

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO 799 OF 2016

SHRI GURUDAS YESHWANT PEDNEKAR
resident of Bastora, Bardez-Goa (since
deceased), through his legal heirs:-

1. SHRI VASSUDEV GURUDAS PEDNEKAR
(SON);
2. MRS PRIYANKA VASSUDEV PEDNEKAR
(daughter in law) Both of major age,
Indian Nationals, Residents of Bastora,
Bardez-Goa. (Registered Addresses) ... Petitioners

V E R S U S

1. SMT SHARADA ALIAS RADHABAI
MANGUESH KENKRE,
widow of Manguesh Kenkre,
(In view of Orders dated 11.04.17 and
28.04.17, Petition stands dismissed as
against the legal representatives of
respondent no.1)
2. SHRI ASHOK MANGUESH KENTRE
3. SMT SUJATA ASHOK KENKRE
4. SHRI RAJENDRA MANGUESH KENKRE
5. SMT SHUBHA RAJENDRA KENKRE
All of major age, Indian Nationals,
Residing at House no.99, Ward no. 9,
Dattawadi, Mapusa, Goa.
6. MR YESHWANT GURUDAS PEDNEKAR
(SON)
7. MRS SEEMA YESHWANT PEDNEKAR
(DAUGHTER IN LAW)
8. MR VINOD GURUDAS PEDNEKAR
(SON)

- 9 MRS MANISHA VINOD PEDNEKAR
(DAUGHTER IN LAW)
All of major age, Indian Nationals,
Residents of Bastora, Bardez – Goa.
- 10 MRS KALAVATI VINOD CHODANKAR
(DAUGHTER)
- 11 MR VINOD SHRIDHAR CHODANKAR
(SON IN LAW)
Both of major age, Indian Nationals,
Residing near Tar, Ecoxim, Bardez – Goa.
- 12 MRS VANDANA SURYAKANT
CHODFANKAR
- 13 MR SURYAKANT VINAYAK CHODANKAR
both of major age, Indian Nationals,
Residents of C/o. Cortalim Market,
Cortalim- Goa.
(REGISTERED ADDRESSES) ..Respondents

Shri S. D. Lotlikar, Senior Advocate with Ms. A. Naik, Advocate
for the petitioners.

Shri S. G. Desai, Senior Advocate with Ms. Pooja Desai,
Advocate for the respondent nos.2 to 5.

Coram:- NUTAN D. SARDESSAI, J.

**Reserved for JUDGMENT on : 8th September 2017
JUDGMENT Pronounced on : 8th March 2018**

JUDGMENT

1. Heard Shri S. D. Lotlikar, learned Senior Advocate for the
petitioners and Shri S. G. Desai, learned Senior Advocate for
the respondents.

2. This Petition takes exception to the Judgment and Order dated 11.02.2003 passed by the Addl. Deputy Collector and Rent Controller Mapusa, the Judgment and Order dated 30.07.2015 passed by the District Judge-I, North Goa, Panaji, in the matter of the application for eviction filed by the predecessor in title of the petitioners for the eviction of the respondents, inter alia, on the ground of personal occupation under Articles 226 and 227 of the Constitution of India. The petitioners' predecessor was admittedly the owner of the property situated at Dattawadi, surveyed under Chalta no.17 of P. T. Sheet No.112 of the City Survey Mapusa with a house bearing no.99 therein being the suit house for brevity's sake and which came to be inherited by the petitioners on whose demise the suit house was let out to one late Shri Manguesh Kenkre, the husband of the respondent no.1 and the father of the respondent nos.2 and 4 for the purpose of their residence. The said Manguesh had expired in the year 1986 and the respondents continued to occupy the suit house as his successors in interest. They put up two illegal shops on the rear side of the suit house and started the business of Electrical Engineers and Contractors without the knowledge and consent of the original applicant and without the objections of the original owner. The original owner was running a Jewellery Shop in the Mapusa Municipal Market but

was residing in a joint family house/premises at Bastora. The joint residential premises were away from the business premises compared to the suit house and he had to travel everyday from the house at Bastora to the suit premises and as there was no provision of public transport it was convenient for him to reside in the suit house which was situated in the City of Mapusa and as he was not keeping good health. He had therefore by notice dated 10.06.1992 called upon the respondent no.2 that he required the suit house for his personal occupation and to deliver its vacant possession thereof within 30 days from the receipt of the said notice failing which he would be constrained to initiate eviction proceedings.

3. The respondent no.2 had not responded to the notice nor complied with the same and hence the original applicant Gurudas was constrained to initiate eviction proceedings on the ground that he required the suit house for his personal occupation. The respondents had resisted the application on the premise that he was a wealthy and rich goldsmith having a vehicle at his disposal and that the joint family house at Bastora was within a distance of 2 kilometres from the City of Mapusa, having good connectivity and easy mode of transport and that the application for eviction on the ground of personal occupation was a fraud in order to evict them from the suit

house. Besides the suit house was on a hilly area and equally far away from the business premises of the said Gurudas and that as per his version that he was not keeping good health, it was difficult for him to proceed to the business premises from the suit house.

4. Shri Lotlikar, learned Senior Advocate, contended that the petition before the Rent Controller on grounds of personal occupation was dismissed and so too the Appeal by the District Court. Both the Courts below held that the joint house was adequate and that the house in Bastora was better for the applicant than that at Mapusa. The petitioners had no other house in Mapusa and the original applicant Gurudas was keeping indifferent health. Judicial notice could be taken of the fact that medical facilities at Mapusa were better than at Bastora. He adverted to Section 23 of the Rent Control Act and otherwise submitted that it was not the case of the respondents that the petitioners had any other residential house in Mapusa. There was also no serious dispute that the original applicant was not enjoying good health. The Rent Controller had also not given any finding that the applicant had any other house in Mapusa and under occupation. The Rent Control Act, 'Act' for short, was intended to provide protection to the tenant against arbitrary and illegal eviction

and it was not a case of that nature where the original applicant Gurudas was seeking eviction on grounds of personal occupation. He placed reliance in Prativa Devi (Smt) vs T. V. Krishnan [1996 (5) SCC 353], Meenal Eknath Kshirsagar (Mrs) vs Traders & Agencies & anr. [1996(5) SCC 344] and Gaya Prasad vs Pradeep Srivastava [(2001) 2 SCC 604] to buttress his contention. Here was a case where the original Landlord had expired and the question was whether the petitioners stepping in his shoes were entitled to seek the recovery of possession and eviction to occupy the same. He relied in Shakuntala Bai & Ors vs Narayan Das & Ors. [(2004) 5 SCC 772, Kailash Chand & anr vs Dharam Dass [2005(5) SCC 375] and in Bharati P. Heble v Shri Zoivanta Jagananta Sina [Writ Petition no.630/2007] to buttress his case. It was his contention in reply that there was no finding rendered by the Rent Controller or the Appellate Authority that the need for personal occupation was not bonafide. There was a patent error in law committed by the Courts below resulting in a miscarriage of justice and warranting the interference by this Court in exercise of its power of its superintendence under Article 227 of the Constitution of India.

