

(1977) 08 BOM CK 0019

In the Bombay High Court

Case No : Special Civil Application No's. 1074 and 1076 of 1972

Deorao Pandurang Mangrulkar

APPELLANT

Vs

The Collector, Chandrapur and Another

RESPONDENT

Date of Decision : 01-08-1977

Acts Referred:

Citation : AIR 1978 Bom 293 : (1978) MhLj 47

Hon'ble Judges : Gadgil, J

Bench : Single Bench

Advocate : Vijay C. Daga, for the Appellant; G.A. Paunikar, Asstt. Govt. Pleader, V.D. Deshmukh and A.N. Deshmukh, for the Respondent

Judgement

1. These two writ petitions can be conveniently decided by a common judgment as practically same or similar points arise in both of them. The Rent Controller, Chandrapur, granted permission to the landlord to terminate the tenancy on the ground that the premises are needed for bona fide occupation of the landlord. This permission was granted under Clause 13 (3) (vi) of the C. P. & Berar Letting of Houses and Rent Control Order, 1949 (hereinafter referred to as the Rent Control Order), After the landlord obtained possession on the basis of that permission, the Collector allotted the premises to some one else, holding that the tenement was not needed by the landlord. The controversy is whether this is permissible.

2. The petitioner is an owner of a building standing on a Nazul Sheet No, 10, Plot No. 44-45 at Chandrapur. This building consists of six blocks. Respondent No. 2 in Special Civil Application (Spe. C. A.) No. 1074 of 1972 is Mansur Husain and he was occupying block No. 6 as the petitioner's tenant, while Abdul Husain, respondent No. 2 in Special C. A. No. 1076 of 1972 was in possession of block No, 5 as a tenant. I will refer to these tenants by their names instead of saying that he is the respondent No. 2 in a particular petition. The petitioner filed an application under Clause 13 of the Rent Control Order for permission to terminate the tenancy of Mansoor Husain. That proceeding was numbered as

Rev. Case No. 32/71-2/64-65. Clause 13 of the Rent Control Order provides that a landlord is entitled to terminate the tenancy of a tenant only after obtaining permission of the Controller. Sub-clause (3) enumerates a number of grounds on the proof of which the landlord can get such permission. Sub-clause (3) (vi) says that such a permission can be obtained if the landlord proves that he needs the house or a portion thereof for the purpose of his bona fide occupation. The landlord has filed another proceeding (Rev. Case No. 29/71-2/64-65) against Abdul Husain for getting similar permission with respect to the block in possession of Abdul Husain. In both these proceedings the landlord-petitioner has contended that he is entitled to a permission under cl 13 (3) (vi) of the Rent Control Order as also under some other clauses. It is not necessary to give details of the case falling under other clauses. The Rent Controller, by his order dated 28-2-1966, granted permission to the petitioner in both these proceedings and the permission was under clause 13 (3) (vi). Mansoor filed appeal No. 47/71-2/65-66 against this decision. Appeal filed by Abdul Husain was numbered as appeal No. 46/71-2/65-66. On 26-7-1966 both these appeals were allowed and the applications made by the petitioner were dismissed. The petitioner preferred two writ petitions against these orders in this Court. Special Civil Application No. 20 of 1967 was against Mansoor while Special Civil Application No. 19 of 1967 was against Abdul Husain. This Court set aside the orders of the appellate authority and held that the premises in possession of Mansoor and Abdul Husain were needed by the petitioner for the purpose of his bona fide occupation and, as such, a permission for terminating the tenancy of Mansoor and Abdul Husain should be granted. On the basis of these decisions, the petitioner terminated the tenancy of the two tenants and filed suits Nos. 2 and 3 both of 1969 against Mansoor and Husain, respectively. These suits have been decreed on 17-1-1970. Mansoor and Husain have filed appeals Nos. 35 and 36 of 1970 against the decrees of the trial Court. These appeals are pending in the District Court at Chandrapur.

3. At the time these suits were decreed, the petitioner had already obtained possession of the three more blocks, viz., blocks Nos. 2, 3 and 4. Mansoor, therefore, made an application under clause 23 and 24 of the Rent Control Order requesting that he may be allotted any of the blocks Nos. 2, 3 or 4, belonging to the petitioner. Clause 23 and 24 permit the Controller to make an allotment of a tenement in favour of a particular class of persons. The class of "evicted persons" is included in that category. The term "evicted person" has been defined in clause 2 (2-a) as follows:

"evicted persons" means a tenant whose landlord has been granted permission to give notice to determine the lease on a ground specified in item (vi) of Sub-clause (3) of clause 13."

