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BODDU NARAYANAMMA

v.

SRI VENKATARAMA ALUMINIUM CO. AND ORS.

SEPTEMBER 21, 1999

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[V.N. KHARE AND SYED SHAH MOHAMMED QUADRI, JJ.]

Rent Control and Eviction :

C *Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 : Sec. 10(3)(a)(i)(b)—Eviction petition—Maintainability of—Premises let out under a composite lease consisting residential and non-residential portion—Eviction petition on the ground of bona fide requirement for residence—Dismissed as not maintainable—Validity of—Held, eviction petition of appellant-landlady maintainable under Sec. 10(3)(a)(i)(b) of the Act—Landlady cannot be left out without any remedy for eviction under a composite lease—Premises let out under composite lease has to be considered either as residential or non-residential premises having regard to the dominant purpose of lease and primary use of the building—On facts, the demised building has to be treated as a residential building—Bona fide requirement having been established the landlady entitled to vacant possession of the demised building.*

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Delhi and Ajmer Rent Control Act, 1952 : Sec. 13(1)(e)—Held not in haec verba with Sec. 10(3)(a) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960.

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Legal Maxim—Ubi jus ibi remedium—Applicability of.

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Appellant-landlady had let out under a composite lease, premises comprising of residential and non-residential portion to respondent-tenant. She filed a petition under Sec. 10(3)(a)(i)(b) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, on the ground of bona fide requirement for personal residence. The said eviction petition was dismissed by Rent Controller holding that the requirement of appellant was not bona fide and that the eviction petition was not maintainable. On appeal, the Appellate Authority reversed the findings of the Rent Controller holding that the requirement of appellant was bona fide and eviction petition maintainable. However, on revision, High Court

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while confirming the finding that the requirement was *bona fide*, set aside the order of Appellate Authority holding that the eviction petition was not maintainable. Aggrieved, appellant-landlady has preferred the present appeal.

On behalf of appellant-landlady it was contended that the building as a whole is a residential one and the purpose for which a portion of it is used cannot really change its nature; therefore, High Court erred in holding that in respect of a composite lease for residential and non-residential purposes, the eviction petition filed for personal occupation of the appellant was not maintainable; she cannot be rendered remediless and the statutory lease cannot be converted into a lease in perpetuity on the ground that there was no provision under the Act to seek eviction in case of a composite lease.

On behalf of respondent-tenant it was contended that on the ground of *bona fide* personal requirement of residence of the appellant, eviction of non-residential part of building cannot be sought for and as the lease was a composite one, no eviction can be ordered even in respect of residential part of the building.

Allowing the appeal, this Court

HELD : 1.1. The eviction petition filed by the appellant- landlady is maintainable under Section 10(3)(a)(i)(b) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. Thus, the order of High Court holding that the petition under Sec. 10(3)(a)(i)(b) is not maintainable, is set aside and the order of the Appellate Authority is restored. The *bona fides* of the appellant having been established she is entitled to vacant possession of the demised premises. [23-D-E]

Ghan Shyam v. Laxmi Narayana, (1990) 1 ALT 43; *Om Prakash v. Smt. Chand Devi*, (1973) RCR 562; *Moinuddin Khan Sahib v. Rukmani Ammal*, (1973) All India RCJ 311; *Tikamchand Mithalal Jain v. M.R. Narasimhachari*, AIR (1981) Mad. 21; *Jamna Prasad v. Nandkishore*, (1976) MPLJ 28; *Panjumal Daulatram (Firm) v. Sakhi Gopal Thakurdin Agrawal*, (1977) MPLJ 762 and *Jagtikumar v. Jagdeeshchandra*, AIR (1982) MP 144, approved.

Dr. Madhusudan Mahuli v. Lambu Indira Bai, (1987) 2 ALT 504 and

A *Gokulchand v. Krishnachandra & Anr.*, (1977) All India RCJ 376, overruled.

