J.R. VOHRA

v

INDIA EXPORT HOUSE PVT. LTD. AND ANOTHER

14th February, 1985

Delhi Rent Control Act, 1958 section 21 read with section 37 and Rule 5 of Delhi Rent Control Rules, 1959, scope of—Limited tenancy created with permission of the Rent Controller under section 21—Whether a warrant for recovery of possession can be issued in favour of a landlord without notice to the tenant under section 21.

A tenancy for a limited period of three years commencing from 1.6.79 in respect of a house at 34, Paschimi Marg, Vasant Vihar, New Delhi at a monthly rental of Rs. 5,000 was created by the appellant in favour of the first respondent company for the residence of its Chairman, Shri C.L. Sachdev after obtaining the requisite permission under section 21 of the Delhi Rent Control Act. In the application filed before the Rent Controller and in the proposed lease-deed it was specifically stated that the appellant landlord in order to clear the loan taken by him for the construction of the premises was creating the limited tenancy for a period of three years. The appellant was desirous of getting possession of the house at the expiry of the period i.e. 31st May, 1982 but before applying for possession under section 21 of the Act, by two registered letters one dated 1st March, 1982 and the other dated 5th May, 1982 he called upon the respondents to hand over vacant possession of the leased premises on the due date. The respondent neither replied these letters nor did handover possession. Therefore, the appellant filed an application under section 21 for recovery of possession before the Rent Controller on 1st July, 1982. On 9.7.82 the appellant took possession of the house through the bailiff and started residing therein with his family members.

On 14th July 1982 the respondents filed a writ petition (CM No. (Main) 174 of 1982) in the Delhi High Court under Article 227 of the Constitution seeking to quash the warrant of possession issued by the Rent Controller on 6.7.1982 and further proceedings taken in pursuance thereof on two grounds : (a) that the initial order dated 10th May, 1979 granting permission to create the limited tenancy was vitiated by fraud practised by the appellant in as much as he had suppressed the fact that an earlier application for such permission has been declined on the ground that premises had been let out for commercial-cum-residential purposes and therefore, there was no executable order pursuant to which any warrant for possession could be issued under section 21 of the Act and (b) that the issuance of a warrant for recovery of possession on 6th July 1982 without notice to the tenant was erroneous in law and in violation of the principles of natural justice and such nonissuance of notice on the part of the Rent Controller had deprived the tenant of an opportunity to prove his case of fraud. By his reply the appellant denied all the allegation made in the Writ Petition.

A The High Court took the view that no warrant for recovery of possession under section 21 of the Act would be issued in favour of the landlord without issuance of a notice to the tenant, and by its judgment and order dated 18th October, 1982 allowed the writ petition, quashed the warrant of possession issued by the Rent Controller and sent the matter back to him for hearing and adjudicating upon the objections of the tenant to the issuance of such warrant of possession and in the meanwhile it also B directed that possession be restored to the tenant. Hence the appeal by special leave.

Allowing the appeal, the Court,

HELD : 1.1. Neither section 21 and 37 of the Delhi Rent Control Act 1958 nor the Rules framed under the Act require service of any prior C notice upon the tenant before he is evicted and in the instant case, the order directin issuance of warrant of possession under section 21 without prior notice to the tenant, for the purpose of putting the landlord in possession of the leased premises at the expiry of the limited tenancy cannot be regarded as illegal, invalid or unwarranted. [908 E-F]

D 1.2. An analysis of section 21 of the Delhi Rent Control Act will show that in regard to tenancies for limited period mentioned therein only two orders are contemplated; (i) an order by the Rent Controller sanctioning or permitting the creation of a tenancy for a particular fixed period only, and (ii) an order by the Rent Controller putting the landlord in vacant possession of the leased premises by evicting the tenant and every other occupier thereof at the expiry of that period. Before passing the first order the Rent E Controller is required to satisfy himself that the two conditions mentioned in the section are genuinely satisfied in every case, namely, (a) that the landlord does not require the premises "for a particular period" only and (b) that the letting itself is for residential purposes and no other. The landlord's non-requirement of the premises for a particular period may arise out of various circumstances for instance, being an officer he may be going on some other assignment for a particular period or being in occupa- F tion of official quarters he may have to vacate the same on his retirement or having borrowed a loan for the same on his retirement or having borrowed a loan for the construction he may desire to clear it of before occupying the premises for his own use, etc. Both the conditions must be truly fulfilled and not by way of any make belief before the Rent Controller grants his permission for the creation of such limited tenancy but once such limited tenancy is properly created the second order of putting the landlord in vacant possession of the leased premises by evicting the tenant at the expiry G of the fixed period has to be passed as a matter of course because the tenant, in view of the non-obstante clause contained in section 21, has no right or protection whatsoever under law to continue in possession nor has he any defence to eviction. The second order contemplated by section 21 is in the nature of a process inexecution whereunder landlord has to be put in possession of the leased premises by evicting the tenant and and every other occupant thereof, and no notice to the tenant is contemplated before issuing H the warrant of possession for putting the landlord in possession.

