
(2008) 08 BOM CK 0010
In the Bombay High Court
Case No : Writ Petition No. 49 of 1998

Smt. Zeitumbi Habib Mohamad

APPELLANT

Vs

Shri Thomas Roberto Gomes

RESPONDENT

Date of Decision : 19-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2008) 08 BOM CK 0010

Hon'ble Judges : S.C. Dharmadhikari, J;R.C. Chavan, J

Bench : Division Bench

Advocate : M.S. Usgaonkar, with Mr. I. Agha, for the Appellant; S.G. Dessai with Ms. S. Rodrigues, Advocate, for the Respondent

Judgement

Dharmadhikari, J.—By this petition under Articles 226 and 227 of the Constitution of India, the petitioner is challenging the order passed by the Administrative Tribunal dated 18.8.1997, reversing that of the Additional Rent Controller, Margao dated 27.6.89 in case No. BLDG/139/ARC-II/80. It appears from the record that the first respondent filed an application on 12.11.1976 u/s 22(2)(b)(I) and Section 23(1)(a)(i) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (hereinafter, referred to as "the Goa Rent Act") for eviction of the petitioner from a house situate at Margao, more particularly described in the order passed by the Addl. Rent Controller-II, North Goa, Margao.

2. Upon rival contentions, issues were framed and settled by the Additional Rent Controller. One of the issues (Issue No.3) is "Whether the first respondent proves that he has no other residence at Margao and that he bonafide requires the suit house for his own occupation ?" After discussing the oral and documentary evidence on record, so also appreciating the arguments, the Addl. Rent Controller, by his order delivered on the above date, concluded that the application of the first respondent is liable to be rejected. The case of the first respondent on the ground of sub-letting was disbelieved and as far as bonafide

requirement (Issue No.3) is concerned, the Addl. Rent Controller concluded that a Deed of Partition dated 23.11.76 was executed under which the first respondent became the owner of the suit house. The said deed was subsequently rectified by a Rectification Deed dated 18.6.1979. This Deed of Rectification is registered after filing of the suit/application for eviction, i.e 12.11.76. Hence, there is no cause of action for the applicant and in such circumstances, the Addl. Rent Controller held that the application was liable to be dismissed.

3. Aggrieved and dissatisfied with the order passed by the Addl. Rent Controller, Margao, the first respondent/landlord approached the Administrative Tribunal, Goa by filing Eviction Appeal No. 27/89 and the learned President of the Administrative Tribunal held that considering the facts and circumstances of the case, the first respondent proved that his need to occupy the suit house is bonafide and, therefore, he is entitled to evict the petitioner. In such circumstances, the learned Administrative Tribunal reversed the order of the Addl. Rent Controller and allowed the first respondent's appeal. Resultantly, the petitioner was directed to hand over and deliver the vacant possession of the suit premises/house to the first respondent from the date specified in the order. The Administrative Tribunal held that the petition/tenant is liable to be evicted from the suit house u/s Section 23(1)(a)(i) read with Section 25 of the Goa Rent Act. Aggrieved by this decision of the Administrative Tribunal that the instant petition is filed.

4. The petition was admitted by this Court and the eviction decree was stayed.

5. The petition, thereafter, appeared for hearing and final disposal before a learned Single Judge of this Court. During the course of arguments, the learned Judge's attention was invited to Section 23 of the Goa Rent Act and it was urged on behalf of the petitioner that the wording of clauses (a) and (b) of sub-clause (i) of Section 23(1) is distinct. Firstly, in sub-clause (i) of clause (a) the word "requires" is used; whereas in sub-clause (ii) the words "bonafide requires" is used. Therefore, the standard of proof would be different in situation gathered by the two sub-clauses.

6. Secondly, it was contended that in sub-clause (i) the words are "the landlord is not occupying a residential building of his own in the city"; whereas, in sub-clause (ii) the words are "if the landlord who has more than one building in the city or Town or village concerned and is in occupation of one of such building, but instead requires the tenanted building for his own occupation". The argument was if the landlord is owner of another building which is in his occupation, there is no difficulty and the case certainly falls under sub-clause (ii). However, if the landlord is only a co-owner of another residential building and is in occupation of that building, then, the issue that arises for consideration is whether the landlord is in occupation of any other building owned by him.

7. The case set up by the petitioner-tenant before the learned Single Judge is, on the basis that the landlord in this case is the owner of the suit house but he was

leaving in an ancestral house, the landlord/first respondent has a share in the said ancestral house, in such a case and when the first respondent was in occupation of another house in which he had a share, then, the case does not fall under sub-clause (i) of Section 23(1)(a) of the Goa Rent Act, but, it would fall under sub-clause (ii). In the instant case, the first respondent having invoked sub-clause (i), the eviction could not have been ordered and consequently, the Tribunal's direction to that effect is bad in law.

