

96

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 17TH DAY OF APRIL 1998

BEFORE:

THE HON'BLE MR. JUSTICE H. RANGAVITTALACHAR

H.R.R.P. NUMBER 678/1995

Between:

1. SMT. VIMALADEVI CHHAJER
W/o. Sri. Mangilal Chhajer,
aged about 49 years,
2. SRI. MANGILAL CHHAJER,
alias SRI. MANGILAL JAIN,
S/O. Late Sri. Vastimalji Chhajer,
aged about 52 years,
3. SRI. SANJAY CHHAJER,
S/O. Sri. Mangilal Chhajer,
aged about 26 years,

all residing at
I floor, M.C. No., 115,
New No. 9, 4th Cross Road,
Gandhinagar, Bangalore - 9.

.. Petitioners

(By Sri. Paras Jain & T.S. Mahabaleshwar)

And:

SRI. H.S. BASAVANNA,
Father's name not known,
Hindu, Major,
residing at No. 115,
New No. 9, 4th Cross Road,
Ground floor, Gandhinagar,
Bangalore - 9.

.. Respondent

(By Sri. C.R. Gouley, Pradeep Kumar V. Shete &
S.S. Padmaraj)

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This H.R.R.P. filed u/s 50(1) of the KRC Act,
against the order dated 7.3.95, passed in HRC No. 152/83
on the file of the court of the XII Addl. Small
Causes Judge, Bangalore.

This H.R.R.P. is coming on for hearing this
day, the Court made the following:

H.R.V

ORDER....

ORDER

This is a landlords petition under Section 50 of the Karnataka Rent Control Act (for short 'the Act') dismissing their eviction petition against the respondent-tenant, seeking additional accommodation.

The parties will be referred to as petitioners and respondent, hereinafter, the same status they had in the court below.

The petitioners filed an eviction petition on the file of the XII Additional Small Causes Judge, Bangalore City in HRC No.152/63 against the respondent-tenant in respect of the ground floor and outhouse of a residential premises on various grounds namely that the premises is reasonably and bonafide required for their own residence, therefore the tenant should be evicted under Section 21 (1) (h), that the respondent-tenant has put up permanent structure without the written consent of the petitioners, that he has

H.R.v

unlawfully sublet the premises. That he has been committing acts of nuisance by keeping two ferocious dogs. He has been using the premises as a hotel though leased to him for residential purpose and that he has acquired suitable alternative premises, he has committed acts contrary to the terms of the lease; therefore liable for eviction under Section 21 (b) (c) (d) (f) (o) and (p) of the 'Act'.

This petition has been resisted by the respondent-tenant, by filing a detailed statement of objection. The respondent while generally denying all the petition averments, had unsuccessfully tried to set up a title in himself to the schedule property as the holder of an "Agreement to sell" made in his favour by the original owner of the property. He also defended the eviction petition on the ground that petitioners own other buildings in Bangalore which could meet their requirement if any. According to him the purpose of purchase made by the petitioners is only to

H.R.v

evict him from the premises with a view to use the property as a "commercial proposition" and not for "bonafide occupation".

On the basis of the above pleadings the parties went to trial and adduced evidence. It must be stated herein that the trial was conducted by the parties like an original suit of a highly contentious in nature, though the enquiry contemplated under the Rent Control proceedings is only summary in nature.

During the enquiry petitioner-2 got himself examined as PW.1 and produced as many as 103 documents vide Exhibits P.1 to P.103.

Similarly the respondent got examined himself as RW.1 and another 5 witnesses in support of his case and produced as many as 92 documents, marked as Exhibits R.1 to R.92 in support of his defence.

H.R.v

The learned Judge of the Small Causes has dismissed the eviction petition of the petitioners on all the grounds; the learned Judge has held that since the landlords-petitioners did not press the ground under Section 21 (1) (d), the same was liable to be dismissed and accordingly dismissed the same.

