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BUSCHING SCHMITZ PRIVATE LTD.

v.

P. T. MENGHANI AND ANR.

March, 17, 1977

[V. R. KRISHNA IYER AND JASWANT SINGH, JJ.]

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Interpretation of statute—Legislature can be assumed not to intend obvious literal interpretation resulting into obscurity—Whether statute can be mocked at—Section 4(1)(c), *Delhi Rent Control Act* 1958— *Sec.* 14, 14*A*, 25*B—Delhi Rent Control Ordinance* 24 *of* 1975*—Delhi Rent Control (Amendment) Act,* 1976*—Right of Government Officer who is asked to vacate Government accommodation to evict his tenant.—Whether can apply to premises let out for commercial purpose—What is residential purpose—Triable issues—Meaning of.*

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The respondent No. 1 landlord let out his building to the appellant, a company to carry on business and use part of it for its manager's residence. The landlord was occupying residential premises allotted by the Central Government. After the amendment of the Delhi Rent Control Act, 1958, by Ordinance 24 of 1975 which was later replaced by Delhi Rent Control (Amendment) Act, 1976, section 14A and 25B were added to the Statute. Section 14 permits a landlord to evict the tenant if the premises let for residential purpose are required bonafide by the landlord for occupation as a residence for himself or

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for any member of his family dependent upon him. Section 14A provides that where a landlord is in occupation of any residential accommodation allotted to him by the Central Government or any local authority and if he is required by order made by that Government or authority to vacate such residential accommodation on the ground that he owns in the Union Territory of Delhi a residential accommodation either in his own name or in the name of his wife or dependent child, there shall accrue to the landlord a right to recover immediately possession of any premises let out by him. The said provision has been given effect notwithstanding anything to the contrary in the Delhi Rent Act or

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any other law or the custom or usage. Section 25B provides for a summary remedy. It provides that the Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession on the ground specified in section 4(1)(c) or 14A. The respondent was directed by the Government to vacate the Government accommodation on the ground that he had let out residential accommodation of which he was owner. The respondent No. 1 accordingly filed eviction proceedings against the

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appellant claiming possession under Section 14A. The appellant contended before the Rent Controller that the ground did not fall within the sweep of section 14A since the premises were let out for residential-cum-commercial purposes to a joint Stock Company which was carrying on business besides using it for the residence of its Managing Director. This plea did not cut ice with the Controller who refused leave to contest. The appellant filed a writ petition in the High Court under Art. 226 of the Constitution which was dismissed.

In appeal by special leave, the appellant contended that

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1. Nothing in s.14A compels the landlord to occupy the premises after evicting the tenant. He could still let it for a higher rent, take on lease from the private sector a small house and make a gain from the difference flowing in rent.

2. The Controller could not shut him out from being heard if a triable issue emerged from the affidavit in opposition. In the present case such issues were present and, therefore, the Rent Controller was not

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justified in refusing leave to contest.

3. Section 14A does not apply in the present case since the premises were not residential premises as they were let out both for commercial and residential purposes.

Dismissing the appeal, A

HELD : (1) It is fallacious to approximate section 25B(5) with Order 37 rule 3 of the Code of Civil Procedure. The social setting demanding summary proceeding, the nature of the subject matter and above all, the legislative diction which has been deliberately designed, differ in the two provisions. Disclosure of facts which disentitle recovery of possession is a *sine qua non* for grant of leave. [320F-A, 321A]