8. On the other hand, respondent No.1/landlord supported the Judgment of the Tribunal and contended that the Judgment of the learned Single Judge of this Court reported in the case of Shri Ramchandra M. Kamat vs. Shri Damodar Ramchandra Mashelkar and ors., reported in 1989(1) Goa Law Times (161) (referred to as Ramchandra's case) fully covers the controversy. The learned Judge had taken a view that even if the landlord is in occupation of another house of which he is not an exclusive owner, but a joint or co-owner, that is hardly relevant for the purposes of the proceedings seeking eviction u/s 23(1) (a). Therefore, the application would be maintainable in this case and the petition is liable to be dismissed.

9. The learned Single Judge (D.G. Karnik J.) by order dated 7.4.2004, observed that if a person is co-owner of a house in his occupation and in that capacity, desires to file a suit for possession of another house, not exclusively owned by him and occupied by a tenant, then, sub-clause (ii) and not sub-clause (i) of clause (a) of sub-section (1) of Section 23 of the Goa Rent Act would be attracted. Holding thus, he expressed his disagreement with the Judgment of another Single Judge (Dr. G.F. Couto, J.) in Ramchandra's case. In the light of this disagreement, he framed the following question for determination of a Larger Bench.

Whether a suit filed against a tenant for possession of a residential building by a landlord who is in occupation of another residential building as a co-owner, on the ground of bona fide requirement, is covered by sub-clause (i) or sub-clause (ii) of Clause (a) of Sub-Section (1) of Section 23 of the Goa (Lease, Rent and Eviction) Control Act, 1968 ?

10. After the matter was placed before the Honourable the Chief Justice, His Lordship directed that the question, as framed above, should be answered by a Division Bench of this Court. That is how the matter is placed before us.

11. Since we are only called upon to answer the above framed question, it is needless to state that after the question is answered, the matter will have to go before a learned Single Judge for decision on merits. Therefore, it is not necessary to refer to the facts. Suffice it to state that the application for eviction by the first respondent proceeds to state that the petitioner is a monthly tenant of the residential house more particularly described in para (1) of the eviction application. The petitioner is monthly tenant and the tenancy is for a residential purpose. By a notice to quit dated 21.9.76, the lease of the petitioner was

terminated with effect from 30.10.76. The notice was duly received and it is urged that the petitioner has left the suit house and sublet it without the consent of the first respondent. Since the decree for eviction is not passed by the Tribunal on the ground of subletting, this question is not germane and relevant at all.

12. As far as Issue No.3 is concerned, it was contended in the house of his own in the city of Margao, nor has he obtained possession of a residential house of his own. He has no other house and, therefore, he requires the suit house for his residence.

13. The petitioner tenant contended in his written statement that the first respondent/landlord resides in his parental house and, therefore, this reason for eviction is bogus and mischievous. The Application be, therefore, dismissed.

14. Before the Tribunal, it was urged that the parents of the first respondent/landlord were original owners of the suit house and the property as a whole. By virtue of a Gift Deed dated 1.12.65, they gifted 4 % of their undivided share in the suit house in favour of the first respondent. By another Gift Deed dated 13.12.1968, the first respondent's parents gifted yet another 12 % of their undivided right and it appears that by a further Gift Deed dated 13.12.1970 the balance 84 % of their undivided right was gifted to the first respondent and his brothers. Subsequently, Partition Deed was executed between all four owners on 4.9.76 which was registered on 23.11.76 and further rectified in the year 1979 amongst all the co-owners. By virtue of these deeds, the first respondent became owner of the suit house and part of the property/land on which the suit house stands. The Tribunal held that the first respondent has become co-owner of the suit premises by virtue of the first Gift Deed and relying upon the Judgment of the learned Single Judge referred to above, he held that if one of the co-owners staying in an ancestral house cannot exclusively occupy the same, but when such co-owner occupying the ancestral house owns another house of his own which is rented and requires it for his need, then, it cannot be said that the house where he resides falls within the meaning of the term "of his own" appearing in sub-clause (i) of Section 23(1)(a) of the Goa Rent Act. Relying upon the decision of the Supreme Court that one of the co-owners can institute a suit for eviction even in the absence of other co-owners, the Tribunal in this case held that the application was not premature and the first respondent/landlord can rely upon sub-clause (i) of Section 23(1)(a) and seek the petitioner's eviction. This conclusion of the Tribunal is under challenge in this Writ Petition.