5. Shri S. G. Desai, learned Senior Advocate for the respondents referred to Section 23 of the Act which

contemplated the landlord's right to obtain possession by applying to the Collector for an Order by directing him to put in possession if he required it for his own occupation or for the occupation of any member of his family. The application made by the original applicant was for his own occupation and therefore the petitioners now as his legal heirs could not canvass the ground of own occupation to seek for appropriate reliefs in their favour and when the original applicant had not asked for the premises on the ground that he required it for his occupation or that of his family members. He also invited attention to Section 25 of the Act to buttress a plea that it was only if the claim of the landlord under Section 23 of the Act was bonafide would the Controller make an Order directing the tenant to put the landlord in possession of the building and not otherwise. He next invited attention to the application made by the original applicant in which he had set out that he required the suit house for his bonafide personal occupation that he did not own any other residential or non residential building in the City of Mapusa and that the house at Bastora was far away from his business premises and he was put to great hardship as he had to travel from his house at Bastora to the shop premises. The original applicant had to satisfy the Rent Controller that the premises i.e. the suit house was required bonafide and in the present case, there was a total

absence of bonafide in the original applicant to seek for the vacant possession of the suit house. The applicant in his submission had to prove his bonafide need by showing his regular presence in the Mapusa shop and that he had indifferent health and was requiring medical attention. Both these aspects were questions of facts which he had to prove by examining himself and quite on the contrary he had not examined himself but brought forth his case through an Attorney. The learned Rent Controller had taken inspection which was permissible in terms of Section 53 of the Act and arrived at clear finding in his Judgment that no case was made out for the grant of his application and dismissed his case seeking the eviction of the respondents from the suit premises. He relied in Natwarlal D. Shah vs Jadaobai [2014(5) Bom CR 675] to substantiate his case and later referred to the impugned Judgment passed by the District Judge to advance his case that no error whatsoever was committed by the District Court and therefore no interference was called for in this Petition. He relied in Dr Mulla Malhandas Khemani vs Avelino Gregorio D' Souza [2000(1) GLT 154]. Inviting attention to the impugned Judgment, it was his contention that the original applicant had to step in the witness box personally and establish his case. He referred to Rule 9(2) of the Rules read with Section 7 of the Mamlatdar's Court Act.

6. Shri S. G. Desai, learned Senior Counsel for the respondents further placed reliance in *Janki Vashdeo Bhojwani & anr vs Indusind Bank Ltd.* [AIR 2005 SC 439], *Sheshambal (Dead) through LRS vs Chelur Corporation Chelur Building* [(2010) 3 SCC 470], *Pasupuleti Venkateswarlu vs The Motor & General Traders* [(1975) 1 SCC 770], *Shantilal Thakordas & Ors vs Chimanlal Maganlal Telwala* [(1976) 4 SCC 417] and *Shakuntala Bai & Ors vs Narayan Das & Ors.* [(2004) 5 SCC 772] and submitted that the Petition was not tenable either under Article 226 or 227 of the Constitution of India. Further reliance was placed in *Shalini Shyam Shetty & anr vs Rajendra Shankar Patil* [(2010) 8 SCC 329] and *Radhey Shyam & anr vs Chhabi Nath & Ors.* [(2015) 5 SCC 423] and distinguished the Judgments relied upon on behalf of the petitioners. Moreover, the Judgments relied upon on behalf of the petitioners were cases where the eviction Orders were prior to the death of the landlord or immediate death of the landlord unlike the present case where the eviction was denied to the original applicant. The Petition as such was not tenable and had to be dismissed.

7. Shri S. D. Lotlikar, learned Senior Advocate in reply invited attention to the Judgment in *Bharati P. Heble* (supra), rendered by a learned Single Judge of this Court wherein the party had sought for eviction on grounds of treatment of his

wife who had expired on 21.05.2004 while the Rent Controller had decided the case on 30.09.2004. The Judgment was placed before the Appellate Court which had not considered the same and carried out an exercise wholly beyond its jurisdiction and therefore amenable to the jurisdiction of this Court under Article 227 of the Constitution of India. In so far as the respondents' plea was concerned, that on death of the original landlord, no cause of action survived in the legal heirs; it was the contention of Shri Lotlikar, learned Senior Advocate for the petitioners that an affidavit was filed before the Appellate Court on behalf of one of the legal heirs in which there was a clear reference to the case carved by the original applicant that the suit premises was required for his personal occupation and that it was not specifically mentioned that the same was required for his personal occupation alongwith his family members which consisted of his three sons. Besides, it was clearly averred in the affidavit filed before the Appellate Court that the original applicant always intended that he would be residing in the suit premises with his family as he was in fact incapable of staying by himself in the suit premises as his wife had pre-deceased him and he also was dependent on his family members. He relied in *Shantilal Thakordas & Ors vs. Chimanlal Maganlal Telwala* [AIR 1976 SC 2358], *Joginder Pal vs Naval Kishore Behal* [(2002) 5 SCC 397] and *Dinesh*

Kumar vs Yusuf Ali [(2010) 12 SCC 740 and once again canvassed a plea that no plea was raised in defence that the eviction was malafide and intended to get the tenants evicted from the suit premises.

8. i would consider the submissions both oral and written, the various Judgments relied upon and in that view of the matter, decide the proceedings appropriately.

9. Section 23 of the Act contemplates a situation where the landlord obtains possession of a residential building if he is not occupying a residential building of his own in the city, town or village concerned and he requires it for his own occupation or for the occupation of any member of his family. There was no particular dispute about the fact that the original applicant had only one residential premises in Mapusa City which was admittedly leased out to the late husband of the respondent no.1 and that the only other house which he had was the joint family house at Bastora where he was residing with his family members. It was also not the case of the respondents that the original applicant had any other residential house in Mapusa City proper. There was also no particular dispute about the fact that the original applicant was not enjoying good health and that he was running a goldsmith shop in

Mapusa City proper. It is therefore to be seen from the material on record whether he had made out a case for eviction on grounds of personal occupation and that such an application was not motivated by malafides.

10. In *Prativa Devi* (supra), the appellant as a widow had been staying as a guest with Shri Chatterjee who was a family friend of her late husband, at B-4/20, Safdarjang Enclave, New Delhi. There was nothing to show that she had any kind of right whatever to stay in the house of Shri Chatterjee. On the other hand, she was there merely by sufferance. The reason given by the High Court that the appellant was an old lady aged about 70 years and had no one to look after her and therefore she should continue to live with Shri Chatterjee, was hardly a ground sufficient for interference. The landlord was the best judge of his residential requirement. He had a complete freedom in the matter. It was no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. The High Court was rather solicitous about the age of the appellant and thought that because of her age she needed to be looked after. Now, that was a lookout of the appellant and not of the High Court. We fail to appreciate how the High Court could give such a gratuitous advise which was

uncalled for. There is no law which deprives the landlord of the beneficial enjoyment of his property and in that view of the matter accordingly reversed the finding reached by the High Court and restored that of the Rent Controller that the appellant had established her bonafide requirement of the demised premises for her personal use and occupation, which finding was based on a proper appreciation of the evidence in the light of the surrounding circumstances.

11. Meenal Kshirsagar (supra) had challenged the Judgment and Order passed by the Appellate Bench of the Small Cause Court whereby the Judgment of the Small Cause Court Bombay was reversed and her suit was dismissed. She was the owner of a flat and a garage in the building known as 'Tarangini' in Bombay which belonged to her father and gifted to her in 1972. By an Agreement dated 29.3.1972 the said premises were given by the appellant to the respondents on leave and license basis for the purpose of its partner. She filed the suit in the Court of Small Causes at Bombay seeking eviction of the respondents on the ground that she required the suit premises reasonably and bonafide for her personal occupation and that she and her husband did not have any other residential premises of their own in Bombay. Her husband was a paid Assistant in M/s. A.F. Ferguson & Co., was

allowed to use a flat in a building named 'Park View' purely on a temporary, caretaker basis after which one of its partners had vacated on his transfer from Bombay to Delhi. She had carved a case that as the partner was likely to return to Bombay, her husband would be required to vacate that flat and therefore they would be without any accommodation whatsoever in Bombay and called upon the respondents to vacate the suit premises in 1974. The respondents in response to one of her letters had in 1976 and again in 1978 assured the appellant that they would vacate the suit premises as soon as the flat booked by the respondent No.2 in a building called 'Rambha' would become ready for occupation. Even though the said flat was made available to the respondent No.2, he was not vacating the suit premises. She also stated that it was not possible for her to acquire any other premises in Bombay and, therefore, if a decree for possession was not passed she would suffer great hardship.