4. At this stage, it will be convenient to reproduce the provisions of Clauses 22, 23 and 24. They are as follows:

"22 (1) Every landlord of a house situate in an area to which this chapter

extends, shall-

(a) within seven days from the date of the extension of this chapter, if the house is vacant on such date; or

(b) within seven days from the date on which the landlord becomes finally aware that the house will become vacant or available for occupation by himself or for other occupation on or about a specified date; give intimation of this fact to the Collector of the district in which the area is included or such other officer as may be specified by him, in the Form given in the Schedule appended to this order, and shall not let or occupy the house except in accordance with clause 23.

(2) No person shall occupy any house in respect of which this chapter applies except under an order under Sub-clause (1) of clause 23 or clause 24 or on an assurance from the landlord that the house is being permitted to be occupied in accordance with Sub-clause (2) of clause 23.

23. (1) On receipt of the intimation in accordance with Clause 22, the Collector may, within fifteen days from the receipt of the said intimation, order the landlord to let the vacant house to any person holding an office of profit under the Union or State Government (or to any person holding a post under the Madhya Pradesh Electricity Board) or to a displaced person or to an evicted person and thereupon notwithstanding any agreement to the contrary, the landlord shall let the house to such person and place him in possession thereof immediately, if it is vacant or as soon as it becomes vacant:

Provided that if the landlord has, in the intimation given under clause 22, stated that he needs the house for his own occupation, the Collector shall, if satisfied after due enquiry that the house is so needed, permit the landlord to occupy the same.

(2) If no order is passed and served upon the landlord within the period specified in Sub-clause (1), he shall be free to let the vacant house to any person.

24. If a house is vacant or becomes vacant after the date this chapter is extended to the area in which it is situate and no intimation of vacancy is received in respect of it as provided in Clause 22, the Collector may order the landlord to let the same forthwith to a person holding an office of profit under the Union or State Government or to any person holding a post under the Madhya Pradesh Electricity Board or to a displaced person or to an evicted person and on receipt of such order the landlord shall comply with the order." The other tenant Abdul Husain, who was under a decree of eviction from block No. 5, made an application dated 18-12-1968, making a similar request that he may be allotted one of the blocks from blocks Nos. 2, 3 and 4, the possession of which has been secured by the petitioner. Mansoor's application was numbered as Rev. Case No. 5/71 (6-A)/ 68-69, while Abdul Husain's application was numbered as Rev. Case No. 4/71 (6-A)/68-69. The main contention of Mansoor and Husain in those applications was that they were entitled to an allotment of any of the blocks Nos.

2, 3 and 4 as they were evicted persons, as denned above. It seems that the Collector sent these applications for enquiry to the Rent Controller, Mr. Badkas who made a report on 22-4-1970, that block No. 4 be allotted to Mansoor while blocks 2 and 3 be allowed to be retained by the landlord.

5. I will, however, make a mention of one more proceeding. It seems that the petitioner was informed that it was necessary for him to give an intimation about his having obtained possession of blocks Nos. 2, 3 and 4 in spite of the fact that he got possession after terminating the tenancy on the ground that the premises were bona fide needed by him for his residence. The petitioner's contention is that such an intimation was not necessary, but in order to avoid any technical liability on him, he had given the intimation. This intimation was numbered as case No. 7/7 (6-A)/68-69. It seems that the Collector got made the enquiries with respect to the intimation given by the petitioner. The enquiries were made by the Rent Controller, Mr. Muley and he submitted a report dated 31-1-1970 that blocks Nos. 2 and 3 be released in favour of the petitioner, while block No. 4 should be allotted to anybody as may be approved by the Collector. The Collector considered the reports of Mr. Badkas as well as Mr. Muley and then passed the impugned orders dated 17-12-1970. Block No. 4 was ordered to be allotted to a Government servant; block No. 5 was allowed to be continued with Abdul Husain, while Block No. 6 was allowed to be continued with Mansoor.

