

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 25th APRIL, 2023

IN THE MATTER OF:

+ **RC.REV. 30/2022 & CM APPL. 15461/2022**

RAJBIR PAL & ANR.

..... Petitioners

Through: Mr. G.P Thareja, Mr. Satyam Thareja,
Mr. Harshit Thareja, Mr. K. K. Singh
and Mr. Rahul Kumar, Advocates.

versus

KANWAR PARTAP SINGH

..... Respondent

Through: Mr. Rajat Aneja and Ms. Aditi
Shastri, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Aggrieved by the Order dated 26.08.2021, passed by the ACJ-cum-CCJ-cum-ARC, North District, Rohini, Delhi in Eviction Petition bearing R.C. No. 37/2018, whereby the Eviction Petition of the Respondent herein was allowed and the Leave to Defend application of the Petitioners herein was dismissed, the instant revision petition has been filed under Section 25B (8) of the Delhi Rent Control Act, 1958 (*hereinafter referred to as the "DRC Act"*).

2. The facts, in brief, leading to the instant petition are as under:

a) It is stated that Property No. 82, Village Rajpura, Gur Mandi, Delhi – 110007 (*hereinafter referred to as the "tenanted premises"*) devolved upon the Respondent herein by way of the

will of his father, Late Sh. Surat Singh, and the Petitioners herein are tenants of the same. *Vide* Order dated 31.07.2018 in eviction petition No. 56369/2016, the title of the Respondent to the tenanted premises, which had been challenged, was held to be *bona fide*.

- b) It is stated that the Respondent herein had preferred an eviction petition under Section 14(1)(e) read with Section 25-B of the DRC Act against the Petitioners *qua* Property No. 82, Village Rajpura, Gur Mandi, Delhi – 110007 (*hereinafter referred to as the “tenanted premises”*) in the year 2009. Though this eviction petition was allowed with the Petitioners’ leave to defend application being rejected, *vide* Order dated 12.10.2011 in R.C. Rev. No. 209/2010, this Court set aside the Order of the Ld. Rent Controller and granted leave to defend to the Petitioners.
- c) It is stated that *vide* Order dated 31.07.2018, the Ld. Rent Controller dismissed the eviction petition preferred under Section 14(1)(e) of the DRC Act *qua* the tenanted premises. However, it is stated that shortly thereafter, another eviction petition was preferred by the Respondent under Section 14(1)(e) of the DRC Act against the Petitioners herein *qua* the tenanted premises.
- d) *Vide* Order dated 26.08.2021, the Ld. Rent Controller allowed the eviction petition bearing no. RC ARC No. 37/2018, and the leave to defend application of the Petitioners herein was dismissed. Aggrieved by the same, the Petitioners have approached this Court assailing the Order dated 26.08.2021.

3. Mr. G.P. Thareja, learned Counsel appearing for the Petitioner, submits that the eviction petition moved by the Respondent is not maintainable for the reason that Section 14(1)(e) of the DRC Act can only be invoked if the need of the landlord is *bona fide* in nature which is not the case herein. He states that the alleged need of the daughter-in-law and grandchild of the Respondent to open a coaching institute and study/library/cafeteria cannot be said to be *bona fide*. He further states that the need of the son of the Respondent who is allegedly a lawyer is also false as the son plays an active role as an Executive Director in the management of the Respondent's hotel business. Mr. Thareja also brings to the notice of this Court that the Respondent has concealed material facts and he owns property bearing No. A-97 and A-98, which was allegedly bought and reconstructed by the Respondent in 2017, and Property bearing no. 73, Village Rajpura, Gurmandi, Delhi, from where he's running one boys' hostel by the name of "Garvit Hostel". He states that the Respondent clearly has suitable alternate accommodation which can be put to use for the requirement put forward and no justification has been put forth refuting this. Furthermore, no affidavit has also been attached with the eviction petition showcasing the need of the beneficiaries.

4. The learned Counsel appearing for the Petitioner submits that the summary procedure under Section 25B will not be applicable because the tenanted premises is commercial property and thus, the procedure that needs to be followed by the Ld. Rent Controller is stipulated under Section 37. He submits that the special procedure under Section 25B was introduced by virtue of a 1976 amendment and prior to this amendment, procedure of eviction of tenants was governed by the procedure prescribed in Section 37 of the DRC Act [Reference made to Precision Steel and Engineering Works

and Anr. v. Prem Deva Niranjana Deva, (1982) 3 SCC 270]. He further states that Section 14(1)(e) should not have been invoked as it is Section 14(1)(g) which is essential for the question in the instant case. Mr. Thareja submits that, in order for the Respondent to actually use the tenanted premises for their alleged *bona fide* need, the Respondent herein will have to substantially alter the tenanted premises and that such alterations would radically alter the nature of the tenanted premises as currently the tenanted premises is merely a small tin shed in a dilapidated condition incapable of being used for the purpose of need put forward by the landlord. It is, therefore, submitted that in such circumstances, it is Section 14(1)(g) of the DRC Act which must be invoked and not Section 14(1)(e) as Section 14(1)(e) does not envisage a composite need, and therefore, the special procedure under Section 25B for disposal of applications for eviction under Section 14(1)(e) would not be available herein. In this regard, reliance has been placed on Rani Sethi v. Amarjeet Singh, 2018 SCC OnLine Del 8889 to submit that in case re-construction is required, it is the obligation of the landlord to show to the satisfaction of the Ld. Rent Controller that the proposed re-construction would not radically alter the purposes for which the premises was let out

5. Mr. Thareja, learned Counsel for the Petitioner, submits that the Supreme Court in Satyawati Sharma v. Union of India, (2008) 5 SCC 287, had not made any observations as to whether Section 25B of the DRC Act was applicable in the case of properties which were commercial in nature. He states that this observation can be buttressed by the observation of the Supreme Court in Vinod Kumar .v Ashok Kumar Gandhi, (2019) 17 SCC 237, wherein it has been stated that as Satyawati Sharma v. Union of India (supra) is silent with respect to the procedure prescribed for eviction of

tenant to whom the premises have been let out for commercial activities. Relying upon the principles of interpretation of statutes, i.e. *noscitur a sociis* and *ejusdem generis*, the learned Counsel for the Petitioner submits that the surrounding provisions colour the interpretation of Section 14(1)(e), and thus, the special procedure under Section 25B of the DRC Act cannot be resorted to *qua* commercial properties.

6. Mr. Thareja further states that the sole observation in Satyawati Sharma v. Union of India (supra) was that the distinction made in Section 14(1)(e) with regard to *bona fide* need of property being used for residential purposes or commercial purposes was discriminatory. However, the scope of applicability of Section 25B to only residential properties remained the same. He raises a question as to whether the judgement of the Supreme Court in Satyawati Sharma v. Union of India (supra) is *per incuriam* on the ground that a Constitution Bench of the Supreme Court in Gian Devi Anand v. Jeevan Kumar, (1985) 2 SCC 683, had already *advised* the Legislature to remove the distinction in Section 14(1)(e) with regard to the nature of purpose of the property in question. He states that when the Constitution Bench of the Supreme Court had refrained from legislating, it was not open to a Division Bench of the Supreme Court to do so.

7. Mr. Thareja argues that the Ld. Rent Controller *vide* the impugned Order dated 26.08.2021 has exceeded its jurisdiction and erroneously arrived at the conclusion that the Respondent has demonstrated sufficient need requiring eviction of the Petitioners under Section 14(1)(e) of the DRC Act. Additionally, he submits that Section 25B does not envisage a situation when the leave to defend application of the tenant is rejected and the facts of the eviction petition are deemed to be admitted. Mr. Thareja states that in such a scenario, it is Section 25B(7) which comes into play as it provides for

enquiry to be conducted by way of following the practice and procedure of the Small Causes Court, including the recording of evidences. He states that this demonstrates that mere dismissal of an application for leave to defend does not entail allowance of the eviction petition and that an enquiry needs to be conducted wherein the landlord is required to prove their case. It is only when the landlord is able to prove their case can the eviction order be passed against the tenant.

8. Mr. Thareja argues that the Respondent herein is in the business of flipping properties. Moreover, the Respondent is not even the owner of the tenanted premises which is exemplified by the fact that the same falls in Khasra No. 189 which belongs to Abdul Whahid Mohd. Umer and Mohd. Shafiq. He submits that no title deed has been provided by the Respondent and that the Ld. Rent Controller has erred in arriving at the conclusion that the Respondent is the owner merely because rent, that too under coercion, has been deposited to the Respondent. He further states that an earlier eviction petition bearing no. 59369/2016 had been preferred by the Respondent with regard to the instant tenanted premises and the same had come to be dismissed by the Ld. Rent Controller *vide* Order dated 31.07.2018. Mr. Thareja submits that all these triable issues have been ignored by the Ld. Rent Controller and that the eviction order has been passed in haste, and thus, it deserves to be set aside.

9. *Per contra*, Mr. Rajat Aneja, learned Counsel appearing for the Respondent, submits that no triable issues have been raised by the Petitioners and that the Ld. Rent Controller has rightly dismissed their application for leave to defend. He argues that the assertion that the Respondent is not the owner of the tenanted premises has already been laid to rest in the Order dated 31.07.2018 in the first eviction petition preferred

by the Respondent *qua* the tenanted premises under Section 14(1)(e), whereby the Ld. Rent Controller had categorically noted that the Petitioners herein were voluntarily depositing rent to the Respondent under Section 27 of the DRC Act and by virtue of Section 116 of the Indian Evidence Act, 1872, this creates an estoppel against the tenant who, in either case, cannot challenge the title of the landlord while continuing to occupy the tenanted premises. He further refers to the Will dated 09.03.1999 whereby the Respondent's father has deputed to him the management of the tenanted premises which had been let out to the Petitioner at a monthly rent of Rs. 1500/- during the years 1974-1975.

10. Mr. Aneja submits that the allegations of the Petitioners that the needs of the Respondent are not *bona fide* in nature and that any such need has to be restricted to the immediate dependents which does not include daughter-in-law and granddaughter is erroneous because it fails to account for the concept of a joint family. Further, he submits that the son of the Respondent who is a lawyer has a right to practice his profession and that the office is needed for the same as he would otherwise have to pay an enormous rent if he opens his office elsewhere. He states that the son wants to setup a good legal practice for which he needs the place on an urgent basis. Mr. Aneja submits that multiple needs can exist and multiple people can use the same premises, be it in the form of a law office or a coaching institute, and that the Petitioners do not have the right to dictate the use of the property by the landlord who is the best judge of his requirements. Reference has been made to Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta, (1999) 6 SCC 222, and a Judgement dated 24.07.2013 of a Single-Judge Bench of this Court in Deepak Gupta v. Sushma Aggarwal, 2013 SCC OnLine Del 2793 with regard to the assessment of a landlord's *bona fide* need, and Judgement

dated 29.08.2014 of this Court in Saroj Malik v. O.P. Gupta, **R.C. Rev. 122/2013** with regard to multiple needs *qua* the same premises.

11. Mr. Aneja states that the argument of the learned Counsel for the Petitioner that an eviction petition should have been preferred under Section 14(1)(g) of the DRC Act and not Section 14(1)(e) for the fact that considerable construction will be required to transform the tenanted premises into what is required by the Respondent is erroneous. He states that there is jurisprudence on this question of law that observes that the nature of Section 14(1)(e) and Section 14(1)(g) are completely different and that just because construction or alteration is required for the *bona fide* need of the landlord to be satisfied, does not mean that an eviction petition under Section 14(1)(e) would not be maintainable. In this regard, Mr. Aneja refers to a Judgement of this Court in Ram Wati Devi & Ors.v. Mohan Babu Sharma & Ors., **2014 SCC OnLine Del 1707**, to submit that it is open to the landlord to refashion the premises in question to their suitability to meet the need. Further reliance has been placed on a Judgement of this Court in Sharifuddin v. Babuddin and Ors., **2008 SCC OnLine Del 1256**, to submit that there is no conflict between Section 14(1)(e) and Section 14(1)(g) of the DRC Act.

12. The learned Counsel for the Respondent argues that the judgement of the Supreme Court in Satyawati Sharma v. Union of India (supra) was categorically upheld in 2019 in Vinod Kumar .v Ashok Kumar Gandhi(supra) wherein the Supreme Court has distinguished the said Judgement from Gian Devi Anand v. Jeevan Kumar (supra) and Gauri Shanker and Ors. v. Union of India and Ors., (supra) and held that the same was not *per incuriam*. It was further observed that there was no justification for referring Satyawati Sharma v. Union of India (supra) to a larger Bench.