12. In Meena Kshirsagar (supra), the suit was opposed on the ground that possession of the premises then in occupation of her husband was not insecure or temporary and that the suit premises were really not required by the appellant reasonably and bonafide for her occupation. During the pendency of the suit, the appellant took out a notice of motion

for early hearing of the suit in which she stated that she was serving as a lecturer in the Education Department of the Bombay University. Since the respondents had not vacated the suit premises inspite of their requests and the assurances given by the respondents and due to problem of accommodation in Bombay, her husband had to get himself transferred to Madras in 1984 and she joined him after obtaining study leave and went to Madras to stay with him. As her application for further leave was rejected she had to return to Bombay and report for duty in July 1987 and was then residing with her parents as she had no accommodation in Bombay. She had examined herself, her husband amongst others and during her cross examination, it was borne out that her husband was a tenant of a two bedroom flat in 'Olympus Apartments' and after her marriage with him, she had stayed in that flat till October 1972 but a plea was raised that as she had not disclosed the fact that her husband was a tenant of 'Olympus Apartments' either in her plaint or the examination in chief, it amounted to a suppression of material fact and on that ground alone her claim that the suit premises were required bonafide for her personal occupation should be rejected. In the ultimate and on merits, the Trial Court passed a Decree against the respondents for eviction who preferred an Appeal to the Appellate Bench of the Small Causes Court.

13. In Meena Kshirsagar (supra), the Appellate Bench held that the appellant ought to have disclosed the fact that her husband was a tenant of 'Olympus' flat and an omission at her instance amounted to suppression of a material fact. The Appellate Bench on considering the material held that there was no evidence on record to show that the Appellant's husband was required to vacate the flat in Park View Building, that he had voluntarily left the flat in order to support her plea for bonafide requirement of the suit flat and that it was an artificially created circumstance to support her case and allowed the Appeal dismissing the suit giving rise to a Writ Petition in the High Court of Bombay challenging the Judgment and Order passed by the Appellate Bench. The High Court held that suppression of material fact that her husband was a tenant of 'Olympus ' flat was sufficient to disentitle her from getting a Decree of eviction, agreed with the findings given by the Appellate Bench and dismissed the Writ Petition giving rise to the Appeal. In that view of the matter, the Hon'ble Apex Court found from the material that the fact that the appellant was the owner of the suit premises and that she did not own any other premises in the City of Bombay was not in dispute. She did not possess even as a tenant any premises in Bombay. No doubt, she would be entitled to stay in the premises of which her husband was a tenant but if for any reason her

husband had parted with possession of such premises and the same was occupied by her husband's brother, it could not be said that the said premises were available to her and by not referring to those facts she had come to the court with unclean hands and that by itself was sufficient to disentitle her from getting a decree of eviction. If the appellant believed that the 'Olympus' flat of which her husband was a tenant was not available for occupation as the same was vacated by her husband many years back and was occupied by Sridhar and his family and that it was not possible or convenient for her and her family to go and stay there, it was not absolutely necessary for her to refer to those facts in her plaint. It would have been better if she had referred to those facts but mere omission to state them in the plaint could not be regarded as sufficient for disentitling her from claiming a decree for eviction, if otherwise she was able to prove that she required reasonably the suit premises for her occupation. The Appellate Court and the High Court clearly went wrong in holding that the said omission was sufficient to disentitle her from getting a decree of eviction and it also disclosed that her claim was malafide and not bonafide as required by law.

14. In Meenal Kshirsagar, the Hon'ble Apex Court held that the findings recorded by both the courts that the 'Park View'

flat was available to her and her husband for occupation was a the result of not applying the correct test to the facts of the case. Eknath was undisputedly not a tenant of the said flat. The tenant of the said flat was M/s. A.F. Ferguson & Co. of which Eknath was only a Director. Mrs. Kalra was the owner of that flat and after it was taken on lease by the firm it was given to Mr. Kalra, another Director of the firm for his occupation and use. The firm allowed Eknath to use the said flat temporarily on leave and license basis in October 1972 as Mr. Kalra was then temporarily transferred to Delhi. The evidence produced by the appellant did disclose that the firm had required Eknath to vacate the same and it was not right for the Appellate Bench and the High Court to brush aside that evidence on the ground that it was "internal correspondence of the company". Even if it was believed that Eknath had not really vacated the said flat in 1984 and continued to be in possession, it could not be said that the possession of the said flat would be such as to disentitle the appellant to get a decree of eviction. Being a licensee, Eknath's possession of that flat was precarious and could not have been considered as a suitable alternative accommodation. In any event, it was for the landlord to decide how and in what manner he should live and that he was the best judge of his residential requirement. If the landlord desired to beneficially enjoy his own property

when the other property occupied by him as a tenant or on any other basis was either insecure or inconvenient it was not for the courts to dictate him to continue to occupy such premises and in that view of the matter held that the appellant had proved her case of bonafide requirement and therefore the Small Cause Court was right in passing the decree in her favour. The Appellate Bench and the High Court committed a grave error in reversing the same and in confirming the judgment and order passed by the Appellate Bench respectively.

15. Gaya Prasad (supra), was a tenant of a shop building situated at Khalsa Gali, Agra. In 1978, the respondent-landlord filed an application under Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short the U.P. Act) on a twin need. One was that his son who passed his medical examination wanted to carry on medical practice and this building was needed for housing his clinic. The other was, the landlord himself had just retired from Railway service and he too did not want to waste his time, talent and energy and hence he wanted to start a radio repairing work which he thought could be performed by using a portion of the building. The first forum, called the Prescribed Authority, where the application was filed, found the claim

bonafide and ordered eviction on 25.3.1982. It was further found by the said authority that the tenant had alternative accommodation in the same city for doing his business. The appellant filed an appeal but it took only 3 years for the Appellate Court to dismiss the appeal on 10.10.1985. The appellant then filed a Writ Petition before the High Court of Allahabad challenging the Order of eviction and the High Court after entertaining the Writ Petition, granted stay of the operation of the eviction Order. The hibernated Writ Petition seemed to have been consigned to records where it remained in torpidity for a record period of 15 years and thereafter it was disposed off on the finding that no ground was made to interfere with the Order challenged before it. The Appellant sought six months time to vacate which was acceded on condition that he should given an undertaking before the original authority that he would vacate the premises within six months.

16. Gaya Prasad (supra), who lost at all levels and yet succeeded during all these years by keeping the order of eviction at bay, lately discovered that the landlords son, for whom the eviction was sought, joined the Provincial Medical Service after 12 years of the institution of the lis. On that premise the appellant ventured to move the same High Court

once again, and this time for a review of the order. However, the review petition was dismissed by the High Court as per its order which was also impugned before the Apex Court. It was his contention that the landlord's son who joined the Provincial Medical Service was posted at a place situated 200 kilometers from Agra, where the building was situated, and that he was getting a pay of ₹15,000/- per month. The Apex Court considered Section 21 of the Act relating to the eviction of a tenant and observed at paras 10 and 11 as under :

“10. We have no doubt that the crucial date for deciding as to the bonafides of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post petition period is to be taken into account for judging the bonafides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow process system subsists. During 23 years after the landlord moved for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any

new work would be at the peril of forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale, after passing through all the previous levels of the litigation, merely on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period.

