
(1992) 04 BOM CK 0020
In the Bombay High Court
Case No : Suit No. 214 of 1975

Mrs. Karuna Manoharlal Ohri

APPELLANT

Vs

Vipinbhai U. Sanghani

RESPONDENT

Date of Decision : 07-04-1992

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 15A, 28
Constitution of India, 1950 — Article 14, 19, 31
Easements Act, 1882 — Section 61
Transfer of Property Act, 1882 — Section 105

Citation : AIR 1993 Bom 177 : (1992) 3 BomCR 33 : (1992) 94 BOMLR 920

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : K.P. Khambata and S.U. Kamdar, instructed by R.K. Maheshwari, for the Appellant; F.E. Devitre, instructed by y M/s. Thakurdas and Madgaonkar, for the Respondent

Judgement

1. This is a suit for possession, compensation and ancillary reliefs in respect of premises being flat No. 16-B, third floor, "Thakur Niwas", 173, Jamshedji Tata Road, Bombay 400020.

2. Deceased plaintiff Swarup Narayan Khanna was a member of Thakur Niwas Co- operative Housing Society Ltd. which is a Society registered under the Maharashtra Co- operative Societies Act, 1960. Thakur Niwas" is a building owned by the Society and the suit flat was allotted to the plaintiff in his capacity as the holder of five shares of the Society. S. N. Khanna was a tax practitioner and used to visit Bombay in connection with the work of his clients. Defendant in 1972 was a law student and a Director of a private concern known as "Paramount Automobiles Pvt. Ltd.". On 18th September, 1972, S. N. Khanna and defendant reached an agreement the terms whereof were reduced to writing, which writing is at Ex. P-1. In this document, S. N. Khanna is described as the "licensor" and defendant the "licensee" in respect of the suit flat, the duration of the licence to be from 1-10-1972 to 31-8-1973. The monthly compensation of

Rs. 650/- was to be paid by the defendant to S. N. Khanna through his authorised agent L. D. Kapoor who has been examined as P.W. 3 in the suit. Ex. P-2 collectively is the correspondence exchanged between S. N. Khanna and defendant -- the first in point of time being S. N. Khanna's letter dated 22-2-1973 and the last being an Advocate's reply given on behalf of the defendant on 27-3-1974. S. N. Khanna filed this suit on the 1st day of February, 1975.

3. S. N. Khanna -- hereinafter also to be referred to as the "plaintiff -- contended that the suit flat was purchased by him for his own use as a practising lawyer and because he desired to settle down in Bombay. Defendant had approached him in August 1972 with the plea that he be allowed to use the suit flat as a temporary shelter. He was studying law and was newly married and would leave the suit flat as soon as he could arrange to get a flat on ownership basis for himself. Plaintiff made it clear to the defendant that exclusive possession of the suit flat even for a temporary period could not be given to the defendant. All that the plaintiff was prepared to grant was an indulgence to the defendant to use the suit flat jointly with the plaintiff. Defendant agreed to the terms and conditions laid down in Ex. P-1 and that is how he came to share the accommodation with the plaintiff. Plaintiff could not create a licence or a tenancy and Ex. P-1 was neither. A key of the flat was retained by the plaintiff whose furniture, fixtures and fittings inclusive of a telephone continued to be in the flat. Even if the transaction amounted to a licence, it was not a possessory licence. Defendant had violated the conditions of Ex. P-1 by not paying the compensation subsequent to the month of October 1972. The non-payment by itself brought about a cancellation of the licence. The subsequent three months compensation was accepted by the plaintiff without prejudice to the revocation/cancellation of the licence which has already taken place. Defendant falsely raised the plea of being a protected licensee and/or a tenant. Assuming that Section 15-A of the Bombay Rent Act was applicable to the occupation of defendant, it was plaintiff's contention that the said provision was ultra vires the Constitution as it contravened the plaintiff's fundamental rights under Articles 14, 19 and 31 of the Constitution of India. The said section conferred protection upon a particular class of licensees for no reason whatsoever. This class had been picked upon to be conferred with a right arbitrarily and without there being the slightest rationale therefor. Persons similarly situated such as sub-tenants and paying-guests etc. were not given the same protection. Section 15-A of the Bombay Rent Act placed an unreasonable restriction upon plaintiff's right to property. The unpaid compensation had accumulated to Rs. 16,943.58 ps. As defendant had failed to vacate and deliver vacant possession and pay the compensation, plaintiff sued for possession and recovery of Rs. 16,943.58 ps. and incidental reliefs.

