

**(1980) 09 SIK CK 0001**  
**In the Sikkim High Court**  
**Case No : Civil Appeal No. 5 of 1979**

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| Nauranglall Agarwala and Others | Vs | APPELLANT  |
| Smt. Basant Kumari Sud          |    | RESPONDENT |

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**Date of Decision :** 04-09-1980

**Acts Referred:**

**Citation :** AIR 1981 Sikk 22

**Hon'ble Judges :** Anandamoy Bhattacharjee, J

**Bench :** Single Bench

**Advocate :** sicR. Sarkar and N.B. Kharga, for the Appellant; N.K. Maitra, for the Respondent

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## Judgement

A.M. Bhattacharjee, J.—This is an appeal by the tenants-defendants against the judgment of the learned District Judge of Sikkim decreeing the suit filed against them by their landlord for their eviction and for recovery of has possession of the premises tenanted to them and also for arrears of rent. Eviction has been claimed by the landlord on the ground of her requirement of the premises for her bona fide occupation as well as on the ground of default in payment of rent by the tenants, being the two of the three grounds on which "the landlord may evict the tenant" under the provisions of Section 4 of the Gangtok Rent Control and Eviction Act, 1956.

2. The learned District Judge has, however, decreed ejectment on the ground of bona fide requirement only and not on the ground of default, as he has found that though there were arrears of rent due justifying granting a decree for such arrears, the same was not legally sufficient to constitute a ground of ejectment under the provisions of Section 4 of the Gangtok Rent Control and Eviction Act, 1956, in view of the decision of this Court in Shakuntala Bai v. K.N. Dewan 1980 1 Ren CJ 577. The plaintiff-respondent, having this obtained a decree of ejectment in her favour, could have, under the provisions of Order 41, Rule 22, Civil P.C. sought to support the decree, without preferring any cross-objection, also on the ground of the alleged default, though the said ground has been

decided against her in the Court below. But Mr. N.K. Maitra, learned Advocate appearing for the landlord-respondent, has not tried to support the decree on the ground of requisite default in payment of rent and, therefore, this aspect, namely, whether the learned District Judge ought to have decreed ejectment on the ground of default also, need not be considered in this appeal. The tenants-appellants also have not challenged the decree so far it relates to the recovery of arrears of rent. Accordingly, the question relating to rents and the defaults or arrears made in payment thereof would require no consideration in this appeal, which, is, therefore, confined to the only question as to whether the plaintiff has been able to prove that the premises in question are required "for the bona fide occupation of the landlord or his dependents", justifying the decree of ejectment granted by the learned District Judge. Mr. S.R. Sarkar and then Mr. N. B. Kharga, learned Advocates appearing for the tenants-appellants have urged that the learned District Judge went entirely wrong in granting the decree for ejectment, while Mr. Maitra appearing for the landlord-respondent has contended that the learned District Judge was absolutely right.

3. The relevant provisions of the Gangtok Rent Control and Eviction Act, 1956, contained in Section 4 thereof and providing for the grounds for ejectment of tenants of premises have been considered by this Court in details in Paul Sangay Vs. Mahabir Prasad Agarwalla, and that being a Division Bench decision of this Court, the observations made therein are binding on me. It has been pointed out in Paul Sangay's case (supra) that the Act ex facie deals with the difficult problem of scarcity of accommodation and as the provisions thereof clearly demonstrate, is more protective of the interest of the tenants than of the landlords. The Act professes to control premises-tenancies and the rents therefore and the eviction of the tenants therefrom and to restrict and to put an embargo on the power of the landlords to evict tenants at their pleasure. Construing the analogous provisions of the Madhya Pradesh Accommodation Control Act 1961, the Supreme Court has observed in D.N. Sanghavi and Sons Vs. Ambalal Tribhuvan Das, that "the direct and immediate object of the Act is to ensure occupation of accommodation by them who are in need of it" and that "broadly speaking, a construction which fulfils this purpose should be preferred to the alternative construction which frustrates it". To the same effect is the observation of the Supreme Court in the recent decision in Onkar Nath Vs. Ved Vyas, where construing the similarly restrictive provisions of the East Punjab Urban Rent Restriction Act, 1949, it has been observed that "the statute benignly designed to protect tenants from unreasonable evictions has taken care to put restrictions which must be rigorously construed to fulfill the purpose of the Statute". These observations, which are of general applications to all cognate and allied legislations, should also apply to the construction of this Gangtok Rent Control and Eviction Act, 1956, the relevant provisions whereof, contained in Section 4, are reproduced hereinbelow:

A landlord may not ordinarily eject any tenant. When however, the whole or part of the premises are required for the bona fide occupation of the landlord or his

dependents, or for thorough overhauling (excluding additions and alterations), or when the rent in arrears amount to four months rent or more, the landlord may evict the tenant on filing a suit for ejectment in the Court of the Chief Magistrate.

4. In construing these provisions, it has been observed by this Court in Paul Sangay Vs. Mahabir Prasad Agarwalla, at p. 546 of the Ren. C.J.) as hereunder:

As the Preamble of the Act shows, the very purpose of the Act is to control eviction of tenants and the first sentence of Section 4, reading "a landlord may not ordinarily eject any tenant" would give rise to an irresistible impression that the law-making authority regarded the continuity of tenancies as the ordinary and desired state of affairs and termination of tenancies as something extraordinary, or, to put it in other words, regarded "once a tenant, always a tenant" and non-ejectment of tenants as the rule and eviction of tenants as the exception.