11. We cannot forget that while considering the bonafides of the need of the landlord the crucial date is the date of petition. In *Remesh Kumar vs. Kesho Ram* [1992 Suppl. (2) SCC 623] a two-Judge Bench of this Court (M.N. Venkatachalia, J.,

as he then was, and N.M. Kasliwal, J.) pointed out that the normal rule is that rights and obligations of the parties are to be determined as they were when the lis commenced and the only exception is that the court is not precluded from moulding the reliefs appropriately in consideration of subsequent events provided such events had an impact on those rights and obligations. What the learned Chief Justice observed therein is this:

"6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a cautious cognizance of the subsequent changes of fact and law to mould the relief. "

17. In Shakuntala Bai (supra), her husband Girdhari Lal Gattani filed a suit on 31.03.1962 for eviction of Magan Lal, father of the respondents from a non-residential premises on the ground that he required the premises for carrying on his own business. The suit was decreed by the Trial Court against which an appeal was preferred by Magan Lal. During the pendency of the appeal, Girdhari Lal died and the appellants

herein were substituted as his heirs and legal representatives. The appellants sought an amendment of the plaint and pleaded that they bonafide required the premises for carrying on business. The tenant Mangan Lal sought an amendment in the written statement to the effect that after the death of Girdhari Lal, the bonafide requirement of the premises for carrying on business pleaded in the suit came to an end. The lower Appellate Court allowed the amendments and remanded the matter to the trial Court for fresh consideration. During the pendency of the suit, the plaint was further amended and it was pleaded that the appellants 2, 3 and 4 had also attained majority and they wanted to start a cloth business in the premises in dispute. The Trial Court after affording the parties an opportunity to adduce evidence, dismissed the suit. The appellants then preferred an appeal and during the pendency thereof, the original tenant Magan Lal died and his sons the respondents 1 and 2 were substituted in the plaint. The lower Appellate Court allowed the appeal and decreed the suit for eviction. Feeling aggrieved by the aforesaid Judgment and Decree of eviction, the respondents preferred the Second Appeal which had been allowed by the High Court by its Judgment and Decree dated 03.09.1997 and dismissed the suit. The main ground on which the appeal was allowed by the High Court was that in a suit filed by the landlord for eviction

of a tenant, the requirement or need set up by him must subsist till the appeal filed by the tenant is finally decided and that a tenant can always take advantage of a subsequent event like death of the landlord at a later stage during the pendency of the appeal, etc. to urge that the requirement or need of the landlord has come to an end. Accordingly, it has been held that on the death of Girdhari Lal Gattani, the Civil Suit filed by him ought to have been dismissed as his legal heirs, the appellants herein, could not have continued the suit which was based on personal bonafide need.

18. In *Shakuntala bai (supra)*, the question which arose for consideration was whether on account of death of a landlord during the pendency of the appeal, a suit validly instituted by him for eviction of a tenant on the ground of his personal need, is liable to be dismissed. The Apex Court considered the Madhya Pradesh Accommodation Control Act, 1961 which was enacted for the expeditious trial of eviction cases on the ground of bonafide requirement of landlords and generally to regulate and control eviction of tenants. It further held that if the subsequent event like the death of the landlord is to be taken note of at every stage till the decree attains finality, there will be no end to litigation. By the time a second appeal gets decided by the High Court, generally a long period

elapses and on such a principle if during this period the landlord who instituted the proceedings dies, the suit will have to be dismissed without going into merits. The same thing may happen in a fresh suit filed by the heirs and it may become an unending process. Taking into consideration the subsequent events may, at times, lead to rendering the whole proceedings taken infructuous and colossal waste of public time. There is no warrant for interpreting a Rent Control legislation in such a manner the basic object of which is to save harassment of tenants from unscrupulous landlords. The object is not to deprive the owners of their properties for all times to come and allowed the Appeal setting aside the Judgment and Decree passed by the High Court.

19. Kailash Chand (supra), with his brother purchased a double-storeyed building in Shimla from Ramji Dass sometime in 1980. The said Ramjee was carrying on his business on the ground floor while the first floor was in occupation of the tenant Dharam Dass, i.e. the respondent. The appellants got vacant possession of the ground floor from their vendors while the tenant continued to be in occupation of the first floor which he was holding on tenancy at a monthly rent of ₹15/-. They initiated proceedings for the eviction of the tenant from the first floor premises under the Himachal Pradesh Urban Rent

Control Act, 1971, by an application dated 1.8.1980 filed before the Rent Controller on the ground that the family of the appellants was living in miserable condition and that he had even started using the godown for the residence of himself alongwith his wife and two school going children. The Rent Controller vide the order dated 31.10.1984 allowed the landlord's application and directed the eviction of the respondent-tenant who preferred an appeal and during its pendency before the Appellate Authority, the parties entered into a compromise which was recorded in the order dated 17.9.1986 passed by the Appellate Authority. The landlords agreed to create a new tenancy in favour of the tenant-respondent in respect of a room, a kitchen and a passage on the ground floor of the building with effect from 1.10.1986 on a monthly rent of ₹30/- while the appellant no.2 and his family shifted to the first floor accommodation which was in occupation of the tenant. The appellants filed another application for his eviction on 01.03.1988 from the ground floor accommodation. The Rent Controller directed the respondent-tenant to be evicted vide the Order dated 20.01.1993 and his appeal was dismissed by the Appellate Authority. In Civil Revision preferred by the tenant-respondent, the High Court vide its order dated 27.11.2001 allowed the revision and directed the Eviction Petition to be

dismissed giving rise to the Appeal before the Apex Court.

The Supreme Court held at Para 13 as under :

“Life is not static and so the law cannot afford to be static. The third proviso cannot be so interpreted as to restrict the right conferred by sub-Section (3)(a)(i) on the landlord to be exercisable only "once in a life time". The proviso has to be read as providing a statutory expression of a situation which would otherwise have been held to be malafides of a requirement. A landlord, having obtained possession of any building to satisfy a requirement, cannot again and again plead the same set of circumstances or similar circumstances for evicting tenants one after other. That is what the third proviso aims at providing. The proviso cannot be interpreted to mean that in spite of the requirement having undergone a change or a new requirement unrelated to the previous one having come into existence, the landlord would yet be denied relief under sub-Section (3)(a)(i) merely because at some point of time in the past he had resorted to this provision for seeking an eviction. Such an interpretation is too rigid an interpretation and would cause such hardship to the landlord as the Legislature cannot be said to have intended. The examples are available in decided cases and two such are: Jagir Singh

v. Jagdish Pal Sagar, 1980 (1) R.C.R. 494 and Brij Lal Puri and anr. vs. Smt. Muni Tandon.”

20. In Bharati Heble (supra), the original landlord had sought for the eviction of Heble's Pest Control Services on the ground of personal occupation and on the premise that he wanted to shift to Panaji for the treatment of his wife. However, in the meantime, his wife expired on 21.05.2004 and two of the three partners of the tenant died in 1991. However, according to the Rent Controller, the third partner Anil Heble, being alive, the suit did not abate. The landlord had applied for the impleadment of the legal representatives of one of the deceased partners, Parag, which was allowed by the Rent Controller on 17.05.2004 and then the present petitioners came to be arrayed as the respondents in the eviction proceedings. The Rent Controller allowed the application for ejectment by his judgment dated 30.09.2004 and the appeal by the petitioners to the Administrative Tribunal failed and that is how they were before the High Court. In the meantime, the original landlord died on 17.01.2007 and the petition was, therefore, filed against the son of the deceased landlord with his daughter joined as a co-respondent. The landlord son too by his affidavit claimed that he needed the premises for his own occupation to which there was no rejoinder at the

instance of the petitioners. A plea was canvassed on behalf of the petitioners that on the demise of the landlord's wife even before the eviction application was allowed by the Rent Controller, the need for which the possession of the premises was sought ceased to exist and even the need of the landlord himself abated upon his demise before the Writ Petition was filed and therefore it was necessary to show that the need existed on the day of making the application and must continue till the final determination of the case to seek possession on the ground of bonafide need. Quite on the contrary, it was submitted on behalf of the respondents that it would be unjust to subject the fortunes of a landlord to vicissitudes of a lis and that ordinarily a lis must be decided on the basis of the situation as it existed on the date of filing of proceeding. In any case, when a decree was passed in favour of a landlord, his subsequent death cannot lead to reopening of the matter and his legal representatives could prosecute/contest further proceedings, which may have to be decided with reference to situation obtaining at the time of passage of the decree.