Subsequent to the filing of this revision petition another development has taken place which has a bearing on this petition. Respondent-tenant had filed a suit seeking ~~to~~ specific performance of an 'agreement of sale' referred to above in O.S.4455/88. This suit came to be dismissed by the learned 17th Additional City Civil Judge, Bangalore which was also confirmed by this court in R.F.A.358/96 and the Supreme Court in S.L.P.No.1717/97. Thus the tenant's attempt to set up a title in himself is frustrated.

H.R.v

When this matter was being heard before another learned single Judge finally; the learned Judge having regard to the conclusion of the trial court namely "the petitioner-landlord had constructed on the first floor of the building two additional rooms so as to comfortably accommodate all the 8 members of the petitioners family," ^{and} "In arriving at the said conclusion the trial court appears to have placed reliance upon certain photographs produced by the respondent before it", ^{and} Since the arguments were made that the said findings of the trial court was without evidence this court has further held "in the course of the arguments the learned counsel for the parties agreed for the appointment of a Commissioner with a direction to inspect the available accommodation both on the ground floor which is in the occupation of the tenant as also on the first floor which is in the occupation of the landlord. The accommodation if any available in the second floor could also be according to the learned counsel inspected and mentioned by the commissioner's report. Such a course which was agreed by the

H.R.V

learned counsel would considerably help in rendering a just and proper decision on the question involved. Under the circumstances this court with the consent of the learned counsel appearing for the parties appointed an Advocate as a Commissioner with a direction as follows:

That he shall visit premises old No.150 New No.9, IV Cross, Gandhinagar, Bangalore-9 on 14.6.97 at 11 a.m. He shall conduct an inspection with a view to find out the exact accommodation available on the ground floor of the building which is in occupation of the respondent tenant and in the first and second floor in the occupation of the landlord. He shall prepare a sketch and take photos of the accommodation available in the building in the respective portions of the parties and may for that purpose engage the services of a drafts-man and a photographer'.

In pursuance of the said direction the Commissioner executed the commission and has given a finding "along with the photographs and a plan". According to the Commissioner the said premises in occupation of both the landlord and the tenant consists of a ground floor, first floor and a out house. There is no second floor existing above the first

H. R. V

floor which can be used for the purpose of occupation. The ground floor consists of a veranda measuring 13.9' x 8', a hall measuring 21' x 13', 2 bed rooms measuring 8'9" x 10' 9" and 9' x 13' respectively a pooja room and a bath room. The out house in occupation of the tenant consists of 4 small rooms measuring 8'9" x 9', 7'6" x 8'9", 8'9" x 8'9" respectively. The first floor in occupation of the landlord consists of one bed room dwelling unit, the bed room measures 8'9" x 10'6". The living room measures 12'9" x 20'9", a dining hall and a kitchen".

This report is supported by the photographs and the sketch prepared by the draftsman.

However a detailed objection has been filed by the tenant to the report of the Commissioner. Except stating that the Commissioner has exceeded his limits, nothing is stated to question about the accuracy of the statement made in the report nor the report has been attacked on the ground of

H. R. V

bias or prejudice. If the report of the Commissioner is perused, it cannot be said that what has been stated by him is untrue. Therefore I am inclined to accept the report of the Commissioner, about the availability of accommodation to the petitioners in the first floor where they are at present residing.

Coming to the merits of the revision petition Sri Paras Jain learned counsel for the petitioners submitted that the finding of the learned Judge that the petitioners have added two more rooms to the present accommodation in the first floor which would satisfy their need is based on no evidence. He submitted that the facts of the present case being that at present the petitioners are in possession of 750 sq.ft. of built up area in the first floor. He submitted that having regard to the size of the petitioners family and the non-availability of other premises except the schedule premises requirement of "schedule

H.R.v

premises" for their own use and occupation cannot be held to be unreasonable. He submitted relying on the decision of the Supreme Court in YUDHISTER VS. ASHOK KUMAR (AIR 1987 SC 558) relevant portion of which is extracted herein:

"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 to the vice of unconstitutionality. Such an approach in interpretation of beneficial statutes is not warranted. It is true that 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 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."