2.1. There is nothing in the A.P. Act to suggest that the right of a landlord like the appellant to recover possession of the demised building from the tenant-respondent is taken away either expressly or by necessary implication. Once it is held that a building having both residential and non-residential portions which are let out together under a composite lease is a building within the meaning of that term and within the ambit of the Act, such a building has to fall within one or the other category, namely, residential or non-residential – the classification which is made in Section 2(iii) of the A.P. Act. It is difficult to infer that the legislature having brought such a building within the ambit of the Act and having provided for eviction of a tenant on the ground of personal requirement of the landlord from such a building when it is let out for residential purposes or for non-residential purposes or separately for residential and non-residential purposes and having not taken away the right of the landlord to eject the tenant from such a building left him in the lurch without providing the remedy of eviction of tenant when let out under a composite lease. The remedy under the A.P. Act has to be discerned on the principle embodied in the maxim *ubi jus ibi remedium*. [35-D-G]

2.2. A building having residential and non-residential portions and let out under a composite lease has to be categorised as either a residential or a non-residential building having regard to its nature, accommodation, dominant purpose of lease, primary use of the building and other relevant circumstances on the facts of each case. In the instant case, the dominant purpose of the lease is residential purpose, non-residential activity being incidental. It is not disputed that the demised building is in residential area where no non-residential activity is permitted to be carried on. The portion of the demised building let out for non-residential purposes can also be adapted with a little modification for residential purpose and indeed the claim of the landlord is to covert the same for residential purpose of the family. Thus, for the above reasons the demised building has to be treated as a residential building. [35-H; 36-A; C-E]

3. The provisions of Section 10(3)(a) of the A.P. Act and Section 13(1)(e) of the Delhi and Ajmer Rent Control Act, 1952 are not in *haec verba*; whereas the former provides for eviction of a tenant both from residential and non-residential premises on the ground of *bona fide* re-

quirement of the landlord, the latter provides for eviction of a tenant on that ground from a residential premises only and only from a non-residential premises. [30-F-G]

Dr. Gopal Dass Verma v. Dr. S.K. Bhardwaj & Anr., [1962] 2 SCR 678; *S. Sanyal v. Gian Chand*, [1968] 1 SCR 536; *Motilal & Anr. v. Nanak Chand & Ors.*, (1970) All India RCJ 99; held inapplicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2648 of 1998.

From the Judgment and Order dated 29.7.97 of the Andhra Pradesh High Court in C.R.P. No. 134 of 1996.

Sudhir Chandra, M.K. Giri and S. Madhusudan Babu for the Appellant.

M.S. Ganesh, Nikhil Nayyar and Ms. B. Sunita Rao for the Respondents.

The Judgment of the Court was delivered by

SYED SHAH MOHAMMED QUADRI, J. This appeal, by special leave, is from the judgment and order of the High Court of Andhra Pradesh in Civil Revision Petition No.134 of 1996 passed on July 29, 1997. It raises a question of interest, namely, whether a petition by a landlord seeking eviction of a tenant under Section 10(3)(a)(i)(b) of the A.P. Act from the demised building, let out under a composite lease for residential as well as non-residential purposes, is maintainable?

The appellant is the landlady and the respondents are tenants of premises bearing D.Nos.19/76-A and 19/76A-1; Innespeta, Rajahmundry (hereinafter referred to as "the demised building") which comprises of a residential and a non-residential portion. She and her husband filed eviction petition, R.C.C.No.71 of 1981, on the file of the Principal District Munsif-cum-Rent Controller, Rajahmundry, under Section 10(3)(a)(i)(b) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (which is referred to in this judgment as 'the A.P.Act') against the respondents (the first respondent is the partnership firm and respondents 2 to 5 are its partners) seeking their eviction from the demised building on the ground of *bona fide* requirement for the personal residence of their

A family. The respondents resisted the petition, briefly stated, on two grounds: (i) the lease granted in their favour is a composite lease and as such the petition for their eviction is not maintainable and (ii) the requirement of the appellant is not *bona fide*.