21. In *Bharati Heble (supra)*, the learned Single Judge considered the Judgment in *Shakuntala Bai (supra)*, and observed at Paras 27 to 31 as below while ultimately holding

that there was nothing to show that the Administrative Tribunal erred in holding in favour of the landlord and dismissed the Petition :

"27. The landlord seeking possession of premises for starting his business or say to set up a son in business, may be required to acquire some other premises because he cannot allow life to stand still and do nothing for livelihood, or do nothing to expand his business. Does law expect him to forgo possession to his own property because he secured some premises to meet his growing needs ? A landlord may construct residential premises by taking a loan and in order to repay the loan, may let out a portion of his house. In the course of time as loan is repaid and number of members of his family also diminished because of daughters' marriages or sons taking employment elsewhere. Does it follow that said landlord must put up with the tenant for the rest of his life though he can afford to live in comfort in his sunset years, simply because he once inducted a tenant ?

28. Acquisition of accommodation during pendency of lis by landlord may satisfy his additional needs of growing family and

merely because such needs have not been pleaded in the eviction proceedings initially started, they could not be ignored. A review of the authorities cited, requires that all subsequent events should be noted and not only those, which favour a tenant. Therefore, the need of landlord's son in this case, who is 66 years old, too would qualify for being considered as a subsequent event, just as the death of his parents.

29. Another temporal dimension of law too may be noticed. Rent Legislation meant to protect tenants arose when social reality was altogether different. In commercial and industrial centres, big landlords constructed hundreds of tenements in order to let them out and make income from property. Rules which emerged to respond to such landlords attempts to evict tenants cannot apply to landlords struggling to get possession of their sole property. Whenever possible, law need not always lag behind life, or be dragged by changing pace of life. If an anachronistic rule of law is a product of legislation, legislative corrective may be needed. But if Courts have by their judgments laid down some requirement, which with passage of time creates conflict judicial action to modify such

requirements so as to bring them in tune with realities of life would be needed.

30. Fortunately, right from *Pasupuleti* to *Kedarnath* the Hon'ble Apex Court has reiterated that the basic principle is to decide the lis on the situation as existing on the date a suitor institutes legal proceedings. Subsequent events may have to be taken into consideration "absent special circumstances" and "provided the rules of fairness to both sides are scrupulously obeyed," if and only if the relief originally claimed becomes inappropriate, or if it is necessary to shorten litigation and or in order to do complete justice. Thus the need to consider subsequent events, will have to be judged in the context of facts in each case. In this case, the present respondent would be on the verge of being pushed into unending loops of litigation, if only the death of his parents, but not his advanced age and needs are taken into consideration. As observed by the Apex Court in *Shakuntalabai*, such is not the intendment of the judicial dictum to consider subsequent events. Hence, as far as this case is concerned, the decree must be held to have attained finality upon the decision of Administrative Tribunal.

Tenant's invocation of discretionary writ jurisdiction, does not reopen the lis, except to the extent of tenant's being permitted to show that the judgment of the Administrative Tribunal, was itself liable to be set aside on the basis of situation then obtaining. If the subsequent event of death of original landlord was to be noticed, rules of fair play would demand that need stated by respondent No.1 in his affidavit in reply (which is unrebutted) too may be considered here and now, without pushing him in another round of litigation, "in order to shorten litigation," as held in *Kedarnath*.

31. Further, as rightly pointed out by the learned Senior Counsel for respondent, if respondent does not occupy the premises himself upon eviction of petitioners, Section 27 of the Goa Rent Control Act entitles the tenant to apply for repossession. Therefore, it may be inappropriate to stifle the bonafide need of the landlord's aged son to occupy the premises in the evening of his life."

22. In *Shantilal Thakordas (supra)*, his father Thakordas was the owner of the suit premises and a partner in the partnership firm styled as Jai Hind Silk Weaving Works with three more partners one being his son and the other two being

outsiders. A suit was filed against the respondent Chimanlal for his eviction from the premises on several grounds, the main ground being the claim of Thakordas of requiring the premises reasonably and bonafide for occupation by himself within the meaning of section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The necessity pleaded by the original plaintiff was that he required the premises for the use of the partnership firm aforesaid in which he was a partner. The Trial Court decreed the suit in part on 30.04.1965 and passed a decree for eviction of the tenant from a portion of the suit premises giving rise to an Appeal at their instance. Since Thakordas was dead, his heirs, namely, the present appellants were the appellants in one appeal and the respondents in the other. The first Appellate Court by its judgment dated November 10, 1966 maintained the partial decree made by the Trial Court with slight modification and both the parties went in revision before the Gujarat High Court. The High Court set aside the decree dated November 10, 1966 of the First Appellate Court and remanded the case to it for a fresh disposal of the appeal after trying out an additional issue of comparative hardship of the landlord and the tenant as also the question as to whether the substituted heirs of the original plaintiff required the premises reasonably and bona-fide for their occupation. The First Appellate Court

after remand again passed a decree for eviction from a portion of the suit premises on 31.03.1970 and two revisions were taken to the High Court, one by the Appellants and the other by the respondents whereupon the High Court allowed the respondents' revision, rejected that of the Appellants and dismissed their suit for eviction in toto following the decision of the Apex Court in Phul Rani's case [1973 3 S.C.R.].

23. In Shantilal Thakordas (supra), it was contended before the Apex Court that Phul Rani's case was not correctly decided with which Their Lordships found favour. In that case, Section 14(1)(e) of the Delhi Rent Control Act 1958 was in question. The Apex Court observed that if the law permitted the eviction of the tenant for the requirement of the landlord "for occupation as a residence for himself and members of his family", then the requirement was both of the landlord and the members of his family. On his death the right to sue did survive to the members of the family of the deceased landlord. We are unable to take the view that the requirement of the occupation of the members of the family of the original landlord was his requirement and ceased to be the requirement of the members of his family on his death. 'After the death of the original landlord the senior member of his family takes his place and is well competent to continue the

suit for eviction for his occupation and the occupation of the other members of the family. Many of the substituted heirs of the deceased landlord were undoubtedly the members of his family and the two married daughters and the children of a deceased daughter in the circumstances could not be held to be not members of the family of the deceased landlord. However, in the facts of this case, it was doubtful whether the requirement of the premises by the landlord for occupation by the partnership firm in which he is a partner will be tantamount to "occupation by himself" i.e. by the landlord. Their Lordships observed as under :

".... We assume, as seems to have been the view of the High Court in this case, that the requirement of the premises for the use of a partnership firm by the landlord in which he is a partner is covered by section 13(1)(g) of the Bombay Act. Yet on the facts of this case there is 'an insurmountable difficulty in the way of the appellants. From the judgment dated March 31, 1970 of the First Appellate Court it would appear that on the death of Thakordas in June, 1965 a new partnership was constituted. One of his sons Shantilal who was a partner from before was taken as a partner in the new partnership alongwith Thakordas's

another son Dhanvantlal Thakordas, appellant No. 2. There were some outsider partners. Harish Thakordas, appellant No. 3, a minor son of Thakordas had not been admitted to the benefits of the partnership. He had, therefore, no interest in the partnership firm Jai Hind Silk Weaving Works. The Appellate Court took the view that the substituted plaintiffs wanted to use the suit premises for the purpose of godown for keeping the yarn clothes and machinery articles and also for a retail shop and show room of the partnership. This in no sense could be the requirement of appellant Harish even assuming that it could be said to be the requirement of his two elder brothers appellants 1 and 2. In that view of the matter we have got to dismiss the appeal.”

24. In Dinesh Kumar(supra), the Apex Court held in the context of the bonafide requirement of the landlord that the need of the landlord is to be examined on the date of institution of the case. An incident too remote from the date of institution of the case may not be relevant for consideration at all.

