

Ajit Singh Vs. Indersaran, Etc.

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Court : Delhi

Decided On : Nov-22-1978

Reported in : ILR1979Delhi335

Judge : H.L. Anand, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1)

Appeal No. : Second Appeal Nos. 29, 30, 31, 32, 82, 83 and 84 of 1978

Appellant : Ajit Singh

Respondent : indersaran, Etc.

Advocate for Pet/Ap. : S.N. Chopra,; N.S. Sistani, ; R.S. Narula,;

Judgement :

H.L. Anand, J.

(1) When can an owner be said to bona fide require a premises for his residence Are the need of the owner and its extent justifiable If so. what is the criterion to determine the reasonable need of an owner These are some of the important questions that fall for consideration in these Second Appeals, four by different tenants and three by the owners of the property in dispute which assail a common order of the Rent Control Tribunal by which the Tribunal confirmed the order of the Additional Rent Controller allowing eviction of four tenants and dismissing the

petitions of the owners for the eviction of the other three. These appeals were filed in the backdrop of the following circumstances;

(2) Inder Saran and his widowed mother, Indrani Saran, for short, the owners, are displaced persons from West Pakistan and had apparently affluent background prior to the partition of India. Their claim to the immoveable property left by the family behind on, the partition of India is said to have been verified at a figure of Rs. 35 laths. That the family lived in Lahore before partition in, a 20 room mansion and soon after partition the owners, being then the only members of the family, apart from a married sister of Inder Saran, rented a comfortable residential flat in 19A, Alipur Road, Civil Lines, which was then considered the best residential locality in Delhi, were said to be the other measures of their standard of living. In course of time, Inder Saran got married and when the proceedings, out of which the appeals have arisen, were launched some time in the year 1964, he was blessed with a son, who would now be around 14 1/5 years of age. During this period Inder Saran, made progress in his business and he set up a factory in Shahdara which he has since been running. In 1957, the owners purchased in a public auction in, different shares the property in dispute known, as 19. Faiz Bazar, Darya Ganj, Delhi. It is a three storeyed building standing on a plot of land said to be on, lease from the' President of India. The ground floor is being used for a commercial purpose partly by Inder Saran, for his own business and partly by a tenant. On both the 1st and 2nd floors, there are in all 8 residential units. In the year 1964, the owners filed 8 different petitions for eviction of each of the tenants of the 1st and 2nd floor on the common, ground that each of the 8 premises were bona fide required by the owners for their residence and that the tenanted premises in the occupation of the owners were not suitable for their requirements. During the pendency of the proceedings, one of the tenants, who held one of the units on the 2nd floor, died and the petition was allowed to abate. The proceedings were consolidated. The owners justified the eviction of the seven tenants on the ground that the owners bona fide required both the floors' so as to convert these, after alteration and modification, into two independent units, one for the mother and the other for the son and his family, guests, and domestic servants. The claim was sought to be reinforced by the plans of the two floors in a redesigned shape. The seven tenants resisted the plea for eviction on a variety of grounds such as

invalidity of the notice of termination, lack of title of the owners in the property, lack of bona fides in the need, the composite nature of the tenancy and the suitability of the tenanted premise in the occupation, of the owners. By a common order of March 26, 1975, the Additional Rent Controller steered clear of all the grounds of resistance to eviction and held that the need of the owners was bona fide, the tenanted premises in their occupation were not suitable for their requirements but that the eviction, of all the seven tenants would not be justified as the reasonable needs of the owners would be satisfied with the eviction of the four tenants of the 1st floor, the present appellants. The petitions of the owners with regard to these four tenants were allowed while the petitions with regard to the three tenants on the 2nd floor were dismissed. The four tenants, who were ordered to be evicted, appealed to the Rent Control Tribunal and so did the owners in so far as the eviction of the remaining three was not allowed. The various contentions and counter-contentions were, by and large, reiterated before the Tribunal and the Tribunal affirmed the order of the Controller by a common order of January 2, 1978, and dismissed all the seven appeals. In the four Second Appeals, the tenants seek a reversal of the order of eviction. In the three appeals, filed by the owners, eviction of the remaining three tenants are also sought ostensibly on the ground that the need of the owners would not be satisfied with the eviction of four tenants but more as a measure of counter blast and with a view to ensure that at least the orders of eviction of four tenants are maintained.

(3) In the course of their rather elaborate and indeed learned arguments, counsel for the parties dealt with different facets of the concept of bona fide personal need, the measure of reasonable requirement of an owner for residential accommodation, the standard of suitability of an existing accommodation, and the criteria to determine if a tenancy was for a composite purpose. While the owners sought to justify a larger area on the ground of their affluence, status and standard of living to which they were used and claimed a right to determine how much area they would need to make themselves comfortable, the claim for any accommodation was resisted on behalf of the tenants on the ground that the owners' fantastic demands to evict 7 or 8 tenants to provide them with a luxurious residence was so fantastic that it was by itself destructive of any element of reasonableness, honesty or bona fide. In an apparent effort to take advantage of