He states that the fact that Section 14(1)(e) also pertains to commercial property must be adhered to and is now the law of the land. He states that the assertion that Satyawati Sharma v. Union of India (supra) is silent on the application of the special procedure under Section 25B to the consideration of an eviction petition under Section 14(1)(e) and thus, Section 37 must be followed, cannot be accepted as it will defeat the very object of ensuring that the landlord does not have to endure a long-drawn trial for establishing his *bona fide* need.

13. Mr. Aneja submits that the other properties available to the Respondent are not suitable or vacant for him to fulfil his *bona fide* needs. He informs this Court that there are 130 rooms in the property bearing no. 94-95 and all are fully occupied. He states that for this reason, another property bearing no. A-98 had to be purchased which has been developed into a paying guest accommodation. He further states that in order to fulfil his commercial purpose, the tenanted premises are required and any other alleged suitable alternate property would not be sufficient to satisfy the purpose. With regard to the earlier eviction petition bearing no. 59369/2016 which was dismissed by the Ld. Rent Controller *vide* Order dated 31.07.2018, Mr. Aneja states that property was then required for support staff of the hostel being run from property no. 94-95, however, the petition had been dismissed as the site plan of property no. 94-95 had not been provided. He states that at a later point of time, the support staff was provided separate space at property bearing no. A-98 and thus, the need stood fulfilled. He further submits that Property No. 73, Rajpura, Gurmandi, Delhi, is a boys' hostel being run by coparcener Sh. Kanwar Ajay Singh and that the said property is yet to be partitioned.

14. Heard Mr. G.P. Thareja, learned Counsel appearing for the Petitioners, Mr. Rajat Aneja, learned Counsel appearing for the Respondent, and perused the material on record.

15. At the outset, for ease of comprehension, this Court shall cull out the relevant provisions of the DRC Act that will be referred to during the course of the analysis. Relevant portion of Section 14(1) of the DRC Act which is necessary for adjudication of the present dispute, reads as under:

“14. Protection of tenant against eviction. –

(1) Notwithstanding anything to the contrary contained 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 the recovery of possession of the premises on one or more of the following grounds only, namely: -

(e) That the premises let for residential purpose are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and the landlord or such person has no other reasonably suitable residential accommodation;

(g) that the premises are required bona fide by the landlord for the purpose of building or re-building or making thereto any substantial additions or alterations and that such building or re-building or

addition or alteration cannot be carried out without the premises being vacated;

.....”

16. Under Chapter IIIA of the DRC Act, Section 25B provides for the special procedure for the disposal of applications for eviction on the ground of *bona fide* requirement, i.e. under Section 14(1)(e), and the same has been reproduced as under:

“25-B. Special procedure for the disposal of applications for eviction on the ground of bona fide requirement.—(1) Every application by a landlord for the recovery of possession of any premises on the ground specified in clause (e) of the proviso to sub-section (1) of Section 14, or under Section 14-A 31[or under Section 14-B or under Section 14-C or under Section 14-D], shall be dealt with in accordance with the procedure specified in this section.

(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 addition to, and simultaneously with, the issue of summons for service on the tenant, also direct the summons to be served by registered post, acknowledgement 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 or carried on business or personally worked for gain.

(b) When an acknowledgement 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 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 duly served (whether in the ordinary way or by registered post) in the form specified 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 admitted 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 (e) of the proviso to sub-section (1) of Section 14, or under Section 14-A.

(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 37, 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 47 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 14-A, shall be the same as the procedure for the disposal of application by Controllers.”

17. The procedure that must be followed by the Ld. Rent Controller while rendering any Order that prejudicially affects any person has been stipulated under Section 37 of the DRC Act and can be read as under:

“37. Procedure to be followed by Controller.—(1) No order which prejudicially affects any person shall be made by the Controller under this Act without giving him a reasonable opportunity of showing cause against the order proposed to be made and until his objections, if any, and any evidence he may produce in support of the same have been considered by the Controller.

(2) Subject to any rules that may be made under this Act, the Controller shall, while holding an inquiry in any proceeding before him follow as far as may be practice and procedure of a court of small causes, including the recording of evidence.

(3) In all proceedings before him, the Controller shall consider the question of costs and award such costs to or against any party as the Controller considers reasonable.”

18. The DRC Act had been primarily enacted to protect the rights of tenants *vis-à-vis* the might of the rich and powerful landlords who were prone to arbitrarily evicting their poor tenants or charging exorbitant rents from them. In order to ensure that tenants did not have to pay more than the standard rent and were safe from exploitation at the hands of their landlords, the DRC Act came into play. It was meant to be a beneficial legislation and Section 14 in particular prohibited the Ld. Rent Controller from passing an Order requiring the eviction of the tenant until and unless the same was sought by the landlord on some specific grounds as enshrined under Section 14(1)(a) to Section 14(1)(l). These are meant to be exceptions to the general rule of protection of the DRC Act and signify that the onus of proving that a ground is made out for eviction lies on the landlord.

19. However, as has been noted in Deepak Gupta v. Sushma Aggarwal (supra), despite the explicit protections that are granted to tenants, the DRC Act attempts to balance out this protection by also providing landlords a special procedure for eviction. This is demonstrated by the insertion of Chapter IIIA by way of the Act of 1976 which provides a summary procedure for those eviction petitions which are moved by the landlord who requires the tenanted premises for a *bona fide* need. This summary

procedure was inserted with the view to provide quick and expeditious relief to the landlord who has a genuine need for the premises that they had previously let out. The relevant portion of the aforementioned judgement of this Court which has relied on Bega Begum v. Abdul Ahmed Khan, (1979) 1 SCC 273, has been reproduced as under:

“9. I think it is for me to firstly emphasize the policy behind the Rent Control legislation which is that the Delhi Rent Control Act is an act which has been enacted for the protection of the tenant by controlling the rate of the rents and unjust and unreasonable evictions in view of the ongoing tenancies in the region of Delhi as is evident from the preamble of the Act of 1958.

A careful reading of the provisions of the Act would reveal that the tenant who comes within the purview of the Rent Control Act is a protected tenant and the grounds of the eviction are enacted in the form of proviso to the Section 14 of the Act as an exception to the general rule which is that the tenant is a protected person within the meaning of the Act.

10. Therefore, the eviction proceedings as provided under the provisions of the proviso to Section 14(1) of Delhi Rent Control Act are an exception to the general rule of protection of the Act. Thus, the initial onus to establish the ground of the eviction as contained in the eviction petition is on the landlord as it is the landlord who is pleading an exception in the form of eviction proceedings under the Act. Consequently, the Rent Controller who is seized of the eviction proceedings has to necessarily keep in mind that it is the landlord who has to establish the ground of eviction as pleaded in the petition.

11. It is equally noteworthy to mention that it is not that the Delhi Rent Control Act merely protects the

tenants against the unjust and unreasonable evictions from the landlord and the landlords. The Act attempts to balance out the protection and also protects the landlord by providing special procedure for eviction. Section 14(1)(e) which enables the landlord to seek eviction on the ground of bonafide requirement is one such protection given to the landlord wherein the landlord can seek quick and swift eviction of the premises by adopting the special procedure laid down under the provisions of Section 25 B of the Act. This protection has been given to the landlord as there may be some genuine reasons for which the landlord may require the premises for his own requirement. For the said reason, the special provisions are enacted under Section 25 B of the Act in order to avoid delay in the proceedings.

The legislative intent behind the special nature of the provisions which are Section 14(1)(e) and section 25 B has been aptly explained by the Supreme Court of India in the case of Bega Begum v. Abdul Ahmed Khan (dead) by LRs [1979] 2 S.C.R. 1 wherein the Supreme Court observed thus:

“Section 25B of the Delhi Rent Control Act was inserted in the statute by Act 18 of 1976 and was given retrospective effect from 1-12-75, with the sole object of simplifying the procedure for eviction of tenants in case the landlord requires the premises bonafide for his personal occupation. The Legislature in its wisdom thought that a short and simple procedure should be provided for those landlords who generally want the premises for their bonafide necessity so that they may be able to get quick and expeditious relief. [865 G-H, 866 A-B] Section 25B does not govern all grounds open to a landlord for evicting the tenant but it is confined only to the ground in section 14A and proviso to section 14(1)(e). In other words, the bonafide necessity of the

landlord has been put in a separate class or category having regard to the peculiar incidents of his right. Section 14A also relates to a special situation where the landlord under the Government Rules is asked to shift to his own house, if he has one or in a house that belongs to his spouse, failing which he has to pay a penal rent which almost takes away a major part of his salary. Thus, such a landlord becomes a class by himself. The statute thus puts personal necessity of the landlord as a special class requiring special treatment for quick eviction of the tenant and cuts out delays and plugs all the loopholes, which may cause delay in getting the relief by the landlord. The classification made by the legislature is in public interest and is in complete consonance with the objectives sought to be achieved. The landlords having personal necessity have been brought together as a separate class because of their special needs and such a classification cannot be said to be unreasonable particularly where the legislature in its obvious wisdom feels that the Landlords should get this relief as quickly as possible (Emphasis Supplied)”
(emphasis supplied)

20. The object of Chapter IIIA of the DRC Act was to ensure that a landlord who requires his premises for *bona fide* purposes should not be forced to endure long trials because of which the *bona fide* need may itself cease to exist or certain events may transpire that would render the entire procedure redundant. The Apex Court in Ravi Datt Sharma v. Ratan Lal Bhargava, (1984) 2 SCC 75, has succinctly laid down the object of Chapter IIIA and the relevant portion of the said Judgement reads as under:

“7. In order to appreciate this contention it may be necessary to give an extract of Statement of Objects and Reasons of the amending Act:

“There has been a persistent demand for amendments to the Delhi Rent Control Act, 1958 with a view to conferring a right of tenancy on certain heirs/successors of a deceased statutory tenant so that they may be protected from eviction by landlords and also for simplifying the procedure for eviction of tenants in case the landlord requires the premises bona fide for his personal occupation. Further, Government decided on September 19, 1975 that a person who owns his own house in his place of work should vacate the Government accommodation allotted to him before December 31, 1975. Government considered that in the circumstances, the Act requires to be amended urgently.”

The dominant object of the amending Act was, therefore, to provide a speedy, expeditious and effective remedy for a class of landlords contemplated by Sections 14(1)(e) and 14-A and for avoiding unusual dilatory process provided otherwise by the Rent Act. It is common experience that suits for eviction under the Act take a long time commencing with the Rent Controller and ending up with the Supreme Court. In many cases experience has indicated that by the time the eviction decree became final several years elapsed and either the landlord died or the necessity which provided the cause of action disappeared and if there was further delay in securing eviction and the family of the landlord had by then expanded, in the absence of accommodation the members of the family were virtually thrown on the road. It was this mischief which the Legislature intended to avoid by incorporating the new procedure in Chapter III-A. The Legislature in its wisdom thought that in cases where the landlords required their own premises for bona fide and personal necessity they should be treated as a separate class along with the landlords covered by Section 14-A and should be

allowed to reap the fruits of decrees for eviction within the quickest possible time. It cannot, therefore, be said that the classification of such landlords would be an unreasonable one because such a classification has got a clear nexus with the objects of the amending Act and the purposes which it seeks to subserve. Tenants cannot complain of any discrimination because the Rent Act merely gave certain protection to them in public interest and if the protection or a part of it afforded by the Rent Act was withdrawn and the common law right of the tenant under the Transfer of Property Act was still preserved, no genuine grievance could be made. This was clearly held in the case of Kewal Singh v. Lajwanti [(1980) 1 SCC 290 : AIR 1980 SC 161 : (1980) 1 SCR 854] .”

21. It is pertinent to note that this leeway was not provided to the landlords without any strings attached. Referring to Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta (supra), while deciphering Section 12(1)(f) of the Madhya Pradesh Rent Act, 1961 which is analogous with Section 14(1)(e) of the DRC Act, the Supreme Court in Deena Nath v. Pooran Lal, **(2001) 5 SCC 705** held that while preferring a petition for eviction for the purpose of *bona fide* need, the landlord had to demonstrate twin requirements: i. a *bona fide* need does exist and the same is not a mere desire, and ii. the landlord does not possess any suitable alternate accommodation that can be utilised for the said *bona fide* need. The portion of the said Judgement stating these requirements is below:

“15. From the discussions in the foregoing paragraphs, the question that arises for determination is whether in the facts and circumstances of the case, the High Court was justified in interfering with the concurrent judgments of the courts below in holding that the plaintiff required the premises bona fide for use of his son. Section 12(1)(f) of the Act under which

the eviction of the tenant was sought and granted by the lower courts, reads as follows:

“12. Restriction on eviction of tenants.—(1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any civil court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely:

*(a)-(e)****

(f) that the accommodation let for non-residential purposes is required bona fide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned;”

The section, on a plain reading, is clear and specific. The criteria to be fulfilled for an order of eviction under the provision are:

(i) that the non-residential accommodation is required bona fide by the landlord for the purpose of continuing or starting his business or that of any of his major sons; and

(ii) that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned.