4. Defendant in his written statement contended that Ex. P-1 clocked a transaction of lease. For that reason, this Court had no jurisdiction to try the suit. Even otherwise, the transaction amounted to a licence which was protected

under Sec. 15-A of the Rent Act. The short duration of the licence as recorded in Ex. P-1 was a device to get over the Rent Act. That was a nominal term and not to be acted upon. If defendant had been placed in possession of the flat, plaintiff was neither in possession thereof nor had access to it. It was not true to say that Section 15-A of the Rent Act was violative of Articles 14, 19 and 31 of the Constitution. Defendant could not be termed a trespasser until plaintiff obtained an order for eviction against him from a competent Court. The rate at which the compensation was claimed was excessive and the most the defendant could be made liable to pay was the standard rent which according to him could not exceed Rs. 225/- per month.

5. Pleadings aforesaid have given rise to the following issues. These are given below with my findings:--

ISSUES FINDINGS

1. Whether the agreement dt. 18-9- 72 cloaks a contract of tenancy? No.
2. Whether a mere indulgence was granted to the defendant by agreement dt. 18-9-1972? No.
3. Has defendant acquired the status of a protected licensee/tenant under Sec. 15-A of the Rent Act? Yes.
4. Has this Court jurisdiction to try this suit? No.
5. Is Sec. 15-A of the Rent Act ultra vires the Constitution as alleged by the plaintiff? No.
6. Relief and costs? Suit dismissed with parties left to bear their own costs.

REASONS FOR THE FINDINGS

6. The first and second issues incorporate the extreme stands taken by the parties. Plaintiff contends that Ex. P-1 depicts a mere indulgence amounting not even to a licence. According to the plaintiff, Ex. P-1 does not indicate a possessory licence. Defendant on the other hand contends that Ex. P-1 cloaks, albeit not very effectively, a contract of tenancy. To appraise these contentions, I will first take up for consideration the depositions of the witnesses examined in the case. The first two witnesses examined by the plaintiff are his daughter and son-in-law. Neither speaks of anything of any consequence and the sole object in examining them appears to be an attempt to get someone to disclaim the defence contention about defendant having acquired any interest in the suit flat. Plaintiff's daughter Karuna has not the faintest notion of what constituted the background of induction of defendant into the suit flat. His son-in-law P.W. 2 purports to be a little bit better informed when he says that he received a first hand account of everything of consequence from his father-in-law. Had there been the slightest truth in the claim put forth by P.W. 2 he would not have found it difficult to give a positive answer in relation to whether or not an advertisement was issued inviting offers to reside in the suit flat and the terms of

such residence. P.W. 2 has however admitted that defendant was introduced to S. N. Khanna through Dhirajlal and also that Dhirajlal was a broker. Describing Dhirajlal as a "friend" does not conceal the truth for defendant has come forth with better evidence in the shape of Ex. D-1 Exception has been taken to the admissibility of Ex. D-1 and naturally enough, for that goes a long way to showing that there is little truth in the plaintiff's attempt to depict the induction of the defendant into the suit flat as an act of charity on the part of S. N. Khanna. Defendant says that he learnt of the suit flat being vacant by coming across an advertisement in the Times of India. This led him on the trail of Dhirajlal and it was from Dhirajlal that he learnt of the vacancy of the suit flat. That Dhirajlal did play an important part in the induction of the defendant into the suit flat is admitted by P.W. 2 the son-in-law of Khanna. If a professional real estate agent or broker was hired for the purpose of finding a suitable occupant in the suit flat, it follows that there was nothing in the nature of altruism motivating Khanna when he permitted defendant to occupy the suit flat. When therefore defendant says that he paid commission or brokerage to Dhirajlal it is not difficult to believe him. But a broker can be engaged for inducing a tenant as also a licensee, though not to put it in the words of the plaintiff, one to whom a mere indulgence is being granted. Defendant's assertion that he was given something in the nature of an assurance to look upon Ex. P-1 as a mere cloak to conceal a transaction of lease cannot be believed. Defendant has an interest to claim the biggest possible interest that he has in the suit flat so as to continue occupation thereof. From his background it does not appear that he is the sort of person who would be forced into executing documents giving the upper hand to the other party with whom he was dealing. Even in the year 1972, though a stripling, defendant was a Director in a concern dealing in automobile spare parts. He was attending a Law College and had engaged brokers to find out suitable accommodation for himself. This was not left wholly to the brokers for he on his own also waded through newspapers containing advertisements for vacant accommodation. When pointed out to the recitals in Ex. P-1 apparently going against his theory of having been given an assurance that he would be treated as a tenant, although not in the matter of quantum of rent, defendant came out with the story that Khanna's broker Dhirajlal had told him not to pay undue attention to the words used, for the real intention was that he would be treated as a tenant. It is not possible to believe this version of defendant. He admits that there were objectionable features in Ex. P-1 and this realisation came to him even before he affixed his signature to the document. It is not as if he kept the objections to himself. He voiced his objections to Dhirajlal and thereafter signed the document. From defendant's evidence we get the information that the accommodation problem was not really very acute insofar as he was concerned. He had been to inspect certain premises in Grant Road and Peddar Road. These were rejected by him and he does not say that the rejection was on account of the rent or licence fee demanded being beyond him. Therefore, what led to the rejection must have been unsuitability of the accommodation offered or the other terms of such offer. In the correspondence preceding the institution of the suit