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(2) The definition of premises in section 2(i) covers any building or part of the building leased for use, residential, commercial or other. To attract section 14A the landlord must be in occupation of residential premises allotted to him by the Central Government. He must be required by order of that Government to vacate his residential accommodation. The Delhi Development Authority granted the land to respondent No. 1 for construction of a residential building although it was let out for commercial purpose. Residential premises are not only plots which are let out for residential purposes nor do all kinds of structures where humans may manage to dwell are residential. Use or purpose C of the letting is no conclusive test. Whatever is suitable or adaptable for residential use, even by making some changes, can be designated residential premises. Once it is residential in the liberal sense, section 14A stands attracted. In the present case the house was built on land given for constructing a residence, is being used even now for residence is suitable otherwise for residence and is being credibly demanded for the respondent's residence. Residential suitability being the basic consideration, the building is residential. The 'purpose test' will enable officers who own houses to defeat the statute that they D do not own residential premises though it was suitably built for residence. The scheme of section 14A definitely contemplates a specific representation from landlord to the Controller that because he has been ordered to vacate the premises where he is residing he requires immediate possession for his occupation. It's non-obstante clause, the vesting of a right to immediate recovery, the creation of a summary process and the package of connected provisions all emphasize that the amendments have to be viewed as a whole, that the court cannot be fooled and the statute mocked at. The cause of action is not only the Government orders to vacate but consequential urgency to recover his own building. Parliament cannot be assumed not to intend the obvious, or to intend the E ludicrous. Literality is not right where obscurity is the result. [321 C-D, G-H 322 C-D, 323 A-B, G-H]

Gillespie Brothers & Co. Ltd. v. *Roy Bowles Transport Ltd.* [1973] 1 Q.B. 400 quoted in 39 Mod. L.R. 379 (1976) and *Anderson* v. *Abbott* 321 US 349 at 366-67 quoted in Univ. of Pennsylvenia Law Review Vol. 117 (1968) p. 1, 63, quoted with approval.

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(3) Judicial machinery while enforcing the law shall forbid its being misused. [325 E]

(4) The possibility of the power of Government to issue orders to vacate being used discriminately should be carefully avoided. If exceptions are made in the case of big officers, naturally the middling and the lesser minions of Government may have a grievance. It may perhaps be proper for Government when allotting good premises for high officers who made from their own houses large returns to pay into the Government coffers some equitable part of the G gain so made, giving consideration to circumstances like loans, investments and the like. [325 G-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 81 of 1977.

(Appeal by Special Leave from the Judgment and Order dated 6-12-1976 of the Delhi High Court in C. R. No. 248/76).

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F. S. Nariman, N. S. Sistani and *K. C. Dua* for the appellant.

K. K. Jain, S. K. Jain and *P. Dayal,* for respondent No. 1.

A The Judgment of the Court was delivered by

KRISHNA IYER, J.—Delhi, the home of Power and the nidus of paradoxes, presents many pathological problems to the students of history, social science, politics and law, often inter-acting with each other. We are here concerned with the socio-legal malady of accommodation scarcity and the syndrome of long queues of government employees waiting, not knowing for how long, for allotment of govern-
B ment quarters at moderate rents and the co-existence of several well-to-do officers enjoying, by virtue of their office, State-allotted residential accommodation while owning their own but letting them out at lucrative rents, making substantial incomes in the bargain. The law awoke to end this unhappy development and to help the helpless non-allottees get government accommodation. Such is the back-drop to s. 14A which, read along with s. 25B, of the Delhi Rent Control Act,
C 1958 (Act LIX of 1958) (for short, the Act), falls for our consideration in the present appeal by special leave.

A deeper understanding of the need for the new provisions just mentioned and the construction that they bear in the context necessitates stating a little more in detail the social setting. The seat of the capital of a vast country with varied activities naturally will be honeycombed with government offices, public organisations and growing
D armies of employees. The higher echelons in public service, over the decades, have made generous use of the availability of government lands at low prices and of the know-how of utilising, to their advantage, the immense developmental potential in the years ahead if buildings were constructed with foresight. Thus many neatly organised colonies blossomed all around Delhi whose owners were in many instances officers who had the telescopic faculty to see the prospective
E spreadout of Delhi of the future. Taking time by the forelock, they wisely invested money (often on soft loans from Government) in buildings which secured ambitious rents when India's headquarters did, as it was bound to, explosively expand. Most of such officials let their premises for high rents to big businessmen, foreign establishments, company executives and others of their ilk.