5. Relying on the observations of the Supreme Court in Mattulal Vs. Radhe Lal, , while dealing with similar restrictive provisions of the Madhya Pradesh Accommodation Control Act, 1961 and in Neta Ram v. Jivan Lal AIR 1961 SC 499 at 502, while construing similar restrictive provisions of the Patiala and East Punjab States Union Urban Rent Restriction Ordinance, it has further been observed in Paul Sangay Vs. Mahabir Prasad Agarwalla, as hereunder:

The Gangtok Rent Control and Eviction Act, 1956 has imposed restrictions on the right of the landlord to evict and on the jurisdiction of the Court to pass a decree for eviction against the tenant and that the onus of proving the conditions, on proof of which alone the tenant may be evicted, lies on the landlord and that the very purpose of the Act would be defeated if the landlords were allowed to come forward and to get tenants turned out on the bare plea that they want more accommodation for their occupation or want to reconstruct the house.

6. In the light of the aforesaid observations, let me, therefore, consider whether on the evidence on record, the plaintiff-landlord can be said to have discharged the onus and has been able to prove that "the premises are required for the bona fide occupation of the landlord or his dependents", within the meaning of Section 4 of the Gangtok Rent Control and Eviction Act, 1956.

7. The case of the plaintiff as to her requirement of the premises has been made out in paras 6 and 8 of the plaint and the relevant portions thereof are as hereunder:

6. That the plaintiff being in urgent and bona fide requirement of the premises in suit for her existing and new business which is in need of expansion, requested the defendants to quit and vacate the suit premises is or about Dec, 1975, and served a notice to quit on the defendants.

8 That the suit premises, namely, the shop room, godown and flat mentioned above are reasonably and bona fide required by the plaintiff for her existing and new business. The flat is required to accommodate the staff of the plaintiff...

So the requirement pleaded by the plaintiff is the requirement:

(1) for her business, existing and new, as pleaded in paras 6 and 8 of the plaint, and

(2) to accommodate the staff of the plaintiff as pleaded in para 8 of the plaint.

8. In the first notice to quit, Ext. P. 3, dated 7-1-1976, issued by the plaintiff personally, the requirement alleged is for "my personal business", stating further that the said business relates to the "contract of Military Supplies" carried on by her "on behalf of the Denzong Co-operative Society". And in the second notice, Ext. P. 5 dated 25-7-76, served through the lawyer, the requirement alleged is "for her own business", being "for her existing business and also for starting new business" and for accommodating the staff of the plaintiff "in the flat".

9. In other words, both in the plaint as well as in the two notices, the case made out by the plaintiff is that of requirement of the premises for her existing business, for starting new business and for the accommodation of her staff. The learned District Judge has, however, held that "it, therefore, stands proved that the plaintiff bona fide requires the suit premises for her existing and new business" and that "the plaintiff would require the flat now in occupation of the defendants besides for the existing and new business, for accommodating her grown up children also" But the case made out by the plaintiff in the plaint as to the requirement for accommodating her staff and her further case made out during the trial that the premises are also required for her husband's business, have been rejected by the learned District Judge on the ground that neither her staff nor her husband can be said to be her "dependants" within the meaning of Section 4 of the Gangtok Rent Control and Eviction Act, 1956, whereunder a decree of ejection can be granted on the ground of bona fide requirement only when such requirement is of the "landlord or his dependents". And for this the learned District Judge has again relied on the decision in *Shakuntala Bai v. K.N. Dewan* 1980 1 Ren CJ 577 (Sikkim) (supra), where my Lord the Chief Justice, sitting singly, held that the requirement for accommodating an employee of the plaintiff-landlord in the suit premises, when such employee used to live separately and in another State and used to look after the plaintiff's business in that State and used to come only occasionally to the town in the other State where the suit premises were situated in connection with the plaintiff's business, could not be regarded as a requirement for a "dependent" of the plaintiff-landlord to attract Section 4 of the Gangtok Rent Control and Eviction Act, 1956. The learned District Judge has also referred to the decision of the Supreme Court in *B.M. Lall (Dead) by Lrs. Vs. Dunlop Rubber and Co. Ltd. and Others*, , where it has been held by the Supreme Court that if the landlord is under a legal obligation to provide residential accommodation to his employees, the requirement for providing such residential accommodation may amount to a reasonable requirement of the landlord. But in this case, as rightly pointed out by the learned District Judge, there is no evidence whatsoever to show that the plaintiff is under any legal obligation to provide residential accommodation to any

of her staff or as to their number or nature of works and the learned District Judge is, therefore, perfectly justified in refusing to decree ejectment on the ground of such alleged requirement. Here again, I may point out that Mr. Maitra for the plaintiff-respondent has not urged, which he could have under the provisions of Order 41, Rule 22 of the Civil P.C. that the learned District Judge should have granted the decree for ejectment on this ground also and that being so, this aspect would not also require any further consideration in this appeal.

10. The case of the plaintiff as to her requirement of the premises also for the business of her husband was, in my view, rightly rejected by the learned District Judge. As already noted, for this also, the learned District Judge has relied on the decision in Sakuntala Bai's case 1980 1 Ren CJ 577 (Sikkim) (supra), I think the learned District Judge could have referred to and relied on the Division Bench decision in Paul Sangay Vs. Mahabir Prasad Agarwalla, , also, where the expression "landlord or his dependents", as used in Section 4 of the Gangtok Rent Control and Eviction Act, 1956, has been considered and construed in some details.