6. The contention of the petitioner is that all this is against the provisions of the Rent Control Order. According to him, he has obtained possession of all the three blocks after taking appropriate proceedings before Rent Controller under Clause 13 (3) (vi) of the Rent Control Order. The petitioner's case is that he was not liable to give any intimation of the three blocks having fallen vacant as clause 22 does not apply to a case where the tenancy is allowed to be terminated-for bona fide personal occupation. His another grievance is that the Collector has no authority to pass any orders of allotment in connection with the premises that have been obtained on the basis of a permission under Clause 13 (3) (vi) of the Rent Control Order. The petitioner has also alleged that the effect of the impugned orders is that he, after having successfully proved his need for bona fide occupation of blocks Nos. 4, 5 and 6 will be. without any remedy or relief, Inasmuch as the Collector has ordered that block No. 4 should again be allotted to some one else (viz. to a Government servant) and blocks Nos. 5 and 6 should be continued with the tenants Abdul Husain and Mansoor, who are under eviction decrees which are pending in appeals. The petitioner feels and apprehends that on the basis of the impugned order, the District Judge is likely to allow the appeals by holding that the permissions granted in favour of the petitioner under clause 13 (3) (vi) have come to an end. The petitioner, therefore, prays that the said orders dated 17-12-1970 be quashed.

7. In both these petitions, the Collector is respondent No. 1, while the tenant is respondent No. 2. In Special Civil Application No. 1074 of 1972, the Collector filed a return wherein he alleged that on enquiry he found that only blocks Nos. 2

and 3 should be released in favour of the petitioner and that block No. 4 is not needed by him. He accordingly passed an order that block No. 4 should be allotted to a Government servant. The Collector denied that he passed any order so as to affect the possession of block No. 6. In paras. 11 and 12 of the return, he stated that the tenant Mansoor was not allotted any block. I would like to reproduce certain portions from para 12 of the return:

"It is humbly submitted that reading the order dated 17-12-70 as a whole, the respondent No. 2 has not been considered as the evicted person and he has also been not allotted the status of tenant."

Thus, in substance, it was pleaded that the order of allotting block No. 4 in favour of a Government servant was quite legal and proper and that the Collector has not passed any order in favour of the two tenants Abdul Husain and Mansoor with respect to blocks Nos. 5 and 6.

8. The return that was filed by the respondent No. 1 in the other petition, Special Civil Application No. 1076 of 1972, is somewhat different and it will be convenient to refer to certain portion of para 9 of that return.

"It is submitted that in the decision given by this Hon"ble Court on 8-10-68 this Hon"ble Court was pleased to observe that the need of the petitioner for restoration of block should be examined and thereafter the petitioner's need be considered. Accordingly this respondent inspected the spot and passed order to the effect that it did not appear necessary to shift the respondent No. 2, the evicted tenant from block No. 5 to other vacant block in order to avoid inconvenience to the parties. It is further submitted that the petitioner had failed to give intimation under the provisions of Clause 22 of the Rent Control Order within the prescribed time limit and it was therefore found by this respondent that the petitioner could not substantiate his claim for restoration of house. There was also no material to show that the respondent No. 2 was habitual defaulter. It is, therefore, submitted that the order passed by this respondent was according to the directions and observations made by this Hon"ble Court."

9. This return gives a clear indication that respondent No. 1 wants to say that he has passed the order of allowing or retaining the two blocks with the two tenants Mansoor and Abdul Husain and that the third block has been ordered to be allotted to some one else. The only contention is that all this has been done according to law and in terms of the observations made by this Court in the judgment in Special Civil Applications Nos. 19 and 20 of 1967.

10. The two tenants filed their respective returns in the two petitions. These returns are on the hypothesis that the blocks in possession of these two tenants (viz. blocks Nos. 5 and 6) have been allotted or allowed to be retained by the tenants in spite of the decrees that have been passed against them. For example, this is what has been alleged in para 9 of the return of respondent No. 2 in Sp. C. A. No. 1074 of 1972.

"This respondent submits that in the same order, this Hon"ble Court had also observed that the landlord shall not ipso facto be entitled to occupy all the premises which he was trying to be vacated but when an occasion would arise, the extent of the need of the landlord at that time will have to be taken into account by the appropriate authority and, therefore, after determining the need of the landlord, the Collector was perfectly competent to allow this respondent to continue in possession of the block rented to him and did not act in any way contrary to the orders passed by this Hon"ble Court." In para 15 it is further alleged--"the Collector was perfectly right in holding that it was not necessary for this respondent to vacate the premises, as the need of the petitioner was already fulfilled."