the obvious sympathy that the Court would have for the tenants, it was urged that there would be no justification to sacrifice the bare minimum needs of seven tenants to ingratiate the luxurious whims of an affluent owner. Some of the tenants, who also appeared in person to reinforce their cases, invoked either their advanced ages, their respectable background and in the case of one at least her windowed status with the obvious difficulty, if required, to make alternative arrangements. There was also considerable controversy as to the precise scope of Second Appeal under the [Delhi Rent Control Act, 1958](#), for short, the Act, and the obvious limitations on the power of the Court while dealing with such proceedings. In the face of rather heavy onslaught on behalf of the tenants, learned counsel for the owners even while pressing his three tenants, learned counsel for the owners even while pressing his three appeals did not leave any doubt that consistent with the requirement to be reasonable in seeking eviction, the owners, even though initially desirous of having both the floors, would be satisfied if the orders of the courts below were maintained with or without the necessary peripheral modifications. Some of the tenants sought leave to urge additional grounds and even to produce additional evidence. There was some controversy arising out of the claim of the owners that they would have to make a number of alterations and modifications in the existing plans to make the premises suitable for their peculiar requirements and an attempt was made on behalf of the tenants to resist eviction on the ground that such modifications or alterations would be hit by the Land Ceiling laws and would also require prior municipal sanction. A contention was also raised that inasmuch as the owners proposed to make alterations and modifications in the existing structure, their case for eviction, if at all, fell within clause (g) of proviso to Section 14 of the Act and the petitions must fail because neither the said clause had been invoked nor were its requirements satisfied. It would, therefore, be necessary to consider and decide all these questions. as indeed. certain minor pleas, raised on behalf of the parties.

(4) What then are the requirements of the law which must be satisfied to justify an order of eviction on the ground of bona fide requirement of a landlord for occupation of any premises as a residence. Clause (e) of the proviso to sub-section (1) of Section 14 of the Act. which lays down these requirements, runs thus: '(e) that the premises let for residential purpose are required bona fide by the

landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation: Explanationn :- For the purpose of this clause, 'premises let for residential purpose' include any premises which having been let for use as a residence are, without the consent of the landlord, used incidently for commercial or other purposes ;' 'lhe clause postulates four conditions which must be satisfied : (i) The landlord must be the owner of the property ; (ii) The premises must have been let for a residential purpose :. (iii) The premises must be required bona fide by such owner lor occupation as a residence for himself or for any member of his family dependent on him; (iv) The non-availability of any other reasonably suitable residential accommodation. ownership of the property :

(5) Both the Controller and the Tribunal have returned a concurrent finding of fact that the property in dispute which formed part of the compensation pool constituted under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, was purchased by the owners in dilferent share in a public auction held on April 27, 1957. for Rs. 2,53,000 and that a sale certificate to that effect had been issued by the competent. authority pursuant to which all the tenunis duty atoraed to the owners and had since been dealing with them as such. It is not disputed on behalf of the tenants that the original sale certificate had been sent to the Sub-Registrar for registration and Exhibit A.W. 5/1 was a copy of the said sale certificate. The title of the owners to the property was nevertheless sought to be disputed on behalf of l he tenants on two grounds. In the first instnce, it was urged that the title did not. pass to the owners notwithstanding the auction and the issue of the sale certificate because in terms of Rule 90(15) of the Displaced Persons (Compensation and Rehabilitation) Rules, 19, a copy of the sale certificate had to be forwarded to the Sub-Registrar and that the title passed on the said sale certificate being registered. It is true that Instead of a copy of the sale certificate, as cnvisaged by the aforesaid Rule. the original sale certificate was forwarded io the Sub-Registrar and a copy of the sale certificate (Exhibit A.W. 8/1) was scnt to the owners. That the certificate sent to the Sub-Registrar was duly registered is not in dispute. That being so. it is difficult to understand why the

registration of an original sale certificate was not tantamount to the compliance with the requirement of the Rule for transfer of title in the property to the owners. If the requirement of the law was that the original document had to be submitted for registration and only a copy of it was submitted, one could appreciate the objection, but where instead of the copy the original certificate was sent and was duly registered, there could be no possible objection to it. This ground is, therefore, wholly frivolous and must be rejected. In the second instance, it was urged that the title did not pass to the owners because the sale certificate purported to transfer absolutely the entire property including the land on which the structure stood even though the land was held by the evacuee owners as lessees from the then Governor General in Council and what vested in the Custodian Administration, and later became part of the compensation pool under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, was merely the leasehold right in the said land and the ownership of the structure. It was not disputed that an objection had been raised on behalf of the Land and Development Office that it was only the leasehold rights which had vested and could be transferred and the Rehabilitation Department had, therefore, erred in making an absolute conveyance of the property. It is, however, difficult to understand how this would affect the owners' title to the leasehold rights in the land and their ownership of the structure standing thereon which is all that is claimed by the owners and required by them to be established for the purpose of the present proceedings. Here again, one could understand the objection if the owners were claiming more than what was conveyed to them by the sale certificate or if they were required by law to establish more than what had been conveyed to them. It is the other way round. They claim to be the owners of the structure and the lessee, of the land on which it stands and that is all that is required of them even though the sale certificate purports to make an absolute conveyance both with regard to the land and the structure. There is, therefore, no valid reason to disturb the concurrent finding of fact with regard to the ownership of the property. Whether the premises were let for residential purposes '.