15. Mr. Usgaonkar, learned Senior Counsel appearing for the petitioner contended before us that the view taken by the learned Single Judge in Ramchandra's case is, with respect, not a correct law. In his submission, as on the date of the application, all houses are of joint ownership. The building which is occupied by the first respondent is occupied in his capacity as co-owner by him. The other house which is in the city is also owned by him jointly with others. Therefore, when there are more than one buildings, then, the landlord must resort to sub-clause (ii) for eviction of a tenant and an application relying upon sub-clause (i)

of Clause (a) of Section 23(1) is not maintainable. Mr. Usgaonkar contended that Clause (a) is applicable in respect of a residential building. Sub-clause (i) thereof speaks of landlord seeking eviction of a tenant from a building which is owned but, not occupied by the landlord. Whereas, sub-clause (ii) speaks of a situation where the landlord has more than one buildings in the city concerned and he is in occupation of one such building, but instead bonafide requires another building for his occupation. Thus, when the landlord is pressing into service his case for bonafide requirement of another building in the city instead of the one which is in his occupation, then, if the landlord is a co-owner, he must fall under sub-clause (ii). He cannot rely upon sub-clause (i) to evict the tenant as the residential building is not of his own. He submits that the words "of his own in the city" must be given some meaning and it is not as if they are superfluous or meaningless. The legislature intended that the nature of ownership of landlords must be gathered by distinct provisions. If the legislature so intended, then, its intention expressed specifically cannot be ignored. The learned Single Judge in Ramchandra's case ignores the intention and, therefore, the view taken in that case is erroneous and requires reconsideration.

16. Mr. Usgaonkar in support of above contentions, has placed reliance on the Judgment of the Division Bench of this Court in LPA No.5/1992, decided on 16.12.1999, reported in 2000(1) Goa Law Times 154.

17. On the other hand, Shri Dessai, learned Senior Counsel appearing for the first respondent contended that explanation below Section 23 cannot be ignored. That explanation specifically defines expression "landlord". The definition is clear inasmuch as it means a person, on account of or on behalf of or for the benefit of whom the rent of a building is received, but does not include the persons specified therein. Mr. Dessai submits that the term "landlord" is defined in Section 2(j). That definition includes a trustee, guardian or receiver. However, these categories are excluded from the explanation. The intention is clear inasmuch as the landlord who has a necessity and requirement, alone can make an application. Others, on his behalf are included, but not those who are merely collecting the rent. Mr. Dessai then submits that there is no question of nature of ownership coming into play for maintaining an application for eviction. One of the co-owners can file a petition/application for eviction and Section 23 does not deal with locus of the landlord. The categories of the landlords are set out, so that those having more than one buildings are also brought within the purview of the provisions. While bringing them within the purview of this provision, there is no question of any other element being introduced or coming into play. The nature of ownership is not relevant and material at all. Therefore, there is no case for inclusion of joint owners in clause (ii). There is no question of the ownership being single or joint and that can never be a relevant factor. But what is decisive, is the extent of the requirement. In such circumstances, really there is no question of taking any contrary view than that taken by the learned Single Judge in Ramchandra's case. The submission of Shri Dessai is, therefore, that the reference be answered by holding that the application for eviction by a co-owner

will also fall in the respective sub-clauses depending upon whether there is ownership of one building or number of buildings. But, merely because a building is jointly owned, does not mean that the application must necessarily fall under sub-clause (II). Mr. Dessai, therefore, submits that the view to the contrary held by Karnik, J. should not be approved and Ramchandra's case need not be reconsidered.

18. For properly appreciating the rival contentions, it would be necessary to refer to the Goa Rent Act. Act No.2 of 1969 is an Act enacted to provide for the control of rents and evictions and of rates of hotels and lodging houses, and of the requisition of vacant buildings in the Union Territory of Goa, Daman and Diu. The statement of objects and reasons of this Act is clear. The Act clearly aims at prohibiting eviction of a tenant on the grounds other than those specified. One of the grounds that has been specified is bonafide requirement of the landlord of the premises for his own use. In a decision in *Shakuntala Bai and Others Vs. Narayan Das and Others*, , the Honourable Supreme Court has observed that a Rent Control Legislation is beneficial to the tenants and protects them from unreasonable and unnecessary eviction. However, at the same time it ensures that the landlord is not deprived of his property/house even if he requires it for his bonafide use and occupation. Thus, the legislation balances rights of the landlord and tenant and, therefore, such of the provisions in Rent Control Legislations which enable the landlord to apply for eviction of a tenant for his own bonafide use and occupation of the premises, must receive an interpretation which would advance the object and purpose of enacting them.

19. Once such provision is Section 23 of the Goa Rent Act, which is divided into several chapters. Chapter I is titled as "Preliminary" and therein definitions of the terms which are relevant and of every day use have been defined. Term "building" is defined to mean any building, or part of a building, which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose, and includes, the garden, ground and out-houses, if any, appertaining to such building or part of the building; any furniture supplied by the landlord for use in such building or part of the building but does not include a room in a hotel or lodging house. The term "landlord" is defined in Section 2(j), to mean that a person who, for the time being, is receiving, or is entitled to receive, the rent of any building, whether on his own account or on account of, or on behalf of, or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant. The term "member of the family" means

(i) in relation to a landlord who is an individual, his spouse, son, daughter and includes father, mother, grandson solely dependent on the landlord for maintenance:

Provided that in case of married daughter, her husband shall not be entitled to claim any benefit u/s 5, if his wife has already got the said benefit thereunder

and in case her husband has already got the said benefit, the married daughter shall not be entitled to claim the same.