According to both the tenants, the order allotting or allowing the retention of the two blocks by these tenants was quite legal and proper and the petitioner cannot make any grievance in that respect.

11. Before going to the main controversy, amongst the parties, it will be desirable to consider the dispute of the respondents 1 and 2 inter se as to what, the order dated 17-12-1970 means. I have already stated that the Collector wants to say that he has not passed any order in favour of the two tenants so far as the possession of blocks 5 and 6 is concerned. As against that, both the tenants are contending that the Collector has passed an order which would enable the tenants to retain the possession of these two blocks in spite of the fact that their tenancies have been terminated under Clause 13 (3) (vi) of the Bent Control Order, and the decrees have been passed against them. It was urged by Mr. Paunikar that there is no express allotment of blocks Nos. 5 and 6 in favour of the two tenants and that this would be clear if the order dated 17-12-1970 is read. According to him, the allotment order should be specific and it should state that a particular block has been allotted to a particular person. I, however, think that the question as to whether the order dated 17-12-1970 is an allotment order or not cannot be decided by merely looking to the form of the order. It will depend upon the substance and meaning of that order. For considering this controversy, I would like to reproduce the relevant portion of the order challenged in Spe. C. A. No. 1074/1972.

"..... It has already been observed In Rent Control Case No. 7/71 (6-A)/68-69 of Chandrapur, that the non-applicant (landlord) can accommodate himself and his family in one block and blocks Nos. 2 and 3 are already released to him for his bona fide occupation. Therefore, the block No. 4 though it was vacant was not released and it was ordered for allotment. The applicant is already having his possession over block No. 6 and it will not be desirable to shift him in the vacant block No. 4 by disturbing his present occupation over block No. 6. The applicant is an evicted person and, therefore, he is allowed to continue his occupation of block No. 6 only. Further I hereby order the allotment of block No. 4 to any Government servant as already ordered in Rent Control Case No. 7/71(6-a)/68-69 of Chandrapur."

Practically similar order with respect to block No. 5 has been issued and it is challenged in Sp. C. A. No. 1076/72. Thus, while passing the orders dated 17-12-1970, the Collector has again considered the question as to whether the petitioner was entitled to have possession of blocks Nos. 4, 5 and 6. He held that these three blocks would not be required by the petitioner. He, therefore, ordered that block No. 4 should be allotted to a Government servant. Not only that, but he directed that it is not necessary to disturb the two tenants from the possession of their respective blocks. The Collector took a note that the two tenants are evicted persons and then he ordered that the two tenants are allowed to continue to occupy the blocks themselves. He then added that in addition there should be an allotment of block No. 4 to a Government servant. It will be very difficult to accept the contention of Mr. Paunikar that such an order should not be treated as an allotment order. Mr. Paunikar urged that there is only a general observation in the order that the tenants may continue their occupation of the respective blocks. I am not ready to accept this contention. On the contrary, there is a specific statement that as the tenants are evicted person, they are allowed to continue their occupation in the respective blocks. If the order is taken as a whole, it gives a clear picture that the Collector did pass the order in connection with the two blocks Nos. 5 and 6, by directing that the two tenants are allowed to retain possession thereof. It was contended on behalf of the petitioner that at the stage of the hearing of these petitions, a mischievous attempt is being made by the respondent No. 1 to wriggle out from the position arising out of an obviously wrong order which is palpably untenable, it was submitted that this attempt is made by contending that there has not been any order in favour of the two tenants, as alleged. I think that there is much substance in this respect. This is more so when the return of respondent No. 1 in Sp. C. A. No. 1076 of 1972 is taken into account. I have already given a summary of the contentions raised by respondent No. 1 in the returns and it is clear that respondent No. 1, while defending Sp. C. A. No. 1076/72 has taken stand that he has passed orders in favour of the two tenants after taking into account the need of the petitioner.