The expression "reasonable and bonafide" occurring in clause (h) of Section 21 (1) of the Act, should not be stretched to make it impossible for the landlord to obtain eviction .

H. R. V

In the next case cited by him that is
Mst.BEGA BEGUM VS. ABDUL AHAD KHAN (1979 (1)
SCC 273), it has been held:

"The words 'reasonable requirement' in the sub-section undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even a genuine need as nothing but a desire. The connotation of the term 'need' or the word 'requirement' should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act, which affords the facility of eviction of the tenant to the landlord on certain specified grounds. The Act strikes a just balance between the genuine need of the landlord on the one hand and the great inconvenience and trouble of the tenants on the other."

He nextly submitted that having regard to the evidence available on record, 'the relevant portions which he read before this court', the inescapable conclusion is that the respondent-tenant has been using the premises as a 'hotel' contrary to the purpose for which it was leased namely

H.R.v

residential one. He also submitted that the respondent tenant has erected a permanent structure without the consent of the landlord as is clear from a proper reading of the evidence and the report of the Commissioner.

That the tenant has also acquired alternative hotel making himself liable to be evicted under Section 21 (1) (p) of the Act. Therefore he prayed for setting aside the order of the learned Judge by allowing the eviction petition.

Sri S.S.Padmaraj, learned counsel appearing for the respondent-tenant while defending the order of the learned Judge submitted that the petitioners have not established that there is "compelling need" to occupy the schedule premises.

In support of the same he cited the decision of the Supreme Court in the case of SMT.SUSHEELA DEVI VS. AVINASH CHANDRA JAIN (AIR 1987 SC 1150) wherein it has been held:

H.R.✓

"It has to keep in view that there is acute shortage of housing accommodation in the metropolitan city of Delhi and therefore unless there is compelling necessity, there can be no order for eviction under Section 14 (1) (e)";

and so also the decision in MATTULAN VS. RADHELAL (AIR 1974 SC 1597) wherein it has been held:

"Mere assertion on the part of the landlord that he requires a non-residential accommodation in the occupation of the tenant for the purpose of starting or continuing his own business is not decisive. It is for the court to determine".

✓ on the basis of above it has to be held -
Therefore according to him the petition lacks bonafides.

According to the learned counsel the petitioners are 'property developers' and the premises was purchased only with an intention to put up a commercial complex and sell, and not for their 'own use and occupation'. The very sale deed under which they acquired title to the petition schedule premises is a "Sham Document" created only for the purpose of obtaining the eviction order.

K.R.✓

He nextly contended that the findings of the trial court being based on evidence is reasonable and does not call for interference by this court.

It has to be stated what is a 'reasonable and bonafide requirement' depends upon the facts of each case. No hard and fast rule can be stated in this regard. In the decision of Ramdas vs. Eshwar Chander (AIR 1988 SC 1422) the Supreme Court has held:

"It is no doubt true that the question whether the requirement of the landlord is bonafide or not is essentially one of fact".

It has been further held:
"Statutes enacted to afford protection to tenants from eviction on the basis of contractual rights of the parties make the resumption of possession by the landlord subject to the satisfaction of certain statutory conditions. One of them is the bona fide requirement of the landlord, variously described in the statutes as "bona

H.R.v.

fide requirement", "reasonable requirement", "bona fide and reasonable requirement" or, as in the case of the present statute, merely referred to as "landlord requires for his own use". But the essential idea basic to all such cases is that the need of the landlord should be genuine and honest, conceived in good faith; and that, further, the court must also consider it reasonable to gratify that need. Landlord's desire for possession, however honest it might otherwise be, has inevitably a subjective element in it and that, that desire to become a "requirement" in law must have the objective element of a "need". It must also be such that the court considers it reasonable and, therefore, eligible to be gratified. In doing so, the court must take all relevant circumstances into consideration so that the protection afforded by law to the tenant is not rendered merely illusory or whittled down."

