A KUSUM DEVI

v.

MOHAN LAL (DEAD) BY L.RS.

(Civil Appeal No. 2876 of 2001)

APRIL 8, 2009

B

[B.N. AGRAWAL AND G.S. SINGHVI, JJ.]

MADHYA PRADESH ACCOMMODATION CONTROL ACT, 1961:

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ss.12(1)(e) and 12(1)(g) – Suit for eviction on both the grounds – Under Clause (e) for personal requirement for residential purposes as also under Clause (g) for carrying out repairs due to premises having become unsafe for human habitation – Held: There is no provision in the Act preventing a landlord from raising grounds enumerated under Clauses (e) and (g) together in a suit for eviction – Court is required to consider both the grounds on merits as they are mutually exclusive but not destructive of each other – In the instant case, trial court and first appellate court having found the requirements of suit premises by landlady under Clauses (e) and (g) proved, rightly granted decree of eviction under both the clauses.

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ss. 17 and 18 – Applicability of – HELD: In case decree for eviction is passed only under clause (e) of s.12(1), provisions of s.17 would apply – But if eviction is ordered under clause (g) alone, s.18 would apply – However, where decree is passed under Clauses (e) and (g) both, it shall be deemed to have been passed mainly under Clause (e) and, therefore, provisions of s.17 would apply and not of s.18.

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Appellant's suit for eviction was decreed by the trial court, *inter alia*, on the ground of *bona fide* need for residential purpose u/s 12(1)(e) of the Madhya Pradesh

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Accommodation Control Act, 1961 as also u/s 12(1)(g) for carrying out repairs in the suit premises as it had become unsafe for human habitation. The first appellate court affirmed the decree. In the second appeal filed by the respondent-tenant, the High Court set aside the decree passed by both the courts below as in its opinion no decree could be granted if the grounds enumerated under Clauses (e) and (g) of s.12(1) of the Act, were taken together in a suit for eviction and in such a case both the claims could not be held to be *bona fide*.

Allowing the appeal, the Court

HELD: 1.1. What is to be ascertained by the court in a suit for eviction under Clauses (e) and (g) of s.12(1) of the Madhya Pradesh Accommodation Control Act, 1961 is the *bona fide* requirement of the landlord; under Clause (e) for own occupation and under clause (g) for carrying out repairs, etc. in the suit premises. If, on the basis of the pleadings and evidence led, the court is satisfied that the landlord has established his *bona fide* requirement of the suit premises for his own occupation or for any member of his family under Clause (e), it may order eviction of tenant under the said clause. There is no provision in the Act preventing a landlord from raising grounds enumerated under clauses (e) and (g) of sub-section (1) of s.12 of the Act together in a suit for eviction. Once the *bona fide* requirement under Clause (e) is held to have been proved, the mere fact of having simultaneously pleaded in the plaint that the suit premises, having become unsafe or unfit for human habitation, are *bona fide* required for carrying out repairs, which could not be done without the premises being vacated, does not affect the *bona fide* requirement of a landlord under Clause (e). Therefore, once *bona fide* requirement of a landlord for own occupation stands established and a decree for eviction is granted under the

A relevant provision, it is well within the right of the landlord to either move to the building without or after carrying out repairs. [Para 9 and 14] [616-C, D; 620-E-H]

1.2. In a case where eviction has been sought both on the grounds of *bona fide* requirement by the landlord for occupation of the premises for himself or any member of his family, as required under s.12(1)(e) of the Act and for carrying out repairs, as enumerated under s.12(1)(g) of the Act, the court is required to consider both the grounds on merits, as they are mutually exclusive, but not destructive of each other. In case decree for eviction is passed only under Clause (e), the landlord would be entitled to move into the premises without or after making any repairs, and the provisions of s.17 of the Act would apply. But if the same is passed under Clause (g) alone, the provisions of s.18 would apply. However, in case decree is passed under clauses (e) and (g) both, in that eventuality, the same shall be deemed to have been passed mainly under clause (e), and, as such, the provisions of s.17 of the Act would alone apply and not s.18. [Para 25] [627-F, G, H; 628-A]