(emphasis supplied)

The legislature in enacting the provision has taken ample care to avoid any arbitrary or whimsical action of a landlord to evict his tenant. The statutory mandate

is that there must be first a requirement by the landlord which means that it is not a mere whim or a fanciful desire by him; further, such requirement must be bona fide which is intended to avoid a mere whim or desire. The “bona fide requirement” must be in praesenti and must be manifested in actual need which would evidence the court that it is not a mere fanciful or whimsical desire. The legislative intent is made further clear by making the provision that the landlord has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. This requirement lays stress that the need is pressing and there is no reasonably suitable alternative for the landlord but to get the tenant evicted from the accommodation. Similar statutory provision is made in clause (e) of Section 12(1) of the Act in respect of accommodation let for residential purposes. Thus, the legislative mandate being clear and unambiguous, the court is duty-bound to examine not merely the requirement of the landlord as pleaded in the eviction petition but also whether any other reasonably suitable non-residential accommodation in his occupation in the city/town is available. The judgment/order of the court/authority for eviction of a tenant which does not show that the court/authority has applied its mind to these statutory requirements cannot be sustained and the superior court will be justified in upsetting such judgment/order in appeal/second appeal/revision. Bona fide requirement, on a first look, appears to be a question of fact. But in recording a finding on the question the court has to bear in mind the statutory mandate incorporated in Section 12(1)(f). If it is found that the court has not applied the statutory provisions to the evidence on record in its proper perspective then the finding regarding bona fide requirement would cease to be a mere finding of fact, for such erroneous finding illegally arrived at would vitiate the entire judgment. In such case the High Court cannot be faulted for interfering with the finding in exercise of its

second appellate jurisdiction under Section 100 of the Code of Civil Procedure.

16. In this connection, we may refer to the decision of this Court in the case of Shiv Sarup Gupta v. Dr Mahesh Chand Gupta [(1999) 6 SCC 222] in which it was held, inter alia, that: (SCC Headnote)

“The term bona fide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by ‘requires’ is much higher than in mere desire. The phrase ‘required bona fide’ is suggestive of legislative intent that a mere desire which is the outcome of a whim or fancy is not taken note of by the rent control legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant.”

Therein it was further held: (SCC p. 231, para 11)

“[T]he High Court (in revision) is obliged to test the order of the Rent Controller on the touchstone of ‘whether it is according to law’. For that limited purpose it may enter into reappraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached on the material available.”

22. What can be discerned from the above is that the DRC Act was promulgated as a beneficial legislation to protect the interests of poor tenants who were merciless in front of mighty and avaricious landlords. The Courts

consistently delivered decisions involving interpretations of the law that favoured tenants. However, in due course of time, the winds of change ushered in an era when the jurisprudence started tilting in favour of the landlords who were rendered helpless due to tenants who would not only pay peanuts for rent, but would also refuse to vacate the tenanted premises. It was under such circumstances that Section 25B was enacted and the initial intent of the DRC Act came to be balanced out. To state that the interpretation of any provision of the DRC Act should be done with the purpose of protecting the tenant would be fallacious given the course that the jurisprudence governing this sphere of law has taken.

23. At the outset itself, this Court finds it necessary to dispel one submission of the learned Counsel for the Petitioner. It has been contended that the alleged procedural lacunae in Section 25B with regard to the course of action when a tenant's leave to defend application is rejected is to be filled by the procedure enumerated under Section 37. It has further been contended that in view of the rules of statutory interpretation, Section 25B cannot be said to be applicable to commercial properties. This Court is inclined to reject this submission on the sole ground that a provision cannot be read in parts and must be read as a whole while keeping its intention and objective in mind [Refer to Nathi Devi v. Radha Devi Gupta, (2000) 9 SCC 249, and Jagadesan v. State of Tamil Nadu and Ors., 2015 SCC OnLine Mad 3721]. A comprehensive reading of Section 25B explicitly notes that it is only when the leave to defend application is allowed that the Ld. Rent Controller must follow the procedure of the Court of Small Causes, and that in the case of dismissal, the landlord is automatically entitled to an eviction order as per Section 25B(4) of the DRC Act. Allowing any other

interpretation when the statute is clear and unambiguous would be bad in law and cannot be permitted.

24. Section 14(1)(e) as framed was applicable only to residential premises. However, the Apex Court in the case of Satyawati Sharma v. Union of India, (2008) 5 SCC 287, held that Section 14(1)(e) cannot be restricted only to residential premises, and thus, extended the application of Section 14(1)(e) to commercial premises as well. The Apex Court felt that striking down the entire Section would be discriminative and violative of Article 14 of the Constitution of India. It was observed that it would be better to remove discrimination by holding that a landlord could seek eviction of his tenant or his *bonafide* requirement for commercial premises as well. Once Section 14(1)(e) was made applicable to commercial premises as well, then the purpose for which Section 25B was enacted, which was to ensure a speedy procedure to the landlord to get his tenant evicted for his requirement, could not be made applicable solely to residential premises and it, therefore, had to be extended to commercial premises as well.

25. Having established the above, we arrive at the simple question of law that has arisen before this Court in the instant matter – whether Section 14(1)(e) of the DRC Act is merely applicable to residential properties or to both residential and commercial properties. It has been vehemently argued before this Court by the learned Counsel for the Petitioner that Section 14(1)(e) solely governs tenanted premises that have been let out for residential purposes and, that as the instant case pertains to commercial use of the tenanted premises, the Respondent could not have availed of the special procedure under Section 25B of the DRC Act and was liable to undergo the procedure under Section 37 of the DRC Act.

26. To delve into this issue, it would first be appropriate to examine Gian Devi Anand v. Jeevan Kumar & Ors., (1985) 2 SCC 683, wherein a Constitution Bench of the Supreme Court noticed a distinction in how Section 14(1)(e) was only confined to residential premises and not available in the case of commercial premises. It was observed that the landlord who let out commercial premises could need the same for his own *bona fide* need under changed conditions. Accordingly, the Legislature was advised to amend Section 14(1)(e) of the DRC Act and make the *bona fide* requirement of the landlord a ground of eviction in respect of commercial premises as well. The relevant paragraph of the said Judgment is as follows:

“39. Before concluding, there is one aspect on which we consider it desirable to make certain observations. The owner of any premises, whether residential or commercial, let out to any tenant, is permitted by the Rent Control Acts to seek eviction of the tenant only on the grounds specified in the Act, entitling the landlord to evict the tenant from the premises. The restrictions on the power of the landlords in the matter of recovery of possession of the premises let out by him to a tenant have been imposed for the benefit of the tenants. In spite of various restrictions put on the landlord's right to recover possession of the premises from a tenant, the right of the landlord to recover possession of the premises from the tenant for the bona fide need of the premises by the landlord is recognised by the Act, in case of residential premises. A landlord may let out the premises under various circumstances. Usually a landlord lets out the premises when he does not need it for own use. Circumstances may change and a situation may arise when the landlord may require the premises let out by him for his own use. It is just and proper that when the landlord requires the premises bona fide for his own use and occupation, the landlord should be entitled to recover the possession of the premises which continues to be his property inspite of

his letting out the same to a tenant. The Legislature in its wisdom did recognise this fact and the Legislature has provided that bona fide requirement of the landlord for his own use will be a legitimate ground under the Act for the eviction of his tenant from any residential premises. This ground is, however, confined to residential premises and is not made available in case of commercial premises. A landlord who lets out commercial premises to a tenant under certain circumstances may need bona fide the premises for his own use under changed conditions on some future date should not in fairness be deprived of his right to recover the commercial premises. Bona fide need of the landlord will stand very much on the same footing in regard to either class of premises, residential or commercial. We, therefore, suggest that Legislature may consider the advisability of making the bona fide requirement of the landlord a ground of eviction in respect of commercial premises as well.”

(emphasis supplied)

27. In Gauri Shanker and Ors. v. Union of India and Ors., (1994) 6 SCC 349, a 3-Judge Division Bench of the Supreme Court took note of the observations in Gian Devi Anand v. Jeevan Kumar (supra), and arrived at the understanding that the Legislature had in its ultimate wisdom, though with regard to heritability of tenancy, made a distinction between residential properties and commercial properties, and that designating both as different classes was not a violation of Article 14 of the Constitution of India, 1950. It further observed that making any changes to the functioning of the enactment was open to the Legislature, but the Supreme Court itself did not institute legislative amendments. The portion of the said Judgement delineating this line of thought has been reproduced:

“10. Bearing the above principles in mind, let us look into the provisions of the Act. A bare perusal of the

Delhi Rent Control Act, 1958, will show that the legislature has treated commercial tenancy differently from residential tenancy. Indeed, in Gian Devi Anand case [(1985) 2 SCC 683] , in paragraphs 32 and 34 of the judgment, the Constitution Bench of this Court has pointedly dealt with the matter thus : (SCC p. 709)

“32. It may be noted that for certain purposes the Legislature in the Delhi Act in question and also in various other Rent Acts has treated commercial premises differently from residential premises. Section 14(1)(d) provides that it will be a good ground for eviction of a tenant from residential premises if the premises let out for use as residence is not so used for a period of six months immediately before the filing of the application for the recovery of possession of the premises. Similarly Section 14(1)(e) makes bona fide requirement of the landlord of the premises let out to the tenant for residential purposes a good ground for eviction of the tenant from such premises. These grounds, however, are not made available in respect of commercial premises.

34. It may be noticed that the Legislature itself treats commercial tenancy differently from residential tenancy in the matter of eviction of the tenant in the Delhi Rent Act and also in various other Rent Acts. All the grounds for eviction of a tenant of residential premises are not made grounds for eviction of a tenant in respect of commercial premises. Section 14(1)(d) of the Delhi Rent Act provides that non-user of the residential premises by the tenant for a period of six months immediately before the filing of the application for the recovery of possession of the premises will be a good ground for eviction, though in case of commercial premises no such

provision is made. Similarly, Section 14(1)(e) which makes bona fide requirement of the landlord of the premises let out to the tenant for residential purposes a ground for eviction of the tenant, is not made applicable to commercial premises.”

11. *It is also appropriate to state that a commercial tenancy is much more valuable and precious than a residential tenancy. In the above decision of the Supreme Court, this aspect was highlighted to the following effect in paragraph 34 of the judgment thus : (SCC pp. 709-11)*

“Business carried on by a tenant of any commercial premises may be and often is, his only occupation and the source of livelihood of the tenant and his family. Out of the income earned by the tenant from his business in the commercial premises, the tenant maintains himself and his family; and the tenant, if he is residing in a tenanted house, may also be paying his rent out of the said income. Even if a tenant is evicted from his residential premises, he may with the earnings out of the business be in a position to arrange for some other accommodation for his residence with his family. When, however, a tenant is thrown out of the commercial premises his business which enables him to maintain himself and his family comes to a standstill. It is common knowledge that it is much more difficult to find suitable business premises than to find suitable premises for residence. It is no secret that for securing commercial accommodation, large sums of money by way of salami, even though not legally payable, may have to be paid and rents of commercial premises are usually very high. Besides, a business which has been carried on for years at a particular place has its own goodwill and other distinct advantages. The death of the

person who happens to be the tenant of the commercial premises and who was running the business out of the income of which the family used to be maintained, is itself a great loss to the members of the family to whom the death, naturally, comes as a great blow. Usually, on the death of the person who runs the business and maintains his family out of the income of the business, the other members of the family who suffer the bereavement have necessarily to carry on the business for the maintenance and support of the family. A running business is indeed a very valuable asset and often a great source of comfort to the family as the business keeps the family going. ... It could never have been the intention of the Legislature that the entire family of a tenant depending upon the business carried on by the tenant will be completely stranded and the business carried on for years in the premises which had been let out to the tenant must stop functioning at the premises which the heirs of the deceased tenant must necessarily vacate, It may also be borne in mind that in case of commercial premises the heirs of the deceased tenant not only succeed to the tenancy rights in the premises but they succeed to the business as a whole. ... Commercial premises are let out not only to individuals but also to Companies, Corporations and other statutory bodies having a juristic personality. In fact, tenancies in respect of commercial premises are usually taken by Companies and Corporations. When the tenant is a Company or a Corporation or anybody with juristic personality, question of the death of the tenant will not arise. Despite the termination of the tenancy, the Company or the Corporation or such juristic personalities, however, will go on enjoying the protection afforded to the tenant under the Act.”(emphasis supplied)