[906 G-H; 907 A-E]

1.3. Section 21 carves out tenancies of particular category for special treatment and provides a special procedure that will ensure to the landlord vacant possession of the leased premises forth-with at the expiry of the fixed period of tenancy, evicting whoever be in actual possession. Such being the avowed object of prescribing the special procedure, service of a prior notice on the tenant upon receipt of the landlord's application for recovery of possession and inviting his objections followed by an elaborate inquiry in which evidence may have to be recorded will really frustrate that object. [909F-G] A B

S. B. Noronah v. *Prem Kumari Khanna*, [1980] 1 SCR 201, followed.

1.4 In case there was in fact a mere ritualistic observance of the procedure while granting permission for the creation of a limited tenancy or where such permission was procured by fraud practised by the landlord or as a result of collusion between the strong and the weak, the solution lies not in insisting upon service of a prior notice on the tenant before the issuance of the warrant of possession to evict him but by insisting upon his approaching the Rent Controller during the currency of the limited tenancy for adjudication of his pleas no sooner he discovers facts and circumstances that tend to vitiate *ab-initio* the initial grant of permission, and certainly not to wait till the landlord makes his application for recovery of possession after the expiry of the fixed period under section 21. The special procedure provided for the benefit of the landlord in section 21 warrants such immediate approach on the part of the tenant. Of course, if the tenant aliunde comes to know about landlord's application for recovery of possession and puts forth his plea of fraud or collussion etc. at that stage the Rent Controller would inquire into such plea but he may run the risk of getting it rejected as an after-thought. [912A-D] C D E

1.5. Except Rule 5 which deals with applications made under s. 21 and which merely provides for period of limitation by saying that every application under section 21 shall be made by the landlord within six months from the date of the expiry of the period of tenancy, there is no other rule in Delhi Rent Control Rules 1959 framed by the Central Government under section 56 of the Delhi Rent Control Act, requiring a notice being served upon the tenant before the issuance of warrant of possession to evict him. [907E-G] F

1.6. Section 37 (1) of the Act also, cannot be construed as requiring service of a prior notice upon the tenant before issuance of a warrant of possession against him. All that sub-section (1) of section 37 of Delhi Rent Control Act does is to incorporate a rule of natural justice, namely, that an order prejudicially affecting a person shall not be made without hearing him and considering his objections if any to the proposed order. But an order can be said to affect a person prejudicially only if any right of his would be affected adversely and in view of the non-obstante clause contained in section 21 the tenant on the expiry of the limited period has no right or protection whatsoever under any law to continue in possession and as such the issuances of a warrant of possession directing him to vacate the premises in his occupation cannot be regarded as one which prejudicially affect him. [907H; 908C-D] G H

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3381 of 1982.
From the judgment and order dated 18.10.82 of the High Court of Delhi in C.M. (M) No. 174/82.

V.M. Tarkunde, B. Datta and *Mrs. & Mr. A. Minocha* for the Appellant.

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L N. Sinha and *Mr. Parmod Dayal,* for the Respondent.

The Judgment of the Court was delivered by

C TULZAPURKAR. J. The only question raised in this appeal is whether a warrant for recovery of possession can be issued in favour of a landlord without notice to the tenant under s. 21 of the Delhi Rent Control Act, 1958 (hereinafter referred to as the Act) ?