(ii) in relation to a landlord who is a joint Hindu family, the members of such a family:

(iii) in relation to joint owners other than a joint Hindu family, the members of the family as indicated in sub-clause (i) in relation to each of such joint owners;

20. A bare perusal of the same would indicate that the Legislature was aware of the fact that the landlord can be an individual and, a joint Hindu family and the landlords can be joint owners, other than a joint Hindu family and the definition encompasses the members of the family as indicated in sub-clause (iii) of Section 2(l) in relation to each of such joint owners.

21. Chapter II deals with control of letting and one need not refer to the provisions, namely Section 4 (1) and (2) therein in any details. Equally, Chapter III dealing with determination of fair rent is also not relevant for the present controversy. As far as Chapter IV is concerned, it deals with payment and deposit of rent and once again we do not find that any reference to the provisions therein is necessary. Then, comes Chapter V which deals with control on eviction of tenants. Section 21 provides for bar on eviction of tenant and the provision is that notwithstanding anything to the contrary contained in any other law or contract, a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of Chapter V. However, denial of title of the landlord is a ground for eviction. Then comes Section 22 and it sets out grounds of eviction. The other grounds of eviction which a landlord can press into service to evict a tenant have been set out therein and it is not permissible to give a restricted meaning to the term "landlord" appearing therein.

22. The term "landlord" has been construed in several Rent Control Legislations. Further, the Honourable Supreme Court has clarified what the Rent Control Legislations seek to do is to restrict and control the leases and tenancies. They do not create them. Therefore, the general law is not displaced by the Rent Control Legislations. In so far as rights of a lessor and lessee, the lessor/landlord can be an individual and could be joint or co-ownership and that is what is contemplated in general law. The intention is not to deprive a co-owner from suing for eviction of a tenant even if the ground for eviction is restricted under the provision of Rent Control law. Section 22 being pressed into service, if the intent was to cover only an individual within the definition and concept of the term "landlord" then, each of the Rent Control Legislations would not have defined the said concept or term widely. Framers of the legislations were aware that a building, house, properties and tenements are held jointly. Once they are held jointly and co-ownership is really a facet of agency, then each one of them can approach the Court to seek eviction of a tenant by filing proceedings for eviction. The requirement in that behalf is succinctly pointed out by the Honourable Supreme Court in a recent decision in the case of India Umbrella

Manufacturing Co. and Others Vs. Bhagabandei Agarwalla (Dead) by Lrs. Smt. Savitri Agarwalla and Others, . In para 6, the Hon''ble Supreme Court holds thus :

6. Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See Sri Ram Pasricha Vs. Jagannath and Others, : Dhannalal Vs. Kalawatibai and Others, . This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owner. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystalised on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law.

Further, in Kailash Chand and Another Vs. Dharam Das, this is what the Supreme Court observes :

13. We find it difficult to accept the construction placed on the third proviso, in para 14 of the judgment in Molar Mal's case. In Rakesh Wadhawan and Others Vs. Jagdamba Industrial Corporation and Others, , this Court has held that a statute can never be exhaustive. Legislature is incapable of contemplating all possible situations which may arise in future litigation and in myriad circumstances. The scope is always there for the Court to interpret the law with pragmatism and consistently with the demands of varying situations. The construction placed by the Court on statutory provisions has to be meaningful. The legislative intent has to be found out and effectuated. "Law is part of the social reality" (See - Law in the Scientific Era by Justice Markandey Katju, 2000 Ed. p. 33) "Though Law and Justice are not synonymous terms they have a close relationship, as pointed out by the American Jurist Rawls. Since one of the aims of the law is to provide order and peace in society, and since order and peace cannot last long if it is based on injustice, it follows that a legal system that cannot meet the demands of justice will not survive long. As Rawls says "Laws and institutions no matter how efficient and well arranged, must be reformed or abolished if they are unjust". (ibid. p.72). Clearly law cannot be so interpreted as would cause oppression or be unjust.

14. Life is not static and so the law cannot afford to be static. The third proviso cannot be so interpreted as to restrict the right conferred by subsection (3)(a)(i) on the landlord to be exercisable only "once in a life time". The proviso has to be read as providing a statutory expression of a situation which would otherwise

have been held to be mala fides of a requirement. A landlord having obtained possession of any building to satisfy a requirement, cannot again and again plead the same set of circumstances or similar circumstances for evicting tenants one after other. That is what the third proviso aims at providing. The proviso cannot be interpreted to mean that in spite of the requirement having undergone a change or a new requirement unrelated to the previous one having come into existence, the landlord would yet be denied relief under sub-section (3)(a)(i) merely because at some point of time in the past he had resorted to this provision for seeking an eviction. Such an interpretation is too rigid an interpretation and would cause such hardship to the landlord as the Legislature cannot be said to have intended. The examples are available in decided cases and two such are : Jagir Singh v. Jadish Pal Sagar, 1980 (1) RCR. 494 and Brij Lal Puri and Another Vs. Muni Tandon, .