1.3. In the case on hand, the trial court as well as the first appellate court, having found the requirements of suit premises by the landlady under clauses (e) and (g) proved, rightly granted decree for eviction under both the clauses. The High Court was not justified in setting aside the said decrees by following the judgment in the case of *Smt. Parmeshwari Devi** as the law laid down therein runs contrary to the principles laid down by this Court in the case of *Ramniklal Pitambardas Mehta*** and other decisions. The judgment of the High Court is set aside and that rendered by the first appellate court confirming the decree for eviction is restored. [Para 26 and 27] [628-C; 628-E]

Smt. Parmeshwari Devi vs. Thakur Nathu Singh,* **1998 (1) MPJR 462, overruled. A

***Ramniklal Pitambardas Mehta vs. Indradaman Amratlal Sheth,* **AIR 1964 SC 1676;** *P.S. Pareed Kaka & Ors. vs. Shafee Ahmed Saheb,* **(2004) 3 SCR 412;** *Modern Tailoring Hall vs. H.S. Venkusa and Ors.* **(1997) 5 SCC 315 and** *Radhey Shyam & Ors. vs. Kalyan Mal,* **(1984) 4 SCC 447, relied on.** B

Krishna Das Nandy vs. Bidhan Chandra Roy, **AIR 1959 Calcutta 181 and** *Smt. Rohinibai vs. Vishnumurthy,* **1980 (1) ILR (Karnataka) 340, referred to.** C

Matthew James Mckenna & Anr. Vs. Porter Motors Ltd., **(1956) AC 688 and** *Betty's Cafes Ltd. Vs. Phillips Furnishing Stores Ltd.,* **(1959) AC 20, referred to.** D

Case Law Reference:

1998 (1) MPJR 462	**overruled**	**para 1**
AIR 1964 SC 1676	**relied on**	**para 15**
(2004) 3 SCR 412	**relied on**	**para 17**
(1997) 5 SCC 315	**relied on**	**para 18**
(1984) 4 SCC 447	**relied on**	**para 19**
(1956) AC 688	**referred to**	**para 21**
(1959) AC 20	**referred to**	**para 22**
AIR 1959 Calcutta 181	**referred to**	**para 23**
1980 (1) ILR (Karnataka) 340	**referred to**	**para 24**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2876 of 2001.

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A From the Judgment and Order dated 2.8.1999 of the High Court of Madhya Pradesh at Jaipur in Second Appeal No. 468 of 1995.

H.L. Agarwal, Akshat Srivastava, P.P. Singh and Inderjeet B Yadav for the Appellants.

Sakesh Kumar, Yogmaya Agnihotri and Ashok Kumar Singh for the Respondents.

The Judgment of the Court was delivered by

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B.N. AGRAWAL, J. 1. The appellant – landlady filed a suit for eviction of respondent-tenant from the suit premises under Section 12 (1)(a), (c), (e), (g) and (o) of the Madhya Pradesh Accommodation Control Act, 1961 [hereinafter referred to as 'the Act']. Decreeing the suit, the trial court directed the D respondent to deliver vacant possession of the suit premises to the appellant and to pay the unpaid rental of Rs. 1080/- to her within one month. Being aggrieved, the respondent filed an appeal in the Court of IIIrd Additional District Judge, Damoh. Dismissing the appeal, the first appellate court held that the E appellant was entitled to get vacant possession of the suit premises from the respondent only under clauses (e) and (g) of sub-section (1) of Section 12 of the Act. Aggrieved thereby, the respondent filed an appeal before the High Court of Madhya Pradesh. The High Court, by the impugned judgment, following F the judgment in the case of *Smt. Parmeshwari Devi vs. Thakur Nathu Singh,* 1998 (1) MPJR 462, a decision of the same High Court – while allowing the appeal and setting aside the decrees of eviction granted by both the courts below under clauses (e) and (g) of Section 12(1) of the Act, held that no decree could G be passed if the grounds enumerated under clauses (e) and (g) are taken together in a suit for eviction as both the claims could not be held to be *bona fide*. Hence, this appeal by special leave.