D A tenancy for a limited period of three years commencing from 1.6.1979 in respect of a house at 34, Paschimi Marg, Vasant Vihar, New Delhi at a monthly rental of Rs. 5000/- was created by the appellant in favour of the first respondent-company for the residence of its Chairman, Shri C.L. Sachdev after obtaining the requisite permission under s.21 of the Act.

E It appears that the said house was constructed by the appellant for his own use and occupation but having taken a loan for its construction he was desirous of clearing the said loan before occupying the same and he, therefore, offered in writing the tenancy for a limited period of three years to the first respondent-company, and since the offer was accepted a joint application seeking permission F of the Rent Controller under s.21 for creating such limited tenancy was made by the parties on 9th May, 1979 in which it was expressly stated that three years tenancy was being created as the appellant had to clear the construction loan ; the proposed lease-deed containing the terms and conditions of letting was annexed thereto, clause 2 G whereof expressly recited that the premises shall be used by the respondent Company only for the residential purposes of its Chairman, Shri C.L. Sachdev (second respondent). On 10th May 1979 the parties appeared before the Rent Controller and their statements were recorded ; the second respondent stated on oath that the premises were being taken by the respondent company for the residence H of its Chairman (i.e. himself) on a monthly rental of Rs. 5000/- for

three years with effect from 1.6.1979 and the lessee shall vacate the premises on the expiry of that period. By his order passed on that very day the Rent Controller, on being satisfied that the requirements of s.21 had been fulfilled, granted permission for the creation of the tenancy for the said period which was to expire on 31st May 1982. The appellant was desirous of getting possession of the house at the expiry of the period but before applying for possession under s.21 of the Act, by two registered letters one dated 1st March 1982 and the other dated 5th May 1982 he called upon the respondents to hand over vacant possession of the leased premises on the due date as the period permitted by the Rent Controller was coming to an end and also because he required the premises for himself. There was no reply to any of these letters nor was possession handed over and, therefore, the appellant filed application under s.21 for recovery of possession before the Rent Controller on Ist July 1982 ; the application was directed to be registered on that day and the appellant was directed to file a certified copy of the plan on 16.7.1982 ; the appellant, however, filed the certified copy of the plan on the 6th July 1982 ; the Rent Controller, therefore cancelled the date 16th July 1982 fixed for filing the plan, took on record certified copy of the plan and issued warrant of possession in favour of the appellant. On 9.7.1982 the appellant took possession of the house through the bailiff and started residing therein with his family members.

On 14th July 1982 the respondents filed a writ petition (C.M. No. (Main) 174 of 1982) in the Delhi High Court under Art. 227 of the Constitution seeking to quash the warrant of possession issued by the Rent Controller on 6.7.1982 and the further proceedings taken in pursuance thereof on two grounds : (a) that the initial order dated 10th May 1979 granting permission to create the limited tenancy was vitiated by fraud practised by the appellant inasmuch as he had suppressed the fact that an earlier application for such permission has been declined on the ground that permises had been let out for commercial-cum-residential purposes and therefore, there was no executable order pursuant to which any warrant for possession could be issued under s.21 of the Act and (b) that the issuance of a warrant for recovery of possession on 6th July 1982 without notice to the tenant was erroneous in law and in violation of principles of natural justice and such non issuance of notice on the part of the Rent Controller had deprived the tenant of an opportunity to prove his case of fraud. By this reply the appellant denied all the allegations made in the Writ Peti-

A tion and particularly denied that the premises were let out for commercial-cum-residential purposes or that permission on the earlier occasion had been declined on that ground or that any fraud was practised by him as alleged at the time when the order granting permission was passed on 10th May 1979 ; it was asserted that the earlier application for permission was not refused but was got with-
B drawn for technical defect. The appellant also disputed that any notice to the tenant was contemplated by s.21 of the Act before issuing the warrant for recovery of possession thereunder ; he also pleaded that on the facts of the case the respondents had ample opportunity to approach the Rent Controller to prove their case of alleged fraud inasmuch as the appellant had issued two registered
C notices to the respondents informing them that he was desirous of recovering possession at the expiry of the lease period and as such though there was no requirement of a notice in law, the principles of natural justice could be said to have been substantially observed. By its judgment and order dated 18th October 1982 the High Court allowed the writ petition, quashed the warrant of possession issued
D by the Rent Controller and sent the matter back to him for hearing and adjudicating upon the objections of the tenant to the issuance of such warrant of possession and in the meanwhile it also directed that possession be restored to the tenant. In doing so the High Court took the view that no warrant for recovery of possession under s.21 of the Act could be issued in favour of the landlord with-
E out issuance of a notice to the tenant. It is this view of the High Court that is being challenged before us by the appellant in this appeal.