21. What is the scope of the first Proviso ? Whether the occupation by landlord of any other residential accommodation of whatever nature, in abstract and without consideration of any other relevant factor would be enough to attract the applicability of the first Proviso and to deny the landlord his right to seek an order of eviction against the tenant? In our opinion, the first Proviso is not to be read in isolation. It has to be read along with the principal provision to which it is appended. The ground for eviction in the case of a residential building is "he requires it for his own occupation". If the pleadings and the evidence adduced by the landlord do not make out a case of requirement, there would be no question of the tenant being directed to put the landlord in possession. Even on the requirement having been proved, the landlord would be denied the order for possession from the tenant because of his being in occupation of `another residential building owned by him in the same urban area". The occupation of another residential building, to act in denial of the landlord's right to evict the tenant to satisfy his requirement, must have correlation with the requirement of the landlord. To illustrate, another residential building in occupation of the landlord may be crumbling, or may be in dilapidated condition or may consist of very little residential space, say one small room alone, which it would be misnomer to all availability of a a residential building in occupation of the landlord by any stretch of imagination. The Legislature could not have intended such an absurd and unreasonable consequence to follow. In our opinion, the first proviso would come into play only if the landlord is occupying another residential building of his own in the same urban area and such building is considered by the Court as reasonably enough and suitable to satisfy the proven requirement of the landlord. Hence, the first proviso, would not apply in the case before us. It is impractical and unreasonable to hold that the accommodation which is already fully occupied and actually in use of appellant No.2, though technically in occupation of both the landlords can satisfy the requirement of appellant No.1 and his family as well. Rightly the tenant has not urged the plea that the landlord being in occupation of other parts of the building excluding the portion in occupation of the tenant would attract applicability of the first provision so as to

disentitle the landlord from seeking his eviction on the ground of requirement of appellant No.1 who is actually living in a rented house.

25. The expression "his own occupation" as occurring in sub-clause (i) of clause (a) of sub-section (3) is not to be assigned a narrow meaning. It has to be read liberally and given a practical meaning. "His own occupation" does not mean occupation by the landlord alone and as an individual. The expressions "for his own use" and "for occupation by himself" as occurring in two other Rent Control Acts, have come up for the consideration of this Court in *Joginder Pal Vs. Naval Kishore Behal*, and *Dwarkaprasad Vs. Niranjan and Another*, . It was held that the requirement of members of family of the landlord or of the one who is dependent on the landlord, is the landlord's own requirement. Regard will be had to the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region to which the landlord belongs, while interpreting such expressions. The requirement of the family members for residence is certainly the requirement by the landlord for "his own occupation".

26. Undoubtedly, the Himachal Pradesh Urban Rent Control Act, 1987 has been enacted for the purpose of providing for the control of rents and evictions because of paucity of accommodation in urban areas. The Rent Control Legislations, generally aim at preventing rack-renting and resorting to eviction by unscrupulous and greedy landlords, who take advantage of the shortage in availability of accommodations in cities and dictate their terms to the tenants and if they do not follow the dictates, subject them to eviction. The Rent Control Legislations are generally heavily loaded in favour of the tenants and the provision dealing with which the courts at times lean in favour of the landlords is the one which permits the landlord seek eviction of the tenant on the ground of requirement of his own occupation, residential or non-residential. There are weak amongst the tenants as also amongst the landlords. (See - *Joginder Pal's case*, supra, paras 9 and 32) Take the case of a landlord knocking the doors of the court seeking its assistance for a roof over his head or for a reasonably comfortable living, when he is himself either in a rented accommodation or squeezing himself and his family members in a limited space, while the tenant protected by Rent Control Law is comfortably occupying the premises of the landlord or a part thereof. Provisions like Section 14(3)(a)(i) of the Act should be so interpreted as to advance the cause of justice instructed by the realities of life and and practical wisdom. While the tenant needs to be protected, the Courts would not ordinarily deny the relief to the landlord, who genuinely and bona fide requires the premises in occupation of the tenant for occupation by himself or for the members of his family, unless they feel convinced that the so-called requirement of the landlord was a ruse for getting rid of an inconvenient tenant or was otherwise mala fide and did not fall within the four corners of the ground for eviction provided by the law.

23. Then comes section 23 which enables a landlord to apply to the Controller for an order directing the tenant to put him in possession of the building. The said

section reads thus :

23. Landlord's right to obtain possession.- (1) A landlord may, subject to the provisions of section 24, apply to the Controller for an order directing the tenant to put him in possession of the building -

(a) in case it is a residential building, -

(i) if the landlord is not occupying a residential building of his own in the city, town or village concerned and he requires it for his own occupation or for the occupation of any member of his family, or

(ii) if the landlord who has more buildings than one in the city, town or village concerned is in occupation of one such building and he bonafide requires another building and instead, for his own occupation.