2. Briefly put, the facts are that the appellant herein H purchased a two-storied building, namely, Ward No. 1, Damoh,

by a registered Sale Deed dated 13.6.1986 from one Mahindra Raja Jain and respondent herein, who was inducted as tenant by the ex-owner Mahindra Raja Jain in the first floor of the said house and was residing in the suit premises at the time of its purchase by the appellant, became tenant of the appellant. Since the respondent had not paid rent since 1979, the right to recover the same was assigned to the appellant by the ex-owner. Failure of the respondent to pay rental resulted in a notice being sent by the appellant on 29th August, 1986, but despite that respondent did not pay rental to the appellant. On 20th July, 1987, appellant filed a suit for eviction against the respondent on grounds, *inter alia*, of *bona fide* need for residential purpose under Section 12(1)(e) and for carrying out repairs in the suit premises as it had become unsafe for human habitation under Section 12(1)(g), which repairs, according to the appellant, could not be carried out until the suit premises were vacated by the respondent. It was stated that since - at the time of purchase - the accommodation available with the appellant on the ground floor was inadequate, the appellant had to hire a room in the same locality for the purpose of keeping the household goods. It was further stated that keeping in view the large family of the appellant consisting of a retired husband, five married daughters, who keep visiting her regularly, and marriageable sons, the appellant and his family was facing acute shortage of residential accommodation.

3. The respondent contested the said suit and filed a written statement, denying the title of the appellant as well as the grounds on which his eviction from the suit premises was sought, stating as follows:-

> "Since the year 1953-54, I am a tenant in the suit house. I had taken this house on rent from Sunder Lal Jain.....The plaintiff used to live in the ground floor portion of the house along with her husband and one child and the remaining members of the family had been married. The Plaintiff had taken on rent some rooms in Asati Dharmashala. Mohinder

A Raja is the son of Sunder Lal Jain, who used to live in London. This house has been sold by Mohinder Raja to the Plaintiff.....Kusum Devi had sent me notice before the Nalish...I had never given any rent to Kusum Devi....This is true to suggest that in the year 1965 I came to know that
B Mohinder Raja is the son of Sunder Lal Vaidya Raj....I indicated this as the wrong statement because I did not know that he had any right over the suit property. When Mohinder Raja went away after executing the registry of the suit house only then I came to know that Mohinder Raja
C was the owner of the suit house. I came to know after going through the notice that Mohinder Raja was the owner of the suit house. This is true to suggest that on 13.6.86 the registry of the suit house had been executed... The suit house was constructed in 1948...This is true to suggest
D that on the first floor, where my latrine is located, to its side Basant Khanwilker's house is situated. The walls of the suit house side where Basant Khanwilkar is living...are in bad condition. The bricks of that side have been washed away. This is true to suggest that there one crack has been
E formed in the roof of the house. This crack is just above the partition. This is true to suggest that the son of the plaintiff who used to live with her in the suit house has reached the age of marriage. The elder son of the Plaintiff has been married. He used to pay visit to plaintiff's place. All the five daughters of the plaintiff have been married and
F they also used to visit the plaintiff's place. This is true to suggest that the husband of the plaintiff is a retired postmaster."

As stated above, the trial court, after considering the
G pleadings of both the parties and analyzing the evidence led, decreed the suit of the appellant-plaintiff on all the grounds taken in the suit and directed the respondent-tenant to deliver vacant possession of the suit premises to the appellant within one month. The said judgment of the trial court was
H unsuccessfully challenged by the respondent by filing an appeal

before the first appellate court in relation to grounds enumerated under clauses (e) and (g). Being aggrieved, the respondent carried the matter – by way of Second Appeal - to the High Court of Madhya Pradesh, which, while reversing the judgment of the first appellate court, held that no decree could be granted if the grounds enumerated under clauses (e) and (g) are taken together in a suit for eviction as both the claims could not be held to be *bona fide*. In so holding, the High Court followed the judgment in the case of *Smt. Parmeshwari Devi* [supra].