11. It has been noted in Paul Sangay Vs. Mahabir Prasad Agarwalla, , that there is a long catena of cases of the different High Courts construing the expression "landlord", or "for the occupation of the landlord", or "his occupation", or "his own occupation", or "his own requirement", or "his personal requirement" and similar other expressions in the different enactments relating to eviction of tenants of premises preponderance of those authorities is in favour of the view that such expression would not only mean or relate to the landlord himself but would include his family and dependents and such person or persons as may be essential and necessary for the purpose of such occupation by the landlord. In fact, there is a myriad of precedents on this point laying down that such expressions are to receive and should be given a fair and liberal construction. It is not possible nor it is necessary to refer to those numberless decisions urging almost uniformly for a fair and liberal construction but failing, for obvious reasons, to lay down any uniform standard therefor.

12. The Calcutta High Court in Pushpa lata v. Dinesh (1950) 85 Cal LJ 74 has held (at p. 79) that the expression "his own occupation" does not necessarily mean of the particular individual alone but must be interpreted to include the individual's family and dependents and such person or persons who may be essential or necessary for the purpose of such occupation. This Calcutta decision has been quoted with approval and relied on by a Division Bench of the Patna High Court in Bidhubhusan Sen Vs. Commissioner, Patna Division and Another, where it has been held by Kanhiya Singh, J. that the expression "his own occupation", or "his own business" should be given a wider and liberal connotation so as to include persons who, though not members of the family of the landlord, are living with him and are dependent upon him. Das, C.J. (as his Lordship then was), in his separate but concurring judgment in that case, has also held that the expression "his own occupation" does not mean "only the

occupation of the landlord himself but includes the occupation of other persons who live with the landlord and are economically dependent on him". The Calcutta decision in Pushpalata's case (supra) has also been quoted with approval and relied on by a Division Bench of the Punjab High Court in Nanak Chand Vs. Tara Devi, . The Division Bench decision of the Andhra Pradesh High Court in B. Balaiah Vs. Chandoor Lachaiah, also appears to have relied extensively on the observations of Pushpalata's case (supra), without, however, expressly referring to it and has also referred to and relied on several other decisions of the other High Courts including the Patna decision in Bidhu Bhusan Sen's case (supra) and also two English decisions and his must include all normal examination the landlord, for instance, if the landlord is a married man, he must be entitled to include with himself, "his wife and children" and that "one cannot construe the said expression strictly as applying physically only to the landlord himself" and "must include any normal emanations of the landlord".

13. In Paul Sangay Vs. Mahabir Prasad Agarwalla, , however, this Court has observed that if the enactment in question providing for ejectment of tenants on the ground of requirement of the landlord uses the expression "occupation of the landlord", or "his own occupation", or other similar expressions referring to the landlord only, like the enactment which has been considered and construed by the Calcutta High Court in Pushpalata's case 1950 85 Cal LJ 74 (supra), or by the Patna High Court in Bidhubhusan Sen Vs. Commissioner, Patna Division and Another, , or by Andhra Pradesh High Court in B. Balaiah Vs. Chandoor Lachaiah, , then it may be necessary, proper and also permissible to construe such expressions as not applying strictly or exclusively only to the landlord himself but as including his family or dependents or other normal emanations. But if the enactment in question, providing for ejectment of tenants on the ground of bona fide or reasonable requirement, expressly provides that not only the requirement of the "landlord", but the requirement of some other class of persons also would be a ground of ejectment, and such class of persons are also otherwise "normal emanations of the landlord" or art members of his family, then the requirement, other than the personal requirement of the landlord, in order to justify ejectment under such enactment, must be the requirement of such persons only who can answer the descriptions of that particularly specified class and not of any other persons, even if such person can otherwise be regarded to be "normal emanation" or member of the family of the landlord.

14. As already noted, the Gangtok Rent Control and Eviction Act, 1956, in Section 4 thereof, quoted hereinbefore, uses both the expressions "landlord" and "his dependents", and provides that a tenant may be ejected when the whole or part of the premises are required for the bona fide occupation either of the "landlord" or "his dependents". If the section had used only the expression "landlord" and only provided that a tenant could be ejected when the premises were required for the bona fide occupation of the "landlord" without adding any other person or class of persons, then it could have been held as was held in the decisions of the Calcutta, the Patna and the Andhra Pradesh High Courts, noted

hereinbefore, that a man being a gregarious animal and generally incapable of living alone, the expression "landlord" should be so construed as to include within itself all his "normal emanations" like spouse, children and the like. But "dependents" also may be, as they very often are, normal emanations of a person and members of his family and the expression "his dependents" only having been expressly added to the expression "landlord" in Section 4, all other "emanations of the landlord" or members of his family, who are not his dependents, should be deemed to be excluded. If the expression "landlord" in Section 4, Gangtok Rent Control and Eviction Act, 1956, is construed to include, by itself, all normal emanations and members of the family of the landlord, then the expression "his dependents" would become redundant to a great extent and, therefore, such a construction should, according to the well-established canons of interpretation of statutes, be avoided. As already noted, the Patan High Court in *Bidhubhusan Sen Vs. Commissioner, Patna Division and Another*, has construed the expression "landlord" to include all other persons who live with the landlord and are dependent on him and I would have, if I may say so with respect, agreed with such construction and would have accordingly construed the expression "landlord" in Section 4, Gangtok Rent Control and Eviction Act, 1956, if that expression stood alone and without any other expression added to it signifying a specified class of persons. But to construe the expression "landlord" in Section 4 of the Gangtok Rent Control and Eviction Act, 1956, as to include all persons living with the landlord and "dependent on him" would be to render the very next expansion "or his dependents" entirely superfluous and redundant and thus to hold, in effect that the concerned legislative authority has indulged in superfluity by wasting these words and has used them in vain - the very thing which a court must avoid to do as far as it can.