(6) Of the four tenants, whose eviction was ordered, three, namely, Dr. Kachwaha (S.A.O. No. 31/78), Dr. Sikka (S.A.O. No. 30/78) and Ajit Singh (S.A.O. No. 29/78) have joined issue with regard to the purpose of letting. On the material placed on.

record, both the courts below returned concurrent findings of fact that. even though the rent notes and the receipts reexecuted from time to time by the previous owners and the Custodian Administration did not specify the purpose of letting, it was established from the nature of the premises, their location, design and the continued dominant purpose of the user throughout since the letting that the same were let for a residential purpose, even though two among these three tenants, Dr. Sikka and Ajit Singh, may have been using the premises or the address incidentally for a commercial purpose and the third of these, Dr. Kachwaha, had been consistently using the premises substantially, even though not dominantly, for the purpose of not only running a clinic but a children's school as well. Both the courts have also rejected an attempt by Ajit Singh to establish composite user on the basis of a document said to have been executed by the then Manager of the owners of the property subsequent to the original letting, though for different reasons. While the trial Court rejected the document on the ground that the Manager had no authority, the Tribunal rejected it on the ground that it had been, obtained subsequently to reinforce a false plea. Both the Courts have entered into an elaborate discussion of both oral and documentary evidence produced on behalf of the parties with regard to these matters and having returned a concurrent finding of fact with regard to the purpose of letting, I would not be justified in interfering in such a finding in Second Appeal under Section 38 of the Act, but would consider some of the questions of law that were canvassed on more or less admitted factual hypothesis.

(7) It was not disputed that the onus to establish that the premises were let for a residential purpose was on the landlord, it was also not disputed that if there was no material to indicate the purpose letting, the plea for eviction on ground of personal need would not necessarily fail and that in such a situation, the purpose of letting could still be inferred from the nature of the premises, its design, the location of the building, the dominant use to which it has over the years been put and other relevant factors. It was also not disputed that in terms of the Explanation to Clause (e), the incidental use of a residential premises for a commercial or other purpose without the consent of the landlord would not take it out of the expression 'residential premises'. Within these admitted parameters, a number of contentions were raised and may be considered. In the first instance, it

was urged that the purpose envisaged in the perpetual lease executed by the then Governor General in Council in favor of the original lessee should be determinative of the purpose for which any structure on it could be built and put to use. The provocation for this contention is the rather inexplicable circumstance that the perpetual lease specifically sets out in unequivocal language that the lease was being granted for the purpose of a 'shop'. It was, however, not disputed that the land on which the structure stands was initially intended for construction of shops, presumably on the ground floor, and that residential flats were put up on the first and second floor and were being used as such over the years without any objection by the Lesser or the Land and Development Office. The purpose of the construction as set out in, the perpetual lease could not in the circumstances be determinative of the nature of the construction, on the first and second floors. That the various tenants had admittedly taken the premises primarily for the purpose of a residence and had consistently been using the same for that purpose would by itself repel that argument. It would, therefore, be reasonable to infer that either by a supplementary instrument the purpose for which construction may be put up on the land had been extended to residential or the Governor General in Council and his successors-in-interest had acquiesced in the construction of residential units on the floors other than the ground floor. Secondly, it was urged that merely because the various units on the first and the second floors were designated as flats in the rent notes, the receipts and the records of the Department of Rehabilitation, would not necessarily connote that these were of a residential nature or intended only for residential use. It is no doubt true that in the large cities where there is growing shortage of accommodation and scarcity of land, the jargon 'commercial flats' is in vogue and when one talks of a flat one does not necessarily exclude a non-residential. or to put it differently, a commercial flat or a flat which may be used for a non-residential purpose. This argument, however, overlooks the patent fact that the units in the present case are residential in nature not merely because of the nomenclature by which they are described in some or all of the documents referred to above, but because the very structure and the design of the units leave no manner of doubt that they were intended to be separate residential units' in which there is a provision for living rooms, kitchen., bath, W.C., courtyard, etc.. which would not only lend support to the claim that they were residential units

but almost establish conclusively that even though they could be used for a composite purpose by certain class of people, such as lawyers, doctors, etc., they were nevertheless designed as an intended for use as purely residential apartments. It was next urged that inasmuch as there is either express or implied finding by the Courts below that at least the three tenants, who joined issue on the question of the purpose of letting, had at least incidentally been using the premises in their occupation consistently over a period of years for a non-residential purpose, these premises would be outside the expression 'let for residence'. This argument clearly ignores the true import of Explanationn to clause (e) which specifically excludes from the expression, 'premises let for residential purposes', such premises which though let for such a purpose are 'without the consent of the landlord used incidentally for commercial or other purposes'. Both the courts have turned down the plea that on the material, the content of the landlord turn such incidental user could be found either expressly or by implication. Lastly, it was urged on behalf of Dr. Kachwaha that he has consistently been using the premises in his occupation primarily for running a clinic, albeit a nature cure clinic, and a children school which must be held to be the dominant purpose because the clinic and the school were not only too well known all over the city, but also because being a bachelor, his residence only in a part of the premises could not be said to constitute a user of the premises predominantly for the purpose of a residence since having regard to the common course of events much more space would be needed for a clinic and children school than the residence of a single individual, who had an austere style of living. It was, therefore, urged that the Explanationn would obviously not cover the case of Dr. Kachwaha and would take the premises outside the expression 'premises let for residential purpose' since she non-residential user could not be said to be incidental, but. was substantial, if not dominant. This contention poses a substantial question, of law as it) the construction to be placed on the expression 'let for residential purposes' in clause (e) and the true import of the expression "used incidentally' in the Explanationn to the clause and [their effect even on the concurrent findings of fact arrived at by the courts below.