12. It is evident from the above decision of the Constitution Bench of this Court that a commercial tenancy is invaluable and has got distinct features and characteristics of its own different from that of a residential tenancy. None of the peculiar or unique features present in the case of commercial tenancies exist in the case of residential tenancies. In the above background, if the legislature thought it fit to afford a greater and extended right or benefit to the heirs of the statutory tenants of commercial premises and not to extend such rights to the heirs of the statutory tenants of residential premises, we should say that it only stands to reason and reckons the stark realities of the prevailing situation. The protection afforded by the Rent Act to a tenant after the termination of the tenancy and to the heirs of the tenant is only a creation of the Act and it is open to the Legislature to make appropriate provisions in that behalf. It can make suitable and appropriate provisions in the Act with regard to the nature and extent of the benefit and protection to be so enjoyed and the manner in which the same is to be enjoyed. In the above perspective, we are of the view that the provisions in Section 2(l)(iii) of the Act, which seeks to restrict or limit the right of the heirs, insofar as the statutory tenants of residential premises are concerned and to the extent provided therein, are not in any way discriminatory and do not offend the guarantee under Article 14 of the Constitution. This is not a case where the residential tenancy and the commercial tenancy are similarly placed. They belong to two different categories with distinct features and characteristics of their own. No question of discrimination arises. In this context, it is only proper to quote the following observations in Sakhawat Ali v. State of Orissa [(1955) 1 SCR 1004, 1010 : AIR 1955 SC 166] , which is apposite:

“... legislation enacted for the achievement of a particular object or purpose need not be all

embracing. It is for the Legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed by Article 14 of the Constitution.”(emphasis supplied)

Nor are we impressed by the plea that the right to shelter is a guarantee under Article 21 of the Constitution of India and so the abridgement or limitation placed on the rights of the legal heirs in the case of a statutory tenancy of residential premises makes an inroad into the rights of the tenant under Article 21 of the Constitution of India. We hold that the statutory tenancies regarding residential premises are distinct and different from statutory tenancies regarding commercial premises and the limitations or the restrictions placed by Section 2(l)(iii) of the Act on the rights of the heirs of the statutory tenants of residential premises are reasonable, fair and just in all the circumstances of the case. There is no violation of the guarantee enshrined in Article 14 or Article 21 of the Constitution of India.”

28. The controversy in the instant case commences with Satyawati Sharma v. Union of India (supra) which arises out of a repulsion by this Court to the challenge to the constitutional validity of Section 14(1)(e) of the DRC Act. In this case, a 2-Judge Division Bench of the Supreme Court noted the observations in Gian Devi Anand v. Jeevan Kumar (supra) and observed that with the passage of time, the distinction between commercial properties and residential properties had become so pronounced that it could no longer be treated *intra vires* Article 14 by applying any rational criteria.

Applying the doctrine of severability, the Supreme Court struck down the offending portion of Section 14(1)(e) and expanded the scope of the provision to commercial properties as well.

“28. A critical analysis of the abovenoted judgment makes it clear that the main reason which weighed with the High Court for approving the classification of premises into residential and non-residential was that by imposing restriction on the eviction of tenants of premises let for non-residential purposes, the Government wanted to solve the acute problem of housing created due to partition of the country in 1947. The Court took cognizance of the fact that as an aftermath of partition many hundred thousands of people had been uprooted from the area which now forms part of Pakistan; that they were forced to leave their homes and abandon their business establishments, industries, occupation and trade and the Government was very much anxious to ensure resettlement of such persons. It was felt that if the landlords are readily allowed to evict the tenants, those who came from West Pakistan will never be able to settle in their life. Therefore, in the 1947 and 1958 Acts, the legislature did not provide for eviction of tenants from the premises let for non-residential purposes on the ground that the same are required by the landlords for their bona fide use and occupation.

29. Insofar as the judgment under challenge is concerned, we find that the Full Bench upheld the validity of Section 14(1)(e) mainly by relying upon the judgment of the Division Bench in H.C. Sharma v. LIC of India [ILR (1973) 1 Del 90] and of this Court in Amarjit Singh v. Khatoon Quamarain [(1986) 4 SCC 736] and by observing that legislature has the right to classify persons, things, and goods into different groups and that the Court will not sit over the judgment of the legislature. It is significant to note that the Full Bench did not, at all, advert to the question

whether the reason/cause which supplied rationale to the classification continued to subsist even after lapse of 44 years and whether the tenants of premises let for non-residential purposes should continue to avail the benefit of implicit exemption from eviction in the case of bona fide requirement of the landlord despite see-saw change in the housing scenario in Delhi and substantial increase in the availability of buildings and premises which could be let for non-residential or commercial purposes.

30. In our opinion, the reasons which weighed with the High Court in H.C. Sharma v. LIC of India [ILR (1973) 1 Del 90] and the impugned judgment cannot in the changed scenario and in the light of the ratio of Harbilas Rai Bansal v. State of Punjab [(1996) 1 SCC 1] , which was approved by three-Judge Bench in Rakesh Vij v. Dr. Raminder Pal Singh Sethi [(2005) 8 SCC 504] and of Rattan Arya v. State of T.N. [(1986) 3 SCC 385] , as also the observations contained in the concluding portion of the judgment in Gian Devi Anand v. Jeevan Kumar [(1985) 2 SCC 683] now be made basis for justifying the classification of premises into residential and non-residential in the context of landlord's right to recover possession thereof for his bona fide requirement. At the cost of repetition, we deem it proper to mention that in the rent control legislations made applicable to Delhi from time to time residential and non-residential premises were treated on a par for all purposes. The scheme of the 1958 Act also does not make any substantial distinction between residential and non-residential premises. Even in the grounds of eviction set out in proviso to Section 14(1), no such distinction has been made except in Clauses (d) and (e).

31. In H.C. Sharma v. LIC of India [ILR (1973) 1 Del 90] the Division Bench of the High Court, after taking cognizance of the acute problem of housing created due to partition of the country, upheld the

classification by observing that the Government could legitimately restrict the right of the landlord to recover possession of only those premises which were let for residential purposes. The Court felt that if such restriction was not imposed, those uprooted from Pakistan may not get settled in their life. As of now a period of almost 50 years has elapsed from the enactment of the 1958 Act. During this long span of time much water has flown down the Ganges. Those who came from West Pakistan as refugees and even their next generations have settled down in different parts of the country, more particularly in Punjab, Haryana, Delhi and surrounding areas. They are occupying prime positions in political and bureaucratic set-up of the Government and have earned huge wealth in different trades, occupation, business and similar ventures. Not only this, the availability of buildings and premises which can be let for non-residential or commercial purposes has substantially increased. Therefore, the reason/cause which prompted the Division Bench of the High Court to sustain the differentiation/classification of the premises with reference to the purpose of their user, is no longer available for negating the challenge to Section 14(1)(e) on the ground of violation of Article 14 of the Constitution, and we cannot uphold such arbitrary classification ignoring the ratio of Harbilas Rai Bansal v. State of Punjab [(1996) 1 SCC 1] , which was reiterated in Joginder Pal v. Naval Kishore Behal [(2002) 5 SCC 397] and approved by three-Judge Bench in Rakesh Vij v. Dr. Raminder Pal Singh Sethi [(2005) 8 SCC 504] . In our considered view, the discrimination which was latent in Section 14(1)(e) at the time of enactment of the 1958 Act has, with the passage of time (almost 50 years), become so pronounced that the impugned provision cannot be treated intra vires Article 14 of the Constitution by applying any rational criteria.

32. It is trite to say that legislation which may be quite reasonable and rational at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equality and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent. In State of M.P. v. Bhopal Sugar Industries Ltd. [AIR 1964 SC 1179] this Court while dealing with a question whether geographical classification due to historical reasons could be sustained for all times observed : (AIR p. 1182, para 6)

“6. ... Differential treatment arising out of the application of the laws so continued in different regions of the same reorganised State, did not, therefore immediately attract the clause of the Constitution prohibiting discrimination. But by the passage of time, considerations of necessity and expediency would be obliterated, and the grounds which justified classification of geographical regions for historical reasons may cease to be valid. A purely temporary provision which because of compelling forces justified differential treatment when the Reorganisation Act was enacted cannot obviously be permitted to assume permanency, so as to perpetuate that treatment without a rational basis to support it after the initial expediency and necessity have disappeared.”

39. A careful reading of the aforementioned judgment shows that the plea of unconstitutionality of Section 14(1)(e) of the 1958 Act was neither raised nor debated with any seriousness and the observation made by the Court in that regard cannot be treated as the true ratio of the judgment, which as mentioned

above, mainly rested on the interpretation of the expression “reasonably suitable residential accommodation”. The bedrock of the respondent's claim was that she had a right to comfortable living and availability of alternative accommodation, by itself is not sufficient for declining eviction of the tenant. While rejecting this argument, the Court observed : (Amarjit Singh case [(1986) 4 SCC 736] , SCC pp. 744-45, para 17)

“17. ... The logic of the argument of Shri Kacker is attractive, but the legality of the said submission is unsustainable. Rent restriction laws are both beneficial and restrictive, beneficial for those who want protection from eviction and rack-renting but restrictive so far as the landlord's right or claim for eviction is concerned. Rent restriction laws would provide a habitat for the landlord or landlady if need be, but not to seek comforts other than habitat—that right the landlord must seek elsewhere.”

40. *Another contention raised on behalf of the landlady was that Section 14(1)(e) of the 1958 Act should be read in a manner which will make it in conformity with Articles 14 and 16 (sic Article 21) of the Constitution. This is evinced from para 18 of the judgment which is extracted below : (Amarjit Singh case [(1986) 4 SCC 736] , SCC p. 745, para 18)*

“18. Our attention was drawn to the decision in Bishambhar Dayal Chandra Mohan v. State of U.P. [(1982) 1 SCC 39 : 1982 SCC (Cri) 53] and our attention was drawn to the observations at pp. 66 and 67 of the said case in aid of the submission that right to property is still a constitutional right and therefore in exercise of that right if a landlord or an owner of a house lets out a premises in question there was nothing wrong. Shri Kacker

submitted that the second limb of Section 14(1)(e) of the Act should be read in such a way that it was in consonance with Article 14 and Article 21 of the Constitution. Otherwise it would be void as being unconstitutional. As a general proposition of law this is acceptable.”

The Court rejected the argument and observed : (SCC p. 745, para 20)

“20. The Act in question has the authority of law. There is no denial of equality nor any arbitrariness in the second limb of Section 14(1)(e) of the Act, read in the manner contended for by the appellant. Article 21 is not violated so far as the landlord is concerned. The rent restricting Acts are beneficial legislations for the protection of the weaker party in the bargains of letting very often. These must be so read that these balance harmoniously the rights of the landlords and the obligations of the tenants. The rent restriction Acts deal with the problem of rack-renting and shortage of accommodation. It is in consonance with the recognition of the right of both the landlord and the tenant that a harmony is sought to be struck whereby the bona fide requirements of the landlords and the tenants in the expanding explosion of need and population and shortage of accommodation are sought to be harmonised and the conditions imposed to evict a tenant are that the landlord must have bona fide need. That is satisfied in this case. That position is not disputed. The second condition is that landlord should not have in his or her possession any other reasonably suitable accommodation. This does not violate either Article 14 or Article 21 of the Constitution.”

41. In view of the above discussion, we hold that Section 14(1)(e) of the 1958 Act is violative of the

doctrine of equality embodied in Article 14 of the Constitution of India insofar as it discriminates between the premises let for residential and non-residential purposes when the same are required bona fide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter's right to seek eviction of the tenant from the premises let for residential purposes only.

42. However, the aforesaid declaration should not be misunderstood as total striking down of Section 14(1)(e) of the 1958 Act because it is neither the pleaded case of the parties nor the learned counsel argued that Section 14(1)(e) is unconstitutional in its entirety and we feel that ends of justice will be met by striking down the discriminatory portion of Section 14(1)(e) so that the remaining part thereof may read as under:

“14. (1)(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 accommodation....”

While adopting this course, we have kept in view well-recognised rule that if the offending portion of a statute can be severed without doing violence to the remaining part thereof, then such a course is permissible—R.M.D. Chamarbaugwalla v. Union of India [AIR 1957 SC 628] and Lt. Col. Sawai Bhawani Singh v. State of Rajasthan [(1996) 3 SCC 105] .

43. As a sequel to the above, the Explanation appearing below Section 14(1)(e) of the 1958 Act will have to be treated as redundant.”