In support of the appeal the principal contention of the counsel for the appellant has been that neither s.21 of the Act nor any
F Rules framed thereunder require or contemplate the service of a notice on the tenant before issuing the warrant of possession for the purpose of putting the landlord in vacant possession of the leased premises at the expiry of the limited period for which the tenancy has been permitted to be created under the Rent Controller's order. Counsel submitted that s.21 postulates summary eviction of the
G tenant by a process which is really in the nature of executing the earlier order creating a tenancy for a limited period as no fresh eviction order is contemplated and that insistence upon a prior notice to the tenant before issuing the warrant of possession followed by an elaborate inquiry would defeat the very object or purposes for which s.21 has been enacted and incorporated in the Act which,

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as explained by this Court in *S.B. Noronah* v. *Prem Kumari Khanna*,[1] is to afford an assurance to the landlord that he will get back possession forthwith at the expiry of the fixed period of tenancy but for which a landlord would never let out his premises and would continue to keep them vacant even though he may not require the premises for a fixed period. Counsel for the appellant pointed out that even under the Civil Procedure Code no prior notice is required to be served on a judgment-debtor when execution processes say for attachment and sale of his properties or even for dispossessing him are taken within two years of the decree. Counsel for the appellant, therefore, urged that the High Court was in error in taking the view that a warrant of possession could not be issued in favour ofthe landlord without service of a prior notice upon the tenant under s.21, and according to him the decision in *Noronah's* case (supra) on which High Court has relied in this behalf is not on this poin. Counsel for the appellant further urged that even in a case where fraud is alleged to have been practised by the landlord in obtaining the Rent Controller's sanction for creating the limited tenancy the section does not cast any duty or obligation upon the Rent Controller to invite a plea of fraud from the tenant by issuing notice to him after the landlord has applied for recovery of possession under that section. Further the counsel pointed out that in the facts of the instant case the fraud, if at all there was any, was known to the tenant right from the time the limited tenancy was created under the Rent Controller's order and the respondents could have approach the Rent Controller to have the issue decided at any time during the three years period and in any case at least immediately after the receipd of two registered letters from the appellant which were issuemonths ahead of the appellant's application for recovery of possession under s.21. Counsel, therefore, urged both in law as well as on the facts of the present case the service of a notice by the Rent Controller upon the tenant before issuing warrant of possession was uncalled for and not required and the High Court was in error in taking the view it did; in any case the High Court was wrong in directing the restoration of possession back to the respondents when the matter was remanded by it to the Rent Controller for hearing and adjudicating upon the tenant's objection and the appellant's possession need not have been disturbed pending such adjudication.

(1) [1960] 1 S.C.R. 281.

A On the other hand counsel for the respondents strongly supported the view taken by the High Court and in that behalf relied upon this Court's decision in the *Noronah's* case (supra) which has the view that even at the execution stage it is open to the tenant to put forward a case of fraud in the matter of obtaining Rent Controller's permission at the initial stage for creating a limited tenancy B and the Rent Controller is bound to hold an inquiry when such a plea of fraud is put forward by the tenant and according to counsel such inquiry into the plea of fraud would not be possible unless notice is served upon the tenant before issuing the warrant of possession.

C In order to decide the question raised in the appeal it will be necessary to set out s. 21 of the Act. The section runs thus :

> "21. *Recovery of possession in case of tenancies for limited period*—Where a landlord does not require the D whole or any part of any premises for a particular period, and the landlord, after obtaining the permission of the Controller in the prescribed manner, lets the whole of the premises or part thereof as a residence for such period as may be agreed to in writing between the landlord and the tenant and the tenant does not, on the expiry F of the said period, vacate such premises then, notwithstanding anything contained in section 14 or in any other law, the Controller may, on an application made to him in this behalf by the landlord within such time as may be prescribed, place the landlord in vacant possession of the premises or part thereof by evicting the tenant and every other person F who may be in occupation of such premises."