there is no reference to any sort of compulsion being brought to bear upon the defendant so as to compel him to affix his signature to Ex. P-1. To sum up, the oral evidence does not indicate any great pleasure on either side culminating in the document Ex. P-1.

7. The terms of Ex. P-1 have been interpreted by the parties in different ways. On behalf of the plaintiff stress is laid on the fact that the apparent tenor of the document is one of leave and licence, that the duration of the occupancy is for a period of 11 months without an option of extension, the licensee being placed under severe restraints in the matter of payment of the licence fee, the joint use of the flat and the defaults occasioning a termination or cancellation of the agreement. On behalf of the defendant it is argued that the substance of the transaction shows it to be a concealed lease. The tests to determine whether a transaction is a lease or licence are easy of enumeration but difficult of application to a given set of facts. Generally speaking, if the agreement between the parties shows an intention to create an interest in the property in favour of the grantee, what results is said to be a lease. A licence on the other hand does not create an interest in property. In *Associated Hotels of India Ltd. Vs. R.N. Kapoor*, *Subha Rao, J.* as His Lordship then was, set out certain propositions saying that these propositions could be taken as well-established. These propositions were (at page 1269) :--

"(1) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form; (2) the real test is the intention of the parties -- whether they intended to create a lease or a licence; (3) if the document creates an interest in the property, it is a lease; but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and (4) if under the document a party gets exclusive possession of the property, "prima facie", he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease."

Tested in the light of these propositions it is plaintiff's contention which must be upheld. The second paragraph of Ex. P-1 speaks of the licensee given a licence "to occupy and use jointly and in common with the licensor". This is not to say that the licensor was making use of the fiat for residence after the exclusion of the document. When P.W. 2 says the contrary, he is telling a lie. In the very nature of things, S. N. Khanna could not have shared the suit flat with the defendant for the only other person in the flat was defendant's wife. The flat consists of a room, bathroom, kitchen and toilet block. It is not possible to believe that a couple, and a newly married couple at that, could share this accommodation in common with another adult male who was not related to them in any manner whatsoever. A faint attempt has been made by P.W. 2 to sound as if S.N. Khanna was doing defendant a favour because of his youth or his being a student at the time of Ex. P-1 was drawn up. If any such consideration was at the back of S. N. Khanna's mind, there was no need for Ex. P-1 and certainly