15. In a sense, this High Court in *Paul Sangay Vs. Mahabir Prasad Agarwalla*, has construed the expression "landlord or his dependents" in Section 4, Gangtok Rent Control and Eviction Act, 1956 in the light of the principles epigrammatically enshrined in the maxims-*expressio unius est exclusio alterius* and "*expressum facit cessare tacitum*" and has, in effect, held that, the express mention of the "dependents" only would exclude all who are not dependents of the landlords, even if they are otherwise the "normal emanations" of the landlord or the members of his family. According to this decision, therefore, I will have to hold that, under the provisions of the Gangtok Rent Control and Eviction Act, 1956, requirement of any person other than the landlord himself, can furnish a ground of ejection only if such a person, whether a wife, a husband, a son, a daughter or any other member of the family, is a "dependent" of the landlord. The learned District Judge has excluded from his consideration the case made out by the plaintiff at the trial, through her husband figuring as P W 1, that the premises were also required for the business of the husband, as according to him, it has not been proved and not even alleged that the husband was or is "dependent" of his wife, the plaintiff. Mr. Maitra has, however, strenuously urged that even if the husband of the plaintiff-landlord is not and has not been alleged or proved to be

a "dependant" of his wife and as such, requirement for his purpose is not a requirement for any "dependent" of the landlord-wife, yet it must be held that the requirement of the husband of the plaintiff-landlord is, in law and also otherwise, the requirement of the plaintiff-landlord herself. I am afraid that in this last quarter of the twentieth century, the idea of the so-called "oneness" of the husband and the wife, originating from the earlier religion oriented societies and their religion based laws, has undergone so much change that the old conception of the husband and the wife being one and being united flesh to flesh and bone to bone and all that, the wife and the husband being two halves, better or worse, of the one whole, has been eroded almost beyond recognition and the sacred and very often sacramental union, originally thought to be indissoluble until death or even thereafter, has now been made dissoluble at any time even by mere consent. A spouse, living separately from and independently of the other spouse, is not an uncommon phenomenon these days; such a spouse, or even a judicially separated spouse, is very much a spouse in the eye of law; but such a one figuring as a landlord, cannot possibly be permitted to contend that the requirement for the occupation of the other spouse is in law his or her own requirement to justify eviction of his or her tenants. Be that as it may, I have already pointed out that if the expression "landlord" had stood alone without the words "or his dependents" super-added to it, and the relevant portion of Section 4 only provided that the requirement for the "bona fide occupation of the landlord" was a ground for ejectment, without providing further and expressly that the requirement of any other person, whether a relation or a dependent, would also be a ground of ejectment, it would have been possible and permissible to allow the expression "landlord" all reasonable expansion to include all such relations or persons whose company may be regarded as essentially or socially necessary for the proper occupation of the landlord. But the law-massing authority, after providing that the requirement for the bona fide occupation of the landlord shall be a ground for ejectment, has provided further that requirement for the bona fide occupation of the "dependents" of the landlord shall also be such a ground and since the expression "dependents" would also, more often than not, include relations, the conclusion that should be reasonably drawn according to the ratio in Paul Sangay's case (supra) is that the requirement of the relations, who are not "dependents", would not constitute a ground for ejectment.

16. Mr. Maitra has, however, also argued that even if the expression "landlord" in the context of Section 4 of the Gangtok Rent Control and Eviction Act is not to include the husband of the landlord, the expression "dependent" would include a "husband" as every husband should be presumed to be dependent on his wife and vice versa, and it is for the party contending the contrary to prove the contrary. Mr. Sarkar who appeared for the appellants at the first stage of hearing has, however, contended that it may be very much desired and may be a cherished social goal that a husband should be "dependent" on the wife and may in fact be "dependent" on the wife in a social, moral, ethical, aesthetic, emotional

or psychological sense; but he has argued that the expression "dependent" in the relevant context of Section 4, Gangtok Rent Control and Eviction Act, 1956 should mean and, in view of the decision of this Court in Shakuntala Bai's case 1980 1 Ren CJ 577 (supra), shall mean a person who is economically dependent. It is true that the exact scope of a term in a statute depends to a great extent on the context in which it is used including the surrounding provisions, but I have not been able to find anything in the relevant context of Section 4 of the Gangtok Rent Control and Eviction Act or in its other provisions to justify a circumscription of the expression "dependents" to persons who are only economically dependent. I have also not been able to find anything in the relevant observations in Shakuntala Bai's case (supra), wherefrom it can be contended, as has been contended by Mr. Sarkar, that this Court has, by way of a judicial definition, so to say, narrowed and limited the extent of the boundaries of the expression "dependents" in Section 4 of the said Act and has held that dependence must in all circumstances be entirely a matter of finance. The relevant observations in Shakuntala Bai's case, relied on by Mr. Sarkar, are as hereunder:

The expression "dependents" occurring in this provision has not been defined in the Act but would not cover the occupation by the Munim or by the representative of the Oil Company. The word "dependents" would mean a person who is either living with the plaintiff or gets financial or other material support for his up-keep. An employee who resides separately and only works for the landlord in his business can on no account be termed as a dependent of the landlord.