29. It is the contention of the learned Counsel for the Petitioners that in the face of Gian Devi Anand v. Jeevan Kumar (supra), which had been taken into account in Satyawati Sharma (supra), and Gauri Shanker and Ors. v. Union of India and Ors. (supra), which had not been referred to at all, a 2-Judge Division Bench of the Supreme Court could not have struck down the distinction between commercial and residential properties in Section 14(1)(e), especially when a Constitution Bench of the Supreme Court had refrained from adjudicating by way of legislating on the instant issue. He has further stated that Satyawati Sharma v. Union of India (supra) is *per incuriam* and cannot be followed.

30. The controversy following Satyawati Sharma v. Union of India (supra) has already been deliberated upon by the Supreme Court in Vinod Kumar .v Ashok Kumar Gandhi (supra) which held that the ratio of Satyawati Sharma v. Union of India (supra) has been upheld in State of Maharashtra v. Super Max International (P) Ltd., (2009) 9 SCC 772, and that the decision or the rationale is not *per incuriam*. The Supreme Court further observed that Satyawati Sharma v. Union of India (supra) was silent on the aspect of applicability of Section 25B to Section 14(1)(e) after its scope had been expanded, and therefore, there was no need for revisitation of the same or reference to a larger Bench to settle the issue. The paragraphs delineating this observation are as under:

“36. The most important observations which are relevant in the present case were made by the Constitution Bench in para 39 of the judgment. The Constitution Bench observed that the landlord who let out commercial premises under certain circumstances may need bona fide premises for his own use under changed conditions. The Constitution Bench suggested that the legislature may consider the advisability of

making the bona fide requirement of the landlord a ground of eviction in respect of commercial premises as well. The following was observed in para 39 : (Gian Devi Anand case [Gian Devi Anand v. Jeevan Kumar, (1985) 2 SCC 683] , SCC pp. 714-15)

“39. Before concluding, there is one aspect on which we consider it desirable to make certain observations. The owner of any premises, whether residential or commercial, let out to any tenant, is permitted by the Rent Control Acts to seek eviction of the tenant only on the grounds specified in the Act, entitling the landlord to evict the tenant from the premises. The restrictions on the power of the landlords in the matter of recovery of possession of the premises let out by him to a tenant have been imposed for the benefit of the tenants. In spite of various restrictions put on the landlord's right to recover possession of the premises from a tenant, the right of the landlord to recover possession of the premises from the tenant for the bona fide need of the premises by the landlord is recognised by the Act, in case of residential premises. A landlord may let out the premises under various circumstances. Usually a landlord lets out the premises when he does not need it for own use. Circumstances may change and a situation may arise when the landlord may require the premises let out by him for his own use. It is just and proper that when the landlord requires the premises bona fide for his own use and occupation, the landlord should be entitled to recover the possession of the premises which continues to be his property in spite of his letting out the same to a tenant. The legislature in its wisdom did recognise this fact and the legislature has provided that bona fide requirement of the landlord for his own use will be a legitimate ground under the Act for the eviction of his tenant from any residential

premises. This ground is, however, confined to residential premises and is not made available in case of commercial premises. A landlord who lets out commercial premises to a tenant under certain circumstances may need bona fide the premises for his own use under changed conditions on some future date should not in fairness be deprived of his right to recover the commercial premises. Bona fide need of the landlord will stand very much on the same footing in regard to either class of premises, residential or commercial. We, therefore, suggest that legislature may consider the advisability of making the bona fide requirement of the landlord a ground of eviction in respect of commercial premises as well.”

37. Now, we revert back to Satyawati Sharma case [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] . Satyawati Sharma case [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] has noticed Gian Devi Anand [Gian Devi Anand v. Jeevan Kumar, (1985) 2 SCC 683] in paras 20 and 21. Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] extracted the entire para 39 of the Constitution Bench judgment in para 20. Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] in para 21 states the following : (SCC pp. 312-13)

“21. What is significant to be noted is that in para 34 of the aforementioned judgment, the distinction between residential and non-residential tenancies was made in the context of the rights of the heirs of the tenant to continue to enjoy the protection envisaged under Section 14(1). The Court was of the view that the heirs of the tenants of the commercial premises cannot be deprived of the protection else the family of the tenant may be

brought on road or deprived of the only source of livelihood. The Court also opined that if the heirs of the individual tenants of commercial tenancies are deprived of the protection, extremely anomalous consequences will ensue because the companies, corporations and juridical entities carrying on business or commercial activities in rented premises will continue to enjoy the protection even after the change of management, but the heirs of individual tenants will be denuded of similar protection. At the same time, the Court noted that the landlord of a premises let for residential purpose may bona fide require the same for his own use or the use of his dependent family members and observed that the legislature should remove apparent discrimination between residential and non-residential tenancies when the landlord bona fide requires the same. If the observations contained in para 34 are read in any other manner, the same would become totally incompatible with the observation contained in the penultimate paragraph of the judgment and we do not see any reason for adopting such course, more so, because the later part of the judgment has been relied in Harbilas Rai Bansal v. State of Punjab [Harbilas Rai Bansal v. State of Punjab, (1996) 1 SCC 1] and Rakesh Vij v. Raminder Pal Singh Sethi [Rakesh Vij v. Raminder Pal Singh Sethi, (2005) 8 SCC 504].”

38. The submission which has been pressed by Shri Uday Gupta is that the Constitution Bench in Gian Devi Anand [Gian Devi Anand v. Jeevan Kumar, (1985) 2 SCC 683] did not declare provisions of Section 14(1)(e) unconstitutional, rather left it to the legislature to amend the law. When Gian Devi Anand [Gian Devi Anand v. Jeevan Kumar, (1985) 2 SCC 683] has itself not struck down Section 14(1)(e) Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] doing the same is contrary to

the judgment of Gian Devi Anand [Gian Devi Anand v. Jeevan Kumar, (1985) 2 SCC 683] . The observation in para 39 of Gian Devi Anand case [Gian Devi Anand v. Jeevan Kumar, (1985) 2 SCC 683] itself suggests that the Constitution Bench was satisfied that a ground for eviction of tenant of commercial premises on bona fide requirement of landlord should also be provided for. The basis for what has been done in Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] was clearly laid down in Gian Devi Anand [Gian Devi Anand v. Jeevan Kumar, (1985) 2 SCC 683] for striking down the unconstitutional part in Section 14(1)(e). We fail to see that how can Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] judgment be said as per incuriam. The ratio of Gian Devi Anand [Gian Devi Anand v. Jeevan Kumar, (1985) 2 SCC 683] has neither been ignored nor any contrary view has been taken by Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] . We may observe that Gian Devi Anand [Gian Devi Anand v. Jeevan Kumar, (1985) 2 SCC 683] in paras 32 and 34 has noticed the provisions of Section 14(1) specifically Section 14(1)(e) as it existed in the 1958 Act. There was no challenge for the classification in Section 14(1)(e) in the above case, hence neither Gian Devi Anand [Gian Devi Anand v. Jeevan Kumar, (1985) 2 SCC 683] was required to pronounce on the classification in Section 14(1)(e) nor was required to consider striking down of the provisions. In any view of the matter, the observation in para 39, Gian Devi Anand [Gian Devi Anand v. Jeevan Kumar, (1985) 2 SCC 683] justified that there is ground to seek eviction on bona fide need. Thus, Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] seeks support of what has been done in Gian Devi Anand case [Gian Devi Anand v. Jeevan Kumar, (1985) 2 SCC 683] .

39. Now, we come to the three-Judge Bench judgment of Gauri Shanker [Gauri Shanker v. Union of India,

(1994) 6 SCC 349] which according to the appellant is binding precedent and Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] having not noticed the said judgment, the judgment of Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] is per incuriam. Gauri Shanker [Gauri Shanker v. Union of India, (1994) 6 SCC 349] was a case where restriction on rights of heir of statutory tenant of residential premises placed by Explanation to Section 2(l)(iii) of the Delhi Rent Control Act as introduced in Act 18 of 1976 while no restrictions were placed on the tenants of commercial premises where challenge on the ground of violation of Articles 14 and 21 of the Constitution of India. Gauri Shanker [Gauri Shanker v. Union of India, (1994) 6 SCC 349] has noticed Gian Devi Anand [Gian Devi Anand v. Jeevan Kumar, (1985) 2 SCC 683] , especially paras 32 and 34. The ground of distinction was repelled and the following was laid down in para 12 : (Gauri Shanker case [Gauri Shanker v. Union of India, (1994) 6 SCC 349] , SCC pp. 359-60)

“12. It is evident from the above decision [Ed. : The reference is to Gian Devi Anand v. Jeevan Kumar, (1985) 2 SCC 683] of the Constitution Bench of this Court that a commercial tenancy is invaluable and has got distinct features and characteristics of its own different from that of a residential tenancy. None of the peculiar or unique features present in the case of commercial tenancies exist in the case of residential tenancies. In the above background, if the legislature thought it fit to afford a greater and extended right or benefit to the heirs of the statutory tenants of commercial premises and not to extend such rights to the heirs of the statutory tenants of residential premises, we should say that it only stands to reason and reckons the stark realities of the prevailing situation. The protection afforded by the Rent Act to a tenant after the termination of

the tenancy and to the heirs of the tenant is only a creation of the Act and it is open to the legislature to make appropriate provisions in that behalf. It can make suitable and appropriate provisions in the Act with regard to the nature and extent of the benefit and protection to be so enjoyed and the manner in which the same is to be enjoyed. In the above perspective, we are of the view that the provisions in Section 2(l)(iii) of the Act, which seeks to restrict or limit the right of the heirs, insofar as the statutory tenants of residential premises are concerned and to the extent provided therein, are not in any way discriminatory and do not offend the guarantee under Article 14 of the Constitution. This is not a case where the residential tenancy and the commercial tenancy are similarly placed. They belong to two different categories with distinct features and characteristics of their own. No question of discrimination arises. In this context, it is only proper to quote the following observations in Sakhawant Ali v. State of Orissa [Sakhawant Ali v. State of Orissa, AIR 1955 SC 166] , which is apposite : (AIR p. 170, para 10)

‘10. ... legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is for the legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed by Article 14 of the Constitution.’

Nor are we impressed by the plea that the right to shelter is a guarantee under Article 21 of the Constitution of India and so the abridgement or limitation placed on the rights of the legal heirs in the case of a statutory tenancy of residential premises makes an inroad into the rights of the tenant under Article 21 of the Constitution of India. We hold that the statutory tenancies regarding residential premises are distinct and different from statutory tenancies regarding commercial premises and the limitations or the restrictions placed by Section 2(l)(iii) of the Act on the rights of the heirs of the statutory tenants of residential premises are reasonable, fair and just in all the circumstances of the case. There is no violation of the guarantee enshrined in Article 14 or Article 21 of the Constitution of India.” (emphasis in original)

40.*Gauri Shanker [Gauri Shanker v. Union of India, (1994) 6 SCC 349] upheld Section 2(l)(iii) of the Act holding it not violating Articles 14 and 21 of the Constitution. The observations in the judgment with respect to residential tenancy and commercial tenancy were made in reference to heritability. In the above context, this Court held that they belong to two different categories with distinct features and characteristics of their own. Gauri Shanker [Gauri Shanker v. Union of India, (1994) 6 SCC 349] was not a case in which provision of Section 14(1)(e) came for consideration nor any observation has been made with regard to ground of eviction available to landlord with regard to commercial premises. Gauri Shanker [Gauri Shanker v. Union of India, (1994) 6 SCC 349] had dealt with entirely different provision, certain limitation which was attached to residential premises itself to heritability. The case of Gauri Shanker [Gauri Shanker v. Union of India, (1994) 6 SCC 349] being on different provision and premise, it cannot be said that Gauri Shanker [Gauri Shanker v. Union of India,*

(1994) 6 SCC 349] was a binding precedent to be followed by Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] . The judgment of Gauri Shanker [Gauri Shanker v. Union of India, (1994) 6 SCC 349] being on different provision cannot be said to be binding precedent in reference to what has been dealt in Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] . We, thus, conclude that the judgment of Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] cannot be held to be per incuriam.

41. The next limb of attack of the appellant on Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] is on the basis of non-consideration of Section 25-B of the 1958 Act. Section 25-A to Section 25-C were inserted by Act 18 of 1976 w.e.f. 1-12-1975. Section 25-B provided for special procedure for the disposal of applications for eviction on the ground of bona fide requirement. The learned counsel for the appellant has also relied on Parliamentary debate on the Delhi Rent Control Amendment Bill, 1976. The learned counsel submits that Hon'ble Minister of State in the Ministry of Works and Housing on the Floor of the House stated the following:

“An apprehension was also expressed that commercial tenants would be evicted through summary procedure. First of all, this procedure is confined to residential premises and secondly, it is applicable only to government servants and bona fide necessities. Nothing else. It does not apply to commercial premises and, therefore, there is no question of tenants being evicted from commercial premises.”