F Where did the officers themselves reside ? The strange advantage of Delhi is that houses, with lawns, servants' quarters and other amenities, built by government long years back are allotted to government servants on rents which are a fraction of what similar accommodation in the private sector may fetch oftentimes. The bigger officials according to the hierarchical system (almost perfected into some sort of official castes and sub-castes based on status and position in the
G ministries and not on the heads of their families or office) occupied the classified quarters, the official 'brahmins', of course, getting the best. The rents they paid as tenants were negligible compared to the returns they made as landlords. Indeed, a sociological research into the whole system may perhaps unravel the semi-survival of quasi-feudal life-styles and the unlovely phenomenon of public servants paying little and collecting large.

H The socio-economic sequel was worse than this. An astronomical increase in the number of government servants led to a terrific pressure for accommodation because, most of them—particularly at the lesser

levels—had no worthwhile salaries and were priced out of the private sector where rentals had unconscionably rocketed. This rack-renting abuse can be checked, in some measure, by an activist policy of relentlessly enforcing fair rents through penal tags. That, of course, depends on the will and wisdom of Parliament and Government, and the court may not make any comment. Anyway, currently, controls in this essential area of human accommodation, in the capital city of our socialist republic, are a statute-book virtue. Similarly, the suggestion, in the course of his submissions, made by counsel for the appellants, that the true solution is for the State to build more accommodation for its servants and not eject tenants like his client is commendable as a text book panacea but 'a consummation to be wished' in practical expectations !

Nevertheless, the State took cognizance of the sinister development of several officers owning private residences and occupying government premises and making handsome dividends out of the disparity in rents and, ergo, a large number of less fortunate officials having to wait in a queue for years hoping against hope that some day some government quarters would be allotted ! These latter, with broken domestic budgets, huddle together in small private tenements (or even servants' quarters) paying rents beyond their means. The politics and economics of scarcity are well known. Out of this distressing situation was born s. 14A of the Act.

A fasciculus of clauses creating substantive and procedural provisions to meet the evil and advance the scheme in that behalf came in, first by ordinance 24 of 1975 in December 1975, duly replaced by the Delhi Rent Control (Amendment) Act, 18 of 1976. The chronic disease needed drastic treatment and the legislative draftsmen created a chain of stiff provisions. Speaking generally, the government, after satisfying itself about the official having let out his residential building and occupying officially allotted quarters, directed the person to vacate government premises but he had quickly to get back his own house. So a new right (s. 14A) was created, accelerated remedial procedures were prescribed (s. 25A and 25B). This appeal turns on the meaning of s. 14A.

The purpose of the project has been explained by Chandrachud J. in *Sarwan Singh*(1) :

> "The object of Section 14A, as shown by its marginal note, is to confer a right on certain landlords to recover immediate possession of premises' belonging to them and which are in the possession of their tenants. In the significant language of the marginal note, such a right is 'to accrue' to a class of persons. The same concept is pursued and clarified in the body of Section 14A by providing that in the contingencies mentioned in the section, a right will accrue to the landlord 'to recover immediately possession of any premises let out by him'. . ."
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> "Whatever be the merits of that philosophy, the theory is that an allottee from Central Government or a local

(1) Sarwan Singh *v.* Kasturi Lal, A.I.R. 1977 S.C. 265, 272-274.

A authority should not be at the mercy of law's delays while being faced with instant eviction by his landlord save on payment of what in practice is penal rent. Faced with a Hobson's choice, to quit the official residence or pay the market rent for it, the allottee had in turn to be afforded a quick and expeditious remedy against his own tenant. With that end in view it was provided that nothing, not even the B Slum Clearance Act, shall stand in the way of the allottee from evicting his tenant by resorting to the summary procedure prescribed by Chapter IIIA. The tenant is even deprived of the elementary right of a defendant to defend a proceeding brought against him, save on obtaining leave of the Rent Controller. If the leave is refused, by section 25B(4) the statement made by the landlord in the appli- C cation for eviction shall be deemed to be admitted by the tenant and the landlord is entitled to an order for eviction. No appeal or second appeal lies against that order. Section 25B(8) denies that right and provides instead for a revision to the High Court whose jurisdiction is limited to finding out whether the order complained of is according to law."