12. In the return in Sp. C. A. No. 1076/ 1972, it was alleged that the orders in respect of blocks Nos. 5 and 6 were passed in favour of the tenants as per the directions and observations in the judgment of this Court in Sp. C. A. No. 19 of 1967 and 20 of 1967. It was contended in the return that this Court directed that the landlord's need of blocks Nos, 5 and 6 should again be scrutinised. and verified by the Collector when an intimation would be given to him vide el. 22. To say the least, this is an attempt to misread the said judgment and that too with a view to create a wrong impression that the impugned order is passed in compliance of the High Court judgment. A copy of the judgment is on record. It is at Annexure D on page 29 in Sp. C. A. No. 1074/1972. It seems that respondent No. 1 wants to rely upon the following observations in that judgment:

"The statement about one of the blocks being vacant is explained by the landlord by stating that there were proceedings for termination on the ground of default

in payment of rent, and even if those premises are vacated under an order of the Rent Controller or of the Court, the landlord will not ipso facto be entitled to occupy those premises. If and when an occasion comes for permitting the landlord to occupy those premises, the extent of the need of the landlord at that time will be taken into account by the appropriate authorities dealing with the matter if an intimation is given under Clause 22 of the Rent Control Order. It is too distant a contingency which cannot possibly be taken into account to defeat the right of the landlord to terminate the tenancies of the two respondents when the needs are present and pressing....."

13. Obviously the above observations are with respect to the vacant block No. 1, the possession of which the petitioner obtained on the ground of arrears and habitual default. An argument was advanced in Sp. C. A. Nos. 19 and 20 of 1967 that the availability of that block No. 1 may be considered as a circumstance to negative the case of the petitioner that he was in need of block Nos. 5 and 6 bona fide for his occupation. It is this contention that has been repelled by holding that the vacant block No. 1 possession of which has not been obtained under a permission under Clause 13 (3) (vi) cannot be taken into account while considering the need with respect to blocks Nos. 5 and 6. The obvious reason was that the petitioner will have to give intimation of that block and the Collector may or may not allow the petitioner to retain the block. This is permissible under Clause 23. It says that the block may be retained with the landlord if the Collector is satisfied that it is needed by the petitioner, it is clear that the observations made by this Court in Special Civil Application Nos. 19 and 20 of 1967 were with respect to block No. 1. These observations are being incorrectly tagged with the questions of the bona fide personal need of the blocks Nos. 5 and 6. That return is filed by the Additional Government Pleader and the Collector has sworn an affidavit about the correctness. At the time of the arguments, it was not possible either for Mr. Paunikar or for Mr. Deshmukh to support such a construction of this Court's judgment in Sp. C. A. Nos. 19 and 20 of 1967. It was faintly suggested on behalf of the petitioner that some action may be taken for putting such wrong and untenable construction on the High Court judgment. I am, however not inclined to consider that suggestion. But I must express my displeasure about the manner in which there is an obvious attempt to make a wrong show that the impugned orders are passed as per the directions given by this Court.

14. The above discussion will, therefore, make it clear that the impugned orders cover not only block No. 4 but also blocks Nos. 5 and 6. By that order the Collector specifically allowed the two tenants to retain possession as they are evicted persons, as denned in Clause 2 (2-a) of the Rent Control Order. It will not be possible to construe these orders as one pertaining only to block No. 4.

15. Thus, under the impugned order, the Collector has disposed of blocks Nos. 4, 5 and 6. The only question is whether this is permissible under the Rent Control Order, Another controversy amongst the parties is as to whether the petitioner

was under any liability to give intimation as soon as he obtained possession of block No. 4. As far as blocks Nos. 5 and 6 are concerned, it must be held that there was no possibility of an intimation on the part of the landlord as the matter is still pending in appeals in the District Court, Decrees for possession passed by the trial Court have not as yet become final and the petitioner has not yet obtained possession in execution of any such decree.

16. According to the petitioner, he has obtained possession of block No. 4 after following the necessary procedure, contemplated by Clause 13 of the Rent Control Order. He made an application for permission to terminate the tenancy of the tenant of that block. Permission was sought on a ground that the block was bona fide needed by the petitioner for his occupation. The petitioner contends that clause 22, 23 and 24 are not at all applicable when possession was taken on a ground under Clause 13 (3) (vi) of the Order. The relevant portion of Clause 22 reads as follows:

"(1) Every landlord of a house situate in an area to which this chapter extends shall-

(a)*****

(b) within seven days from the date on which the landlord becomes finally aware that the house will become vacant or available for occupation by himself or for other occupation on or about a specified date, give intimation of this fact to the Collector....."