B The learned Rent Controller recorded the findings that the requirement of the appellant is not *bona fide* and that the eviction petition is not maintainable; in that view of the matter, he dismissed the eviction petition. The husband of the appellant died in the meanwhile. The appellant then filed an appeal, R.C.A.No.11/1994, before the learned Subordinate Judge, Rajahmundry, the Appellate Authority under the A.P. Act. By its order dated 27.11.1995, the Appellate Authority held that the requirement of the appellant was *bona fide* and the eviction petition was maintainable. Accordingly, the Appellate Authority set aside the order of the Rent Controller and allowed the appeal. The respondents carried the matter in Civil Revision Petition before the High Court of Andhra Pradesh. While confirming the finding that the requirement of the appellant was *bona fide*, the High Court on the question of maintainability, set aside the order of the Appellate Authority holding that the eviction petition was not maintainable. The revision petition was thus allowed on 29.7.97. It is against that order of the High Court, the appellant is in appeal before this Court.

E Mr. Sudhir Chandra, learned senior counsel for the appellant, urged that the building as a whole is a residential one and the purpose for which a portion of it is used cannot really change its nature; therefore, the High Court erred in holding that in respect of a composite lease for residential and non-residential purposes, the eviction petition filed for personal occupation of the appellant was not maintainable. On the ground that there is no provision in the A.P. Act entitling the appellant to seek eviction in case of a composite lease, submits the learned counsel, the appellant cannot be rendered remediless and the statutory lease cannot be converted into a lease in perpetuity.

G Mr.M.S. Ganesh, learned senior counsel for the respondents, on the other hand, has submitted that the building comprises of two separate portions—one is residential and the other non-residential and there is dichotomy in the Act for purposes of eviction of tenants inasmuch as with regard to eviction from residential and non-residential premises separate H grounds are provided; that on the ground of *bona fide* personal require-

ment of residence of the appellant, eviction of non-residential part of the building cannot be sought for and as the lease is a composite one, no eviction can be ordered even in respect of residential part of the building; the High Court is, therefore, right in holding that the eviction petition is not maintainable.

To appreciate the rival contentions of the learned counsel, it would be necessary to notice the relevant provisions of the A.P. Act.

Section 2(iii) defines the term 'building' as follows :

"2(iii). "Building" means any house or hut or part of a house or hut, let or to be let separately for residential or non-residential purposes and includes :

- (a) the gardens, grounds, garages and out-houses if any, appurtenant to such house, hut or part of such house or hut and let or to be let along with such house or hut or part of such house or hut;
- (b) any furniture supplied or any fittings affixed by the landlord for use in such house or hut or part of a house or hut, but does not include a room in a hotel or boarding house."

Sections 10, 12 and 13 of the A.P. Act provide grounds for eviction of tenants. We shall presently refer to Section 10(3)(a) with which we are concerned in the appeal.

A perusal of the definition of the term 'building' shows that (a) any house or hut, or (b) part of a house or hut, let or to be let separately for residential or non-residential purposes, is a building for purposes of the Act; it takes in the gardens, grounds, garages and out-houses, if any, appurtenant to such house, hut or part of such house or hut and also any furniture supplied or any fittings affixed by the landlord for use in such house or hut or part thereof. However, a room in a hotel or boarding house is excluded from the meaning of the term 'building'.

But, if a house/hut is having both residential as well as non-residential portions which are let out together under a composite lease, will it be within the meaning of the term 'building'? And will it be covered by the A.P. Act? In the definition of the term "building" in Section 2(iii) of the

- A Act, the words "let or to be let separately for residential or non-residential purposes", indicate that where any house or hut or parts thereof are let separately for residential or non-residential purposes, each part will be a building within the meaning of that term. It does not and cannot mean that when a residential portion and a non-residential portion of a building are let under a composite lease, the whole building as such will not be within the meaning of the term 'building' for the simple reason that a house whether it is wholly residential, wholly non-residential or partly residential and partly non-residential is by definition a 'building'.