(Underlining mine)

As will appear from the observations quoted above and also from the judgment, my Lord the Chief Justice in that case was considering the question as to whether the requirement for the residence of an employee or Munim residing separately and looking after the business of the landlord at different place in different States and coming only occasionally to Gangtok to look after the business there or the requirement for the occasional residence of the representatives of the Oil Company supplying petroleum and other similar products to the landlord for her business in those products, could be regarded to be a requirement for the "dependents" of the landlord and while answering the question in the negative, his Lordship, made the aforesaid observations. In the circumstances, his Lordship neither intended nor is expected to lay down nor really formulated any all-embracing and comprehensive tests that would govern all situations which might arise under the relevant provisions. But that apart, it would amount to a serious misreading of the observations quoted above if it is contended, as has been urged by Mr. Sarkar, that therein his Lordship construed the expression "dependent" in Section 4 of the Gangtok Act to mean only those who are dependent only economically. It is irresistibly clear from the word "or" in the observation quoted above that a person living with the landlord may be a "dependent" within the meaning of the relevant provisions even though he does

not get any "financial or other material support for his up-keep". I must, however, that, notwithstanding his contention as stated above, Mr. Sarkar has very fairly conceded that the very same expression "dependent" in similar context in allied enactments operating in other States has been differently construed by other High Courts and has himself drawn my attention to a recent single Judge decision of the Kerala High Court in *Muhammad and Others Vs. Sinnamalu Amma*, where it has been held (at p. 24) that "it would be an undue restriction of the word "dependent" to limit it to one who is only financially dependent upon the landlord". The Kerala decision has referred with approval to the decisions of the Punjab High Court in *C.L. Davar v. Amar Nath Kapur* ILR 1962 2 P&H 484 and of the Delhi High Court in *Govind Dass and Others Vs. Kuldeep Singh*, . If it was necessary for me to decide this question in this appeal, I would have respectfully agreed with these decisions and would have held that dependence, for the purpose of the relevant provisions of the Gangtok Rent Control and Eviction Act, may not and need not be in all cases financial or economic dependence. To illustrate, in unmarried daughter or a widowed daughter law or an aged parent may be suitably employed or may otherwise have sufficient independent means and as such may thus be financially or economically independent in the fullest sense but yet may be wholly enable to live separately and may require (sic) the care and protection from the parents or parents-in-law or the children; such a daughter or daughter-in-law or parent may, therefore, be a "dependent" within the meaning of Section 4 of the Gangtok Act, notwithstanding her or his financial or economic independence.

17. But I think that for the purpose of this case it is not necessary for me to decide the question as to whether or not, u/s 4 of the Gangtok Rent Control and Eviction Act, the requirement for the husband of the landlord can be a requirement of the landlord or can be a requirement of the "dependent" of the landlord where the husband is not dependent on the landlord-wife economically or financially. Because, even assuming that the requirement the business of, the plaintiff's husband in law a requirement for the plaintiff-landlord herself or a requirement of her "dependents", the evidence on record singularly fails to make out a case for such requirement. Figuring as PW 1 and deposing for the plaintiff herself as her constituted attorney, PW 1 has no doubt alleged that "the premises are required by the plaintiff for her own business, for my business and for expansion of our own business" but has adduced no evidence whatsoever, oral or documentary, to show what is the present or what would be the future nature, extent or volume of his business at Gangtok or in Sikkim, wherefrom it may be concluded that the premises are or can be bona fide required for such business. He has said that he "has submitted the lowest tender for supply of milk to the Army and the premises are required for this purpose also" but has admitted in cross-examination, that he has "not yet received acceptance of my tender with the Military Authority". So, admittedly he has not yet secured any such contract work and even assuming that his tender is the "lowest", as asserted by him, it is neither the law nor a fact that the lowest tender has got to be accepted. That

being so, I am afraid that there is no evidence on the record from which it can be held that the premises are or can be required bona fide for the business of the husband of the plaintiff-landlord, assuming that the requirement of the husband of the landlord is in law the requirement of the landlord herself, or is a requirement of her dependent.

18. In this view of the matter, I need not consider the further argument advanced by Mr. Sarkar for the tenants-appellants that this further case made out by the plaintiff only at the stage of the trial as to the requirement for her husband's business must be excluded from consideration, as such a case was not made out either in the plaint or even in any of the preceding notices served by the plaintiff-landlord on the defendants-tenants, being Exts. P 3 and P 5. The general rule no doubt is that relief granted to a party should be founded on the case made out by him in his pleading and that if a party asks for a relief on clear and specific grounds then it would not ordinarily be open to him to attempt to sustain his claim to the relief on a ground which is entirely new. But at the same time, as pointed out by this Court in *Bishnu Kala Karki Dholi Vs. Bishnu Maya Darjeeni*, it is also not the law that relief can never be granted on a case not specifically pleaded and that the rule "*Secundum allegatta et probate*" need not be and has not been strictly applied where there can be or has been no surprise or prejudice to the other party. But this question need not detain me any further because, as already noted, I have already held that a claim for the requirement of the husband of the plaintiff in this case, even if provable under the relevant law, has not been proved on facts. But as to the argument that no such requirement was alleged in the Notices being Exhibits P 3 and P 5, I would only point out that now by the unanimous seven Judge Bench decisions of the Supreme Court in *V. Dhanapal Chettiar Vs. Yesodai Ammal*, it has been held that no notice to quit under the general law is necessary in a case governed by any specific Premises-Tenancy legislation, and such a notice may be necessary only if the same is specifically required by any such legislation, though earlier there was a sharp divergence of opinion as to the necessity of giving such notice and also as to the necessity of stating the grounds of ejectment in such notice. The provisions of the Gangtok Rent Control and Eviction Act, 1956 do not provide for or require any such notice. But it is one thing to say that no notice is necessary or that no ground is required to be mentioned therein and an entirely different thing to state that the ground specifically alleged in such notice can be added to or substituted by a new and different ground in the plaint or at the trial. At any rate, such new or different ground, whether in addition to or in substitution of the earlier ground, would make the new ground look very much like an afterthought and as such to be doubtful.