An analysis of the provision will show that in regard to tenancies for limited period mentioned therein only two orders are contemplated by the section : (i) an order by the Rent Controller sanctioning or permitting the creation of a tenancy for a particular G fixed period only, and (ii) an order by the Rent Controller putting the landlord in vacant possession of the leased premises by evicting the tenant and every other occupier thereof at the expiry of that period. It is also clear that before passing the first order the Rent Controller is required to satisfy himself that the two conH ditions mentioned in the section are genuinely satisfied in every

case, namely, (a) that the landlord does not require the premises 'for a particular period' only and (b) that the letting itself is for residential purposes and no other. The landlord's non-requirement of the premises for a particular period may arise out of various circumstances; for instance, being an officer he may be going on some other assignment for a particular period or being in occupation of official quarters he may have to vacat the same on his retirement or having borrowed a loan for the construction he may desire to clear it of before occupying the premises for his own use, etc. It cannot be disputed that both the conditions must be truely fulfilled and not by way of any make-belief before the Rent Controller grants his permission for the creation of such limited tenancy but once such limited tenancy is properly created the second order of putting the landlord in vacant possession of the leased premises by evicting the tenant at the expiry of the fixed period has to be passed as a matter of course because the tenant, in view of the non-obstante clause contained in the section, has no right or protection whatsoever under law to continue in possession nor has he any defence to eviction and the section does not contemplate the passing of any order of eviction against the tenant before issuing the warrant of possession in favour of the landlord. It is thus clear that the second order contemplated by the section is in the nature of a process in execution whereunder the landlord has to put in possession of the leased premises by evicting the tenant and every occupant thereof, and no notice to the tenant is contemplated before issuing the warrant of possession for putting the landlord in possession.

As far as the Delhi Rent Control Rules 1959 framed by the Central Government under section 56 of the Act are concerned there is only one rule being Rule 5 which merely provides for period of limitation by saying that every application for recovery of possession under sec. 21 shall be made by the landlord within six months from the date of the expiry of the period of tenancy and there is no rule requiring a notice being served upon the tenant before the issuance of warrant of possession to evict him.

Counsel for the respondents relied upon sec. 37 of the Act to canvas the contention that service of a prior notice upon the tenant before he is evicted would be necessary but that deals with the practice and procedure required to be followed by the Rent Controller in proceedings before him and it mainly provides that subject to any rules

A that may be made under the Act the Controller shall, while holding an inquiry in any proceeding before him, follow as may be the practice and procedure of a court of small causes, including the recording of evidence. In particular counsel relied upon sub-sec. (1) of sec. 37 which provides that "no order which prejudicially affects any person shall be made by the Controller under this Act without giving him a reasonable opportunity of showing cause against the order proposed to be made and until his objections, if any, and any evidence he may produce in support of the same have been considered by the Controller." In our view all that sub sec. (1) does is to incorporate a rule of natural justice, namely, that an order prejudicially affecting a person shall not be made without hearing him and considering his objections if any to the proposed order. But an order can be said to affect a person prejudicially only if any right of his would be affected adversely and as stated earlier in view of the non-obstante clause contained in sec. 21 the tenant on the expiry of the limited period has no right or protection whatsoever under any law to continue in possession and as such the issuance of a warrant of possession directing him to vacate the premises in his occupation cannot be regarded as one which prejudicially affects him. Section 37 (1) therefore, cannot be construed as requiring service of a prior notice upon the tenant before issuance of a warrant of possession against him. In other words neither sec. 21 nor sec. 37 nor the Rules framed under the Act require service of any prior notice upon the tenant before he is evicted and the order directing issuance of warrant of possession under sec. 21, without prior notice to the tenant, for the purpose of putting the landlord in possession of the leased premises at the expiry of the limited tenancy cannot be regarded as illegal, invalid or unwarranted.