- C Section 1(2)(a)(b) of the A.P. Act says that it applies to the cities of Hyderabad, Secunderabad, Visakhapatnam, Vijayawada and to all Municipal Corporations and municipalities in the State of Andhra Pradesh and Section 32 says that the A.P. Act shall not apply to any building owned by the Government. Under Section 26 of that Act, the Governor of Andhra Pradesh has exempted, with effect from October 26, 1983, – (1) all buildings for a period of ten years from the date on which their construction is completed and (2) buildings the monthly rent of which exceeds Rs.1,000. The building in question is within the limits of Municipality of Rajahmundry, thus it satisfies the requirement of Section 1(2)(a)(b) and neither Section 32 excludes it from the purview of the Act nor does it fall under any of the exemptions granted under Section 26 of the A.P. Act.
- D Now, it cannot be that a building is within the purview of the A.P. Act if let out exclusively for residential purpose or exclusively for non-residential purpose or let out separately in parts for residential purpose and non-residential purpose but outside its purview if let out under a composite lease for residential and non-residential purposes. To hold so would be to defeat the object of the A.P. Act. It follows that the demised building is within the meaning of the term "building" and is within the ambit of the A.P. Act.

- G With regard to the question of maintainability of eviction petition under Section 10(3)(a)(i) of the A.P. Act, there is no controversy that when a building having a residential and non-residential portions is let separately to a person, a petition for eviction of the tenant from the residential or non-residential portion or both on the plea of personal requirement of residence or business of a landlord, as the case may be, is maintainable but there is a conflict of opinion among various High Courts as to the maintainability of a suit/petition for eviction filed by a landlord, on the ground
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of his personal requirement of residence, against a tenant who is occupying both residential and non-residential portions of a building under a composite lease. A

Now, we shall refer to the views expressed by various High Courts on the question of maintainability of a suit/petition filed on the ground of *bona fide* personal requirement of residence of the landlord for eviction of a tenant holding residential and non-residential portions of a building under a composite lease. B

The High Court of Andhra Pradesh in *Ghan Shyam v. Laxmi Narayana*, (1990) 1 ALT 43; the High Court of Rajasthan in *Om Prakash v. Smt. Chand Devi*, (1973) RCR 562; the High Court of Madras in *Moinuddin Khan Sahib v. Rukmani Ammal*, (1973) All India RCJ 311 and *Tikamchand Mithalal Jain v. M.R. Narasimhachari*, AIR (1981) Madras 21; the High Court of Madhya Pradesh in *Jamna Prasad v. Nandkishore*, (1976) MPLJ 28, *Panjumal Daulatram (Firm) v. Sakhi Gopal Thakurdin Agrawal*, (1977) MPLJ 762 and *Jagatkumar v. Jagdeeshchandra*, AIR (1982) MP 144 took the views that a suit/petition, under the respective Act, for eviction of the tenant from a premises having residential and non-residential accommodation held under a composite lease, on the ground of personal requirement of residence of the landlord, is maintainable. The reasoning is that there are two kinds of accommodation viz., residential and non-residential so if an accommodation is primarily used for residential purposes it has to be classified as residential although a part of it is used for non-residential purposes and *vice versa*. There is also emphasis on the dominant purpose of the lease. However, the contrary view is taken in *Dr. Madhusudan Mahuli v. Lambu Indira Bai*, (1987) 2 ALT 504 by the High Court of Andhra Pradesh and in *Gokulchand v. Krishnachandra & Anr.*, (1977) All India RCJ 376 by the High Court of Madhya Pradesh on the ground of absence of specific provision in the A.P. Act and the M.P. Act for eviction of the tenant holding a building having residential and non-residential portions under a composite lease. C D E F G

Apropos the discussion, the following decisions of this Court are apposite :

In *Dr. Gopal Dass Verma v. Dr. S.K. Bhardwaj and Anr.*, [1962] 2 SCR 678, the appellant was the landlord and the respondent was the tenant of H

- A the premises which were let for use as the residence of the tenant but from the inception of the tenancy, the premises were being used for commercial purposes also i.e. for his professional work as E.N.T. Specialist. The appellant sued the respondent for ejection, *inter alia*, under Section 13(1)(e) of the Delhi and Ajmer Rent Control Act, 1952 (for short 'the Delhi Act') for his personal requirement of residence. The Trial Court decreed the suit but the Appellate and the High Court dismissed it on the ground that from the beginning of the tenancy, a substantial part of the premises was used by the respondent for his professional work with the consent of the appellant. On appeal, this Court held that the premises let for residential purposes were being used by the respondent with the consent of the appellant for commercial purposes also so it ceased to be premises let for a residential purpose alone and as such the appellant could not eject the respondent under Section 13(1)(e) of the Delhi Act.