4. Shri H.L.Agrawal, learned senior counsel appearing on behalf of the appellant, submitted that both the courts below having concurrently found the requirement of suit premises by the appellant *bona fide* for the purpose of residence under Section 12 (1) (e) and for carrying out repairs under Section 12 (1) (g) as the accommodation had become unsafe/unfit for human habitation, it was not open to the High Court to go into the question whether both the grounds for eviction under Section 12 (1) (e) and Section 12 (1) (g) could be taken together or not. The High Court, therefore, has committed a grave error by going into that question and holding that if grounds for eviction under Section 12 (1)(e) and 12 (1) (g) are raised together, both the claims could not be held to be *bona fide* and no decree could be granted at the same time.

5. On the other hand, Shri Sakesh Kumar, learned counsel appearing on behalf of the respondent, has submitted that by the impugned judgment, the High Court has rightly set aside the decree of both the courts below granted under Section 12 (1)(e) and Section 12(1)(g) as both the grounds, being contradictory to and destructive of each other, could not be taken together in a suit for eviction.

6. Before considering the rival submissions of both the parties, it would be useful to refer to the relevant provisions of the Act, which are set out hereunder: -

A "Section 12: Restriction on eviction of tenants:-

(1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any civil Court against a tenant for his eviction from any
B accommodation except on one or more of the following grounds only, namely:

(e) that the accommodation let for residential purposes is required *bonafide* by the landlord for occupation as a residence for himself or for any member of his family, if
C he is the owner thereof, or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned;

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(g) that the accommodation has become unsafe, or unfit for human habitation and is required *bonafide* by the landlord for carrying out repairs which cannot be carried out without the accommodation being vacated;"

E According to clause (e), a landlord can file a suit for eviction of tenant if the accommodation let for residential purpose is required *bona fide* by him for occupation as a residence for himself or for any member of his family if he is the owner thereof, provided the landlord has no other
F reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. Under clause (g), what is required to be established by a landlord seeking eviction is that the accommodation has become unsafe, or unfit for human habitation and is *bona fide* required by him for the
G purpose of carrying out repairs, etc., and that such repairs cannot be carried out without the accommodation being vacated. Therefore, in a suit for eviction under Section 12(1)e) and Section 12(1)(g), what the court is required to see is the *bona fide* requirement of the landlord; under the former clause
H for occupation of the landlord or any member of his family and

under the latter, for the purpose of carrying out repairs. A

7. There are provisions in the Act that provide sufficient protection to the tenants against whom decree of eviction is granted under clauses (e) and (g). Section 17 of the Act provides that a landlord on recovery of possession of any B accommodation from the tenant in pursuance of order made under clauses (e) or (f) shall not, except with the permission of the Rent Controlling Authority, re-let whole or any part of the accommodation so recovered within two years from the date of obtaining such possession. It further provides that failure of C the landlord to occupy the premises so recovered within two months of obtaining the possession or, after occupation within two months, if it is re-let, within two years from the date of obtaining such possession, to any person other than the evicted tenant without obtaining the permission of the Rent Controlling D Authority or is transferred to any other person for reasons which do not appear to the Rent Controlling Authority to be *bona fide*, the Rent Controlling Authority may, on application made to it in this behalf by such evicted tenant, direct the landlord to put the tenant in possession or pay him such compensation as the Rent Controlling Authority thinks fit. E

8. Section 18 of the Act provides that the court while granting decree on the grounds specified in clause (g) or (h) of sub-section (1) of Section 12, shall ascertain from the tenant whether he would like to be placed in occupation of the F accommodation or part thereof from which he is to be evicted and on his so electing, shall record the fact of the election in the order specifying the date on or before which he shall deliver possession so as to enable the landlord to commence the work of repairs or building or re-building, as the case may be, and G on the tenant delivering the possession within the date specified, the landlord shall, within one month of the completion of such work, place the tenant in occupation of the accommodation or part thereof. It further provides that on failure of the landlcrd, after having obtained possession of the H

premises within the date specified in the order, to commence the work of repairs, etc., within one month of the specified date or complete the work in a reasonable time or after completion of the work, to place the tenant in occupation of the premises, the Court may, on application made to it in this behalf by the evicted tenant within the prescribed time, order the landlord to place the tenant in occupation of the accommodation or part thereof or to pay to the tenant such compensation as the court thinks fit.