The question at issue could also be considered by having regard to the object or purpose with which section 21 has been enacted and incorporated in the Act. It cannot be disputed that sec. 21 carves out tenancies of particular category for special treatment and the *raison d'etre* of the provision has been explained by this Court in *Noronah's* case (supra) in these words :

> "Parliament was presumably keen on maximising accommodation available for letting, realising the scarcity crises. One source of such spare accommodation which is usually shy is potentially vacant building or a part

A thereof which the landlord is able to let out for a strictly limited period provided he has some credible assurance that when he needs he will get it back. If an officer is going on other assignment for a particular period, or the owner has official quarters so that he can let out if he is confident that on his retirement he will be able to re-occupy, such accomodation may add to the total lease-worthy houses. The problem is felt most for residential uses. But no one will part with possession because the lessee will become a statutory tenant and, even if bonafide requirement is made out the litigative tiers are so many and the law's delays so tantalising that no realist in his sense will trust the sweet promises of a tenant that he will return the building after the stipulated period. So the law has to make itself credit-worthy. The long distance between institution of recovery proceedings and actual dispossession runs often into a decade or more—a factor of despair which can be obviated only by a special procedure.

Section 21 is the answer. "*The law seeks to persuade the owner of a premise available for letting for a particular or limited period by giving him the special assurance that at the expiry of that period the appointed agency will place the landlord in vacant possession.*" (Emphasis supplied).

It is thus clear that the object of incorporated s. 21 in the Act is to provide a special procedure that will ensure to the landlord vacant possession of the leased premises forthwith at the expiry of the fixed period of tenancy but for which he would be shy to let out his premises and would continue to keep them vacant even though he may not require the premises for a fixed period. Moreover the assurance of getting vacant possession forthwith is further strengthened by the provision that under the warrant of possession not merely the tenant but every person who may be in occupation is also to be evicted. If such is the avowed object of prescribing the special procedure then service of a prior notice on the tenant upon receipt of the lanlord's application for recovery of possession and inviting his objections followed by an elaborate inquiry in which evidence may have to be recorded will really frustrate that object. In our view precisely for this reason the scheme of sec. 21 and the connected relevant provisions do not require service of a prior notice on the tenant before issuing the warrant of possession against

A him for putting the landlord in possession of the leased premises, for, the law has to make itself credit worthy.

Strong reliance was placed by counsel for the respondents on the decision of this Court in *Noronah's* case (supra) where according to counsel a view has been taken that even at the second stage when B the landlord applies for recovery of possession under sec. 21, the Rent Controller must satisfy himself by such inquiry he may make about the compulsive requirements of that provision that is to say, whether the twin conditions requisite for granting the permission for the creation of limited tenancy had been really fulfilled or not C and counsel argued that no such inquiry would be possible unless on receipt of landlord's applications for recovery of possession a notice served is upon the tenant which would enable the tenant to put forth a plea that at the initial stage a mindless order granting permission for the creation of limited tenancy had been made without the twin conditions being really satisfied or that the said initial D order granting permission was the result of either fraud on the part of the landlord or collusion between the parties. Counsel urged that a mere ritualistic enforcement of the conditions of the permission under sec. 21 or a mechanical grant of permission thereunder would amount to subverting the whole effect of sec. 21 and it is E well settled that fraud and collusion (especially collusion between two unequals—the strong and the weak) will vitiate completely the permission so granted and render it non-est. Therefore, it would be the duty of the Rent Controller to hear and adjudicate upon such pleas of the tenant before issuing warrant of possession in favour of the landlord. At the outset we would like to observe F that in *Noronah's* case the question whether a prior notice is required to be served upon the tenant before issuance of warrant of possession in favour of the landlord under sec. 21, did not arise for consideration. It was a case where upon receipt of landlord's application for recovery of possession under the section the tenant raised pleas that the permises had been let out for non-residential pur- G poses and that the sanction or permission granted for the creation of the limited tenancy was vitiated by fraud and collusion and the question that arose for consideration was whether at that stage the Rent Controller could go into and consider such pleas and this court has ruled that the Controller should consider those pleas even when raised at that stage. In other words all that the said case decides is H that if such pleas are raised by the tenant even at the execution

stage (i.e. at the stage of passing the second order) the Rent Controller should consider and adjudicate upon such pleas but the decision is no authority for the proposition that upon receipt of landlord's application for recovery of possession the Rent Controller must issue a notice to the tenant inviting from him the pleas of fraud, collusion etc. and hold an inquiry into such pleas before issuing the warrant of possession in favour of the landlord; for there cannot be a presumption that in every case there was a mere ritualistic observance of the procedure contemplated while passing the initial order granting permission or that the Controller had passed a mindless order or that the order granting permission was the result of either fraud on the part of the landlord or collusion between the strong and the weak. In fact even in *Noronah's* case this Court has observed that there will be a presumption in favour of the sanction or permission being regular and if that be so, we fail to appreciate as to why the Rent Controller should invite such pleas of fraud, collusion etc. at the instance of the tenant by being required to serve a notice upon him before issuing the warrant of possession in favour of the landlord especially when the scheme of sec. 21 and the connected relevant provisions do not require it.