42. There cannot be any dispute to the submission of the appellant that provision of Section 25-B when it was inserted, the procedure was confined to residential

premises as has been stated by the Hon'ble Minister on the Floor of the House. There being no ground available to the landlord for eviction of a tenant of commercial premises on bona fide need, there was no contemplation for applying the procedure under Section 25-B.

43. The question is as to whether non-consideration of Section 25-B by Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] renders the judgment of Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] per incuriam. Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] was considering the challenge to the provisions of Section 14(1)(e) insofar as the ground of bona fide need of landlord is also available for commercial premises. Section 25-B being related to only procedure for considering the application under Section 14(1)(e) has no bearing on the issue which had propped up before this Court in Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] . Nothing in Section 25-B can be read which runs counter to what has been laid down by Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] . Whether a procedure giving more flexibility to tenants of commercial premises should be provided for is another subject but non-reference of Section 25-B by Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] does not render the judgment per incuriam.

44. We may also at this stage notice one submission raised by the counsel for the respondent that judgment of Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] has been affirmed by the three-Judge Bench judgment in Super Max International (P) Ltd. [State of Maharashtra v. Super Max International (P) Ltd., (2009) 9 SCC 772 : (2009) 3 SCC (Civ) 857] The submission is countered by the

counsel for the appellant who contends that Super Max [State of Maharashtra v. Super Max International (P) Ltd., (2009) 9 SCC 772 : (2009) 3 SCC (Civ) 857] was a case which was dealing with entirely different subject and it cannot be said that ratio of Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] has been affirmed in Super Max [State of Maharashtra v. Super Max International (P) Ltd., (2009) 9 SCC 772 : (2009) 3 SCC (Civ) 857] .

45. We may now notice the judgment of Super Max [State of Maharashtra v. Super Max International (P) Ltd., (2009) 9 SCC 772 : (2009) 3 SCC (Civ) 857] in some detail. Super Max [State of Maharashtra v. Super Max International (P) Ltd., (2009) 9 SCC 772 : (2009) 3 SCC (Civ) 857] was a case where this Court had occasion to consider the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. In the above case, the Government of Maharashtra was in occupation of sixth floor of a building which was used for housing the Office of the Registrar, Cooperative Societies. The appellant suffered a decree of ejectment passed by the Court of Small Causes. The decree came to be challenged by civil revision application where the High Court stayed the execution of the decree subject to the condition that the tenant shall deposit Rs 5,40,000 every month which amount was, however, not allowed to be withdrawn by the appellant. In para 8 this Court noticed : (Super Max case [State of Maharashtra v. Super Max International (P) Ltd., (2009) 9 SCC 772 : (2009) 3 SCC (Civ) 857] , SCC p. 777)

“8. Of late, orders are coming to this Court where, in cases arising from ejectment proceedings, the High Courts, with a view to strike a balance between the competing interests of the landlord and the tenant, pass interim orders asking the tenant to pay to the landlord or deposit in Court, as monthly rent, certain sum fixed by it

(that, according to the High Court, should be the reasonable market rent for the tenanted premises), far in excess of the existing monthly rent.” 46. The three-Judge Bench in the above case noticed both the judgments in Gian Devi Anand [Gian Devi Anand v. Jeevan Kumar, (1985) 2 SCC 683] and Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] . The judgment of Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] specifically paras 12, 29 and 32 have been considered in paras 67 to 70 of the judgment which are as follows : (Super Max case [State of Maharashtra v. Super Max International (P) Ltd., (2009) 9 SCC 772 : (2009) 3 SCC (Civ) 857] , SCC pp. 793-94)

“67. The way this Court has been looking at the relationship between the landlord and the tenant in the past and the shift in the Court's approach in recent times have been examined in some detail in the decision in Satyawati Sharma v. Union of India [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] . In that decision one of us (Singhvi, J.) speaking for the Court referred to a number of earlier decisions of the Court and (in para 12 of the judgment) observed as follows : (SCC pp. 304-05)

‘12. Before proceeding further we consider it necessary to observe that there has been a definite shift in the Court's approach while interpreting the rent control legislations. An analysis of the judgments of 1950s to early 1990s would indicate that in majority of cases the courts heavily leaned in favour of an interpretation which would benefit the tenant — Mohinder Kumar v. State of

Haryana [Mohinder Kumar v. State of Haryana, (1985) 4 SCC 221] , Prabhakaran Nair v. State of T.N. [Prabhakaran Nair v. State of T.N., (1987) 4 SCC 238] , D.C. Bhatia v. Union of India [D.C. Bhatia v. Union of India, (1995) 1 SCC 104] and C.N. Rudramurthy v. K. Barkathulla Khan [C.N. Rudramurthy v. K. Barkathulla Khan, (1998) 8 SCC 275] . In these and other cases, the Court consistently held that the paramount object of every rent control legislation is to provide safeguards for tenants against exploitation by landlords who seek to take undue advantage of the pressing need for accommodation of a large number of people looking for a house on rent for residence or business in the background of acute scarcity thereof. However, a different trend is clearly discernible in the later judgments.’

68. The learned Judge then referred to some later decisions and (in para 14 at SCC p. 306 of *Satyawati Sharma case [Satyawati Sharma v. Union of India, (2008) 5 SCC 287]*) quoted a passage from the decision in *Joginder Pal v. Naval Kishore Behal [Joginder Pal v. Naval Kishore Behal, (2002) 5 SCC 397]* to the following effect : (*Satyawati Sharma case [Satyawati Sharma v. Union of India, (2008) 5 SCC 287]* , SCC p. 306, para 14)

‘14. ... “9. ... The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted

out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as to take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble.” (Joginder Pal case [Joginder Pal v. Naval Kishore Behal, (2002) 5 SCC 397] , SCC p. 404, para 9) ’

69. Commenting upon the Full Bench decision [Satyawati Sharma v. Union of India, 2002 SCC OnLine Del 930 : (2002) 65 DRJ 615] of the Delhi High Court that had upheld the constitutional validity of Section 14(1)(e) of the Delhi Rent Control Act and that came under challenge in Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] , Singhvi, J. (in para 29 of the judgment) observed as follows : (SCC p. 318)

‘29. ... It is significant to note that the Full Bench did not, at all, advert to the question whether the reason/cause which supplied rationale to the classification continued to subsist even after lapse of 44 years and whether the tenants of premises let for non-residential purposes should continue to avail the benefit of implicit exemption from eviction in the case of bona fide requirement of the landlord despite see-saw change in the housing scenario in Delhi and substantial increase in the

availability of buildings and premises which could be let for non-residential or commercial purposes.'

70. *The decision in Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] then referred to the doctrine of temporal reasonableness and in para 32 observed as follows : (SCC p. 320)*

'32. It is trite to say that legislation which may be quite reasonable and rational at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equality and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent.' "(emphasis in original)

47. *The ratio which was quoted by the three-Judge Bench from Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] was that which was laid down in para 32 of Satyawati Sharma case [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] . The ratio in Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] that a legislation which may be quite reasonable and rational at the time of its enactment may with the lapse of time and due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equality has been affirmed which is clear from para 71 of the judgment. Para 71 of the three-Judge Bench judgment is as follows : (Super Max case [State of Maharashtra*

v. Super Max International (P) Ltd., (2009) 9 SCC 772 : (2009) 3 SCC (Civ) 857] , SCC 794-95)

“71. We reaffirm the views expressed in Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] and emphasise the need for a more balanced and objective approach to the relationship between the landlord and tenant. This is not to say that the Court should lean in favour of the landlord but merely that there is no longer any room for the assumption that all tenants, as a class, are in dire circumstances and in desperate need of the Court's protection under all circumstances. (The case of the present appellant who is in occupation of an area of 9000 sq ft in a building situate at Fort, Mumbai on a rental of Rs 5236.58, plus water charges at the rate of Rs 515.35 per month more than amply highlights the point.)”

48. It is true that in the above three-Judge Bench judgment, the Court was not directly concerned with Section 14(1)(e) of the Delhi Rent Control Act. Thus, the three-Judge Bench had the basis of Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] and on which basis Section 14(1)(e) was struck down after working of the Act after more than 50 years. We, thus, are of the view that the three-Judge Bench in Super Max [State of Maharashtra v. Super Max International (P) Ltd., (2009) 9 SCC 772 : (2009) 3 SCC (Civ) 857] approved limited ratio of Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] as extracted by the three-Judge Bench which fully supports the submission that basis and reasoning on which Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] struck down Section 14(1)(e) partly stood on firm footing.

53. Much emphasis has been given by the learned counsel for the appellant on the fact that various

tenants are tenants of small shops which are their source of livelihood when application under Section 14(1)(e) filed by the landlord on bona fide need, they are not even entitled to contest the application by filing written statement. They are obliged to obtain leave to defend as per Section 25-B which leave to defend is rejected in most of the cases which causes great hardship on the tenants. It is submitted that insofar as applicability of the procedure under Section 25-B is concerned, the issue needs to be revisited to save the tenants from hardship. In our view this cannot be a ground for referring the judgment of Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] to larger Bench for reconsideration of the judgment of Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] . Satyawati Sharma [Satyawati Sharma v. Union of India, (2008) 5 SCC 287] having not said about the procedure, there is nothing in the judgment which needs to be revisited on the above aspect. It is for the legislature to take stock of the situation and if it so decides it can make necessary changes in the procedure for considering the application under Section 14(1)(e) with regard to eviction of commercial tenants on the ground of bona fide need of the landlord. We need to add nothing more on the subject. Insofar as submission of the learned counsel for the appellant is that under Section 14(1)(e) in respect of commercial tenancy leave to defend is generally rejected, it is suffice to say that rejection of leave for a particular case is matter to be examined in each case and no general observation can be made in this regard.

54. *[Ed. : Para 54 corrected vide Official Corrigendum No. F.3/Ed.B.J./122/2019 dated 4-1-2020.] . There is one more aspect of the matter which needs to be noted. We have already extracted observation of the Constitution Bench judgment in Gian Devi Anand [Gian Devi Anand v. Jeevan Kumar, (1985) 2 SCC 683] in para 39 where the Constitution Bench*

observed that bona fide need of the landlord stands very much on the same footing in regard to either class of premises, residential or commercial. We, therefore, suggest that the legislature may consider the advisability of making the bona fide requirement of the landlord a ground of eviction in respect of commercial premises as well. After more than a decade of the above observation, a comprehensive legislation, namely, the Delhi Rent Act, 1995 has been enacted to provide for the regulation of rents, repairs and maintenance and evictions relating to premises and of rates of hotels and lodging houses in the National Capital Territory of Delhi. In the 1995 Act, the definition of "premises" as was contained in the 1958 Act remained same." (emphasis supplied)

31. What can be observed from the foregoing is that the validity of Satyawati Sharma v. Union of India (supra) and its reference to a larger Bench has already been settled by the Supreme Court in Vinod Kumar v. Ashok Kumar Gandhi (supra). Further, it would be unconscionable to assume that Section 25B, which clearly notes that it is applicable to Section 14(1)(e), would only be applicable to Section 14(1)(e) to the extent of the need pertaining to residential properties. Had that been the intention of the Supreme Court, there would have been a distinct reference to Section 25B in Satyawati Sharma v. Union of India, (supra) and its scope would have been confined to residential properties. In absence of such a distinction, it is evident that that was not the intention and that Section 25B of the DRC Act is applicable to Section 14(1)(e) as a whole, be it residential properties or commercial properties.