(8) It was successfully demonstrated by counsel for Dr. Kachwaha that in determining the question as to the purpose of letting, including the incidental

question as to the actual user of the premises, both the courts below have perhaps unintentionally ignored a number of press cuttings dating back to the early fifties which clearly bring out that the nature cure clinic and the children school has been a popular project of Dr. Kachwaha and had found acceptance and attracted commendation from very high quarters. Some of these press cuttings admittedly show Dr. Kachwaha along with the children with high dignatories on, ceremonial occasions which prominently bring out the number of the premises in dispute as the possible venue of the activities of Dr. Kachwaha. Mr. Narula, who appeared for the owners, did not seriously dispute this criticism but sought to justify the exclusion on the ground that these press cutting did not necessarily lead to the conclusion that Dr. Kachwaha was running the clinic or the school in the premises in dispute nor establish the extent of the premises which was really being utilized by Dr. Kachwaha for these non-residential purposes. He nevertheless did not dispute the fact that since the period soon after the premises were let to him. Dr. Kachwaha has been running some kind of a nature cure clinic even though he was not a qualified medical practitioner and had been running a children school of sorts either in the premises proper or partly in the premises proper and partly in any unauthorised construction put in the uncovered area forming part of the premises. He was also unable to dispute the fact that Dr. Kachwaha has throughout lived in the premises alone and has no other member of his family. if that be so, it would be difficult to hold even on the concurrent findings of the courts below as to the consistent user of the premises for a clinic and a school since a very long time that the use of the premises for a non-residential purpose was merely incidental. One could perhaps say that of a clinic in the case of a doctor, that too if the doctor was living with his family. But that would not be true of a doctor living alone and also engaged in the business of running a children school. If this non-residential user was, therefore, not incidental even, on the admitted facts and the concurrent findings of fact, the owners would not be entitled to the benefit of the Explanationn, even if neither they nor their predecessor-in-interest consented to such user. It would be useful to remember in this context that in spite of the consistent user of a premises for a composite purpose by Dr. Kachwaha and what now appears to be a dominant non-residential user did not invoke any objection either from the original owners of the property or the Rehabilitation. Department or even by the

present owners because none of them took any steps to prevent such misuse and the misuse was not made subject matter of an additional ground for the eviction of this tenant. Such consistent user of the premises by him for long years would appear to transform the purpose of letting, even if it was initially intended for a residence.

(9) In the result, while there would be no justification to interfere with the conclusions arrived at by the courts below with regard to the purpose of letting 'of the premises to the other tenants, such a conclusion would not be justified in the case of Dr. Kachwaha on the admitted facts and on a proper application of the law on the material on record, it must be held that the premises in his occupation could not be said to have been let for residential purpose so as to be capable of attracting clause (e) of the proviso to sub-section (1) of Section 14. Bona fide need and availability of reasonably suitable accommodation:

(10) The bona fide requirement of the owners and the non-availability of other reasonably suitable residential accommodation are in theory, two independent conditions, both of which must be satisfied along with the other conditions, to justify an order of eviction. These two conditions are, however, by their very nature so inextricably linked with each other that any decision with regard to the availability of residential accommodation, which is reasonably suitable, would be fortiori determinative of the question of the very existence of the need. In theory, it may, therefore, be possible to say that the owners bona fide required the premises for a residential purpose even though the residential accommodation available to them otherwise may be reasonably suitable, but once one holds that such accommodation is reasonably suitable, the bona fides of the need or its factual existence would be of no avail, so that in the ultimate analysis of the residential accommodation available is reasonably suitable, the bona fide need of the owners could not be said to survive so as to justify an order of eviction. It would, therefore, be not only convenient but proper that both these requirements are dealt with together as the latter lends colour to the former and could even be determinative of it.

(11) What then do the words 'required bona fide by the landlord' in clause (e) of proviso to sub-section (1) of Section 14 of the Act connote. The expression 'required' appears to signify more than a mere whim, a wish or a desire, it does not incorporate the concept of absolute necessity either. The expression 'bona fide' implies an element of honesty or, to put it differently, the absence of any ulterior motivation. The words, therefore, signify an honestly felt need of an owner and, therefore, incorporate a concept which, is both objective as well as subjective. Ordinarily, an owner of a property would have the freedom to use it according to his desire irrespective of whether such a desire would satisfy the test of an honestly entertained need. The provision of clause (c), as indeed the broad scheme of the Act, however, put certain constraints on such a right and incorporate a sort of a measure of social control on some of the attributes of ownership of immovable property. The statute makes both the motivations of the owner, as indeed the reasonableness of the desire, justiciable, and the law, therefore, requires not only that the need of the owner for the premises should be honestly and genuinely entertained but must also be the need of a reasonable person in the position of the owner having regard to the totality of circumstances such as the extent of the family of the owner, the standard of living to which the family is used, his social status, the pattern of life relevant to that status, the social conditions and any peculiar requirements of the family. All these have to be considered in the wider context of the socio-economic conditions obtaining in the country. Once the Court comes to the conclusion that the claim of the landlord is the result of honestly entertained need the Court would not weigh the requirements in a fine scale, even while keeping the landlord confined within reasonable limits, having regard to all the relevant circumstances.