D It is a notorious fact that, vesting a right is long years' distance away from getting the remedy, thanks to our legal process with its slow motion mood. A jurisprudence of quick-acting and comprehensive remedies, demanding re-structuring and streamlining of the judicative apparatus and imparting operational speed and modernisation of the whole adjectival law and practice, is urgent and important—an observation we make hoping that Parliament will programme for such E a constructive change for the good of the community, in consultation with the Court and the Bar. That legal instrumentality alone truly sustains the rule of law which delivers justice with inexpensive colority, finality and fullness. The big right—remedy gap is the bane of our system. We regard it our duty to mention this dimension of justice and this desideratum of systemic reform so that repetitive litanies to end law's delays may be intelligently heeded by the law-makers ins- F tead of joining the chorus against the court.

Back to the statute. Section 14-A, with a non-obstante rider, follows upon and is partly supplemental to s. 14 which primarily governs eviction by landlords of tenants. We may extract a part of s. 14 and the whole of s. 14A :

G "14(1) Notwithstanding anything to the contrary in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant :

Provided that the Controller may, on an application made to him in the prescribed manner make an order for H the recovery of possession of the premises on one or more of the following grounds only, namely,—

(a) to (d) * * * *

(e) that the premises let for residential purposes 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 :

Explanation.—For the purposes of this clause, "premises let for residential purposes, includes any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes,...."

x x x x

"14A. *Right to recover immediate possession of premises to accrue to certain persons.*—

(1) Where a landlord who, being a person in occupation of any residential premises allotted to him by the Central Government or any local authority is required, by, or in pursuance of any general or special order made by that Government or authority, to vacate such residential accommodation, or in default, to incur certain obligations, on the ground that he owns, in the union territory of Delhi, a residential accommodation either in his own name or in the name of his wife or dependent child, there shall accrue, on and from the date of such order, to such landlord, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract (whether express or implied), custom or usage to the contrary, a right to recover immediately possession of any premises let out by him :

Provided that nothing in this section shall be construed as conferring a right on a landlord owning, in the union territory of Delhi two or more dwelling houses, whether in his own name or in the name of his wife or dependent child, to recover the possession of more than one dwelling house and it shall be lawful for such landlord to indicate the dwelling house, possession of which he intends to recover.

(2) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract, custom or usage to the contrary, where the landlord exercises the right of recovery conferred on him by sub-section (1), no compensation shall be payable by him to the tenant or any person claiming through or under him and no claim for such compensation shall be entertained by any court, tribunal or other authority :

Provided that where the landlord had received,—

A (a) any rent in advance from the tenant, he shall, within a period of ninety days from the date of recovery of possession of the premises by him, refund to the tenant such amount as represents the rent payable for the unexpired portion of the contract, agreement or lease;

B (b) any other payment, he shall, within the period aforesaid, refund to the tenant a sum which shall bear the same proportion to the total amount so received, as the unexpired portion of the contract or agreement, or lease bears to the total period of contract or agreement or lease;

C Provided further that, if any default is made in making any refund as aforesaid, the landlord shall be liable to pay simple interest at the rate of six per cent per annum on the amount which he has *omitted,* or failed to refund."

A summary remedy is provided by s. 25B which reads :

"25.B. *Special procedure for the disposal of applications for eviction on the ground of bona fide requirement.—*

D (1) Every application by a landlord for the recovery of possession of any premises on the ground specified in clause (a) of the proviso to sub-section (1) of Section 14, or under Section 14A, shall be dealt with in accordance with the procedure specified in this section.

E (2) The Controller shall issue summons, in relation to every application referred to in sub-section (1), in the form specified in the Third Schedule.

(3) (a) The Controller shall, in acquisition to, and simultaneously with, the issue of summons for service on the tenant, also direct the summons to be served by registered F post, acknowledgment due, addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and may, if the circumstances of the case so require, also direct the publication of the summons in a newspaper circulating in the locality in which the tenant is last known to have resided G or carried on business or personally worked for gain.