(b) in case it is a non-residential building which is used for the purpose of keeping a vehicle or adapted for such use, if the landlord requires it for his own or to the possession of which he is entitled in the city, town or village concerned which is own or to the possession of which he is entitled whether under this Act or otherwise:

Provided that a person who becomes a landlord after the commencement of the tenancy by an instrument "inter vivos" shall not be entitled to apply under this sub-section before the expiry of five years from the date on which the instrument was registered:

[Provided further that in case of gift from parents the above period of five years shall be reduced to two years]

Provided further that where a landlord has obtained possession of a building under this section, he shall not be entitled to apply again under this section -

(i) in case he has obtained possession of a residential building for possession of another residential building of his own;

(ii) in case he has obtained possession of a nonresidential building for possession of another non-residential building of his own.

(2) Where the landlord of a residential building is a religious, charitable, educational or other public institution, if may, if the building is required for the purposes of the institution, apply to the Controller, subject to the provisions of Section 24, for an order directing the tenant to put the institution in possession of the building.

(3) A landlord who is occupying only a part of a residential building, may notwithstanding anything in sub-section (1), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for his own use or for the use of any member of his family.

Explanation:- For the purpose of this section, a landlord means a person, on account of or on behalf of or for the benefit of whom the rent of a building is received but does not include an agent, trustees, guardian or receiver.

24. A bare perusal of the same would indicate that subject to Section 24, the landlord can file an application to the Controller and request for an order directing the tenant to put him in possession of the building. Clause (a) of sub-section (1) of Section 23, deals with residential building and sub-clause (i) thereof states that if the landlord is not occupying a residential building of his own in the city, and he requires for his own or for the members of his family he can seek eviction of the Tenant. Sub-clause (ii) deals with if the landlord who has more buildings than one in the city, and is in occupation of one such buildings but bonafide requires another building instead, for his own occupation. Now, it is pointed out to us that the words "his own", "he requires", "his own occupation" are not indicative of the fact that the legislature is only dealing with individual landlords in clause (a). Proviso to sub-section (1) is very clearly pointing out towards the fact that the landlord of a residential building could be a religious, charitable, educational or other public institution. Therefore, the legislature has in its mind both, individuals and other persons as landlords. Sub-section (3) states that a landlord occupying only a part of a residential building, may notwithstanding anything in sub-section (1), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for his own use or for the use of any member of his family. Thus, the landlord of a residential building has been given an additional right to apply to the Controller for an order directing the tenant to be evicted from a whole or any portion of the remaining part of a building in case the landlord himself is occupying a part of a residential building. Now, here also one need not restrict the term "landlord" only to an individual, as that would mean that if the landlord is of the categories specified in sub-section (2), then it would not be able to apply at all. Thus, sub-section (1) of Section 23, is dealing with a residential building and enables the landlord of such a residential building to sue for eviction of the tenant in occupation, if the landlords are themselves not occupying the residential building belonging to them or if they are occupying one residential building, they may sue for eviction of the tenant who is occupying the other building by demonstrating that they would require the other building for their own occupation. While sub-clause (i) can be availed of for his own need or requirement of any member of the family, sub-clause (ii) can be availed of by the landlord who has more buildings than one, but he requires another building which is tenant occupied, intended for his own occupation. About this part, there is no dispute at all.

25. In Ramchandra's case the issue before this Court was that the petitioner was a tenant, occupying house bearing No.45, situated at Ward No.8 of Bicholim. The respondent No.1 before this Court filed proceedings for his eviction on the ground that he had changed the use of premises. Further that, he required for

his personal occupation. The Rent Controller dismissed the application by Judgment dated 31.12.1991. However, in appeal, the Administrative Tribunal reversed that judgment and ordered eviction of the petitioner.