17. Mr. Paunikar for respondent No. 1 and Mr. Deshmukh for respondent No. 2 relied upon this very clause for the purposes of contending that the landlord who has obtained possession after getting permission under Clause 13 (3) (vi) (hereinafter referred to as the landlord benefited under Clause 13 (3) (vi) is bound to give intimation to the Collector. A reliance is placed on the words "or available for occupation by himself or for other occupation" for the purpose of submitting that a block of which possession has been obtained after getting permission under Clause 13 (3) (vi) should be treated as a block available for occupation by himself (by landlord) and, as such, intimation is needed. It was also contended that after such intimation is given the Collector has an authority to make an enquiry about the need of the petitioner. It was urged that such an enquiry is contemplated by proviso to Clause 23 (1). According to them, the petitioner would be entitled to occupy block No. 4 only if he would satisfy the Government that the said block is needed by him..

18. As against this, Mr. Daga for the petitioner submitted that the scope of Clause 22 is not such as to require giving of an intimation by a person benefited under Clause 13 (3) (vi). He argued that certain incongruous results are likely to follow if the necessity of giving intimation in such cases is assumed to be necessary. In the first place, he urged that the question of existence of a bona fide need has already been considered by the Rent Controller, while deciding the application under Clause 13 and that it would either be futile or redundant to

accept that the said question has again to be decided upon by the Collector under proviso to Clause 22 (1). The manner in which an application under Clause 13 is decided can also be considered at this stage. Clause 18-A says that an application should be accompanied by spare copies of the applications. It also gives the details as to how notice should be served on the non-applicants. Sub-clause (5) empowers the Controller to order payment of costs in case an adjournment is sought by a party to the proceedings. Under Clause 19 parties to such proceedings are entitled to appear through a legal practitioner. Clause 20 deals with the costs incidental to such applications. An appeal is provided against the order to the Controller. Clause 21 says that the appeal shall lie to the Collector. The Collector has to decide the appeal after making a necessary inquiry. Not only that but clause 21 (2-a) provides that the Collector can review the order already passed by him. All these provisions, therefore, would give a clear idea that an application made for permission under Clause 13 (3) (vi) is put to a judicial scrutiny at the hands of the Controller as also the appellate authority, viz., the Collector. It was submitted by Mr. Daga that it does not appeal to reason that Collector should be entitled to reconsider the question of the need of the petitioner for the second time under Clause 22. He argued that the nature of the enquiry contemplated by the proviso to Clause 22 (1) must on the face of it be a summary one and that it would not be as detailed as that which is expected of an application under Clause 13. According to him, the Government could not have expected or intended that a dispute which is already scrutinised in a detailed manner should again be gone into in a summary manner.

19. Another contention of the petitioner is that the provisions of Clause 13 (4) (5) and (6) would be inconsistent with the need of giving an intimation and of an enquiry under Clause 22. Clause 13 (4) enjoins the landlord benefited under Clause 13 (3) (vi) to occupy the house within one month. That clause also says that if such occupation is not made within the prescribed period, the tenant is given right to have restoration of possession with the help of the Collector. Clause 13 (5) says that the premises acquired by having recourse to a permission under clause (vi) shall not be let out to any person other than the evicted tenant except with the previous approval of the Controller. Sub-clause (6) provides that such an approval will not be granted if the tenant is agreeable to have the premises on fair rent.

20. The argument is that the compliance of Clause 13 (4) to Clause 13 (6) would not be possible if the landlord is bound to give an intimation to the Collector who may even allot the block to some one else. Mr. Deshmukh replied that the wording of Clause 22 is so clear that it will also cover a case of a person benefited under Clause 13 (3) (vi). It was urged that the premises which have been taken possession of for personal requirement would be available for occupation by the landlord as contemplated by Clause 22 and that, therefore, the intimation would be necessary. The consequential result, according to Mr. Deshmukh, is that the Collector would have the power to again scrutinise the need of the petitioner under proviso to Clause 23 (1). It is true that the words

"available for occupation by himself" may perhaps be interpreted to cover a case similar to the present one. But it appears that those words may as well apply to a case where the landlord constructs a new house. It will be difficult to suggest that such a newly constructed house should be treated as a house that has "become vacant". For becoming a house vacant, it should ordinarily be in possession of or occupation of some one and that person should vacate or deliver possession. Thus, the house newly constructed may not come within the first part of Clause 22 (1) (b), However, it can very well be said that the said house becomes available for occupation by landlord or any other person. Of course, I am making these observations not with a view to affirmatively hold as to whether the house newly constructed will be governed by the term "available for occupation by himself. Suffice it to say that the clause as it stands is not clear in its meaning and there might be a number of contingencies, where the construction put in favour of the respondents would go against the other provisions of the Rent Control Order. For example a landlord may get possession after obtaining permission to terminate the tenancy under Clause 13 (3) (vii) (i. e. if the landlord desires to make essential repairs which cannot be made without the tenant vacating the premises) would it be necessary for him to give intimation after recovering possession? Is it necessary to give intimation at least after the repairs are effected? While, deciding the ques- tion one has to consider the obligation cast upon the landlord under Clause 13 (7) to restore possession to the tenant after the repairs are effected. Can this obligation be avoided if the Collector (on receipt of intimation or otherwise) allot the house to someone else ? These questions need not be decided by judgment as they do not directly arise in this case, I would be deciding only question as to whether a landlord benefited by Clause 13 (3) (vi) is liable to give intimation and whether the Collector can allot the house to someone else.