32. Moreover, the learned Counsel for the Petitioners has raised the above argument previously as well in the earlier petition for revision in R.C. Rev. No. 209/2010 and this Court *vide* Order dated 12.10.2011 has aptly referred

to a Judgement of a Division Bench of this Court in Indian Airlines v. Union of India and Ors, **128 (2006) DLT 505**, and observed that decisions of the Supreme Court cannot be assailed before the High Court, and that this Court is bound to follow the law laid down in Satyawati Sharma v. Union of India (supra). Paragraphs 7 and 8 of the said Judgement are as under:

“7. As far as the first argument advanced by the learned counsel for the petitioners to the effect that decision of Satyawati Sharma’s case was rendered per incuriam is concerned and this Court should hold so the same cannot be accepted for the simple reason that the Supreme Court has, on a couple of occasions, held that no judgment of Supreme Court can be assailed before the High Court on the ground that certain aspects were not considered or relevant provisions were not brought to the notice of the Supreme Court. Those decisions were noticed by a Division Bench of this Court in the case of “Indian Airlines vs. UOI & Others”, 128 (2006) DLT 505 and the Division Bench of this Court also held that the High Court cannot decline the law laid down by the Supreme Court as per incuriam. Para no. 23 of the judgment of the Division Bench, which deals with this aspect, as reproduced below:

“27. There is another reason also why the contention raised by the learned Counsel for the petitioner cannot be accepted. The issue, whether Standing Orders and/or the Standing Orders Act will apply to "air transport services", has already been decided by a Division Bench of this Court as well as the Supreme Court. A decision of the Supreme Court is binding under Article 141 of the Constitution of India. In view of the binding nature of the judgments of the Supreme Court we cannot hold and declare the law laid down by the Supreme Court as per incuriam or take a contrary view on the ground that the Supreme Court has failed to deal with certain aspects or some

relevant provisions of law were not brought to its notice or some argument was not raised/examined. Merely because certain aspects of a matter were never examined or considered by the Supreme Court, does not entitle a High Court to refuse or follow the said decision. Decisions of the Supreme Court are binding under Article 141 of the Constitution of India and cannot be assailed before the High Court on the ground that certain aspects were not brought to the notice of the Supreme Court or considered by it. High Courts are duty bound to follow the judgment of the Supreme Court and it is only for the Supreme Court to re-examine and reconsider its earlier judgments. The Supreme Court in the case of Director of Settlement A.P. and Ors. v. M.R. Apparao MANU/SC/ 0219/2002 : [2002]2SCR661 has examined Article 141 of the Constitution of India and has unequivocally held that the law laid down by the Supreme Court is binding on all Courts in India and it cannot be assailed on the ground that certain aspects were not considered or relevant provisions were not brought to the notice of the Supreme Court. When an issue is decided by the Supreme Court it is the duty of the High Court or the subordinate Court to follow the said decision. Similarly, the Supreme Court in the case of Suganthi Suresh Kumar v. Jagdeeshan MANU/SC/0037/2002 : 2002CriLJ1003 has held as under:

It is impermissible for the High Court to overrule the decision of the Apex Court on the ground that the Supreme Court laid down the legal position without considering any other point. It is not only a matter of discipline for the High Courts in India, it is the mandate of the Constitution as provided in Article 141 that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. It was

pointed out by this Court in Anil Kumar Neotia v. Union of India MANU/SC/0027/1988 : [1988]3SCR738 that the High Court cannot question the correctness of the decision of the Supreme Court even though the point sought before the High Court was not considered by the Supreme Court.”

8. In view of the afore-said legal position, this Court is bound to follow the judgment of the Supreme Court in Satyawati’s case(supra) irrespective of the fact that P. Ramachandra’s judgment was not noticed.”

33. The learned Counsel for the Petitioners has also argued that in the instant case, the tenanted premises being a dilapidated tin shed which is currently being occupied by the Petitioners, the alleged *bona fide* need of the Respondent would require considerable construction and alteration of the structure, and thus, Section 14(1)(g) of the DRC Act should have been invoked instead of Section 14(1)(e). As a consequence, the summary procedure under Section 25B would not be applicable in the instant case. This argument of the learned Counsel for the Petitioner also does not hold any water for the reason that it is settled law that the nature of Section 14(1)(e) and Section 14(1)(g) are completely different and that just because construction or alteration is required for the *bona fide* need of the landlord to be satisfied, does not mean that an eviction petition under Section 14(1)(e) would not be maintainable. There is no prohibition on the landlord from reconstructing the premises according to their needs as long as there is no breach of conditions required to be fulfilled under the law [Refer to Baldev Singh Bajwa v. Monish Saini, (2005) 12 SCC 778].

34. In Sharifuddin v. Babuddin and Ors. (supra), this Court had observed that both Section 14(1)(e) and Section 14(1)(g) operate in different spheres, and that the landlord is always at the liberty to first bring the premises either to a habitable or suitable condition by either reconstruction or repair and then shift to it. It is not necessary for the landlord to first get the premises vacated under Section 14(1)(g) and not Section 14(1)(e). The paragraph stipulating this observation is as follows:

“7. The testimony of AW-1 shows that the premises had been under tenancy for about more than 80 years. AW-1 was born and brought up at there. It is obvious that since the premises had been in occupation of the tenant and the rent being meager, the premises had not been taken care of for the purpose of repair and maintenance. No fault can be found with the petitioner if the premises even after being vacated cannot be occupied directly and has to be given extensive repair or reconstruction. There is no conflict between provisions of Section 14(1)(e) and 14(1)(g) of DRC Act. A decree can be passed under Section 14(1)(e) even in respect of a dilapidated premises where the landlord intends to live in the premises after repairing it. Section 14(1)(g) operates in a different area. In case of 14(1)(g) the premises is required by the landlord for the purpose of re-building or making any substantial additions or alterations not because the premises was in dilapidated condition but because the landlord wants to re-construct or wants to make additions or alterations in the premises for whatsoever purposes. Under Section 14(1)(e) the landlord can require the premises for his own use or for the use of his family members from the tenant who is in occupation of the premises. A tenant who is paying low rent may continue to live in a dilapidated premises because of meager rent being paid by him but after evicting the tenant from the premises, it was not necessary for the landlord to shift into the premises in the same

condition. He is always at liberty to first bring the premises to habitable and suitable condition by either reconstruction or repair and then shift to it. It is not necessary for him that he should get the premises vacated under Section 14(1)(g) and not under Section 14(1)(e), if he wants to shift to the premises, after making it a habitable.” (emphasis supplied)

35. Similar observations had been made by this Court in Ram Wati Devi v. Mohan Babu Sharma (supra) noting that there is no impediment on the landlords to refashion the tenanted premises accordingly to their suitability to meet their need and that in such cases, the eviction petition must be moved under Section 14(1)(g). The portion of the said Judgment with this observation is as under:

“16. This Court is of the view that the argument of the tenants that the petition should have been under Section 14(1)(g) is untenable. The domains of Sections 14(1)(g) and 14(1)(e) are different. In the present case, the landlords' requirement for the tenanted premises was for them to start their own shop. It was also averred that since the size of the three shops were small, they wanted to convert them into two. This would not mean that the landlords' petition should have been filed under Section 14(1)(g). Making alterations to the shops was merely ancillary and the landlords' primary need for the tenanted premises was for them to start their own shop. The landlords needed the space and there is no impediment upon them to refashion it according to their suitability to meet the need. This Court is not persuaded with the other grounds taken by the tenants in this revision petition.” (emphasis supplied)

36. Having rejected the assertions of the learned Counsel of the Petitioners, we must now decipher what is the scope of revision under Section 25B(8) of the DRC Act. It has been held that in cases of revision,

the High Court must not act as a Court of Appeal and the scope of interference by a High Court is very restrictive. It is only when there is an error apparent on the face of the record or a jurisdictional error that the High Court can exercise its powers of superintendence. In absence of the same, it is prudent for the High Court to stay its hands and not interfere into the matter by initiating a roving inquiry. This settled proposition of law regarding scope of revision has been comprehensively discussed by the Apex Court in Abid-ul-Islam v. Inder Sain Dua, (2022) 6 SCC 30:

“22. We are, in fact, more concerned with the scope and ambit of the proviso to Section 25-B(8). The proviso creates a distinct and unequivocal embargo by not providing an appeal against the order passed by the learned Rent Controller over an application filed under sub-section (5). The intendment of the legislature is very clear, which is to remove the appellate remedy and thereafter, a further second appeal. It is a clear omission that is done by the legislature consciously through a covenant removing the right of two stages of appeals.

23. The proviso to Section 25-B(8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance. Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power

of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.

24. We do not wish to go further on this settled proposition of law, except by quoting the decision of this Court in Sarla Ahuja v. United India Insurance Co. Ltd. [Sarla Ahuja v. United India Insurance Co. Ltd., (1998) 8 SCC 119] : (SCC pp. 122-25, paras 5-14)

“5. Section 25-B of the Act lays down ‘special procedure for the disposal of application for eviction on the ground of bona fide requirement’. Sub-section (1) says that every application for recovery of possession on the ground specified in Section 14(1)(e) of the Act shall be dealt with in accordance with the procedure specified in Section 25-B. Sub-section (8) says that no appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Rent Controller in accordance with the procedure specified in this section. The proviso to that sub-section reads thus:

‘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.’

6. The above proviso indicates that power of the High Court is supervisory in nature and it is intended to ensure that the Rent Controller conforms to law when he passes the order. The satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the Rent Controller is “according to the law”. In other words, the High Court shall scrutinise the records to ascertain

whether any illegality has been committed by the Rent Controller in passing the order under Section 25-B. It is not permissible for the High Court in that exercise to come to a different fact finding unless the finding arrived at by the Rent Controller on the facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available.

7. Although, the word “revision” is not employed in the proviso to Section 25-B(8) of the Act, it is evident from the language used therein that the power conferred is revisional power. In legal parlance, distinction between appellate and revisional jurisdiction is well understood. Ordinarily, appellate jurisdiction is wide enough to afford a rehearing of the whole case for enabling the appellate forum to arrive at fresh conclusions untrammelled by the conclusions reached in the order challenged before it. Of course, the statute which provides appeal provision can circumscribe or limit the width of such appellate powers. Revisional power, on the contrary, is ordinarily a power of supervision keeping subordinate tribunals within the bounds of law. Expansion or constriction of such revisional power would depend upon how the statute has couched such power therein. In some legislations, revisional jurisdiction is meant for satisfying itself as to the regularity, legality or propriety of proceedings or decisions of the subordinate court. In Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar [Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar, (1980) 4 SCC 259] this Court considered the scope of the words (“the High Court may call for and examine the records ... to satisfy itself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order...”) by which power of revision has been conferred by a

particular statute. Dealing with the contention that the above words indicated conferment of a very wide power on the revisional authority, this Court has observed thus in the said decision : (SCC p. 262, para 3)

‘3. ... The dominant idea conveyed by the incorporation of the words ‘to satisfy itself’ under Section 25 appears to be that the power conferred on the High Court under Section 25 is essentially a power of superintendence. Therefore, despite the wide language employed in Section 25, the High Court quite obviously should not interfere with findings of fact merely because it does not agree with the finding of the subordinate authority.’

8. Dealing with Section 32, the Delhi and Ajmer Rent (Control) Act, 1952, which is almost identically worded as in the proviso to Section 25-B(8) of the Act, a three-Judge Bench of this Court has stated thus in Hari Shankar v. Rao Girdhari Lal Chowdhury [Hari Shankar v. Rao Girdhari Lal Chowdhury, 1962 Supp (1) SCR 933 : AIR 1963 SC 698] : (AIR p. 701, para 8)

‘8. ... The section is thus framed to confer larger powers than the power to correct error of jurisdiction to which Section 115 is limited. But it must not be overlooked that the section — in spite of its apparent width of language where it confers a power on the High Court to pass such order as the High Court might think fit, — is controlled by the opening words, where it says that the High Court may send for the record of the case to satisfy itself that the decision is “according to law”. It stands to reason that if it was considered necessary that there should be a

rehearing, a right of appeal would be a more appropriate remedy, but the Act says that there is to be no further appeal.'