(12) A number of contentions were urged on behalf of the tenants in support of the plea that the desire of the owners to take up a residence in their property was tainted and that no reasonable person in the position of the owners could possibly have entertained a genuine desire to take up residence in the property in dispute having regard to the common course of events. In the first instance, it was urged that the grossly unreasonable and almost capricious nature of the claim made by the owners to as many as eight flats on both the floors giving shelter to eight families, four of which were admittedly larger than the remaining four in area and

each of which was in any event a dwelling unit for a family by itself, for the residence of the owners and their family consisting of a mother, a son, his wife and a child, who was only a year old when the proceedings were initiated. would by itself seriously impinge on the honesty and genuineness of the desire of the owners. It is no doubt true that the initial claim of the owners, who during almost a quarter century been living quite comfortably in a rented apartment, which has been described by both the courts as family commodious, to four large and four medium residential units comprising two complete floors was no doubt fantastic whatever be the standard of living, to which they were used, or which may otherwise be justified, having regard to their social status. their peculiar requirements and however liberally one may concede to them the play of their ego to live in a lordly style. That both the courts have rejected the claim even for half of the accommodation further reinforces the unreasonableness of the original demand. But would that necessarily lead to the conclusion that the owners never entertained a genuine desire to live on two complete floors of the building and be destructive of even a genuine desire to have as much accommodation, if not all the accommodation that they claimed, which may enable them to live in a style of their choice. It is possible for an owner to pitch his claim too high because of a false notion of his affluence or his exaggerated ideas of a fabulous style of living It may also be a pure bargaining counter which may perhaps justify a wider or a larger claim to be able to ensure eventually the lesser relief. It may be based on other considerations such as the desire to eliminate outsiders from the floors in which the owners want to live to reduce the possible source of noise or other pollution from the two floors or to avoid any possibility of unnecessary conflicts or irritations which may accompany a situation where the owners and some of the tenants share the floor or floors with the owners. If the claim of an owner to at least a part of the area could eventually successfully pass the judicial test and the need of the owner in relation to that part could be said to be bona fide, it would not be disentitle the owner to the relief merely because initially he appeared to have opened his mouth a little too wide. It would not. thereforee, be possible to hold that merely because the owners overstated their case initially their desire to occupy a part of their own Property for their residence must be held to be tainted so as to disentitle them to any relief.

(13) It was next urged that a comparative study of the locality in which the owners have been residing over the years and the location of the property in dispute and of the different features of the two properties would militate against any reasonable possibility of a genuine desire by a family which makes a claim to affluence, high standard of living and sophistication in taste to take up residence in such property. It is no doubt true that Alipur Road is certainly the best and quietest residential areas in this part of the city and is completely free from numerous unfavorable features of urban life like congestion, density of population, heavy traffic, noise smoke and other pollution from which the Faiz Bazar area in which the property in dispute is situated certainly suffers in almost chronic form. It is also not disputed that the building abuts on the main road, which is the busiest road in the city, and the area has been fast developing as a commercial centre with the resultant increase in noise, smoke and other pollution, which would certainly make it highly unattractive, if not uncomfortable for a sophisticated and affluent family who could afford the luxury of a comfortable living. That the property houses a number of other families may be another unfavorable feature of it. It is, however, not possible to ignore that the property in dispute has its favorable features as well. One of the owners maintains an office on the 1st floor of the property. The owners would also have the satisfaction of taking up residence in their own property, eliminating any possibility in future of any threat from the landlord for eviction or other similar discomfiture. There is the prospect of the owners taking up residence in a more spacious premises than their existing accommodation with the likelihood in the future of increase in the area should such increase be justified. The proximity of the residence to the place of work and its nearness to the factory in Shahdara would effect both economy of time and money. The Faiz Bazar property is in close proximity to New Delhi which is the centre of commercial and cultural activity as well as the seat of the Central Government. Faiz Bazar is an ideally situated locality between the Old and New Delhi and most of the domestic requirements and conveniences are within easy reach- Some of the unfavorable features such as noise and other pollution could be effectively taken care of by modern methods of insulation. Having regard to all the circumstances, it is difficult to say that an owner who has a high standard of living would never think of shifting from a tenanted premises to his own property with these features and if one reckoning a

reasonable owner may opt to do it, it would not be possible for this Court to come to a contrary conclusion.

(14) The difficulty of the owners, however, does not end merely because they entertain a genuine desire to shift to their own properly. The further requirements as to the extent of their need and the unsuitability of the present accommodation in the context of such a need have still to be satisfied. The family consists of an aged mother, her son, the wife of the son and their 15 years old son. The accommodation at present available with the owners consists of a spacious drawing room (16'.4'x 19'.3'), a large dining room (16'.41/2'X 16'.4'1/2') three bedrooms (9 x 13', 9 x 17 and 8.6 x 11.3). one of which has been improvised by covering a verandah, a kitchen, a store and a toilet. The total covered area works out to about 1200 sq. fit. Both the courts have returned a concurrent finding that having regard to the extent of the family, the present accommodation was reasonably suitable for its requirements. The first appellate court has expressed the view that even though the accommodation was reasonably suitable, the accommodation that would be available on the eviction of all the tenants on the first floor would be 'more suitable'. If the existing accommodation is reasonably suitable according to both the courts and the first appellate court has said so in the judgment in terms there would be considerable force in the contention that the claim for eviction would not survive at all because the availability of a reasonably suitable accommodation would disentitle the owners to evict any tenant, much less four tenants. It would, however, be unreasonable to shut out the claim of the owner on this ground because the owners could not have filed any appeal against this part of the judgment since the ultimate conclusion was in their favor. They would, therefore, be entitled to canvass even in the present Second Appeals that the conclusion of the courts that the owners were entitled to orders of eviction of the tenants of the first floor could be justified, inter alia, on the ground that the present accommodation was not reasonably suitable to their requirements. On behalf of the tenants, it was further urged that the first appellate court having found that the present accommodation was reasonably suitable, eviction could not have been ordered merely because the area thus available would be by some standard more suitable.. Now this is true that clause (e) does not incorporate any concept of comparative suitability. The last condition of the clause is the non-availability of a