21. This much is clear that the pro-1 visions of clause 13 and Clause 22 cannot go together in an harmonious manner at] least in certain cases. One of the cases is of the type which is available here, i. e. where the landlord has obtained possession after getting permission under Clause 13 (3) (vi). Clause 13 (4) provides that the landlord must occupy the premises within one month. This does not mean that he is not entitled to occupy till the completion of one month. Ordinarily he can occupy the house even on the day he receives possession. The question would be as to how he can occupy the premises if he is again to give an intimation under Clause 22. If such a case is assumed to be governed by Clause 22, there would be a fresh enquiry as to the need of the landlord. Clause 23 nowhere says that the said enquiry should be completed within a period of one month. What the landlord has to do if he wants to comply with the provisions of Clause 13(4) by occupying the premises within one month? Can he wait till the second decision about his need as contemplated by proviso to Clause 23 (1) ? Secondly, Clause 13(5) says that a landlord benefited under Clause 13 (3) (vi) shall not let out the house to any person other than the evicted tenant. That means that he must let out the premises (whenever he decides to let them out)

to the evicted tenants. Can it be said that such a letting should be postponed till the Collector passes any order under Clause 23 ? These instances will, therefore, give an idea that the provisions of Clause 13 and "clause 22 may not go hand in hand at least in certain circumstances.

22. The question is as to how these provisions, should, therefore, be construed. Maxwell in his book on Interpretation of Statutes (12th Edn.) has considered in the following words the question as to how an interpretation of a statute or a statutory , order is to be made:

"An intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction." (Page 199). "Not only are unreasonable or artificial or anomalous constructions to be avoided: it appears to be an assumption (often unspoken) of the Courts that where two possible constructions present themselves, the more reasonable one is to be chosen." (Page 203).

"A sense of the possible injustice of an interpretation ought not to induce Judges to do violence to well-settled rules of construction, but it may properly lead to the selection of one rather than the other of two reasonable interpretations. Whenever the language of the legislature admits of two constructions and, if construed in one way, would lead to obvious injustice, the Courts act upon the view that such a result could not have been intended, unless the intention to bring it about has been manifested in plain words," (Page 208).

"The same general rule applies where the result of one of two interpretations would be to lead to an absurdity. The leading modern case is *Att.-Gen. v. Prince Ernest Augustus of Hanover*, from which it is clear that the absurdity must be judged of as it would have appeared at the time of the passing of the Act." (Page 210).

This matter is also considered by the Supreme Court in a number of cases. In *N.T. Veluswami Thevar Vs. G. Raja Nainar and Others*,

"It is no doubt true that if on its true construction, a statute leads to anomalous results, the Courts have no option but to give effect to it and leave it to the Legislature to amend and alter the law, But when on a construction of a statute, two views are possible, one which results in an anomaly and the other not, it is the duty of a Court to adopt the latter and not the former, seeking consolation in the thought that the law bristles with anomalies."

In *Tirath Singh Vs. Bachittar Singh and Others*, , the question of construction of a statute has been considered from another angle in the following words (at p. 833):

"Where the language of a statute, in its ordinary meaning and grammatical

construction leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence." It is a defined principle of interpretation that as far as possible, harmonious construction should be put on different sections of a statute. This has been so held by the Supreme Court in *Chandra Mohan v. State of Uttar Pradesh* AIR 1966 SC 1987. The material head note reads as follows:

"The fundamental rule of interpretation is the same whether one construes the provisions of the Constitution or an Act of Parliament, namely, that the Court will have to find out the express intention from the words of the Constitution or the Act, as the case may be. But if, however, two constructions are possible then the Court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well-established provisions of existing law nugatory."