Thus from a reading of the decisions cited above, the reasonable and bonafide requirement of the landlord to occupy his own

H. R. v

premises depends upon the facts and circumstances of each case, and the court must by looking at the evidence on record and the circumstances of the case must satisfy itself whether the landlords desire to occupy is merely a desire or there is an element of need. What is need in a given case again depends upon the facts and circumstances of the case;

Having regard to the rival contentions raised on merits the question that falls for consideration in this petition is:

1. Whether the petitioners have established that they require the premises reasonably and bonafide and whether the learned Judge of the Small Causes, Bangalore was justified in dismissing the petition on the facts and circumstances of the case?

2. Whether the learned Judge was justified in dismissing the petition filed under Section 21 (1) (p) (o) (b) and (c) of the Act?

H.R.V

POINT NO.1:

1. Whether the petitioners have established that they require the premises reasonably and bonafide and whether the learned Judge of the Small Causes, Bangalore was justified in dismissing the petition in the facts and circumstances of the case?

A few facts which are not in dispute necessary for deciding this case are as follows:

That the schedule premises consists of the ground floor and out house and a garage at No.115, Gandhinagar and the petitioners are residing in the first floor of the said premises.

The family of the petitioners consists of husband and wife, petitioner Nos.2 and 1 herein, and their 3 children one of them is petitioner No.3. Two sons of the petitioners 1 and 2, are married while one of them is studying. Of the two married sons

K.R.v

~~one~~ son has a child. That the petitioners are businessmen and even according to the tenant they are men of economic status. Petitioner No.2 is holding an important office in various social organisations and petitioner No.1 has got an Ambassador Car which has to be parked in a safe place; that the petitioners are used to the assistance of cooks and servants are also not seriously disputed. Apart from that the petitioners also have servants working in their business establishment and the desire of the petitioners is to provide accommodation to them also. Petitioners are now in occupation of the first floor of premises No.115, Gandhinagar which consists of 750 sq.ft. in all having 2 rooms each measuring 8'x 10', one veranda, a hall measuring 15' x 20', one bath room in the second floor. It has to be stated in this context that the trial court had given a finding on the basis of certain photographs that the petitioners have added two more rooms. This finding was seriously disputed by the parties before this court as narrated above a Court Commissioner was

H.R.✓

appointed and by a reading of the report, it is clear that no such rooms have been added. Therefore it has to be taken as proved that the accommodation available to the petitioners is only 750 sq.ft., as pleaded by them. It has also come on record which is also not seriously disputed by the respondent-tenant that one of the married sons has shifted to the rented accommodation, while another son is using a free accommodation made available for the purpose of sleeping only.

That the second petitioner who has been examined as PW.1 has deposed as follows:

"I am trustee of Sree Jaina Shwethambara Thearapanthi Trust, 2nd Main Road, Gandhinagar. I am also a trustee of a College Shree Trainees Shwethambara Therapanthi Manvathitakari Sangh Ranavas, Marvad. I was a Vice President of Therapanthi Maha Sabha, Calcutta. I am a trustee and ex-member of Mysore Silk Cloth Merchant Association. I am also a member of Lions Club. My wife is the Secretary of Theraphanthi Mahila Mandali, Bangalore. She is also an ex-member of All India Therapanthi

H.R.✓

Mahila Mandali. 100 of visitors come to see me and my wife from Bangalore and outside in the connection with the above social activities. I have no separate accommodation for them to meet me in my residential premises. I feel shy to entertain them. I cannot give proper hospitality for want of accommodation."

He has further deposed that among the 'Therapanthi Jains' there is a custom to have a separate room for prayer and meditation. Under the circumstances it cannot be said that the desire of the petitioners for additional accommodation can be held to be unreasonable or malafide. In fact the trial court also not disbelieved that the desire of the petitioners is not bonafide or reasonable.