- D In *S. Sanyal v. Gian Chand*, [1968] 1 SCR 536, the predecessor in title of the respondent let out the suit premises to the appellant-tenant for her residence and for running a school. Thereafter, the respondent purchased the house and filed a suit under Section 13(1)(e) of the Delhi Act for eviction of the appellant on the ground that he required the premises *bona fide* for his own residence. The Trial Court dismissed the suit. On revision, the High Court held that a decree for ejection limited to that portion of the house which was used for residential purposes by the tenant could be granted and remanded the case for demarcating that portion and passing a decree. On appeal to this Court against the order of the High Court, it was held that the contract of tenancy was a single and indivisible contract and in the absence of any statutory provision to that effect, it was not open to the Court to divide it into two contracts – one of letting out for residential purposes and the other for non-residential purposes for granting relief under Section 13(1)(e) of the Delhi Act in respect of the portion used for residential purposes. Following *Dr. Gopal Dass Verma's* case (supra), it was observed that if in respect of premises originally let for residential purposes, a decree for ejection could not be passed on the grounds mentioned in Section 13(1)(e), if subsequent to the letting, with the consent of the landlord, the premises was used both for residential and non-residential purposes, the bar against the jurisdiction of the Court would be more effective when the original letting was for purposes - non-residential as well as residential. It may be recalled that the condition for invoking Section 13(1)(e) of the Delhi Act is that the premises be held

by the tenant for residential purposes.

In *Motilal & Anr. v. Nanak Chand & Ors.* (1970) All India RCJ 99, the suit-house was let out to the tenant for residence and for running a school. The landlord's suit for ejectment against the tenant filed under Section 13(1)(e) of the Delhi Act was dismissed by the Trial Court on the preliminary issue of maintainability of the suit but the District Judge reversed the decree and remanded the case to the Trial Court. The revision against that order having been dismissed by the High Court, an appeal by special leave was filed in this Court. Relying on the judgment in *S. Sanyal's* case (supra), it was held that as the owner let out the premises to the tenant for residence and for running a school, the suit for ejectment on the ground of *bona fide* personal requirement was not maintainable and it was not open to the Court to demarcate the portions used for residential and non-residential purposes as the contract of tenancy was single and indivisible contract and in the absence of a statutory provision, it was not open to the Court to divide it into two contracts and grant eviction of the portion which was used for residential purposes.

For appreciating the above noted decisions, it may be pointed out here that though the A.P. Act, the Tamil Nadu Act, the M.P. Act, the Rajasthan Act and the Delhi Act are in *pari materia*, yet provisions of these Acts dealing with grounds of eviction of a tenant for personal requirement of residence of a landlord are not in *haec verba*.

Since the three cases decided by this Court, referred to above, arose under Section 13(1)(e) of the Delhi Act, it will be useful to quote that provision here :

"13(1)(e). *Protection of a tenant against eviction* —

(1) Notwithstanding anything to the contrary contained in any other law or any control, no decree or order for the recovery of possession of any premises shall be passed by any court in favour of the landlord against any tenant (including a tenant whose tenancy is terminated):

Provided that nothing in this sub-section shall apply to any suit or other proceeding for such recovery of possession if the Court

A is satisfied –

(e) that the premises let for a residential purposes are required *bona fide* by the landlord who is owner of such premises for occupation as a residence for himself or his family and that he has no other suitable accommodation:

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Explanation – For the purposes of this clause, “residential premises” include any premises which have been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes;