not, with those strict terms therein. Defendant was a student who was out of favour with his parents and wanted accommodation. S. N. Khanna was a do-gooder and taking pity on the unfortunate student would have straightway permitted him to occupy the suit flat. Nothing more was necessary for the grantee was the favoured one and the grantor the one granting the favour. At the most the grantee would have been asked -- in fact he would have offered on his own to pay the outgoings to the society. Yet, a hefty charge was agreed to be paid by the grantee and that was as much as Rs. 650/-per month. Next, deposits of rent and fixtures etc. were separately taken from the grantee. Ex. P-1 went on to recite that the grantee would not have this or that right, and this, because he was not to believe himself to be a tenant etc. etc. All this shows that hard bargaining went into the drawing up of Ex. P-1 and that the parties with open eyes agreed to formalise the terms settled between them. The shortness of the duration of the licence is not of any consequence for there is nothing in law to prevent the lessor and lessee to agreeing to a short term for the duration of the lease. This acceptance of a short term as the duration of the occupancy is more or less a common feature of transactions in the nature of a lease or licence in any area of rent restriction legislation. On behalf of the defendant reliance is placed upon an indirect extension of the definition of "licensor" in clause 1 of Ex. P-1. The term is to include his heirs, executors and assigns. But significantly no such extended definition has been conceived of for the licensee. S. N. Khanna resided at Amritsar and was a person of fairly advanced age. His son had passed away in 1969 and it was that son who was occupying the suit flat almost permanently. It is quite possible that S.N. Khanna wanted to dispose of the suit flat or having regard to his age thought it prudent to make provision for his not being on the scene afterwards. Therefore the extended definition given to the expression "licensor" does not justify the inference of transferability or heritability sought to be drawn from it by the defence counsel. So far as the plaintiff is concerned, reliance is placed upon the licensor permitting defendant to make use not only of the flat but also the fittings, furniture and fixtures. I do not see how this can necessarily militate against an inference of lease. The apparent tenor of the document shows a clear intention to deprive the licensee of an interest in the property. Therefore even though he was left in exclusive occupation of the premises, it cannot be said that defendant was a lessee. No interest in the property was created in his favour and he had a mere right to occupy and make use of the fixtures and furniture therein. Intention has assumed importance in differentiating between the two transactions. This is made clear by a recent decision of the Supreme Court in *Puran Singh Sahni Vs. Sundari Bhagwandas Kripalani (Smt) and Others*, . His Lordship Saikia, J. speaking for the Bench observed :--

"The intention of the parties in making the agreement is determinative of the question whether it was a lease or licence. The test of exclusive possession though of significance, is not decisive. By mere use of the word lease or "licence" the correct categorisation of an instrument under law cannot be affected. While

interpreting the agreement the court has also to see what transpired before and after the agreement.... The best interpretation is made from the context. The intention of the parties to an agreement has to be gathered from the terms of the agreement construed in the context of the surrounding, antecedent and consequent circumstances. The crucial test would be what the parties intended. If in fact it was intended to create an interest in the property, it would be a lease, if it did not, it would be a licence.... What was given to the licensee was the use of the flat with furniture, fittings etc., which could not be said to have created any interest in the flat though in effect the use continued for a stipulated period of time."

These observations apply almost directly to the facts of this case. S. N. Khanna had engaged a broker though his witnesses now choose to describe the broker as a "friend" of the deceased. The broker was to find out a suitable inductee in the flat. S. N. Khanna did not really need the flat after the passing away of his son in 1969. Though required to visit Bombay quite often, his client the Modelia Mills were well-off and had a guest house in Thana. The Modella Mills being a valued client most of Khanna's visits to Bombay were on account of the said mills. P.W. 2 admits that S. N. Khanna never took his meals in the suit flat but always lunched or dined outside. Defendant was not a helpless student requiring a place for stay. He was a well-to-do person who had got married at just about that time and wanted privacy for himself and his newly wedded bride. He could afford the licence fee S. N. Khanna wanted. The vacancy in the flat was advertised and it was in response to the advertisement that defendant contacted Dhirajlal. Dhirajlal played a fairly important part in the whole affair for he even went to the extent of giving what are termed as "kutchra" receipts. Ex. D-7 is one such receipt. The other representing deposits for the telephone and furniture or advance rent is at Ex. D-6. Plaintiff's Counsel has objected to the admissibility of both these documents, and naturally so, for they most effectively demolished the theory of Dhirajlal being a well-meaning friend of S. N. Khanna as also the defendant. That pose does not carry conviction. All aspects considered, I hold that Ex. P-1 is what it purports to be viz. an agreement recording a leave and licence transaction.

8. Defendant contends that in case Ex. P-1 be construed as licence, he gets the protection of Section 15-A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. This section to the extent relevant reads as follows :--

"(1) Notwithstanding anything contained elsewhere in this Act or anything contrary in any other law for the time being in force, or in any contract, where any person is on the 1st day of February, 1973 in occupation of any premises, or any part thereof which is not less than a room, as a licensee he shall on that date be deemed to have become, for the purposes of this Act, the tenant of the landlord, in respect of the premises or part thereof, in his occupation.