19. This brings me to the consideration of the most important question in this case, namely, whether the learned District Judge is right in holding that "evidence on record sufficiently proves that the suit premises are bona fide required for the use and occupation of the plaintiff and for her existing and new business".

20. There can be no manner of doubt that before decreeing a suit on the ground of the landlord's bona fide requirement for his own occupation, whether for residence or business or otherwise, and granting ejectment of tenants from the house occupied in part by the tenants and in part by the landlord, as in this case, the Court must be in a position to ascertain the extent of the portion in the occupation of the landlord and whether such accommodation is or is not sufficient for the bona fide requirement of the landlord and if not, whether the portion occupied by the tenant is, therefore, bona fide required to be made available to the landlord. But after repeatedly going through the evidence as carefully as I could, I have not been able to ascertain with any medium of certainty the extent of the portion of the suit-building in occupation of the landlord or, for the matter of that, the extent of the entire suit-building. And the evidence on record, read along with the relevant portions of the pleading, has given me a very strong impression that even the plaintiff or her husband P W 1 has no clear definite or precise idea about the suit-building, its extent and even how many storeys it consists of or they have indulged in deliberate falsehood. In the plaint, signed and verified by the plaintiff herself, the suit-building has been described in para 1 as "a three-storeyed pucca building". In reply to the defendants' assertions in para 1 of the written statement that "the building in question has 5 storeys and not 3 as mentioned in the plaint", the plaintiff, in para 1 of her replication, has again reiterated that "the building in fact is a three storeyed one and is not a five storeyed one". In the notice served through lawyer, Ext. P. 5 dated 25-7-76, the suit building was also described as "a three-storeyed pucca building".

21. P W 1, the husband and constituted attorney of the plaintiff and deposing in this suit for and on her behalf, has in the beginning of his deposition in examination in-chief, described the suit-building as "three-storeyed pucca building" but at the end of his cross-examination has admitted that "the building has got five storeys". But the Pleader-Commissioner, PW 3, in his report Ext. P-9 has, however, stated that "it is a 6 (six) storeyed R.C.C. building".

22. From all these, therefore, it cannot be ascertained with any amount of certainty as to what is the extent of the suit-building and even how many storeys it consists of and how many storeys or what portions of the building are in possession of the plaintiff-landlord and how many storeys or what portions are in possession of the tenants and whether the portions in possession of the landlord are not or cannot be sufficient for the business, existing and new, of the plaintiff-landlord. And if this much only, namely, what is the total extent of the entire suit-building and the accommodation of space available therein and how much of it is in occupation of the landlord and, as such how much more he can bona fide require, cannot be ascertained, then I do not understand how any Court can find that the landlord bona fide requires the premises or any part thereof or requires more accommodation or space than she has now. I may frankly confess my inability to understand how a Court can decree ejectment in favour of a landlord and order recovery of possession of the portion occupied by the tenants, on the

ground that the landlord bona fide requires that portion, without ascertaining extent of the portion occupied by the landlord and without thus being able to determine how much more the landlord can require for his bona fide occupation.

23. In para 3 of the plaint, the suit premises that is, the portions occupied by the defendants-appellants, have been described to consist of- (1) one shop room, (2) one that, consisting of two rooms, store, kitchen, bath and latrines in the second floor and (3) one godown in the basement (ground floor). So, even assuming that the shop-room is on another floor, the tenants, even according to the plaint case, are occupying, in whole or in part, only three floors, name is the basement-cum-ground floor, where the godown is situated, the second floor used as residence and another floor where the shop "Shyama Auto Agency" may be situated. In his deposition also P W 1 has said that besides the shop-room where "Shyama Auto Agency" is located, "the defendants have got their godown at the basement and they are occupying one flat as residence. This being the definite case of the plaintiff in the plaint as well as in the evidence, it is really difficult to understand law the Pleader-Commissioner, P W 3 has found, as stated in para 3 of his report, Ext. P9, that "among the six storeys, the 1st 2nd, third and bigger portion on the fifth floor are exclusively occupied by the defendant". It is also difficult to understand that if the third floor is thus "exclusively occupied by the defendants", as noted in para 3 of the report, how the Pleader-Commissioner has found "packets of eggs" of the plaintiff" on the passage of the third floor".