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A perusal of this provision reveals that the ban imposed by Section 13(1), that no decree or order for the recovery of possession of any premises in favour of the landlord against any tenant shall be passed, is lifted in case of an owner-landlord of a premises who *bona fide* requires it for occupation as a residence for himself or his family, provided that the

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premises was let for a residential purpose and the landlord has no other suitable accommodation. The explanation makes it clear that if the premises let for residential purposes is used for commercial purposes without the consent of the landlord it will continue to be a residential premises. In other words, if the premises let for residential purposes is

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actually used for commercial purposes but without the consent of the landlord, the landlord can seek the eviction of the tenant under Section 13(1)(e) as the character of the premises is statutorily retained as a residential premises. This is so because the Delhi Act does not provide for eviction of the tenant from the premises other than residential premises on the ground of *bona fide* requirement of the landlord, *S. Sanyal's case*

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(supra).

It may be noticed here that the provisions of Section 10(3)(a) of the A.P. Act and Section 13(1)(e) of the Delhi Act are not in *haec verba*; whereas the former provides for eviction of a tenant both from residential and non-residential premises on the ground of *bona fide* requirement of the landlord, the latter provides for eviction of a tenant on that ground from a residential premises only and not from a non-residential premises.

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For this reason, the judgments in the aforementioned cases decided under Section 13(1)(e) of the Delhi Act cannot be applied to cases arising under Section 10(3)(a) of the A.P. Act or Section 10(3)(a) of the T.N. Act which

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are in *haec verba*. Section 12(e) and (f) of the M.P. Act is substantially

similar to the said provisions of the A.P. Act and the T.N. Act but Section 13(1)(h) of the Rajasthan Act is wider than the provisions of the A.P. Act and the T.N. Act.

Mr.Sudhir Chandra has further urged that a residential accommodation is one which is suitable for residence even with necessary changes and as the tin shade (non-residential portion) is not being used for more than a year pursuant to the orders of the Member Secretary, Andhra Pradesh Pollution Control Board under Air (Prevention and Control of Pollution) Act, 1981 and other authorities directing the respondents not to carry on any manufacturing activity in the residential area and to shift the same to any non-residential area, so the non-residential portion can be put to residential use with necessary changes and indeed, for that purpose alone, the eviction of the tenant is sought; therefore, the demised building has to be treated as residential and if so, eviction can be ordered. In support of his submission, he relied on the observations of this Court in *Busching Schmitz Private Limited v. P.T.Menghani & Anr.*, [1977] 2 SCC 835. In that case, the landlord was the Government servant. He let out the building for purposes of residence and for business in a portion thereof. He sought eviction of the tenant under Section 14A(1) of the Delhi Rent Control Act, 1958 (59 of 1958). That application was opposed by the tenant on the ground that what was let out to him was not for residential purpose but for residential-cum-commercial purposes. The tenant was, however, refused leave to contest the petition under Section 25B(4) of the said Act. He challenged that order in a writ petition before the High Court of Delhi but it was dismissed. On appeal to this Court, the question which arose for consideration was whether the building which was let out for the residential-cum-commercial purposes remained a residential building? It was held that whatever was suitable or adaptable for residential use, even by making some changes, could be designated as 'residential premises'. Speaking for the Court Krishna Iyer, J., in his inimitable style, observed :

“Residential premises are not only these which are let out for residential purposes as the appellant would have it. Nor do they cover all kinds of structures where humans may manage to dwell. If a beautiful bungalow were let out to a businessman to run a show-room or to a meditation group or music society for meditational or musical uses, it remains none-the-less a residential accommodation. Otherwise, premises may one day be residential

A another day commercial and, on yet a later day, religious. Use or purpose of the letting is no conclusive test. Likewise, the fact that many poor persons may sleep under bridges or live in large hume pipes or crawl into verandahs of shops and bazars cannot make them residential premises. That is a case of *reductio ad absurdum*.”