(b) When an acknowledgment purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement purporting to have been made by a H postal employee to the effect that the tenant or his agent had refused to take delivery of the registered article, the Controller may declare that there has been a valid service of summons.

(4) The tenant on whom the summons is dully served (whether in the ordinary way or by registered post) in the form specied in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be committed by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

(5) The Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in clause (a) of the proviso to sub-section (1) of Section 14, or under Section 14A.

(6) Where leave is granted to the tenant to contest the application, the Controller shall commence the hearing of the application as early as practicable.

(7) Notwithstanding anything contained in sub-section (2) of Section 17, the Controller shall, while holding an inquiry in a proceeding to which this Chapter applies, follow the practice and procedure of a Court of Small Causes, including the recording of evidence.

(8) No appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in this section;

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit.

(9) Where no application has been made to the High Court on revision, the Controller may exercise the powers of review in accordance with the provisions of Order XLVIX of the first Schedule to the Code of Civil Procedure, 1908 (5 of 1908).

(10) Save as otherwise provided in this Chapter, the procedure for the disposal of an application for eviction on the ground specified in clause (e) of the proviso to sub-section (1) of Section 14, or under Section 14A, shall be the same as the procedure for the disposal of applications by Controllers."

A The landlord-respondent no. 1 was a government servant who had let his own building to the appellant-tenant (a company) to carry on business and use part of it for its manager's residence. He himself was occupying residential premises allotted by the Central Government and, since he was directed by that Government to vacate, on the ground that he had let out 'residential accommodation' of which B he was owner, he sought refuge under s. 14A. The eviction proceeding was resisted, *inter alia,* on the score that the ground did not fall within the sweep of s. 14A, the premises 'having been let out for a residential-cum-commercial purpose to a joint stock company which was carrying on its business....besides using it for the residence of its Managing Director'. This plea did not cut ice with the Controller who refused leave to contest under s. 25B(4) of the Act. The refusal C would ordinarily have led to an order for eviction but this consequence was intercepted by a writ petition under Art. 226 of the Constitution and a revision to the High Court, as provided by the proviso to sub-s. (8) of s. 25B of the Act. Dismissal of these proceedings has brought the appellant, special leave having been granted, to this Court as the last hope. Of course, the issue is of some moment, legally and otherwise. For while solving the twin problems, viz., making more D accommodation available to government servants in need and ending the vice of officers gaining by letting their own residential houses, s. 14A creates another, viz., the ejectment of tenants by summary procedure on a new ground. Maybe, as between the two hardships Parliament has made the choice and the Court implements the law based on the policy decision of the legislature. Mr. Nariman sought to expose the weakness of this legislative policy by stating that nothing in s. 14A E compelled the officer-landlord to occupy the premises after evicting the tenant. He could still let it for a higher rent, take on lease from the private sector a small house and make a gain flowing from the difference in rents. While we, as Judges, cannot fail to apply the provision merely because dubious ingenuities can circumvent it, we will later interpret the section eliminating the possible evil pointed out.

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The short but insistent submission made by the counsel for the appellant was that the Controller could not shut him out from being heard, as he did, if only a triable issue emerged from the affidavit-in-opposition filed under s. 25B(4). Such an issue (in fact, more than one) was obviously present here, urged counsel. But we make it plain even at this stage that it is fallacious to approximate (as was sought G to be done) s. 25B(5) with Order 37, r. 3 of the Code of Civil Procedure. The social setting demanding summary proceeding, the nature of the subject-matter and, above all, the legislative diction which has been deliberately designed, differ in the two provisions. The legal ambit and judicial discretion are wider in the latter while, in the former with which we are concerned, the scope for opening the door to defence is narrowed down by the strict words used. The Controller's power H to give leave to contest is cribbed by the condition that the 'affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in cl. (e) of the proviso to sub-s. (1) of s. 14

or under s. 14A. Disclosure of *facts* which *disentitle* recovery of possession is a *sine qua non* for grant of leave. Are there facts disentitling the invocation of s. 14A ? A