reasonably suitable accommodation. There was, therefore, no question of comparative suitability otherwise there would perhaps be no end to it because there may be more suitable accommodation even to the most suitable one. It is true that the first appellate court has only given one reason why the property in dispute would be more suitable than the existing accommodation i.e. the proximity to the office of one of the owners which is located on the ground floor of the property itself. It is, however, not possible to ignore a variety of other reasons why the existing accommodation could not be reasonably suitable. Suitability is a very wide concept which encompasses not only the area available but the location of the property, its economic implications, the nature of the holding, and a number of other factors. It has also been pointed out by the first appellate court that the existing accommodation was not reasonably suitable because it is at some distance from the property in dispute where the office of one of the owners is located. But that apart, there are other features of unsuitability. There is only one Toilet in the accommodation which can hardly be said to be sufficient for a family comprising three generations. There is also no additional accommodation which may be used for certain minimum facilities to the maid servant or cook etc. to which the family must, having regard to its status and standard of living be used to. The two bad rooms are of rather small size and the third is only an improvised arrangement. There is no scope to accommodate an occasional guest. The accommodation is a tenanted one and although the desire of the owner to live in his own property may not by itself justify eviction and an accommodation may not be necessarily unsuitable merely because it is held on rent. nevertheless, it is not possible to ignore the preference that the owner would have to reside in his own property rather than be compelled to live in a tenanted accommodation even though there was no immediate threat of eviction. For all these reasons I see no ground to interfere in the conclusion of the courts below that the present accommodation could not be said to be reasonably suitable so as to disentitle the owners to an order of eviction.

(15) There is, however, a serious question as to the extent of the accommodation that the owners would reasonably require in their property. Surely the extent of accommodation could not be left to the mere desire or whim of the owners howsoever genuine or honest it may be even though the court would not like to

weigh their need in a fine scale. It would, however, certainly be entitled, as indeed duty bound, to ensure that the claim of the owners is confined within a broad reasonable limit. It has already been pointed out that the courts below have allowed the owners full one floor evicting all the four tenants but without justifying such a large area for a small family of only four members. As has been pointed out above, the accommodation at present available with the owners comprising a total covered area which works out to about 1200 sq. ft. and consisting of three bed rooms, a drawing room, a dining room, a store, a kitchen and toilet, has been described by the courts below, from the point of view of the total area, as reasonably suitable for their requirements and that is where the owners have been living during the last almost quarter century. If that be the true test of suitability of a residential accommodation for a family like that of the owners, it would be difficult, it not impossible, to justify the eviction of four tenants occupying four different residential units even if one were to take into account the high standard of living claimed by the owners, their most liberal requirement including accommodation for an occasional guest and certain minimum facilities for the attendants. Parties have been at variance as to the precise covered area of the existing accommodation and the covered area on the 1st floor of the property in dispute, but it was by and large agreed that the total plinth area of the 1st floor works out to 5,599 sq. ft. and the covered area to 4,342 sq. ft. although the area is reduced to a little more than 2,000 sq. ft. if the covered verandah and certain other portions are ignored. As against the drawing-dining, three bed rooms, store, kitchen and a toilet available at present, the four units on the 1st floor would have given to the owners 4 large drawing rooms, 6 bed rooms, 2 box rooms, 4 bath. rooms, 4 W.C.s., 4 kitchens, 2 kitchen stores and 2 front covered verandahs and 4 open court-yards. From the point of view of the area in the 1st floor, it works out to almost thrice of the total area in their occupation at present, while from the point of view of accommodation it would have given to the owners more than double the existing accommodation. The claim of the owners to such a large area was, however, sought to be justified with reference to a plan containing the manner in which the entire floor would be redesigned for the peculiar needs of the owners which broadly visualises the retention of the two large units for the residence of the family while one small unit for the servants and the other small unit for the guests. Unfortunately, neither of