What then is the remedy available to the tenant in a case where there was in fact a mere ritualistic observance of the procedure while granting permission for the creation of a limited tenancy or where such permission was procured by fraud practised by the landlord or was a result of collusion between the strong and the weak ? Must the tenant in such cases be unceremoniously evicted without his plea being inquired into ? The answer is obviously in the negative. At the same time must he be permitted to protract the delivery of possession of the leased premises to the landlord on a false plea of fraud or collusion or that there was a mechanical grant of permission and thus defeat the very subject of the special procedure provided for the benefit of the landlord in sec. 21 ? The answer must again be in the negative. In our view these two competing claims must be harmonised and the solution lies not in insisting upon service of a prior notice on the tenant before the issuance of the warrant of possession to evict him but by insisting upon his approach the Rent Controller during the currency of the limited tenancy for adjudication of his pleas no sooner he discovers facts and circumstances that tend to vitiate *ab initio* the initial grant of permission. Either it is a mechanical grant of permission or it is procured by fraud practised by the landlord or it is the result

A of collusion between two unequals but in each case there is no reason for the tenant to wait till the landlord makes his application for recovery of possession after the expiry of the fixed period under sec. 21 but there is every reason why the tenant should make an immediate approach to the Rent Controller to have his pleas adjudicated by him as soon as facts and circumstances giving rise to such B pleas come to his knowledge or are discovered by him with due diligence. The special procedure provided for the benefit of the landlord in sec. 21 warrants such immediate approach on the part of the tenant. Of course if the tenant aliunde comes to know about landlord's application for recovery of possession and puts forth his C plea of fraud or collusion etc. at that stage the Rent Controller would inquire into such plea but he may run the risk of getting it rejected as an afterthought. There is however no need to imply any obligation on the part of the Rent Controller to serve a notice on the tenant inviting him to file his objections before issuing the warrant of possession in favour of the landlord.

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Having regard to the above discussion we are clearly of the view that the High Court was in error in taking the view that no warrant for recovery of possession under sec. 21 could be issued without serving a notice on the tenant. We hold that the Rent Controller's order directing the issuance of warrant of possession in favour of the appellant-landlord herein and the further proE ceedings of putting him in possession of the suit premises in pursuance thereof were valid and proper and ought not to have been quashed by the High Court. However, since the High Court has remanded the matter back to the Rent Controller for adjudication upon pleas of the respondent tenant we do not propose to interfere F with that part of the order and the adjudication of the objections raised by the respondent-tenant may be proceeded with and decided in accordance with the law but on the facts of the instant case there was no justification for the direction issued by the High Court that pending such adjudication possession of the premises be restored to the respondent-tenant. Admittedly in the instant case long before he applied for recovery of possession under sec. 21 of the G Act the appellant had sent two registered notices to the respondent-company calling upon it to vacate the premises as the period of the limited tenancy was about to expire and also because he wanted the premises for his own use and occupation and nothing was done by the respondents and it was only after the warrant of possession H had been executed and the landlord got possession of the premises

in question that the respondent-company approached the High Court by means of a Writ Petition challenging the issuance of warrant of possession on the ground that no prior notice had been served upon him and that the first order granting permission for limited tenancy was the result of fraud practised by the landlord. Obviously the respondent-company has thought fit to raise the plea of fraud belatedly. We would therefore, quash that part of the High Court's order which directs restoration of possession of the suit premises to the respondent-company during the pendency of the proceedings before the Rent Controller and direct that the appellant's possession of the suit premises which he has secured in pursuance of the warrant of possession shall not be disturbed till the respondent-company's objections and/or pleas are finally decided. Since the appeal substantially succeeds the respondents are directed to pay the cost of the appeal to appellants.

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S.R. *Appeal allowed.*