9. As stated above, what is to be ascertained by the court in a suit for eviction under clauses (e) and (g) is the *bona fide* requirement of the landlord; under clause (e) for own occupation and under clause (g) for carrying out repairs, etc. in the suit premises. If, on the basis of the pleadings and evidence led, the court is satisfied that the landlord has established his *bona fide* requirement of the suit premises for his own occupation or for any member of his family under clause (e), it may order eviction of tenant under the said clause. Once such a decree is passed, the landlord, by grant of such decree in his favour, gets a right to either move to the building so vacated without or after making repairs, alterations, additions, etc.

10. In the case on hand, both the courts below concurrently found that the appellant required the premises for her own use and, therefore, granted a decree for eviction under Section 12(1)(e). We have been taken through the pleadings and the evidence led in both the courts below and find that, while arriving at the finding of *bona fide* requirement of the suit premises by the appellant, both the courts below very carefully considered the pleadings of the parties and analyzed the evidence on record. In fact, the respondent himself, in his written statement, spoke about the factum of large family of the appellant and her having taken on rent some accommodation in the locality for keeping household goods. The relevant portion of the written statement of the respondent is reproduced below:-

"The plaintiff used to live in the ground floor portion of the house along with her husband and one child and the remaining members of the family had been married. The Plaintiff had taken on rent some rooms in Asati Dharmashala. This is true to suggest that the son of the plaintiff who used to live with her in the suit house has reached the age of marriage. The elder son of the Plaintiff has been married. He used to pay visit to plaintiff's place. All the five daughters of the plaintiff have been married and they also used to visit the plaintiff's place. This is true to suggest that the husband of the plaintiff is a retired postmaster....". A B C

We, therefore, do not find any infirmity in the findings concurrently recorded by both the courts below on the aspect of *bona fide* requirement of the suit premises by the appellant for her use under Section 12(1)(e). In our view, the trial court as well as the first appellate court have rightly come to the conclusion that the requirement of suit premises by the appellant was *bona fide* and granted decree under clause (e). D

11. Having held that the present case is one where the appellant has established her *bona fide* requirement of the suit premises for residential purpose under clause (e), we now turn to the grounds raised by the appellant under clause (g) i.e., that the accommodation having become unsafe or unfit for human habitation, she *bona fide* required the same for carrying out repairs, etc., and that such repairs could not be carried out without the accommodation being vacated. Both the courts below have relied upon the statements of Puran Chand [PW.2], Khemchand Asati [PW.3], Bhagawati Prasad [PW.4], C.K. Shrivastava [PW.5] and Mohinder Raja Jain [PW.6] and Exhibit P-6. All these witnesses in their depositions have categorically stated that the suit premises were in a dilapidated condition, that there were cracks on the walls and that the building, being very old, has become quite weak. PW.5 – Shri C.K. Srivastava, an official of the Public Works Department, in his deposition E F G H

A has stated that the suit house needed special repairs and that the repairs could not be carried out without getting the house vacated. Exhibit P.6 is a notice dated 16.9.87 sent by one Mr. Khanwilker, whose house is next to the appellant, stating that the suit premises were in rundown condition, which was posing B a danger to the safety of life and property. Even the respondent in his written statement has admitted about the dilapidated condition of the suit building, the relevant portion of which is as under:-

> C "The suit house was constructed in 1948...This is true to suggest that on the first floor, where my latrine is located, to its side Basant Khanwilker's house is situated. The walls of the suit house side where Basant Khanwilkar is living...are in bad condition. The bricks of that side have been washed away. This is true to suggest that there one D crack has been formed in the roof of the house. This crack is just above the partition."

On the basis of the statements of PWs. 2 to 6 and Exhibit P-6 as also the written statement of the respondent, both the E courts below were quite justified in arriving at a finding that the appellant has succeeded in proving her *bona fide* requirement under Section 12 (1)(g) as well and accordingly granted a decree for eviction against the respondent on that ground as well.