the courts below have applied any objective criteria as to the needs of a family of four members. The courts have, apparently been carried away by the fact that they were after all turning down half the claim of the owners in that instead of two floors, they were allowing eviction of tenants from one floor. This was, however a wholly erroneous approach because the need of the owners had to be determined on the basis of an objective criteria of the need of a reasonable person in the circumstances of the owners subject to the prevalent socio-economic conditions such as the changing property relations, and the changing concept of a dwelling unit- A proper consideration of the matter by the courts below would not have justified more than the two large units on the 1st floor. These two units now in the occupation of Ajit Singh and Dr. Duni Chand comprise a covered area which is more than the total covered area now in the occupation of the tenant. As against the existing accommodation available to them, these would provide for the family a large drawing room, a large dining room, four bed rooms, two box rooms, two kitchen-stores, two bath rooms and two W.Cs., two kitchens, two front covered verandahs and two open court-yards. Such an accommodation would be eminently suitable for a family of four members including a couple, leaving scope for the accommodation of an occasional guest and to provide certain minimum facilities to the attendants of the family. The courts below have apparently been taken in because of the plan filed on behalf of the owners containing a super imposition on the existing plan of how they would redesign the floor for their use by making various alterations and various modifications. The fresh design demarcates the two large units of the family leaving two smaller units for the attendants and the guests respectively. This may present an artist's impression of how the first floor may be redesigned or the owners own wish or their conception of a spacious and comfortable living. The extent of the need of the owner, however could not be left on their whims or on their fancies without their beings suitable tampered by the social conditions obtaining in this country, the fast changing property relations and rather down to earth style of living not only in this country but even in the more prosperous and developed countries of the world. To allow the owners to evict a tenant of a complete residential unit to be able to accommodate their attendants or to give similar treatment to the other tenant to provide for the occasional guests of the owners would be virtually restoring to

them the unrestricted rights to move in their own property which it is intended by clause (c) to the proviso to Section 14 which admittedly entitles the owners to evict the tenant only to the extent of the reasonable need of the owner. Having regard to all the circumstances there would be no justification to evict the tenants of the two smaller units of the first floor even if one were to ignore the finding that one of these is even otherwise outside clause (e) because of the composite purpose of the tenancy.

(16) Sought to be resisted on behalf of the owners, as is conventional, on the additional ground that these involved determination of pure questions of fact which would be outside the reach of the jurisdiction of this Court in Second Appeal in view of the concurrent findings of fact returned by the two Courts below. The law with regard to the nature of these questions, as indeed the jurisdiction of this Court in Second Appeal under the Act, is fairly well settled. While the High Court in exercising of its jurisdiction in Second Appeal would not interfere with a pure finding of fact, a decision of the lower Courts which is contrary to law or where the Courts have committed an error of law or the finding of the Courts is one of law or mixed question of law and fact, the High Court would certainly be entitled to examine its correctness. Even if the decision raises a pure question of fact, the High Court would be entitled to examine it if it can be shown that there was an error of law in arriving at it or that the finding was based on no evidence at all or was arbitrary, unreasonable or perverse. There can be no doubt that, while the question as to how the premises was being used by a tenant is a pure question of fact, the further question as to the circumstances of the user which would transform the purpose of letting is certainly a question of law. For, it raises a question of a legal approach to the facts in the light of the language of the statute and its true scope and meaning. The further question as to the criteria to determine the reasonable need of an owner in the context of the totality of circumstances in the backdrop of the socio-economic conditions obtaining in the country is essentially a question of law though, on its application to the facts of a case, it may become a mixed question of law and fact. If on these questions, the decision of the Courts below is the result of a wholly erroneous legal approach to the problem, it would certainly be open to this Court in Second Appeal to correct the decision by a proper legal approach. It has been pointed out above that in

determining the effect of the consistent long user of the premises by Dr. Kachwaha for a composite purpose, the Courts below have not given effect to Explanation to clause (e) and have committed an error of law in ignoring that on the admitted findings of fact the nonresidential user was substantial and even dominant. On the question as to the extent of the need of the owners, the Courts below have not considered the criterion to determine the reasonable needs of a man in the position of the owners and the totality of the circumstance.' in the context of the conditions obtaining in the country, the changing trend with regard to a dwelling and the preference for a small, compact and functional residential unit not only in the developing countries but even in the highly developed countries of the world. In any event, the conclusions of the Courts below on both the questions particularly the question as to the extent of accommodation required by the owners would be open to serious objection as being wholly arbitrary and unreasonable bordering on perversity. I am, therefore, unable to see any reason why this Court should not interfere with the findings of the Courts below on these two questions.

(17) That leaves for consideration certain miscellaneous contentions and pleas for additional evidence urged on behalf of the tenants. In the first instance, it was urged that the Act envisaged eviction from a premises and that the concept of plurality of the premises or eviction from more than one premises in the same proceedings was wholly foreign to the scheme of the Act. This contention appears to be wholly frivolous. It is true that the Act uses the expression singular in relation to the premises. But it is equally true that in each of the petitions eviction is sought from a single premises. It was in the interests of justice and primarily for the benefit of the tenants that all the petitions were consolidated since by and large they raised common questions of law and fact. If after considering the material on record the Court comes to the conclusion that the need of the owners could not be satisfied with the eviction of a single tenant and that the eviction of more than one tenant was necessary to provide the required accommodation for the residence of the owners, there was nothing in the Act or otherwise on principle which may prevent such a course being followed. Secondly, it was urged that the petitions for eviction under clause (e) were not maintainable because on the owners own showing they would not be able to occupy different premises forming subject matter of the proceedings as they are, but would have to make certain alterations