The thrust of Shri Nariman's contention is that s. 14A does not apply at all, as a matter of construction of the expression 'residential premises'. This is net something factual but essentially legal and perhaps the question deserves our decision. For, if we explain, as declaratory of the law, what the true scope of s. 14A is, *vis a vis* the premises involved, the Controller may then proceed on that footing and decide whether there is any fact disclosed which disentitles eviction. B

Let us break down s. 14A, to the basic components creative of the new right to recover possession of premises let to a tenant. 'Premises', by definition, covers any building or part of a building let for use, residential, commercial or other (s. 2(i)). We confine ourselves to the considerations relevant to our case. To attract s. 14A, the landlord must be in occupation of 'residential premises' allotted to him by the Central Government. He must be required by order of that Government to vacate such 'residential accommodation'. These are fulfilled here. The ground for such order to vacate must be 'that he owns, in the Union Territory of Delhi, a residential accommodation'. If so, there accures to such landlord the right 'to recover *immediately* possession of *any premises* let out by him' (emphasis added). C D

The bone of contention between the parties is as to whether the premises let out are 'residential accommodation'. It may be a pursuit of subtle nicety to chase the reason for using different expressions like 'residential premises' and 'residential accommodation' in the same section. If at all, 'accommodation' is ampler than 'premises'. What is residential accommodation ? If the building in dispute answers that description, the tenant must submit to eviction. So this is the *key* question. E F

Admittedly, the building was let out for commercial purpose also. Is the purpose of the lease decisive of the character of the accommodation ? For a long itme it was used as an office of the tenant's business, the manager also residing in a part thereof. Does user clinch the issue ? At present, the main use to which the building is put is as residence of the manager. G

The Delhi Development Authority granted the land to the government servant-respondent for construction of a residential building although he later let it out for non-residential use, apparently for getting large rents, silencing his compunction about the basis on which he secured the allotment of the land at low cost. But can the court conclude from the object of the land assignment whether the building later put up is residential or not ? Marginal relevance there may be in these diverse factors, telling value they do not possess. Law, being H

A pragmatic, responds to the purpose for which it is made, cognises the current capabilities of technology and life-style of the community and flexibly fulfils the normative role, taking the conspectus of circumstances in the given case and the nature of the problem to solve which the statute was made. Legislative futility is to be ruled out so long as interpretative possibility permits. Residentiality depends for its sense on the context and purpose of the statute and the project B promoted.

Guided by this project-oriented approach, we reject the rival extreme positions urged before us by Shri Nariman and Shri Jain. Residential premises are not *only* these which are let out *for* residential purposes as the appellant would have it. Nor do they cover all C kinds of structures where humans may manage to dwell. If a beautiful bungalow were let out to a businessman to run a show-room or to a meditation group or music society for meditational or musical uses, it remains none-the-less a residential accommodation. Otherwise, premises may one day be residential, another day commercial and, on yet a later day, religious. Use or purpose of the letting is no conclusive test. Likewise, the fact that many poor persons may sleep D under bridges or live in large hume pipes or crawl into verandahs of shops and bazars cannot make them residential premises. That is a case of *reductio ad absurdum.*

Engineering skills and architectural designing have advanced far enough to make multi-purpose edifices and, by minor adaptations, make a building serve a residential, commercial or other use. The E art of building is no longer rigid and the character of a house is not an 'either or'. It can be both, as needs demand. It is so common to see a rich home turned into a business house, a dormitory into a factory. Many small-scale industries are run in former living quarters. To petrify engineering concepts is to betray the law's purpose. Whatever is *suitable* or adaptable for residential uses, even by making some changes, can be designated 'residential premises'. F And once it is 'residential' in the liberal sense, s. 14A stands attracted. Dictionary meaning, commonsense understanding and architectural engineering concur in the correctness of this construction.