25. In Natwarlal Shah (supra), the tenant has questioned the order passed by the Courts below in granting a Decree for eviction and possession in favour of the landlady/her legal heirs under the clause 'bonafide need' as contemplated under Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act of 1947. The respondent landlady filed the suit seeking possession of the property consisting of a shop which was rented out to the Appellant on monthly rent of Rs.40/- canvassing bonafide requirement for her own and her husband as according to her she was staying alongwith her husband and her mother. It was her case that she intended to do business in the said premises and, as such, sought for a Decree for the possession of the property in question. The claim of the landlady was objected by the petitioner on the premise that bonafide need as canvassed by her was not genuine and that her husband was engaged in the business of Savkari/money lending and in relation to other premises in the said building, she had sought possession on the similar ground. The Civil Judge, Junior Division, Nandurbar, granted Decree in her favour which was the subject matter of the Appeal before the Court of the Additional District Judge, Nandurbar, who upheld the Judgment of the Trial Court ordering grant of possession giving rise to the Petition before the High Court. In the said proceedings, the landlady had

expired during the pendency of the Appeal and her legal heirs i.e. her husband and her son were brought on record and during the pendency of the Petition, the legal heirs namely her husband expired and the Petition was contested by only her son. In that context, it was the contention of the Petitioner that bonafide need of the respondent and her husband had extinguished and as such the orders passed by the Courts below were required to be quashed and set aside and placing reliance in *Sheshambal (supra)*, where the Apex Court held that subsequent development which has a direct bearing over the pleadings of the Petition of having bonafide need is required to be looked into and the same needs to be re-assessed.

26. In *Natwarlal Shah (supra)*, it was contended on behalf of the respondents that both the Courts below had concurrently held that bonafide need of the landlady/landlord was proved and enough evidence was available on record that the shop in question was required for the bonafide occupation of the landlord and that the requirement of the son had to be taken into account as landlord is the best judge of the situation. Besides, the bonafide need as was existing from the date of filing of the suit was required to be taken into consideration and the subsequent developments were hardly of any

consequence whilst deciding the Petition. Moreover, the respondent's son who was pursuing the proceedings was in need of the premises and, as such, the Petition was liable to be rejected. In that view of the matter, the learned Single Judge considered the Judgment of the Apex court in Sheshambal (supra), where the Hon'ble Apex Court had observed at para 15 as below :

“The position may indeed have been differentiated if in the original petition the petitioner-owners had pleaded their own requirement and the requirement of any member of their family dependant upon them. In such a case the demise of the original petitioners or any one of them may have made little difference for the person for whose benefit and bona fide requirement the eviction was sought could pursue the case to prove and satisfy any such requirement.”

27. The learned Single Judge found that though the son was pursuing the Petition as the legal representative of the original landlady, there were no pleadings in support of the bonafide need of the son. What was pleaded in the plaint was the bonafide need of the husband of the landlady. The evidence also speaks about bonafide need of the husband of the

landlady. If the legal heirs continued the proceedings much less the proceedings wherein possession of the property was sought under the clause 'bonafide need' of the Rent Act, the judgment of the Apex Court cited in Sheshambal (supra) mandates that the bonafide need of the legal heir should be pleaded and established. Just because he is legal heir, does not ipso-facto give him the right to claim the possession of the property on the ground of bonafide need, that was established by the original plaintiff. In the eviction proceedings which were initiated for the possession of the property, the landlady or her husband had pleaded their own requirement that the premises to be occupied by them for the purpose of carrying out the business. In the said civil suit or even in the evidence, there was no whisper about the bonafide need of any member/legal representative of the plaintiff and the claim of bonafide need was restricted to that of the landlady and her husband, who had expired way back and in that view of the matter found that the subsequent development i.e. death of the landlady and death of her legal heir whose bonafide need was pleaded if taken into account, the judgment decreeing the suit for possession for bonafide needed to be set aside and allowed the Petition.

28. In Dr. Mulla Khemani (supra), the suit premises comprised of a first floor of a building situated at Mapusa which originally belonged to Dr. Pedro Cupertino de Souza and thereafter since 1972 to Avelino Nicolay Gregorio de Souza i.e. the respondent who filed the eviction proceedings. The husband of the appellant had been in occupation of the suit premises since the year 1952 pursuant to the grant of lease. The respondent no.1, since deceased, filed the eviction proceedings against the husband of the appellant on the ground that the premises were required for his personal occupation which was contested and dismissed for default. A fresh application for eviction was filed on the same ground and during the pendency of the proceedings, the appellant's husband filed an application for amendment of the written statement for bringing on record the fact that a portion on the ground floor of the house wherein also existed the suit premises, had fallen vacant and the same was leased to the Office of Weights and Measures during the pendency of the proceedings. The Additional Rent Controller allowed the application by its order dated 29.07.1986 and the Appeal against the same to the Administrative Tribunal was dismissed by its Order dated 24.05.1980. The Writ Petition in the matter was also dismissed by the learned Single Judge on 27.04.1992 giving rise to the Letters Patent Appeal. The original lessee,

the husband of the appellant expired issueless and consequently his widow was brought on record.

29. In Dr. Mulla Khemani (supra), the Division Bench observed at Para 11 that the decisions relied upon by the appellant were in relation to the provisions contained in the respective Statutes which were in force in the various States in relation to the eviction of tenants from the leased premises by the landlord on the ground of need of the premises for personal occupation. It was also equally true that the provisions contained in this respective Statutes are not in pari materia with Section 23(1)(a) of the said Act. However, it cannot be forgotten that Section 23(1)(a) clearly states that an application for eviction on the ground of need of premises for personal occupation could be filed only when the premises were required for occupation of the landlord or his family member. The stress was on the expression 'requires' and not merely when the landlord 'desires' to occupy the same. Section 25 of the said Act provides that the Controller shall, if he is satisfied that the claim of the landlord under Section 23 is bonafide, make an order directing the tenant to put the landlord in possession of the building. It cannot be disputed that though the rules of pleadings as contemplated under the Code of Civil Procedure are not strictly applicable to the

proceedings under the said Act, nevertheless the tenant who has to contest the proceedings must have fair and reasonable idea of the case which he was required to meet in the matter and for that purpose it is necessary for the landlord to plead minimum necessary facts which would constitute the cause of action for eviction of a tenant on the ground of need of the premises for personal occupation of the landlord. In other words, the pleadings in the application for eviction on the ground contemplated under Section 23(1)(a) should disclose the facts which show the requirement of the premises as well as the bonafide of the requirement. Bearing this in mind, if one peruses the original application filed for eviction in the case in hand, it does state that the landlord needs the house in question for his occupation. However, there are no facts disclosed justifying the need to be bonafide. Considering the fact, as rightly submitted by the learned Advocate for the appellant, that the present litigation was preceded by another litigation between the parties wherein the landlord had filed yet another application in the year 1979 for eviction of the said tenant on the ground of need of the premises for personal occupation and it was contested on the ground that the landlord had other premises available for his occupation and the said proceedings were dismissed and subsequently the present proceedings were instituted on the same ground, it

was all the more necessary for the landlord to disclose the need of the premises in question in comparison with the other premises as were stated to be available for the occupation of the landlord. In the absence of such pleadings, certainly it cannot be said that the application was strictly in compliance with the provisions contained in Section 23(1)(a) of the Act read with Rule 9 of the Rules framed under the said Act. However, at the same time it is to be considered that the tenant had contested the proceedings placing on record his entire defence.

30. In Dr. Mulla Khemani (supra), the Division Bench observed at Para 23 as below :

“Bearing in mind the law as laid down on the point in issue there is no doubt that it is for the landlord to decide as to how and in what manner he should live and he is the best judge of his residential requirements. However, when the landlord seeks the eviction of a tenant on the ground of need of the premises for his occupation, it is primarily for the landlord to establish that such need is genuine,

honest and conceived in good faith. Mere desire of the landlord to possess particular premises for his occupation will not be sufficient for justifying the order of eviction of the tenant on the ground of need of the premises for personal occupation of the landlord. In order to transform 'desire' into 'requirement' in the eyes of law, it must be genuine need of the landlord and the same can be decided only by taking into consideration all the relevant facts and circumstances of a particular case. It must be remembered that the protection afforded to the tenant by the Rent legislation is not to be rendered illusory or whittled down by encouraging eviction of tenants on fanciful desire of the landlord. Therefore, while considering the question of bonafide requirement of the landlord, it is not the mere desire on the part of the landlord that would entitle him or her to seek eviction of a tenant but it will be necessary for the landlord to establish

that he bonafide needs the premises for his occupation. At the same time. It is not to be forgotten that the landlord has right to choose the premises of his choice for his residence when he owns more than one premises.....”