The contention of the respondent tenant that if really the petitioners were sincere and honest for a larger residential accommodation they could as well have constructed in their own premises which they own at No.5, A.M.Lane, Chickpet. It is admitted no doubt by the petitioners of they possessing such a property. However PW.2 in

H.R.✓

his evidence has stated regarding the suitability, availability and nature of their right in respect of the said premises as follows:

"There is a property bearing No.64, A.M.Lane,Chickpet Cross. Its site is about 30' x 60'. It is a joint family property. It has been partly demolished by my brother to construct a Commercial Complex. The other half is in possession of 12 tenants and it was also be demolished. After reconstruction we have to provide accommodation to those tenants. It will completely be a Commercial Complex. There will be no residential premises. I cannot provide accommodation to the staff members in the present premises as it is insufficient for my own use and occupation. My business is expanding";

He has further deposed that the said premises No.5, A.M.Lane is called by name "Shanthi Bhavan". The said building has been demolished for putting up a commercial complex. To a question put by the tenant "that he could as well construct a house and continue to reside there, PW.2 has stated that the Corporation does not give permission to use the place as residential premises". Besides according to him it is a joint family property and petitioners have only one third

H.R.v

share in it. He has further deposed in cross-examination that the said "Shanthi Bhavan" is situate in a narrow Chickpet Lane which is a very busy commercial locality and it is very difficult for the vehicles to move about. This evidence is not seriously disputed or challenged. It cannot therefore be held that the petitioner could have built a residential house in the busy commercial locality and lived in the third or 4th floor. The trial court has casually observed that the servants of the petitioners could be accommodated in the said "Shanthi Bhavan", the finding clearly overlooks the admitted evidence namely that "Shanthi Bhavan" was demolished and a commercial complex has been built and is not available nor any residential premises could have been built there.

The next submission of the learned counsel appearing for the tenant is admittedly the petitioner secured one of the flats in the fifth floor, 5th Block, Gandhinagar, called as "Chandraloka

H.R.V

Apartment". This contention overlooks the evidence. PW.2 has stated in his evidence that the said flat belongs to his widowed sister who is in occupation in her own right. This evidence also is not seriously disputed nor the learned Judge has applied his mind to this aspect. Therefore it cannot be held that the petitioners have the benefit of the said accommodation for their use.

The learned counsel nextly submitted that the petitioner is also owning a complex called " Mahaveer Complex" in K.H.Road he could as well accommodate his servants there. This submission also over-looks the evidence on record. PW.2 has deposed in his evidence that his brother-in-law has taken the land where Mahaveer Complex has been built on lease for a period of 30 years. About 10 to 15 partners including the second petitioner have financed for the construction of the said complex in which his share is only 5% which evidence also has not been controverted. Therefore it cannot be held as contended that the petitioner has the benefit

H.R.V

of a accommodation at Mahaveer Complex where he could accommodate his servants as contended by the tenant.

As stated above that the petitioners family consists of petitioner and his wife, two married sons with their respective famalies and a studying son. As has been admitted by the tenant himself that the petitioners have social as well as economic status and their turn over from their business is quite high. Therefore the desire to accommodate their maid servants and the cook and the servants cannot be held to be unreasonable. If these facts are taken into consideration, it has to be held that there is an absolute need for the petitioners to occupy the petition schedule premises as admittedly other than the petition schedule premises they do not own any other premises except what is stated above. The learned Judge has not dealt with this part of the evidence but has simply proceeded to hold on a misreading of the fact namely that the petitioners have added few more rooms to

H.R.v

The contention of the learned counsel for the tenant that the petitioners are only property developers and their intention is only to put up a commercial complex and not to occupy the premises is concerned, no material is placed on record to substantiate the same. It was also contended that the petitioners-landlords are somehow bent upon evicting the tenants and the sale deed under which they claim the property is a sham transaction created only for the purpose of seeking eviction. The learned counsel relied on a decision of the Supreme Court in support of this submission reported in DEVIDAS VS. MOHAN LAL (AIR 1982 SC 1213); it has to be stated that it is not the case of the respondent that the earlier owner of the property tried to evict him but did not succeed or had any legal difficulty in evicting him and therefore in order to achieve the said object this "sale deed" was created nor it is the case that the earlier owner and the present petitioners are related to each other by blood or otherwise, nor it is their case that the sale deed lacked any

H.R.✓

consideration which could suggest a suspicion in the transaction to appreciate the contention. The decision referred to is clearly distinguishable as that was a case where the consideration had not passed between the vendor and the purchaser and the earlier owner failed to evict the tenant. In the presence of a registered sale deed the presumption arises that the purchaser is the true owner and if the tenant were to contend that no title passed in spite of the registered sale deed the purpose of the sale is only to evict him, the burden is on the tenant to prove by adducing evidence that the sale deed is brought into existence only to evict him. As narrated above none of the circumstances has been shown to exist in this case to come to such a conclusion.