9. *In Malini Ayyappa Naicker v. Seth Manghraj Udhavadas [Malini Ayyappa Naicker v. Seth Manghraj Udhavadas, (1969) 1 SCC 688] another three-Judge Bench of this Court was considering a similarly worded proviso in Section 75(1) of the Provincial Insolvency Act, 1920. Though, the learned Judges did not give an exhaustive definition of the expression "according to law", a catalogue of instance in which the High Court may interfere under the said proviso was given in the decision as the following [Ed. : The passage quoted is an extract from Beaumont, C.J.'s judgment in Bell & Co. Ltd. v. Waman Hemraj, 1937 SCC OnLine Bom 99, para 4 : (1938) 40 Bom LR 125 which was approved by the Supreme Court in the case cited.] : (SCC p. 691, para 7)*

'7. ... "4. ... are cases in which the Court which made the order had no jurisdiction, or in which the Court has based its decision on evidence which should not have been admitted, or cases where the unsuccessful party has not been given a proper opportunity of being heard, or the burden of proof has been placed on the wrong shoulders. Wherever the Court comes to the conclusion that the unsuccessful party has not had a proper trial according to law, then the Court can interfere." '

10. *The Bench has, however, cautioned that the High Court should not interfere merely because it considered that "possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at".*

11. *The learned Single Judge of the High Court in the present case has reassessed and reappraised the evidence afresh to reach a different finding as though it was exercising appellate jurisdiction. No doubt even while exercising revisional jurisdiction, a reappraisal of evidence can be made, but that should be for the limited purpose to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable. A reading of the impugned order shows that the High Court has overstepped the limit of its power as a revisional court. The order impugned on that score is hence vitiated by jurisdictional deficiency.*

12. *Clause (e) of the proviso to Section 14(1) of the Act affords one of the grounds to the landlord to seek recovery of possession of the building leased. The said clause reads thus:*

‘14. (1)(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” include 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;’

13. *If the landlord has another residential accommodation which is reasonably suitable, he is not permitted to avail himself of the benefit afforded in the ground set out in the clause. The learned Single Judge of the High Court has noted that the landlord in this case has 'admitted in her deposition that the house in Calcutta was a 3-bedroom house with drawing/dining room and one of the bedrooms was used by her, another by her son with his wife and another bedroom was kept for her daughter who used to come and stay'. This was one of the reasons which persuaded the learned Single Judge to interfere with the order of eviction. To deprive a landlord of the benefit of the ground mentioned in Section 14(1)(e) on account of availability of alternative residential accommodation, it is not enough that such alternative accommodation is in a far different State. Such accommodation must be available in the same city or town, or at least within reasonable proximity thereof if it is outside the limits of the city. The said limb of clause (e) cannot be interpreted as to mean that if the landlord has another house anywhere in the world, he cannot seek recovery of possession of his building under clause (e). The High Court therefore went wrong in observing that since the landlord has possession of another flat at Calcutta she is disentitled to seek recovery of possession of the tenanted premises situated at Delhi.*

14. *The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation, the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are*

satisfied and when the landlord shows a prima facie case, it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.” (emphasis in original)

25. The aforesaid decision has been recently considered and approved by this Court in *Mohd. Inam v. Sanjay Kumar Singhal* [*Mohd. Inam v. Sanjay Kumar Singhal*, (2020) 7 SCC 327 : (2020) 4 SCC (Civ) 107] : (SCC pp. 340-41, paras 22-23)

“22. This Court in *Sarla Ahuja v. United India Insurance Co. Ltd.* [*Sarla Ahuja v. United India Insurance Co. Ltd.*, (1998) 8 SCC 119] had an occasion to consider the scope of proviso to Section 25-B(8) of the Delhi Rent Control Act, 1958. This Court found, that though the word “revision” was not employed in the said proviso, from the language used therein, the legislative intent was clear that the power conferred was revisional power. This Court observed thus : (SCC p. 124, para 11)

‘11. The learned Single Judge of the High Court in the present case has reassessed and reappraised the evidence afresh to reach a different finding as though it was exercising appellate jurisdiction. No doubt even while exercising revisional jurisdiction, a reappraisal of evidence can be made, but that should be for the limited purpose to ascertain whether the conclusion arrived at

by the fact-finding court is wholly unreasonable.'

It could thus be seen, that this Court has held, that the High Court while exercising the revisional powers under the Delhi Rent Control Act, 1958 though could not reassess and reappraise the evidence, as if it was exercising appellate jurisdiction, however, it was empowered to reappraise the evidence for the limited purpose so as to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.

23. Again in *Ram Narain Arora v. Asha Rani* [*Ram Narain Arora v. Asha Rani*, (1999) 1 SCC 141], this Court had an occasion to consider the aforesaid powers under the Delhi Rent Control Act, 1958. This Court observed thus : (SCC p. 148, para 12)

'12. It is no doubt true that the scope of a revision petition under Section 25-B(8) proviso of the Delhi Rent Control Act is a very limited one, but even so in examining the legality or propriety of the proceedings before the Rent Controller, the High Court could examine the facts available in order to find out whether he had correctly or on a firm legal basis approached the matters on record to decide the case. Pure findings of fact may not be open to be interfered with, but (sic if) in a given case, the finding of fact is given on a wrong premise of law, certainly it would be open to the Revisional Court to interfere with such a matter.'

It was thus held, that though the scope of revisional powers of the High Court was very limited one, but even so in examining the legality

or propriety of the proceedings before the Rent Controller, the High Court could examine the facts available in order to find out whether he had correctly or on a firm legal basis approached the matters on record to decide the case. It has also been held, that pure findings of fact may not be open to be interfered with, but in a given case, if the finding of fact is given on a wrong premise of law, it would be open to the Revisional Court to interfere with the same.””

37. As has been discussed above, while making out a case for eviction under Section 14(1)(e) of the DRC Act, only two requirements must be fulfilled on the part of the landlord. This Court, within the limits of its jurisdiction, can only analyse whether these two requirements have been satisfied or not. First, whether the Respondent has made out a case of genuine *bona fide* need requiring the eviction of the Petitioners from the tenanted premises. This Court is of the opinion that it has and just because there are separate needs of different dependents of the landlord does not mean that the needs are whimsical. Further, it is settled law that multiple needs pertaining to the same premises may coexist [Refer to: Saroj Malik v. O.P. Gupta (supra)].

38. With regard to the second requirement, i.e. non-availability of suitable alternate accommodation, the learned Counsel for the Petitioner has placed on record various other properties of the Respondent that can be utilised for the purpose of either expanding the hostel or opening a law office. While that may be the case that the Respondent has other properties, neither this Court nor the Petitioners can dictate which accommodation is more suitable to the needs of the landlord. It is the convenience and safety of the landlord and his family members which are relevant factors, and while considering

the totality of circumstances, the Court must keep in view the profession or vocation of the landlord, his family members, their style of living, their habits, and the background wherefrom they come. Availability of another vacant accommodation pales in front of the test of suitability for satisfying the need of the landlord [Refer to Damodar Sharma v. Nandram Deviram, AIR 1960 MP 345 (FB)]. It was in Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta (supra) that the Supreme Court passed its extensive observations with regard to the *bona fide* need of the landlord and how Courts must approach the same:

“13. Chambers 20th Century Dictionary defines bona fide to mean “in good faith : genuine”. The word “genuine” means “natural : not spurious : real : pure : sincere”. In Law Dictionary, Mozley and Whitley define bona fide to mean “good faith, without fraud or deceit”. Thus the term bona fide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by “requires” is much more higher than in mere desire. The phrase “required bona fide” is suggestive of legislative intent that a mere desire which is the outcome of whim or fancy is not taken note of by the rent control legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of the landlord and its bona fides would be capable of successfully withstanding the test of objective determination by the court. The judge of facts should place himself in the armchair of the landlord and then ask the question to himself — whether in the given facts substantiated by the landlord the need to occupy the

premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bona fides of the need of the landlord for the premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

14. *The availability of an alternative accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to the bona fides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the court drawing an inference that the need of the landlord was not a felt need or the state of mind of the*

landlord was not honest, sincere, and natural. Secondly, another principal ingredient of clause (e) of sub-section (1) of Section 14, which speaks of non-availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available then the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternative residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternative accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction. Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come.

15. A few decided cases apposite to the point may be referred to. A Division Bench of the Madhya Bharat High Court in Motilal v. Badrilal [ILR 1954 MB 1 (DB)] interpreted clause (g) of Section 4 of the Madhya Bharat Sthan Niyantran Vidhan Samvat, 2006 whereunder a landlord was entitled to eject a tenant if he “really needs a house for himself and he possesses no other accommodation belonging to him elsewhere”. It was held that the landlord was made the sole arbiter of his own requirements but he must prove that he in fact wants and genuinely intended to occupy the premises. His claim would no doubt fail if the Court came to the conclusion that the evidence of “want” was unreliable and that the landlord did not genuinely intend to occupy the premises. As to alternative

accommodation disentitling the landlord to the relief of possession it was held that it must be reasonably equivalent as regards suitability in respect to the accommodation he was claiming. This statement of law was cited with approval before a Full Bench of the High Court of Madhya Pradesh in Damodar Sharma v. Nandram Deviram [AIR 1960 MP 345 (FB)] . Pandey, J. recording the majority opinion emphasised the distinction between the expressions “genuinely requires” and “reasonably requires” and said:

“It is wrong to say that ‘genuinely requires’ is the same as ‘reasonably requires’. There is a distinction between the two phrases. The former phrase refers to a state of mind; the latter to an objective standard. ‘Genuine requirement’ would vary according to the idiosyncrasy of the individual and the time and circumstances in which he lives and thinks. ‘Reasonable requirement’ belongs to the ‘knowledge of the law’ and means reasonable not in the mind of the person requiring the accommodation but reasonable according to the actual facts. In my opinion, in this part of Section 4(g), the landlord is made the sole arbiter of his own requirements but he must prove that he, in fact, wants and genuinely intends to occupy the premises. His claim would no doubt fail if the Court came to the conclusion that the evidence of ‘want’ was unreliable and that the landlord did not genuinely intend to occupy the premises.”

16. *As to impact of availability of another vacant accommodation with the landlord it was held in Damodar case [AIR 1960 MP 345 (FB)] that it must satisfy the test of suitability for satisfying the need of the landlord.*

17. *The abovesaid Full Bench decision of the High Court of Madhya Pradesh was cited with approval*

before this Court in Sarvate T.B. v. Nemi Chand [1965 Jab LJ 973 (SC)] .

18. In M.M. Quasim v. Manohar Lal Sharma [(1981) 3 SCC 36 : AIR 1981 SC 1113] this Court has held (vide para 18) that the landlord does not have an unfettered right to choose the premises but merely showing that the landlord has some other vacant premises in his possession may not be sufficient to negative the landlord's claim if the vacant premises were not suitable for the purpose for which he required the premises. This Court cautioned that the court must understand and appreciate the relationship between the legal rules and necessities of life.

19. In Ram Dass v. Ishwar Chander [(1988) 3 SCC 131 : AIR 1988 SC 1422] this Court has held that: (SCC pp. 134-35, para 11)

“[T]he need of the landlord should be genuine and honest, conceived in good faith; and that, further, the court must also consider it reasonable to gratify that need. Landlord's desire for possession, however honest it might otherwise be, has inevitably a subjective element in it and that, that desire, to become a ‘requirement’ in law must have the objective element of a ‘need’. It must also be such that the court considers it reasonable and, therefore, eligible to be gratified. In doing so, the court must take all relevant circumstances into consideration so that the protection afforded by law to the tenant is not rendered merely illusory or whittled down.”

20. In Sarla Ahuja v. United India Insurance Co. Ltd. [(1998) 8 SCC 119] this Court has held that the Rent Controller should not proceed on the assumption that the landlord's requirement is not bona fide. When the landlord shows a prima facie case a presumption that the requirement of the landlord is bona fide is

available to be drawn. It is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without giving possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.

21. In Prativa Devi v. T.V. Krishnan [(1996) 5 SCC 353] this Court has held that in considering the availability of an alternative accommodation, not availability merely but also whether the landlord has the legal right to such accommodation has to be considered.”

39. The Ld. Rent Controller *vide* its impugned Order dated 26.08.2021 has correctly assumed the position that the *bona fide* need of the landlord is their prerogative, and no one else, not even Courts, can dictate how the landlord wishes to run their business. The learned Counsel of the Respondent has informed this Court that the alleged alternate accommodation is currently in use and cannot be utilised for the purpose that is sought for by the Respondent. Property bearing no. 94-95, Gurmandi, Delhi, currently houses 130 rooms which are occupied by paying guests. Further, another property bearing no. A-98 admeasuring 125 sq.yards has been utilised for the support staff which is helping in the running of the paying guest accommodation. Other properties mentioned by the learned Counsel for the Petitioners are also not suitable to the Respondent's purpose.
40. The argument that the Respondent is not the owner of the tenanted premises has also been dealt with in the impugned Order dated 26.08.2021 which takes note of the Order dated 31.07.2018 in the first eviction petition preferred by the Respondent *qua* the tenanted premises under Section 14(1)(e) whereby the Ld. Rent Controller therein has categorically noted that

the Petitioners herein were voluntarily depositing rent to the Respondent under Section 27 of the DRC Act. It is the opinion of this Court that the Ld. Rent Controller has correctly and comprehensively dealt with every legal and factual issue arising out of the instant case. The Ld. Rent Controller has gone through the site plan and dealt with the legal submissions accurately and precisely. There is no error apparent on the face of the record and no excess of jurisdiction that would warrant the interference of this Court in the impugned Order dated 26.08.2021.

41. Accordingly, this Court finds no infirmity in the impugned Order dated 26.08.2021 in Eviction Petition bearing R.C. No. 37/2018 and therefore, the present revision petition is dismissed, along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J

APRIL 25, 2023

Rahul/RR

न्यायमेव जयते