It would, therefore, be necessary to put, construction on Clause 13 and els. 22 and 23 in such a manner which would bring in harmony and avoid conflict. I have already discussed and observed that if clause 22 and 23 are treated as applicable to the premises of a landlord benefited under Clause 13 (3) (vi) of the Rent Control Order, it would cause hardship and open a gate for undoing the findings, recorded by the competent authorities" after detailed enquiry. It was rightly argued by Mr. Daga that this absurdity or disharmony should be avoided.

23. Mr. Deshmukh submits that the scope of an enquiry under clause 13 (3) (vi) is quite different from the enquiry under Clause 23. According to him, Clause 23 contemplates an enquiry as to the extent of the need viz,, whether the need exists even after taking possession and, if so, whether the entire tenement is needed or a part thereof would suffice. This argument is not acceptable for the simple reason that the Rent Controller, while deciding the application under Clause 13 (3) (vi) is also bound to consider the extent of the need. Clause 13 (8) provides that whenever necessary, the Controller can give permission in respect of a portion of the premises. Thus, the extent of the need has to be considered by the Rent Controller and it does not appear to be necessary that it should be again scrutinised by the Collector under Clause 23.

24. There is another fallacy in the argument of Mr. Deshmukh. Under Clause 13 (3) (vi), the landlord will get permission on a strict proof that the house is not only needed by him but that his need is for his bona fide occupation. As against this, it would be sufficient under proviso to Clause 23, if the landlord has proved his need, though it may not be bona fide as contemplated by Sub-Clause (vi). There is a difference of degree in the needs contemplated by the two clauses and obviously the Collector is given a wider power to consider a need which may not necessarily be as strict as a "need for bona fide residence." In this background can the Collector, while deciding the dispute under Clause 23, say, "Leave aside

the bona fide need already proved, I hold that there is not even an ordinary need of the premises to the landlord." This does not appear to be permissible.

25. Mr. Deshmukh relied upon a decision of the Supreme Court in *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, It was case under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, and the question arose before the Supreme Court was as to whether the High Court at the revisional stage can take cognizance of the subsequent event of the plaintiff having acquired possession of a building. The Supreme Court held that this is permissible. The following is the relevant head note:

"If a fact, arising after the lis has come to Court and has a fundamental impact on the right to relief of the manner of moulding it, is brought diligently to the notice of the Tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies pending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice subject, of course, to the absence of other disentitling factors or just circumstances. Nor can the Court contemplate any limitation on this power to take note of undated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice."

This case would not be applicable in the present dispute. The subsequent event has been taken into account in the sama proceeding but at the revisional stage. Here the position is quite different. The previous proceeding has come to a final close when permission was granted under Sub-clause (vi). The alleged change of circumstances is being taken into account in a quite different proceedings under Clause 23 and I feel this would not be possible. It was rightly urged on behalf of the petitioner that judicial propriety requires that a matter once decided by a competent Court is not reopened in another summary proceeding. Two more cases were also cited before me on behalf of the respondents. One is in *R.P. Ghosh Vs. Pramila Bai Ravindra Puri and Others*, , while the other is in *Sitaram Tensukhrai Lekaria Vs. V.R. Bhoware and Another*, The matters involved in these decisions are quite different and I think that the principles enunciated in these decisions have no bearing with the controversy that is available here.

26. The result is that the landlord who is benefitted under Clause 13 (3) (vi) of the Rent Control Order is not liable to give any intimation to the Collector after actually taking physical possession of the premises. Similarly, the Collector has no jurisdiction to allot the said premises to any one in derogation to the previous finding of the Rent Controller that the premises are reasonably and bona fide needed by the landlord for his occupation. Secondly, it is not open to the Collector to pass allotment orders in respect of blocks Nos. 5 and 6 particularly when those blocks have not as yet been vacated by the tenants. Even after the blocks fell vacant in execution of any decree that may be passed against the tenants, the Collector would not be able to pass any allotment orders in respect of these blocks.

27. Thus both the petitions succeed The rule is made absolute in Special Civil Applications Nos. 1074 and 1076 both of 1972. The order of the Collector, that block No. 4 should be allotted to a Government servant is quashed. Similarly, the orders of the Collector, permitting the tenants Abdul Husain and Mansoor to continue in possession of blocks Nos. 5 and 6, respectively, are quashed. The petitioner to get his costs in both the matters from the respondents.

28. Petitions allowed.