At this stage the learned counsel submitted that subsequent to the sale deed, a rectification deed was made between the parties on an insufficiently stamped paper to correct the description of the schedule in the sale deed, that should be held as a

H.R.V

circumstance to show that the transaction is a 'sham' one. This contention is only to be stated to be rejected as the rectification deed brought about between the parties is only to correct the omissions made in the earlier sale deed. In so far as the contention that the rectification deed was made on insufficient stamp paper it is beyond the scope of this revision, to consider whether it was properly stamped or not.

The schedule premises consists of the ground floor having 750 sq.ft. more or less the accommodation in the first floor, an adjacent car garage and out house approximately measuring 450 sq.ft. That one of the petitioners own an Ambassador Car is proved by evidence and accepted by the learned Judge and the car has to be parked in a garage when such a facility is available cannot be denied. But the learned Judge after holding the need for parking the car proceeds to hold that the petitioners can park their car in a public parking lot opposite to the schedule premises. This

H.R.V

approach is totally unreasonable. When the petitioner owns a garage in the same building where they are residing, the desire to park the car in their own garage cannot be held to be unreasonable and it has to be held that the garage in the ground floor is required by the petitioners to park their car.

Lastly the submission of the learned counsel for the respondent is 'that since one of the sons with his wife is residing in a rented premises and another son is making use of his relatives house, they must be asked to continue in the same situation and only the requirement of the petitioners 1,2 and 3 alone must be taken into consider', if accepted would result, to disrupt the joint family and ^{Landlords should} continue to suffer the inconvenience arising out of the separation which is totally unreasonable. The Supreme court in BHAIKAB CHANDRA NANDAN V. RANADHIR CVHANDRA DUTTA (AIR 1988 S.C.396) has held that the factors to be taken into consideration while assessing the bonafides of the landlord is the privacy and

H. R. V

convenience required for the family and the desire of all the family members to stay in one place. This court in LINGA JOIS VS. SHAMA RAO B.S. (1977 (1) KLJ 36) has held:

" It would not be a correct proposition to hold that if the landlord somehow manages with the limited accomodation which is obviously insufficient for him, he should be made to stay with that accomodation for all time in future."

One does not merely exist but lives. In this case the tenant who has no family but very much aspires to live with his friends and relatives numbering about 30 persons in the rented premises ironically contends that the landlord should not live with his own sons and daughter-in-laws but continue to suffer, expgeriencing separation from his own family members and living at different places.

H.R.V

Having regard to what is narrated above namely the number of persons residing there, their economic status and their need to accommodate their maid servants and servants they require the ground floor, garage and out-house for accommodating their family.

Coming to the question of comparative hardship, the evidence clearly discloses that the respondent tenant is an unmarried man living singly. He is in affluent circumstances cannot be denied as admittedly he is running a hotel after acquiring an alternative building on a monthly rent of Rs.13,000/-. Per contra the petitioners have no other accommodation other than the schedule premises and if eviction order is refused it would be virtually compelling the large family of the petitioners to huddle in a small accommodation of 750 sq.ft. consisting of two bed rooms, a hall, a veranda, kitchen, bathroom etc., Therefore the petitioners suffer greater hardship than the tenant.