(2)"

Now of course the primary requirement is for defendant to establish that the licence was subsisting as on the 1st day of February, 1973. Plaintiff contends that Section 15-A cannot be availed of because the said provision is unconstitutional and that in any case the licence was not subsisting on the crucial day, and next, that the defendant was not in exclusive possession as is necessary for attracting Sec. 15-A. The constitutionality aspect will be considered separately. In regard to the subsistence or otherwise of the licence as on 1st day of February, 1973, the plaintiff relies on Clauses 2, 13 and 16 to contend that the licence stood terminated even prior to 1-2-1973. The termination allegedly made by word of mouth have been testified to by P.W. 2. P.W. 2's version on the subject is at the best hearsay, for he admits that he was not personally present when S. N. Khanna verbally requested defendant to vacate the flat. P.W. 2's interest in testifying in conformity with the claim in suit is obvious. The correspondence at Ex. P-2 shows that S. N. Khanna addressed two communications to defendant in the month of February 1973. The dates of these communications are 22-2-1973 and 24-2-1973. The first letter i.e. of 22-2-1973 makes no reference to an earlier demand -- whether in writing or oral -- calling upon defendant to deliver vacant possession of the flat to Khanna. On the contrary, this letter contains the following recital :--

"The agreement of leave and licence, therefore, stands cancelled....."

This means that the cancellation was under the letter, of 22-2-1973 itself. In the letter of 24-2-1973 there is a mention of an earlier declaration of the cancellation of the licence and that can only be a reference to the letter of 22-2-1973. Therefore, if a determination of the licence by the licensor be the criterion for deciding the question as to whether the licence did or did not subsist on 1-2-1973, the answer has to go against the plaintiff. If the determination took place on the receipt of the letter dt. 22-2-1973 by the defendant that event must fall on a date subsequent to 1-2-1973. But it is argued that Ex. P-1 contains clauses indicating an automatic or self-operative cancellation of the licence. The words relied upon appear in Clauses 2, 13 and 16 of Ext. P-1. They read as under :--

"2.Provided, however, that notwithstanding anything contained in this clause, the Licensor shall be entitled at all times to revoke the licence hereby granted for breach of any of the terms and conditions herein contained to be observed by the licensor.

13. That the Licence and privileges herein contained shall be cancelled and revoked on the Licensee or any one claiming through or under of them committing a breach of any of terms and conditions of these presents.

16. That on the termination or cancellation of this Licence as provided respectively in clauses 2 and 13 above, the Licensee shall forthwith cease to use and occupy the said flat and shall vacate and hand over the flat and the aforesaid furniture, fixtures and fittings...."

None of these clauses can be read as leading to an automatic cancellation or revocation of the licence during the currency of the licence period from 1-10-1972 to 31-8-1973. The clauses required an act of the licensor to bring about the cancellation or revocation. Clause 2 speaks of the licensor being entitled to revoke the licence. Clause 13 speaks of "the licence and privileges shall be cancelled and revoked". Clause 16 makes it explicit that the termination or cancellation of the licence can be as provided in Clauses 2 and 13. Therefore the theory of automatic cancellation does not come to the aid of the plaintiff.

9. It was agreed that defendant had defaulted in the matter of payment of rent and that constituted an automatic cancellation or revocation of the licence. Now, defendant has tried to show that there was no default in the payment of rent. This is a lie and the only rent paid in time or rather in advance by the defendant before February 1973, was that shown in Ex. D-7. Ex. D-7 is the receipt for the payment of compensation for the month of October 1972. That the compensation for the subsequent months was not paid is clear from the tenor of the defendant's letter dated 5-3-1973. Of course defendant with his legal education and commercial craftiness was not going to come out with an open admission about being a defaulter. Nonetheless, the truth could not be concealed and he did it in his own inimitable way by putting it thus :--

"Please be informed that all rents till last month have been paid by me.... I apologise for the delay in paying previous rents but hence-forth payments of rent will be made on time regularly."