F 12. This brings us to the question whether in a suit for eviction the grounds enumerated under clauses (e) and (g) of Section 12 (1) can be raised together by a landlord. As stated above, the High Court, by the impugned judgment, following *Smt. Parmeshwari Devi* [supra], held that no decree could be G granted if the grounds enumerated under clauses (e) and (g) are taken together in a suit for eviction as both the claims could not be held to be *bona fide*.

13. In *Smt. Parmeshwari Devi* [supra], plaintiff filed a suit H for eviction of defendant on the grounds enumerated under

clauses (e) and (h) of sub-section (1) of Section 12 of the Act. While the trial court granted a decree of eviction under clause (h), but not under clause (e), the first appellate court, on appeal being preferred by the defendant challenging grant of eviction decree under clause (h) and on cross objection being filed by the plaintiff seeking decree under clause (e) as well, dismissed the appeal filed by the defendant and allowed the cross objection filed by the plaintiff and granted decree of eviction under clause (e) as well. On appeal being preferred by the defendant, the High Court, while allowing the appeal and setting aside decrees of eviction granted by the trial court and the first appellate court under clauses (e) and (h) of sub-section (1) of Section 12 of the Act, observed as under: -

> "...this court is of the view that no difficulty would arise if the respondent had approached the court without asserting that he wanted to reconstruct the house or demolish it, provided he required the accommodation for his residence. In the case of Ramniklal Pitamabardas Mehta vs. Indradaman Amratlal Sheth, AIR 1964 SC 1676 it was held that once it is proved that landlord required the house *bona fide*, it did not matter if he occupied the house after reconstructing or demolishing it. Therefore, we take it that it is well established that once the *bona fide* requirement under section 12 (1) (e) of the Act is proved together with other ingredients of that Section, it would not be of any consequence whether the accommodation is occupied as such or the house is reconstructed or demolished as such or the house is reconstructed or demolished for the purpose of residence, but the landlord could not let it out within two years of obtaining possession unless conditions mentioned in Section 17 are satisfied. ....the court has no option to say that respondent could not have pleaded *bona fide* requirement for residence as well as *bona fide* requirement for reconstruction simultaneously. Both the pleas destroy each other. It is true that under Order VII Rule 7 of the Code of Civil Procedure alternative reliefs are

A permitted. It is also well established that alternative and inconsistent claims have been permitted by courts subject to rider that law permits a court to do so."

The High Court further observed as under: -

B "this court is of the view that the plea of the respondent/ landlord that he required the suit house *bona fide* for the residence of himself and that of the members of his family cannot stand together with the plea of the landlord that he required the suit house *bona fide* for reconstruction. On C the contrary, the requirement of *bona fide* reconstruction of the suit house cannot be pleaded simultaneously with the plea of *bona fide* requirement for persona residence. Both the pleas are mutually destructive of each other and the very fact that they were pleaded together shows that D none of them are *bona fide*....the landlord can take only one of pleas so that it be *bona fide*. The moment he chooses the second with the first both destroy each other"

14. There is no provision in the Act preventing a landlord from raising grounds enumerated under clauses (e) and (g) of E sub-section (1) of Section 12 of the Act together in a suit for eviction. In a given case like the present one, raising both the grounds together, what the court is required to see is whether the *bona fide* requirement of the landlord to occupy the premises for his own occupation has been proved or not. Once F the *bona fide* requirement under clause (e) is held to have been proved, the mere fact of having simultaneously pleaded in the plaint that the suit premises, having become unsafe or unfit for human habitation, are *bona fide* required for carrying out repairs, which could not be carried out without the premises G being vacated, does not affect the *bona fide* requirement of a landlord under clause (e). Therefore, once *bona fide* requirement of a landlord for own occupation stands established and a decree for eviction is granted under the relevant provision, it is well within the right of the landlord to H either move to the building without or after carrying out repairs.