It was further observed that pointing out the availability of an alternative accommodation to the landlord by itself would not disentitle the landlord to seek eviction of the tenant from the premises from which the landlord seeks to evict the tenant for his personal occupation but if such alternative accommodation is pointed out and the landlord does not even come out with the case either of non-suitability of such alternative accommodation or better suitability of the suit premises to the landlord nor any material discloses any such non-suitability or suitability, as the case may be for occupation thereof by the landlord, then certainly the Rent Controller would be justified in rejecting the claim of the landlord for eviction of the tenant on the ground of need for personal occupation. When the tenant is able to point out the availability of alternate premises for occupation of the landlord who has filed the eviction proceedings against such tenant on the ground of need of premises for personal occupation, the

least that can be expected from the landlord is to dispute the suitability of such alternate accommodation for his occupation and place on record some material to justify either non-suitability of the alternate accommodation or some justification for the choice of the particular premises being more suitable to the landlord for his occupation.

31. In *Janki Bhojwani (supra)*, the Apex Court observed at Para 13 as under :

"13. Order III, Rules 1 and 2 CPC, empowers the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order III, Rules 1 and 2 CPC, confines only in respect of "acts" done by the power of attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in

respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined. "

32. Sheshambal (supra), as owners of the premises in dispute let out the same to the respondent no.1 for a period of three years in terms of a lease dated 12.04.1983. On expiry thereof, the owners filed proceedings before the Rent Controller at Ernakalum seeking eviction of the tenant/occupant on the ground that they required the same for their bonafide personal occupation within the meaning of Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965. The prayer for eviction was opposed by the tenant on the ground that the owners did not require the demised premises and that the tenant would find it difficult to shift its business to any other premises on account of non-availability of a suitable accommodation. The Rent Controller eventually came to the conclusion that the owners had failed to establish their bonafide requirement of premises and held that the owners had shifted their residence from Cochin and were living with their daughter and son-in-law who were running a nursing home in that city. Aggrieved by the order passed by the Rent Controller, the owners appealed to the Appellate authority who affirmed the decision taken by the Rent

Controller holding that the owners were residing with their daughter and son-in-law at Ernakulam in a building owned by the owners. The Appellate Authority also found that the owners had a cottage at Kodaikanal and that they being fairly old had no reason to shift back to Ernakulam in search of better medical facilities especially when their own son-in-law was running a nursing home at Coimbatore where such facilities were available to them. Absence of any medical evidence to show that the owners suffered from any illness was also cited as a ground for dismissal of the prayer for eviction. Aggrieved by the Orders passed by the Rent Controller and the Appellate Authority, the owners brought up the matter before the High Court of Kerala in a revision with a view to have the concurrent findings recorded by the courts below set aside. The High Court had refused to intervene in the matter and dismissed the Revision Petition.

33. In Sheshambal (*supra*), it was not in dispute during the pendency of the Revision Petition before the High Court that the landlord Shri K. Sachindanda Iyer passed away on 24.04.1996 leaving behind his wife Smt. A. Sheshambal Iyer as the sole revision petitioner seeking eviction of the respondent tenant and consequent upon the dismissal of the revision petition the present appeal was filed by her who too

passed away before the Appeal could be heard for final disposal and thereupon an application was moved for substitution of the legal representatives of the appellant on the basis of a will left behind by the deceased according to which the property in question had to be devolved upon the three daughters left behind by the deceased. It is common ground that two of the daughters are living in India, one each at Coimbatore and Bihar, the third daughter was settled in America. The short question was whether the proceedings instituted by the deceased owners of the demised property could be continued by the legal heirs left behind by them. It was contended on their behalf that it was permissible for the legal heirs to continue the present proceedings and seek eviction of the tenant on the basis of the requirement pleaded by the erstwhile owners in the eviction petition filed by them. The rights and obligations of the parties get crystallised as on the date of the filing of the petition and his subsequent development would be irrelevant to the maintainability or the continuance of the proceedings after the death of the original petitioners placing reliance in *Gaya Prasad Srivastava (supra)* and *Shakuntala Bai (supra)*. However, it was contended on behalf of the respondent-tenants that the legal position as to whether the Court could take note of the subsequent developments stood settled by the above decisions which left

no manner of doubt that all such developments had an impact on the rights and obligations of the parties must be taken into consideration by the court and the relief suitably moulded.

34. In *Sheshambal* (*supra*) it was not in dispute that in the eviction petition the owners had pleaded their own requirement for the premises to be occupied by them for residential as well as commercial purposes. The eviction petition was totally silent about the requirements of any member of the family of the petition owners leave alone any member of their family who was dependent upon them. That being so the parties went to trial before the Rent Controller on the basis of the case pleaded in the petition and limited to the requirement of the owners for their personal occupation. Neither before the Rent Controller nor before the Appellate Authority it was argued that the requirement in question was not only the requirement of the petitioner owners of the premises but also the requirement of any other member of their family whether dependent upon them or otherwise. Not only that, even in the petition filed before this Court the requirement pleaded was that for the deceased widowed owner of the demised premises and not of any member of her family. Super added to all this was the fact that the legal representatives who now claimed to be family members of the

deceased are all married daughters of the deceased couple each one settled in their respective matrimonial homes in different cities and at different places. That none of them was dependent upon the deceased petitioner was also a fact undisputed before the Court. In the circumstances, the Apex Court found it difficult to see how the legal representatives of the deceased appellant could be allowed to set up a case which was never set up before the Courts below to bring forth a requirement that was never pleaded at any stage of the proceedings. Allowing the legal heirs to do so would amount to permitting them to introduce a case which is totally different from the one set up before the Rent controller, the Appellate authority or even the High Court. The position may indeed have been differentiated if in the original petition the petitioner owners had pleaded their own requirement and the requirement of any member of their family dependent upon them. In such a case the demise of the original petitioners or any one of them may have made little difference for the person for whose benefit and bonafide requirement the eviction was sought could pursue the case to prove and satisfy any such requirement.

35. In *Sheshambal* (supra), the Apex Court observed at Para 17 as under and ultimately held that on the death of the

petitioners in the original eviction petition, the right to seek eviction on the ground of personal requirement of the demised premises became extinct and no order on the basis of such requirement be passed at this point of time.

“17. While it is true that the right to relief must be judged by reference to the date suit or the legal proceedings were instituted, it is equally true that if subsequent to the filing of the suit, certain developments take place that have a bearing on the right to relief claimed by a party, such subsequent events cannot be shut out from consideration. What the Court in such a situation is expected to do is to examine the impact of the said subsequent development on the right to relief claimed by a party and, if necessary, mould the relief suitably so that the same is tailored to the situation that obtains on the date the relief is actually granted.”

36. In *Joginder Pal (supra)*, the Hon'ble Apex Court while dealing with Section 13(3)(a)(ii)(a) of the East Punjab Urban Rent Restriction Act, 1949, held that the expression “for his own use” as occurring therein, cannot be narrowly construed. It must be assigned a wider, liberal and practical meaning.

The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfill the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use.

37. In *Pasupuleti* (supra), a three Judge Bench of the Apex Court held at para 4 that it was basic to the processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief for the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice-subject, of course, to the absence of other disentitling factors or just circumstances. The Apex Court affirmed the proposition that for making the right or

remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.