26. Before this Court, as far as first ground for eviction is concerned, that is given up we are not concerned with it. The learned Single Judge was considering the challenge to the decree for eviction on the ground of personal occupation of the landlord and after perusing the material on record, the Court referred to the rival contentions. The application for eviction on the ground of bonafide need, according to the tenant, fell under sub-clause (ii) of clause (a) and did not, therefore, specify the requirement of law. The argument was that in the application for eviction the landlord alleged that he was in bonafide need of the rented premises for occupation of his married son and not for his own occupation. The argument of the landlord was that he was not taking shelter of sub-clause (ii) of clause (a). He could have stated that he needed the premises for the use of his one of the married sons. Thus, the application strictly speaking fell under sub-clause (i) of clause (a). The landlord contended that his case comes under sub-clause (i) because he was not occupying any residential building of his own in the city. He merely alleged that the house where he was staying was not sufficient for his needs and the needs of his family and, therefore, he required the demised premises for accommodation of one of his married sons. This Court considered the evidence on record and concluded that the house where the first respondent/landlord was residing did not belong to him exclusively, but was a common ancestral house. Apart from the first respondent, and members of his family, his brothers also have share in the same. In these circumstances, it could not be held that the landlord is occupying the residential building of his own in the city, for building of his own connotes an idea that such building exclusively belongs to such person. It is in that context that the observations in para 20 have been made by the learned Single Judge. The real controversy before the learned Single Judge in Ramchandra's case was whether the suit house is not belonging exclusively to the landlord. If one of the co-owners who stays there owns another house of his own which is rented and requires it for his needs and that of his family, it cannot be said that the house where he resides presently as co-owner is a residence of his own. It is in that context that the observations have been made by the learned Single Judge holding that the landlord cannot be held to be disentitled to seek eviction of a tenant who is residing in his house merely because the landlord is a co-owner of a house presently in occupation. The learned Single Judge held that the case squarely falls u/s 23(1)(a)(i) in the facts and circumstances of that case. Ramchandra's case is not an authority for the proposition which Brother Karnik, J. culls out from the same. Before Brother Karnik, J. reliance was placed on Ramchandra's case for the proposition that the landlord can file a suit against the tenant for possession of a residential building even though the landlord is in occupation of another residential building as a co-owner. Such a landlord can press into service the ground of bonafide requirement. The argument was that

the landlord still is entitled to seek eviction by resorting to Section 23 of the Goa Rent Act.

27. Thus, the learned Judge read Ramchandra's case as an authority for the proposition that the application for eviction of the landlord would fall under sub-clause(i) and not sub-clause (ii) of Clause (a) and went further in concluding that such a plea essentially deals with a case of more than one building and, therefore, must necessarily fall under sub-clause (ii) of Clause (a). Karnik, J. concluded that where a landlord is in occupation of another residential house, which is not owned by him exclusively, but owned jointly with others, the case would still fall under sub-clause (ii) of Clause (a) of sub-Section (1) of Section 23 of the Goa Rent Act. In our view, Karnik, J. brought into play nature of ownership and that is how he construed the sub-clauses.

28. In our view, the sub-clauses read as a whole and harmoniously, so also with the substantive part, would indicate that the legislature merely categorized the landlord under the sub-clauses. Sub-clause (1) deals with landlord of a single building belonging to him, but not in his occupation. Here, it is unnecessary to go into the nature of the ownership. What is relevant under sub-clause (i) is occupation and nothing else. If the landlord owns one building exclusively or jointly, but is not occupying it, and has let it out, then, he can seek eviction of the tenant provided he requires it for his own occupation or for the occupation of members of his family. If this part of section 23 is read with the definition "member of the family" reproduced above, then, there cannot be any confusion and the legislative intent is clear. A member of the family in relation to individual landlord, would include his spouse, son, daughter, and father, mother, grandson solely dependent on the landlord for maintenance. If the landlord is a joint family, then, the member of the joint family is included. In relation to joint owners, other than a joint Hindu family, the members of the family as indicated in sub-clause (i) of Section 23(1)(a) in relation to each of such joint owners are included. Thus, it is not necessary as held in Ramchandra's case that the landlord cannot seek eviction of a tenant from the building not occupied by him, merely because he occupies another building and in which he has a share, even if a portion of such building is insufficient for his accommodation.

29. The Landlord, whether individual or co-owner, is not prohibited from suing admittedly and Karnik J. does not dispute it either. However, as to which sub-clauses would be attracted must ultimately depend upon facts and circumstances of each case, and no straight jacket formula can be applied. The case will have to be decided upon the evidence led and if it is proved that the landlord owns building or buildings, the relief could be granted accordingly. The relief cannot be denied merely because the application does not specifically mention or set out the sub-clause. It is well settled that the label attached to the application may be relevant, but is not decisive. It is the substance of the matter which is more important than the form. If the view taken by Karnik, J. is approved, it would mean that a building which is, or is intended to be let out separately for use as a

residence or for commercial use or for any other purposes, cannot be made subject-matter of eviction u/s 23(3) of the Rent Act. Sub-clause (i) deals with a residential building of his own by the landlord in the city, but not occupied by him. Such a landlord may be in occupation of some other building, but may not be of his own, still, if he wants his own tenant occupied building for his use or for the occupation of his members of his family, he can seek eviction of the tenant therefrom. He is not disentitled to seek eviction merely because he is occupying a building in which he has share. That is the interpretation in Ramchandra's case and which does not go contrary to sub-clauses (i) or (ii). Such a case, does not necessarily mean that the landlord is owner of both the buildings. The term "is owned" would mean exclusive ownership and a single building is covered by sub-clause (i).