What falls outside the ambit of 'residential purposes' may be limited but not non-existent. A shop in Connaught Place, a factory in G an area prescribed by any municipal regulation for residential use or any structure too patently non-residential such as a hothouse for botanical purposes or a bath and toilette or teashop by the road margin are obvious instances. We may visualise other cases but that is not our purpose here. The house we are considering was built on land given for constructing a residence is being used even now for residence, is suitable otherwise for residence and is being credibly demand- H ed for the respondent's residence. Residential suitability being the basic consideration, this building fills the bill. Nothing said in the affidavit-in-opposition puts it out of the pale of residential accommodation. A building which reasonably accommodates a residen-

tial user is a residential accommodation—nothing less, nothing else. The circumstances of the landlord are not altogether out of place in reaching a right judgment. The 'purpose test' will enable officers who own houses to defeat the government by pleading that they do not own 'residential premises' because the lease is for commercial use, built though it was and suitable though it is, for residence. Similarly, the 'possibility test' may make nonsense of the provision. The contrast in the phraseology between s. 14(1)(e) and s. 14A strengthens our inference. The legislature has, in the former provision, used the expression 'premises let for residential purposes', thus investing the purpose of the lease with special significance. The deliberate omission of such words in s. 14A and, instead, the use of the flexible but potentially more comprehensive, though cryptic, expression 'residential accommodation' cannot be dismissed as accidental.

Shri Nariman argued that the court must have the power to consider whether the order of the government stating that the government servant's building is residential, is valid or not. We do not deny that in the last resort it is within the Court's province to do so. But it must give due—not deadly—weight to the decision of the government that the premises owned by its officer is residential. Perversity and *mala fides* will, of course, invalidate government orders here, as elsewhere. They are the exceptions but as a practical guideline, the government's order may be taken as correct. For, after all, while courts must finally pronounce, others familiar with the work-a-day world and enquire before passing orders are not too inexpert or incompetent to be brushed aside. The power to render binding decisions vests in the judicial process, not because it is infallible or occult but because it is habitually independent and professionally trained to consider contending view points aided by counsel for a adversaries. The humility that makes for wisdom behoves the judge to show respect for—not obedience to—the view of an administrative agency.

There remains the conundrum raised by Shri Nariman. Supposing the landlord, after exploiting the easy process of s. 14A, re-lets the premises for a higher rent; the social goal boomerangs because the tenant is ejected and the landlord does not occupy, as he would have been bound to do, if he had sought eviction for *bona fide* occupation under s. 141(e). Section 19 obligates the landlord in this behalf. In literal terms, that section does not apply to eviction obtained under s. 14A. But the scheme of that section definitely contemplates a specific representation by the petitioner-landlord to the Controller that because he has been ordered to vacate the premises where he is residing, therefore he requires immediate possession for his occupation. The *non-obstante* clause, the vesting of a right to *immediate* recovery, the creation of a summary process under s. 25B and the package of connected provisions, all emphasize that the amendments have to be viewed as a whole, that the Court cannot be fooled and the statute mocked at. The law, as Mr. Bumble (in Oliver Twist) said. 'is a ass—a idiot', but today the socio-economic project cannot be frustrated by legalistics. Underlying the whole legislative plan and provision is the fundamental anxiety to recover, *for the officer's occupation,* his own premises. Once we grasp this cardinal point, the

A officer's application for eviction under s. 14A can be entertained only on his averment that he, having been asked to vacate, must get into possession of his own. For instance, if he has a vacant house of his own and, on getting an order to vacate, he moves into his vacant house, he cannot thereafter demand recovery under s. 14A. The cause of action is not only the government order to vacate, but his consequential urgency to recover his own building. That is the B *rationale legis*. To interpret otherwise is to vindicate Mr. Bumble ! We hold that Shri Nariman's apprehension is unfounded and s. 14A is largely a rider to s. 14 and the condition indicated in s. 19 must, *mutatis mutandis*, bind the landlord. Parliament cannot be assumed not to intend the obvious, or to intend the ludicrous. Literality is not right where absurdity is the result.