38. Shalini Shyam Shetty (supra), on a consideration of various judgments including that in Surya Dev Rai vs Ram Chander Rai and others [(2003) 6 SCC 675] culled out the following principles on the exercise of the High Court jurisdiction under Article 227 of the Constitution :

a. A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

b. In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts

under Article 227 and have been discussed above.

c. High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

d. The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* (supra) and the principles in *Waryam Singh* (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

e. According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

f. In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

g. Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

h. In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view

than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

i. High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar vs. Union of India & others, [(1997) 3 SCC 261] and therefore abridgement by a Constitutional amendment is also very doubtful.

j. It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code ,(Amendment) Act 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

k. The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

l. On a proper appreciation of the wide and unfettered power of the High Court under Article 227 it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

m. The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

n. This reserve and exceptional power

of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

o. An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.

39. In *Radhey Sham* (supra), the Hon'ble Apex Court held that under Article 227 of the Constitution, the High Court did not issue a writ of certiorari. Article 227 of the Constitution vests the High Courts with a power of superintendence which is to be very sparingly exercised to keep tribunals and Courts within the bounds of their authority. Under Article 227, orders of both Civil and Criminal Courts can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned. Such power, however, is not to be exercised

to correct a mistake of fact and of law.

40. The original petitioner had maintained a case for eviction setting out a case of personal bonafide requirement on the premise that he had a Jewellery Shop in the Mapusa Municipal market unlike his residence in a joint family house situated at Bastora in which he only had an undivided share and that being far from the place of his business, he was put to great hardship as he had to travel everyday from his house at Bastora to the business premises at Mapusa. The place of business situated was very convenient and moreover he was not keeping good health and on that ground sought for the eviction of the respondents as he required the suit house for his bonafide personal occupation. He had also carved a case that he did not own any other residential or non-residential building in the City of Mapusa. The respondent had primarily denied his claim to the requirement of the suit house for bonafide and personal occupation or that he was residing in a joint family house at Bastora in which he had an undivided share and on the contrary had set up a plea that he was a wealthy and rich goldsmith having a vehicle at his disposal. Moreover, the family house at Bastora was at two kilometres distance from the city of Mapusa having good road and easy mode of transport and that the ground for personal occupation

was a fraud in order to evict the respondent from the suit premises.

41. The Rent Controller by his Judgment dated 11.02.2003 dismissed the application giving rise to an Appeal before the Administrative Tribunal. Indisputably, the original petitioner had died during the pendency of the Appeal and one of his legal heirs filed an affidavit in the Rent Appeal before the District Judge to whom the proceedings were assigned carving a case that though the original applicant had made a ground of the suit house being occupied for his personal occupation, nonetheless, since the original applicant was a widower and was residing with his family members comprising of his three sons, it was intended that he should be residing in the suit premises with his family as he was incapable of staying all by himself. One of the respondents had opposed this affidavit filed in the Appeal proceedings on the premise that allowing such an affidavit would take away the rights which had accrued in their favour. Be that as it may, the learned Rent Controller based on the material on record and on suo motu inspection of the house at Bastora, came to the conclusion that this house was adequate for the original applicant and better than that at Mapusa and without making an inspection

of the house at Mapusa, held against the applicant and dismissed the eviction application.

42. The Rent Controller did not consider the indifferent health of the original applicant or that he had no other house in Mapusa and that better medical facilities were available at Mapusa than at Bastora and rejected the Eviction Application. The Rent Controller for that matter had also not rendered any finding that the need of the suit house of the original applicant was not bonafide. The Appellate Court while dealing with the Judgment of the Rent Controller, was swayed by the findings rendered by the Rent Controller that the house of the original applicant at Bastora was a ground plus one storeyed structure and that the house at Bastora was more convenient to the original applicant to come to his shop in Mapusa as compared to the suit house. The learned District Judge gave undue weightage to the evidence regarding the non-production of documents qua the house at Bastora, the availability of transport to the house at Bastora and went overboard while ignoring that it was the suit house in respect of which the original applicant claimed necessity of bonafide requirement. While laying undue weightage on the amenities and facilities viz a viz the house at Bastora, the Appellate Court too did not render any finding that the need of the suit house claimed by

the appellants was not bonafide. The learned District Judge at one time observed that the record showed that the parties were not made aware that the Rent Controller intended to hold an inspection, the exact position at loco and yet at the same time committed a patent error of law in not considering the case of the appellant that the need of the suit house was for a bonafide requirement. The entire tenor of the Appellate Judgment harps on the feasibility of the house at Bastora totally ignoring the ground urged in the application for eviction being the bonafide requirement of the suit house for his occupation and the grounds urged in the Appeal assailing the Judgment of the Rent Controller.

43. It is a matter of record that the original applicant had expired during the pendency of the Appeal before the District Court and his legal heirs were permitted to be brought on record. The son of the original applicant had deposed on his behalf as a constituted attorney stating facts within his knowledge and as the attorney-applicant. The learned District Judge had taken note of the fact that one of the sons of the applicant had filed his affidavit in the Appeal clarifying that the original applicant was an aged widower and that the ground of bonafide requirement for his personal occupation also included his family since with his ailing health and being a widower he

could never have intended to live alone in the suit premises at Mapusa. The Judgment in Heble (*supra*) referred to and rightly pointed out by Shri S. D. Lotlikar, learned Senior Advocate, was never considered by the learned Appellate Court who was instead carried away by the observations of the Rent Controller qua the feasibility of the house at Bastora. The exercise of discretion by the Appellate Court was wholly beyond its jurisdiction and therefore amenable to interference by this Court in exercise of its power of superintendence under Article 227 of the Constitution of India. There is otherwise no basis in the contention on behalf of the respondents that on the death of the original applicant-landlord, no cause of action survived in the legal representatives to pursue the proceedings for eviction on grounds of bonafide need. No doubt, there was power vested in the Rent Controller in terms of Section 53 of the Act to enter and inspect any building for the purpose of an inquiry or proceeding under the Act. However, the Rent Controller while taking resort to such provision had not notified any of the parties and also as clearly observed by the Appellate Court in its Judgment under challenge. Besides, fairness was inherently lacking when the Rent Controller had not embarked on any inspection of the suit premises to consider the plea of the landlord on the requirement of the house for his bonafide need. There is also no force in the

contention of Shri S. G. Desai, learned Senior Counsel for the respondents that the Judgments relied upon by the petitioners qua the right being inherent in the legal heirs to pursue the proceedings as being distinguishable when the legal heirs of the original landlord were brought on record during the pendency of the Appeal proceedings which is in continuation of the Eviction proceedings. Besides, his contention that the eviction orders were pre-death of the landlord or immediate death of the landlord in the Judgments cited on behalf of the petitioners unlike the present case where eviction was denied, cannot stand the test of scrutiny in the factual matrix. Last but not the least, it was never the case of the respondents that the eviction proceedings were malafide and intended to get other tenants inducted in the suit premises.

44. In the case at hand, it has been shown on behalf of the petitioners that there has been grave injustice or failure of justice by the Courts below failing to exercise jurisdiction and resulting in a failure of justice justifying recourse to the powers of superintendence under Article 227 of the Constitution of India. Having thus considered the various Judgments and applying the same in the facts of the case, i find that this is a fit case to rise to the occasion and exercise

the powers vested in this Court under Article 227 of the Constitution of India.

45. In view thereof, the Petition is allowed and the impugned Judgment dated 30.07.2015 affirming that of the Rent Controller, is quashed and set aside.

NUTAN D. SARDESSAI J.

Date : 8 March 2018

JUDGMENT CONTINUED

46. Ms. P. Desai, learned Advocate for the respondent nos.2, 3, 4 and 5 prays for ten weeks stay of the judgment passed by this Court today.

47. Ms. Furtado, learned Advocate for the petitioners leaves the matter to the Court.

48. The judgment is stayed for a period of four weeks from today.

NUTAN D. SARDESSAI J.