and modifications in the existing design to make the accommodation for their peculiar needs. This contention appears to be equally fallacious. All that clause (e) envisages is that the owners required the premises for their residence irrespective of whether they were able to occupy in its present form or alter any alterations or any modifications that may be required to suit their peculiar needs. Once the court comes to the conclusion that the premises are required by the owner for his residence, it is not for this Court to consider as to how the owner would use it and what alterations or modifications he would make. It is entirely for the owners. The modifications or alterations are wholly irrelevant for the Court while considering the question if a tenant is liable to be evicted on account of the bona fide personal need of the owners. Thirdly, it was urged that in view of the averments of the owners that the structure would be subjected to modifications or alterations after eviction either as indicated in the plans or otherwise and before the owners could usefully occupy the same, the pleas would be outside clause (e) and would be within clause (g) of the proviso. Eviction was, therefore, sought to be resisted on the ground that the owners had neither invoked this clause nor had its requirements been otherwise satisfied. The material's reflection would show that clause (g) would not be attracted. This is how clause (g) reads : 'that the premises are required bona fide by the landlord for the purpose of building or re-building or making thereto any substantial additions or alterations and that such building or rebuilding or addition or alteration cannot be carried out without the premises being vacated'. It has nothing to do with the requirement of the owner to occupy the premises for his residence. Clause (g) is attracted only where the landlord requires the premises for reconstruction and what is relevant for the purpose of clause (g) is the need of the building for re-construction. It is not the mere desire of the owner to make alterations or . modifications to make the premises fit for his peculiar needs, but the objective condition of the structure that would justify a decision of reconstruction that attracts the clause. Fourthly, a contention was raised that the proposed modifications and alterations would be hit by the law relating to ceilings on urban lands as, by these modifications, the total area of a dwelling house would exceed the permissible limits of a dwelling as envisaged by the said law. Learned counsel was, however, unable to reinforce this contention with reference to any provision which may apply the aforesaid law to the existing

building nor was he able to show how a mere internal modification in an existing structure could possibly change the dimensions of the structure as such or otherwise attract any prohibitory or regulatory provisions of law. Fifthly, it was urged that inasmuch as the proposed modifications or alterations would attract the Delhi Municipal Corporation Act and the Building Bye-laws framed there under, eviction could not be ordered unless the owners had first obtained permission from the Municipal Corporation of Delhi to make the modifications or to carry out the alterations. There was considerable controversy if the proposed alterations and modifications would attract any of the provisions of the Act or the Building Bye-laws and would require sanction. But it is wholly unnecessary to go into this aspect because, assuming that a prior municipal sanction was necessary to make the modifications or to carry out the alterations, it does not affect the right of the owners to the relief if they are otherwise entitled to it. If, after evicting the tenants, the owners want to make any modifications or alterations, they are free to do so subject, however, to the requirements of law. It is neither for the tenants, who are sought to be evicted, nor for this Court to concern itself with the question as to what modifications or alterations may be necessary to enable the owners to make themselves more comfortable in their own property and whether or not municipal authorities would permit such modifications, etc. These matters are wholly outside the proceedings under the Act where eviction is sought on the ground of bona fide personal need of the owners. Sixthly, pleas were made on behalf of Ajit Singh in S.A.O. 29/78 and Dr. Sikka in S.A.O. 30/78 for permission to adduce additional evidence. While Ajit Singh sought to produce additional evidence to establish that he had been receiving official communications from the Central Government and other authorities at the residential address to reinforce the claim of the composite nature of the purpose of letting. Dr. Sikka sought investigation of an averment that the owners had since been able to obtain vacant possession of some of the flats on the 2nd floor of the building or had been promised the same. So far as the plea of Ajit Singh is concerned, the additional evidence is unnecessary because it has already been established that he had been receiving some correspondence at the residential address and there is an implied finding that even though without the permission of the landlord, he may have been incidentally using the premises for a non-residential purpose in that some of the official communications were received

by him at the residential address. The additional -evidence docs not in any way strengthen his case as to the nature of letting. So far as the plea of Dr. Sikka is concerned. it. is much too vague and indefinite and it is not possible to investigate the matter at such a late stage of the proceedings. Lastly. the plea of eviction was sought to be resisted on the ground that it would cause untold hardship to such of the tenants who would be required to vacate. It is no doubt true that considerable hardship would be caused to the tenants whose eviction is being allowed in that they would be compelled to shift from comfortable apartments in a centrally located area at a nominal rental where they have been living for almost a quarter century. It would be particularly hard on Dr. Sikka), a busy medical practitioner in his early seventies because of the prospect of being faced with house hunting at this age. It is equally true that it would be impossible to get a similar premises for residence in the vicinity of his clinic or to get any accommodation any where in Delhi at the present rental. That the evictees would have to pay rent which will be many times more than the present rent can also not be denied. Unfortunately that is one incident of occupation of a tenanted premises and in granting eviction Court has to strike a reasonable balance between the bona fide needs of the owner and the minimum required protection to the tenants. The Act unfortunately makes no provision for alternative accommodation for the evictees and the hardship that may be caused to them is not a ground to deny to the owners their bona fide need of a premises.

(18) In the result, S.A.O. 31/78 and 32/78 succeed and the impugned orders to the extent they allow the eviction of Dr. Kachwala and Mrs. Lila Wati are set aside and the petitions for their eviction are dismissed S.A.O.s. 29/78 and 30/78, however, fail and are hereby dismissed. In the peculiar circumstances, there would, however, be no costs. The appellants in S.A.O. Nos. 29/78 and 30/78 would vacate the respective premises within a period of three months from today.