C The same result is reached by reading into every application for eviction by a landlord a necessarily implied representation to court that for the reason of his being directed to get out he must be given possession of his own residence for his own occupation with the aid of the judicial process. If the finale is reached and possession obtained, the Court will not allow a party to reduce its process to a mere make-believe, or a clever parody, breaking faith with the judicial process D itself. Such paths can be interdicted by the use of the inherent power of the court. The re-letting to someone else or non-occupation, even after a reasonable time or without reasonable cause, will be regarded as an abuse of the process of the court and, at the instance of the affected tenant or otherwise, the eviction order cancelled and possession restored. We affirm this legal position lest overly cute but qualmless landlords should hopefully hoax the court and reduce its E decree to a joke. Every tribunal has the inherent power to prevent its machinery from being made a sham, thereby running down the rule of law itself as an object of public ridicule. It will and must prove any strategem self-defeating if a party indulges in making the law the laughing stock, for, the court will call him to order.

We are not adventuring into any innovation of legal principle in F inhibiting unconscionability in the enforcement of rights. Lord Denning M. R. said :

> "What is the justification for the courts in this or any other case, departing from the ordinary meaning of words ? If you examine all the cases you will, I think, find that at bottom it is because the clause (relieving a man from his own negligence) is unreasonable or is being applied unreasonably G in the circumstances of the particular case. The judges have then, time after time, sanctioned a departure from the ordinary meaning..... Are the courts then powerless ? Are they to permit the party to enforce his unreasonable clause, even when it is unconscionable, or applied so unreasonably as to be unconscionable ? When it gets to this point, I would say, as I said many years ago : 'There is the vigilance H of the common law which, while allowing freedom of contract, watches to see that it is not abused.' "

x x x x x

He continued : A

> "I know that the judges hitherto have never confessed openly to the test of reasonableness. But it has been the driving force behind many of the decisions."(1)

We agree that, in the words of Lord Erskine, 'there is no branch of the jurisdiction of this court more delicate than that, which goes to restrain the exercise of a legal right'. But the principle of unconscionability clothes the court with the power to prevent its process being rendered a parody. The justice of the law steps in end, in the area of eviction of a tenant by a landlord, the tribunal cannot tolerate double-dealing or thwarting the real intendment of the statute. B C

The same conclusion can be reached through another line of reasoning expressed by Justice Jackson of the Supreme Court of the United States in *D' Cench Duhme* :(2)

> "If the judicial power is helpless to protect a legislative program from schemes for easy avoidance, then indeed it has become a handy implement of high finance.... Once the purpose or effect of the scheme is clear, once the legislative policy is plain, we would indeed forsake a great tradition to say we were helpless to fashion the instruments for appropriate relief." D

The doctrine that the judicial machinery, while enforcing the law, shall forbid its being misused is another dimension of two deeply rooted, but inter-connected maxims. *Actus curiae neminem gravabit* (An act of the court shall prejudice no man : Jenk. Cent. 118) and *Actus legis est damnosus* (The act of the law is hurtful to no one : 2 Inst. 287) : *Actus legis nemini facit in-juriam* (The act of the law does injury to no one : 5 Coke. 116). This principle is fundamental to any system of justice and applies to our jurisprudence. E F

An Afterword

The possibility of the power of government to issue orders to vacate being used discriminatorily should be carefully avoided. If exceptions are made in the case of big officers, naturally the middling and the lesser minions of government may have a grievance. It may perhaps be proper if government, when allotting good premises for high officers who make from their own houses large returns by way of rentals, makes them pay into government coffers some equitable part of the gain so made, giving consideration to circumstances like loans, investments and the like. This, again, is a matter falling with- G H

(1) 39 Mod. L.R. 379 (1976)

(2) Referred to in 318 U.S. 366, at 366-67; Quoted in Univ. of Pennsylvania Law Review Vol. 117 (1968) p. 1, 63.

A in the province of the sense of justice of the Administration. But we mention it only to save the legislation from the aspersion of invidiousness in the exercise of the power.

In the view we have already taken, it follows that the appeal must be dismissed and we hereby do so; but the parties, in the circumstances, will bear their own costs throughout.

B

P.H.P. *Appeal dismissed.*