B The learned counsel for the appellant has also placed reliance on the following observations of this Court in *M/s. Maulavi Abdur Rub Firoze Ahmed & Co. v. Jay Krishna Arora*, [1976] 1 SCC 295 :

C “The law does not require that the landlord must need the premises for his own occupation only for the purpose to which they were being put by the tenant. It may well be that a tenant cannot put the demised premises to any other use. But there is no bar in law in the way of the landlord requiring the business premises for his residential occupation and *vice versa*, provided the premises are capable of being put to different uses, as they seem to be in this case.”

D and contended that merely because the tenant was using the portion of the building for non-residential purposes, there was no bar in law for the landlord to use the same for residential purposes. That case arose under the West.Bengal Premises Tenancy Act, 1956 (12 of 1956).

E It is true that under the A.P.Act, there is no bar to convert a non-residential building into a residential one though Section 18 mandates that no residential building shall be converted into a non-residential building except with the permission in writing of the Controller.

F We shall now advert to Section 10(3)(a) of the A.P. Act under which the instant case arises and it will be apt to quote it here :

G “10(3)(a). A landlord may subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the landlord in possession of the building

(i) in case it is a residential building

H (a) 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;

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(b) 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 *bona fide* requires another building instead, for his own occupation;

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(ii) 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 use and if he is not occupying any such building in the city, town or village concerned which is his own or to the possession of which he is entitled whether under this Act or otherwise;

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(iii) in case it is any other non-residential building, if the landlord is not occupying a non-residential building in the city, town or village concerned which is his own or to the possession of which he is entitled whether under this Act or otherwise –

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(a) for the purpose of a business which he is carrying on, on the date of the application; or

(b) for the purpose of a business which in the opinion of the Controller the landlord *bona fide* proposes to commence :

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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 clause before the expiry of three months from the date on which the instrument was registered :

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

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

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

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- A The provisions, extracted above, specify the grounds for eviction of a tenant from a residential building as well as from a non-residential building. Sub-clause (i) of clause (a) of sub-section (3) of Section 10 deals with eviction of a tenant from a 'residential building'. It says that a landlord may apply to the Rent Controller for an order directing the tenant to put
- B the landlord in possession of a residential building on any of the two grounds, namely, (a) 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; and (b) 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 *bona fide* requires another building instead, for his own occupation.
- C Sub-clause (ii) thereof deals with the eviction of a tenant from 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 use provided he is not occupying any such building in the city, town or village concerned
- D which is his own or to the possession of which he is entitled whether under this Act or otherwise. Sub-clause (iii) thereof furnishes the ground for eviction of a tenant from a non-residential building other than that falling under sub-clause (ii); if the landlord is not occupying a non-residential building in the city, town or village concerned which is his own or to the possession of which he is entitled under the Act or otherwise and he requires it (a) for the purposes of a business which he is carrying on, on
- E the date of the application; or (b) for the purpose of a business which, in the opinion of the Controller, the landlord *bona fide* proposes to commence, he may seek eviction of the tenant. These provisions are subject to two restrictions: (i) a person who becomes a landlord by an instrument *inter vivos* after the commencement of the tenancy cannot apply under that
- F clause before the expiry of three months from the date of registration of the instrument; and (ii) where the landlord has obtained possession of a residential building under that clause, he will not be entitled to apply again under it whether he has obtained possession of a residential or a non-residential building of his own.
- G It is not necessary to refer to the other provisions of Section 10 for purposes of the present discussion.

A combined reading of Section 2(iii) and Section 10(3)(a) of the A.P. Act indicates that when a residential building or a non-residential building

H or parts thereof are let separately for residential and/or non-residential

purposes, the provisions of Section 10(3)(a), namely, sub-clause (i) in case of a residential building and sub-clauses (ii) and (iii) in case of a non-residential building, can be invoked and on the requirements thereof being satisfied a landlord can seek eviction of a tenant therefrom. However, there is no separate provision under which eviction of a tenant can be sought from a building, having both residential and non-residential portions, held under a composite lease. For this reason, the High Court held that as the demised building was let out for residential and non-residential purposes under a composite lease to the respondent, the eviction petition of the appellant on the ground of her personal requirement of residence was not maintainable. In the result, the appellant is placed in such a position that she cannot seek recovery of possession of the demised building, not even of the residential portion, from the respondent by approaching the Rent Controller. She cannot also seek decree for eviction against the respondent on the aforementioned ground from Civil Court because the building is found to be within the purview of the A.P. Act. In such a situation is she without any remedy? The riposte, in our view, is in the negative.