24. As will appear from the Order No. 19 dated 20-4-78, the Pleader-Commissioner was in particular, asked to make inspection as to "the nature and extent of accommodation of the plaintiff" and "how the present accommodation is being utilized" and "if any other portion in the suit-building is available to the plaintiff". But I must say but the Commissioner has wholly failed to help the Court on any of these points and has not been able to state, either in his report or in his deposition, with any amount of clarity as to what was the nature and extent of the accommodation occupied by the plaintiff and how the same has been utilised. I cannot but feel that the evidence of P W 1, representing the plaintiff; read along with the evidence and report of the Pleader-Commissioner gives a very much confused picture as to the nature and extent of the entire building and of the suit-premises and also of the extent of the accommodation occupied by or available to the plaintiff-landlord and/or the defendants-tenants and, as already noted earlier, P. W. 1, the husband of and the sole witness representing the plaintiff, has made the confusion worse confounded by making divergent statements on different occasions. Apart from what has already been noted hereinbefore, it may be pointed out further that while according to para 3 of the plaint, the flat used as residence by the defendants-tenants is "on the second floor", P.W. 1 has stated in cross-examination that "the basement of the building is in possession of the defendants and on the portion above the basement, they have their residence", which would obviously mean that the residence of the defendants is on the first floor and not on the second floor. In this state of affairs, I am afraid that it would not be possible for me to hold that

for her business, existing or new, or for the matter of that, for any other purpose, the plaintiff bona fide requires more accommodation than she has now, as it is not possible to ascertain with any reasonable certainty as to what is the extent of the entire suit-building and what is the extent of accommodation in the occupation of the plaintiff and, as such, to ascertain what and how much more accommodation, if any, can be required for her existing business or its expansion or any new business or any other purpose.

25. But that apart, and even otherwise, I do not think that the plaintiff has been able to prove that for her business, existing or new, she bona fide requires the portion of the house in the occupation of the defendants. As to the nature, extent and volume of her alleged business, the evidence of her sole witness, P W 1 is as hereunder:

The plaintiff is carrying on the business of supply of the eggs to Army through Denzong Co-operative Society Limited and her annual turnover is Rs. 16/17 lakhs. She has also a transport business. The plaintiff has got no place at Gangtok to store eggs and for this reason the premises in dispute is required, by her.... At present for lack of accommodation she has to stock the eggs at Siliguri. The shop portion of the premises would be utilised by the, plaintiff for opening a shop under the style of Softy Tea Centre where cold beverages, confectioneries, eggs and poultry birds would be sold... The plaintiff has to incur additional expenditure of Rs, 2/- per hundred eggs by storing them at Siliguri.... We have to pay toll tax on all the materials unloaded in Gangtok.... Our eggs are taken by our trucks to the points of supply for delivery.... It is correct that toll tax is to be paid for unloading within the bazar limits.

26. In other words, to put it shortly, the case as made out is that the plaintiff requires the suit-premises for storing the eggs which she supplies to the Army through Denzong Co-operative Society and also for opening a new shop under the style of Softy Tea Centre for selling beverages, confectionery, eggs etc., therefrom. It is stated that the plaintiff has a transport business, but it has not been stated whether such business or any part thereof is carried on at Gangtok or anywhere in Sikkim or at their native place and, therefore, such transport business even if there be any, need not be taken into consideration for ascertaining the requirement of the plaintiff for the suit-premises for her business at Gangtok. But the alleged business of supplying eggs etc., by the plaintiff to the Denzong Co-operative Society and its extent and volume would have been otherwise very much pertinent in this case. But P W 2 Gopal Krishnan, a manager of the Denzong Co-operative Society, has categorically stated that "since July, 1976, the plaintiff stopped the supply of the articles and provisions to our Society". After this statement of P. W. 2, the plaintiff has made no attempt to show that this statement made by P W 2 was wrong or otherwise mistaken or unreliable and that she is still carrying on the said business with the Denzong Co-operative Society. That being so, the reasonable conclusion would be that the plaintiff is no longer carrying on the business for which she has alleged that she

requires the suit premises for her bona fide occupation, and has ceased to do, so for about three months before the filing of this suit on 16-10-76.

27. But even if it is assumed that the said business of the plaintiff is still continuing, I do not think that there are materials on record to show that the plaintiff is not in a position to carry on the said business in the manner as required without the possession of the suit-premises in the occupation of the defendants or would be able to carry on the same in a better or more profitable way with such accommodation being made available to her or is suffering loss or other inconveniences in carrying on the business with the present accommodation in her occupation. It is true that the plaintiff has tried to make out a case that because of want of space at her disposal at Gangtok, she has to stock eggs at a cold storage at Siliguri and that as supplies are thus to be made by her to the Denzong Society at Siliguri, she is getting only Rs. 41/- per hundred eggs while she can get Rs. 43/- per hundred eggs if she can supply them to the Society at Gangtok. As already noted, it is the evidence of P W 1 that they "have to pay toll tax on all materials unloaded in Gangtok". There is nothing on record to show that Rs. 43/- per hundred eggs supplied by the plaintiff to the Society at Gangtok would be more profitable than Rs. 41/- per hundred eggs supplied to the Society at Siliguri, after taking into consideration the cost of transport and other incidental costs and also the toll tax that would be payable if those eggs are brought and unloaded at Gangtok. But what is more, the plaintiff case that she is getting only Rs. 41/-, per hundred eggs as, for want of space of storage at Gangtok, she is to supply them to the Society at Siliguri, is belied by P W 1's own statement, noted and quoted above, that "our eggs are taken by our trucks to the points of supply for delivery" and also by the statement of P W 2, Manager of the Denzong Society, that "the articles are delivered to our Society at Gangtok, Bordung, Chungthang, Rongli and Lungthung all in Sikkim". If the articles are thus delivered by the plaintiff "to the points of supply" as stated by P W 1 or to the Society at Gangtok and at other places in Sikkim as stated by P W 2, then there can be no reason why the plaintiff shall be getting only Rs. 41/- per hundred eggs, which is a rate for supplies made at Siliguri. Since according is both P W 1 and P W 2, the supplies are being made "to the points of supply" at Gangtok and at other places in Sikkim, the plaintiff cannot suffer or be heard to say to have suffered any loss by way of lesser price for not being able to store the eggs in the suit premises at Gangtok and thus being compelled to supply the eggs at Siliguri. It also appears from Ext. P 10, being a letter dated 23rd. June, 1975, written by the plaintiff to the State Bank of Sikkim, that the plaintiff prayed for being allowed to have overdraft facilities up to the limit of Rs. 2 lakhs to enable her to store eggs at Siliguri in the Siliguri Ice Factory and Cold Storage (P.) Limited, where she has acquired "storing room at an annual rental of Rs. 4,200/-". There is nothing to show that the plaintiff has any reason to be unhappy with this arrangement or that any happier or more profitable arrangement can be made in the suit-premises or anywhere in Gangtok. On the materials on record, therefore, it