H. R. V

On the question of partial eviction the learned Judge has held that having regard to the facts and circumstances of the case partial eviction is not possible in this case. Further it is also to be stated that the petitioners and the respondent have developed bitter feelings, the parties have been litigating all these years and there are number of criminal cases filed between them which are pending and the landlord particularly is very apprehensive about the tenant's conduct of keeping two ferocious dogs though they are chained. Under the circumstances apart from the entire premises being required by the landlord it is no longer practicable having regard to the above for both of them to stay in the same place.

For the reasons stated above, the finding of the learned Judge of the Small Causes rejecting the claim of the petitioners, to occupy the ground floor and the out-house ^{garage} has to be set aside, it has to be held that the petitioners are in need to

H. R. V.

occupy the petition schedule premises. Consequently their eviction petition filed under Section 21 (1) (h) of the Act has to be allowed.

For the reasons stated supra it has to be held that the petitioners landlords have established that they require the premises reasonably and bonafide for their own use and occupation, and the learned Judge of the trial court was not justified in rejecting their claim on this ground.

POINT NO.2:

The petitioners had filed the eviction petition as stated above under Section 21 (1) (o) on the ground that the tenant has been using the premises as a hotel instead of a residence that is for a different purpose, than the one for which it was leased and therefore he is liable to be evicted under Section 21 (1) (o) of the Act. Section 21 (1) (o) of the Act reads as under:

"That the premises have not been used without reasonable cause for the purpose for which they were let

for a continuous period of six months immediately preceding the date of the application".

The burden is on the landlord to show that the tenant has been using the premises for a different purpose other than the residence. The evidence on record no doubt discloses that the electricity and gas connection that is provided to the petition schedule premises is categorised as 'non-domestic' and the materials stored like fuel and provisions indicate that food is prepared for more persons than one. The tenant has come out with an explanation of his own that though he is unmarried about 30 of his friends and relatives from his village are permanently staying with him which explains the fact of storing large quantity of fuel and provisions. This explanation no doubt is unnatural, but however as rightly held by the court below the petitioners have not furnished adequate evidence to come to a conclusion that the tenant is running a hotel in the said premises. The eviction petition filed on this ground is also liable to be rejected on one more ground as admittedly before filing

~~H.R.v~~ H.R.v

the eviction on the said ground, the landlord has not issued a notice as contemplated under Section 21 (1) (6) of the Act.

In so far as the petition filed for eviction on the ground that the tenant has been committing "Acts of nuisance" by keeping two ferocious dogs in the compound is concerned, this ground has been negatived by the court below on the ground that the evidence on record discloses that the dogs are 'chained always'.

In so far as the ground of eviction filed under Section 21 (1) (b) (c) and (d) is concerned, the learned Judge has dismissed the petition under Section 21 (1) (d) on the ground that the landlord during the argument did not press and has dismissed the petition, under section 21 (1)(b) and (c) on the ground that the landlord has not produced any material to show that the tenant has violated any of the terms of the lease, similarly the learned Judge has held that the tenant has not put up any permanent structure making himself

H.R.V

liable for eviction under Section 21 (1) (c). The other ground of eviction sought by the landlord that the tenant had acquired a suitable alternative premises is conceder, the learned Judge has held it is true that the tenant has acquired the premises which is a non-residential one used by him for the purpose of running a hotel and the present premises was leased for residential purpose Therefore it cannot be said that he has acquired "suitable alternative premises".

These findings also are not shown to be against the evidence or non-application of mind to the evidence on record calling for interference.

Accordingly it has to be held that the learned Judge of the trial court was justified in dismissing the petition on the stated grounds.

For the reasons stated above, the order passed by the learned Judge of Small Causes rejecting the petition of the petitioners

H. R. V

seeking eviction of the schedule premises in occupation of the respondent for their own use and occupation is set aside and it is held that the petitioners require the premises for their own use and occupation and they are entitled to succeed on this ground. In other respects the order of the learned Judge of Small Causes is upheld. The revision petition is partly allowed and the eviction petition filed by the petitioners to the extent that they require the premises for their own use and occupation is allowed and the respondent tenant is ordered to quit and deliver vacant possession to the petitioners within a period of six months from today.

Petition partly allowed.

Sd/-
JUDGE