There is nothing in the A.P. Act to suggest that the right of a landlord like the appellant to recover possession of the demised building from the tenant-respondent is taken away either expressly or by necessary implication. Once it is held that a building having both residential and non-residential portions which are let out together under a composite lease is a building within the meaning of that term and within the ambit of the Act, such a building has to fall within one or the other category, namely, residential or non-residential – the classification which is made in Section 2(iii) of the A.P. Act. We find it difficult to infer that the legislature having brought such a building within the ambit of the Act and having provided for eviction of a tenant on the ground of personal requirement of the landlord from such a building when it is let out for residential purposes or for non-residential purposes or separately for residential and/or non-residential purposes and having not taken away the right of the landlord to eject the tenant from such a building left him in the lurch without providing the remedy of eviction of tenant when let out under a composite lease. We cannot construe the provisions of the A.P. Act in that way. We have, therefore, to discern the remedy under the A.P. Act on the principle embodied in the maxim *ubi jus ibi remedium*. The buildings under that Act are classified as (i) residential and (ii) non-residential. In our view, a building having residential and non-residential portions and let out under

- A a composite lease has to be categorised as either a residential or a non-residential building having regard to its nature, accommodation, dominant purpose of lease, primary use of the building and other relevant circumstances on the facts of each case. On such determination, the suit/petition of the landlord has to be decided under sub-clause (i) or sub-clauses (ii) or (iii) of clause (a) of Section 10(3) of the A.P Act, as the case may be.
- B It may be noticed here that under Section 10(3)(a) of the A.P. Act, the relief is granted with reference to the nature of the building and not with reference to the purpose for which it is let.

- C In the instant case, it is admitted that the building comprises of two parts – (a) country tiled house used for residential purposes and (b) a L-shape tin shade appurtenant thereto which is lesser in area than the residential portion and was being used for manufacturing aluminium vessels. The dominant purpose of the lease is residential purpose, non-residential activity being incidental. Now, some material is sought to be placed on record to show that no manufacturing activity is being carried on in that portion pursuant to the orders of the Member Secretary, A.P.Pollution Control Board. It is not disputed that the demised building is in residential area where no non-residential activity is permitted to be carried on. While respectfully agreeing with the test laid down by this Court in *Busching Schmitz* case (supra), we are of the view that the portion of the demised building let out for non-residential purposes can also be adapted with a little modification for residential purposes and indeed the claim of the landlord is to convert the same for residential purposes of the family. For all these reasons, we are of the considered view that the demised building has to be treated as a residential building. If so, the provisions of Section 10(3)(a)(i)(b) of the A.P. Act will be attracted and the eviction petition filed by the appellant will be maintainable. The impugned order of the High Court, insofar as it holds that the petition of the appellant under Section 10(3)(a)(i)(b) is not maintainable, is accordingly set aside and the order of the Appellate Authority dated 27.11.95 is restored. We approve the ratio in the judgments of the High Courts which are in accord with the view expressed hereinabove by us and overrule the ratio of the judgments of the High Courts which have held to the contra.
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- H Inasmuch as the Appellate Authority as well as the High Court have held that the requirement for residence of the appellant is *bona fide* and as we have held that the petition of the appellant filed under Section

10(3)(a)(i)(b) is maintainable, the appellant is entitled to a direction to the respondents to put the appellant-landlord in possession of the demised building. The eviction petition, R.C.C.No.71 of 1981 on the file of the Principal District Munsif-cum-Rent Controller, Rajahmundry is ordered. We grant time to the respondents to vacate the demised building and put the appellant-landlord in vacant possession of the same till December 31, 1999. The appeal is accordingly allowed but in the circumstances of the case without costs. A B

S.V.K.

Appeal allowed.