cannot be held that the plaintiff bona fide requires any more portion, and, as such, any portion of the suit premises for her business relating to supplies to the Denzong Co-operative Society Limited, even if she is continuing any such business till now.

28. As to the other business which according to P.W. 1 the plaintiff intended to start, namely, a business under the style of "Softy Tea Centre", we get it from the Pleader-Commissioner, P. W. 3, that such a business under such style has already started and "deals in eatable articles like eggs and confectionery, tinned-food etc." and there is no evidence on record to show the extent and volume of business thereof or that the present accommodation provided therefore is not reasonably sufficient for the same. The very fact that P. W. 3 in his report Ext. P 9 has described the shop as a "Stationeries shop" but has subsequently stated in his deposition that eatable articles like eggs, confectioneries and tinned-foods etc., are sold there would make the nature of the shop and the business carried thereon rather doubtful. P. W. 1 has stated further that "the plaintiff has obtained a trade licence for this purpose from Gangtok Municipal Corporation", but no such licence has been produced and the non-production thereof, according to Mr. Kharga, goes to show that the same is not a genuine venture but is a mere temporary show to make out a case requirement, without even a Municipal Trade Licence to show its bona fide. I have not been able to obtain any satisfactory explanation from Mr. Maitra, the learned Counsel for the respondent for the non-production of this licence, alleged to have been taken by the plaintiff, though this new business has been held out as one of the grounds for the requirement of the plaintiff.

29. As already pointed out, the learned District Judge has also held that the plaintiff requires the suit-premises or portions thereof for "accommodating her grown-up children also". But I am afraid, this finding of the learned District Judge also cannot be sustained for more reasons than one. As I have already pointed out hereinbefore, the specific and categorical case made by the plaintiff in paras 6 and 8 of the plaint as to her requirement is for (1) "her existing and new business" and (2) "to accommodate the staff of the plaintiff" and in the plaint, the plaintiff has not even remotely suggested about any requirement for residence, whether for herself or for her children. Assuming, as I may, that these three children, being two daughters aged about 18 and 10 years and one son aged about 15 years, are her "dependants" within the meaning of Section 4 of the Gangtok Rent Control and Eviction Act, 1956 and as such the plaintiff would have been entitled to evict her tenants if the premises were required for the bona fide occupation of these children, I do not think that the plaintiff, not having pleaded such a case in her plaint even remotely, but having pleaded some other and different case specifically and categorically, can be allowed to found her claim on such new grounds. I have already referred to the decision of this Court in Bishnu Kala Karki Dholi Vs. Bishnu Maya Darjeeni, , where, after referring to the decisions of the Privy Council and the Supreme Court, it has been pointed out that in a given case relief may be granted even on a ground not specifically

pleaded, provided there can be or has been no prejudice or surprise to the other party. But I have no doubt that the tenants-defendants in this case can reasonably complain both prejudice and surprise if, after being summoned to meet a specific case made by their landlord as to her requirement of the tenanted premises for her business only, they find the landlord having been allowed to make out a different case of requirement based on an entirely new ground of residence for the children. The case sought to be made out by P. W. 1 at the trial is that "two of the children will have the education in Gangtok and the third one will be visiting on vacations". If the tenants-defendants knew that they would have to meet such a case of requirement for the children, they might have taken necessary steps to disprove the same, by proving, for example that the children are already having their education at such place or places and in such manner and in such courses or streams of studies and in such educational institutions and hostels etc., that no parent would even think of shifting them to a place like Gangtok of that the plea of their having education in Gangtok is a dodge or a rose. I am, therefore, of opinion that the learned District Judge was wrong in allowing the plaintiff to make out this new case dehors the plaint during the trial and in holding that the plaintiff has been able to prove such case.

30. I, therefore, feel that the decree granted by the learned District Judge for eviction from and recovery of khas possession of the suit-premises cannot be sustained and must, therefore, be set aside and I therefore, set aside the decree under appeal so far it relates to eviction and recovery of khas possession and mesne profits. The decree, so far it relates to the recovery of arrears of rent is, however, maintained with proportionate costs, being the amount of the Court-fees payable thereon and save as aforesaid the decree for the remaining amount of costs is also set aside. The appeal is, therefore, allowed accordingly, but with no order as to costs in this appeal.