30. In sub-clause (ii) a landlord who has more buildings in the city, is covered. He may be exclusive owner of the building which he is occupying. He may be exclusive owner of the other building which is occupied by the tenant. Yet, he may seek eviction of the tenant from the other building, if he points out that the other building is more suitable for his own occupation. In other words, the building owned and occupied by him personally being allegedly insufficient, the landlord can seek eviction of the tenant from another building of his ownership if he proves that the another building is suitable for his occupation and he bonafide requires it. As to how concept of co ownership or joint ownership alone is being dealt with by this sub-clause is not clear to us at all. If the interpretation placed by Karnik, J. is accepted in cases of a single building also, the landlord will have to go under sub-clause (ii) necessarily if such a landlord is co-owner of another residential building in the city. He may be exclusive owner of a building not occupied by him, but he is co owner of the building where he is presently residing and occupying it. In such a case, he will have to invoke sub-clause (ii), because two buildings allegedly are involved. This is not a case of two buildings at all. Exclusive ownership is of only one building and the other is not his own. Therefore, there is nothing which prevents him from availing of sub-clause (i) and filing an application for eviction of the tenant occupying a building exclusively belonging to him. Sub-clause (ii) deals with the landlord who has more than one building in the city. All buildings that are contemplated by sub-clause (ii) may or may not be of exclusive ownership of the landlord. One of them is required for occupation in preference to another and the Legislature did not desire to leave out or omit such a landlord. Merely because the landlord is owner of more than one building in the city, town or village and is occupying one of them, it does not mean that he cannot seek eviction of a tenant in occupation of his another building even if he bonafide requires another building for his own occupation. Ultimately, if the landlords are not to be deprived of their right to seek eviction on bonafide personal requirement, then, merely because they have one or more than one building in the city, town or village, does not mean that their requirement is not to be taken into consideration at all. What is germane and relevant is the bonafide requirement and once that is taken into

consideration, of both the categories of landlords and distinctly, that does not mean that the element of joint ownership is separately dealt with by the sub-clauses. It would amount to reading into the sub-clauses something which the sub-clauses do not intend to cover at all. That would create confusion and chaos and ultimately, the bonafide requirement of the landlord would take a backseat. It might be defeated and frustrated totally. If that is given prominence, then it cannot be held that a case of joint ownership would necessarily fall under sub-clause (ii).

31. The interpretation placed by Karnik, J. overlooks the social realities. When there are larger families and houses and premises are occupied jointly and the members in the families are ever increasing on account of marriages, adoptions, and other social customs, it could not have been intended by the legislature that the Rent Control Legislations overlook such realities or ignore them completely. As held by us, if the rights of both have to be balanced, then the landlord owning a single building or more than one buildings have to be covered under the subject provisions. It is only classification and categorization of the landlords and not of the nature of their ownership. If this underlying principle and object is understood, then there is no necessity to take the view that Ramchandra's case is an authority for the proposition culled out by Karnik, J. It is an authority for the proposition set out by us above and must be read so. Nothing needs to be read into the same or else there will be confusion and chaos.

32. In such circumstances, we are of the view that the above famed question can be answered thus :

The suit filed against a tenant for possession of a residential building by a landlord who is in occupation of another residential building as a co-owner, on the ground of bonafide requirement against a tenant for possession of a residential building even though the landlord is in occupation of another residential building as a co-owner, is covered by sub-clause (i) of Clause (a) of Section 23(1) of the Goa Rent Act and if the landlord satisfies the requirement stipulated in clause (i), he can also demonstrate that the building presently occupied by him is not his own or is not of his exclusive ownership. Even then the application would fall under the above sub-clause. However, the landlord will have to establish the case of exclusive ownership of the building not in his occupation and an answer to such issue would depend upon the facts and circumstances of each case. It is clarified that whether the relief can be granted at all or the case of the landlord falls under which sub-clause must be decided on the evidence led and material produced before the Court. However, the application cannot be thrown out because it either fails to mention or refer a sub-clause or refers or sets out a sub-clause under which the final relief cannot be granted. It is settled law that mentioning an erroneous provision is not fatal. If there is power to grant the relief claimed, then, such an error is immaterial. Merely because the landlord is co-owner of another building in his occupation, does not mean that he cannot avail of sub-clause (i) of Clause (a) to seek

eviction of a tenant of a building which exclusively belongs to him.

33. In the view that we have taken, it is not necessary to make a reference to the other decisions cited by Shri Usgaonkar. Suffice it to state that the Division Bench in Dr. Mulla M. Khemani's vs. Shri Avelino Gregorio D'Souza since deceased represented by his legal representatives, reported in 2000 (1) Goa L.T. 154 while deciding the LPA reproduced the facts in para 2 of the Division Bench Judgment. We do not find that Judgment as an contrary ruling on the point canvassed before us. We are of the opinion that the observations of the Division Bench do not run counter to the view in Ramchandra (Supra) or upholding the view of Karnik, J. Far from supporting the view of Karnik J. the observations of the Division Bench in paras 11, 15, 16, 23 to 28 and 30 are in accord with our conclusion.

34. The reference is answered accordingly. Since the reference is answered, the petition be now placed before the appropriate Court for hearing and final disposal on other issues and points. Office to act accordingly.