This admission is more than enough to avoid waste of time and space in going over the depositions of defendant and P.W. 3 as to whether the compensation was paid in cash or by cheque and whether or not receipts were properly given. But even default in the matter of payment of rent required an act on the part of the licensor to put an end to the licence. That option was exercised by S. N. Khanna after 1-2-1973. It was argued that S. 15-A was inapplicable to the case of defendant because he was not in exclusive occupation of the suit premises. Admittedly, the suit premises came to more than a room. The mere recital in Ex. P-1 about the licensee being permitted to occupy and use jointly the suit flat with the licensor would not disprove the case of exclusive occupation set up by the defendant. In the very nature of things the premises could not have been shared in jointness between two total strangers like S. N. Khanna and the defendant. Learned Counsel for the plaintiff argues that even if there was no factual jointness in occupation, the licensor was in possession of one of the keys of the flat and had the right to come and occupy the flat whenever he so desired and even during the currency of the licence. This submission cannot be accepted. Theoretical rights cannot exclude the concept of exclusivity in occupation as is contemplated by Sec. 15-A of the Rent Act. True, that section speaks of exclusive occupation on the part of the licensee and this exclusivity may be in existence at the same time as jointness in possession. In the present case the jointness in possession was evidenced by the licensor keeping one set of the flat's keys with

him and ensuring that any visit made by him to the flat during the currency of the licence would not render him liable for "trespass or other misfeasance" (see Clause 7 of Ex. P-1). When Section 15-A speaks of "occupation" it contemplates exclusive occupation which is something less than occupation equivalent to possession in the legal sense of that term. Considered thus, the case of a licensee in exclusive possession such as the defendant albeit with the right of the licensor to enter upon the premises during the currency of the licence would be within the protection of Section 15-A of the Rent Act. I, therefore, hold that having regard to the application of Sec. 15-A, defendant though a licensee has acquired the protection given to tenants under the Rent Act. Once this conclusion is reached, it follows that the jurisdiction to try the suit will be exclusively be that of the Court specified in Sec. 28 of the Rent Act and not this Court.

10. One last point that remains to be considered is the vires of Sec. 15-A of the Rent Act. On behalf of the plaintiff it is contended that Section 15-A has chosen to confer an exalted status upon one particular class and that for no apparent reason. Now Sec. 15-A confers a protection upon licensees during the subsistence of a licence as on 1-2-73 and if the premises in the occupation of such licensees are not less than a room. The currency of the licence has to be as on 1-2-1973. In the matter of conferring the protection upon this or that class the legislature has a wide discretion. Here, perhaps the legislature thought it necessary not to subject licensees of the above class to the whims and vagaries of the licensors. A very large section of the population may have been subject to the whims and fancies of the landlords or whoever it was who had inducted the licensees into occupation. Yet, the protection was not to become unduly wide so that even the unscrupulous could take advantage thereof. The legislature in its wisdom chose to confer protection similar to that of a tenant upon licensees whose licence was current as on 1-2-1973, and, the licensed premises were not less than a room. All such persons at answering to this categorisation, were given the benefit of the protection. That others should have been or could have been given a similar protection is no answer to the point under consideration. The question is not whether Section 15-A suffers from the vice of any under-inclusion. Plaintiff can have no complaint on that score for his real grievance is that no licensees, much less one in the position of the defendant, should have been conferred the protection of Sec. 15-A. The selection cannot be said to be arbitrary as all those who answer to the requirement of the section are given the protection. The argument that plaintiffs fundamental rights under Articles 19 and 31 are infringed by S. 15-A has merely to be stated to furnish its own refutation. Protection had to be given to occupants who have lawfully come into occupation of premises belonging to others, though of course this would be subject to their paying the necessary charges and observing the other terms and conditions prescribed by law. A fetter placed upon the right of owners of property in the matter of leasing or licensing, cannot, but be considered reasonable. The Society is made up of different sections like owners, tenants, licensees and other classes of occupants. Each class has its own problems and needs. A nice balance has to

be struck between the rights and obligations of these classes whose interests may clash. Where the legislature has evolved a measure for the balancing of such interests, it will not be for the Court to strike down that legislation. Curtailments on the right of property are necessary -- in fact, a necessity lest the owners of scarce resources exploit those at a disadvantage. The suit fails and hence the order.

ORDER

Suit dismissed. Deposits made by defendant during the pendency of the suit permitted to be withdrawn, and adjusted towards occupation charges by the plaintiffs heir, provided however, that the same shall not be for a period in excess of three months beyond the date of decision. Having regard to the complex questions that arose for determination, parties are left to bear their own costs.

11. Suit dismissed.