15. In *Ramniklal Pitambardas Mehta vs. Indradaman Amratlal Sheth,* AIR 1964 SC 1676, a decision of a 3-judge Bench of this Court, referred in *Smt. Parmeshwari Devi* [supra], respondent-plaintiff filed a suit for ejectment of the defendant-tenant from the suit premises on the grounds of *bona fide* requirement for own occupation under clause (g), which is analogous to clause (e) in the case on hand, and for making additions, alterations and necessary changes in the suit premises, it being in dilapidated condition, under clause (hh) of sub-section (1) of Section 13 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, which is more or less similar to clause (g) in the case on hand. Finding that the respondent *bona fide* required the premises for his own occupation, the trial court decreed the suit on both the grounds. Agreeing with the views of the trial court, the first appellate court dismissed the appeal preferred by the defendant-tenant. The defendant -tenant then preferred a revision before the High Court, which was also dismissed. On appeal by special leave being preferred to this Court, the sole question that arose before this Court was whether the case of the respondent-plaintiff fell within the provisions of Section 13(1)(g) or Section 13(1)(hh) of the said Act. After having answered the question that the case of the respondent-plaintiff fell within the provisions of Section 13(1)(g), this Court observed at page 1678 as under:-

> "....we agree with the courts below that the respondent's case falls under cl. g when he *bona fide* requires the premises for his own occupation. The mere fact that he intends to make alterations in the house either on account of his sweet will or on account of absolute necessity in view of the condition of the house, does not affect the question of his requiring the house *bona fide* and reasonably for his occupation, when he has proved his need for occupying the house. There is no such prohibition either in the language of cl. g or in any other provision of the act to the effect that the landlord must occupy the house for residence without making any alterations in it. There could

A not be any logical reason for it."

After so observing, this court held at page 1679 as under:-

"we are therefore of opinion that once the landlord establishes that he *bona fide* requires the premises for his
B occupation, he is entitled to recover possession of it from tenant in view of the provisions of sub-cl. g of Section 13 (1) irrespective of the fact whether he would occupy the premises without making any alteration to them or after making the necessary alterations."
C

16. There is a long line of decisions wherein, in identical situations, the principle laid down in Ramniklal [supra] has been reiterated by this Court.

17. In *P.S. Pareed Kaka & Ors. vs. Shafee Ahmed Saheb,*
D (2004) 3 SCR 412, a 2-Judge Bench of this Court, while interpreting clauses (h) and (j) of sub-section 1 of Section 21 of the Karnataka Rent Control Act, 1961, which clauses are analogous to clauses (e) and (g) of sub-section (1) of Section 12 of the Act in the present case, held, at page 419, as under:-
E

"...the trial court has miserably failed to consider whether the need as put forth is *bona fide*, reasonable or not. The High Court on re-appreciation of evidence, came to the conclusion that the need is *bona fide* and the building
F required demolition and reconstruction....it is in evidence that the premises is very old and the building therein is dilapidated and portions of the building have also collapsed. It is also in evidence that the rear outhouse building has already collapsed. In these circumstances, it
G cannot be said that the said need is not *bona fide* or unreasonable. It is not for the tenant to suggest that there is no need to demolish the existing building and construct the new building. The landlord is entitled to make use of his property for any reasonable purpose. If the landlord
H chooses to use it for residential purpose, the tenant cannot

say that he should not do so." A

It was further held at page 420 as under:-

"Law is well settled on this aspect. Even if the building is in a good condition, if it is not suitable for the requirement of the landlord, he can always demolish even a good B building and put up a new building to suit his requirements. It is not necessary for the landlord to prove that the condition of the building is such that it require immediate demolition particularly when the premises is required by the landlord. Therefore, it has to be held that the finding of C the trial court cannot be sustained and the High Court on re-appreciation of the evidence, rightly so, held that the landlord has established that his need for all the four petition schedule premises is *bona fide* and reasonable."

D

18. In *Modern Tailoring Hall vs. H.S. Venkusa and Ors.,* (1997) 5 SCC 315, this Court was dealing with a case in which the landlord had sought eviction of the tenant under clauses (h) and (j) of sub-section 1 of Section 21 of the Karnataka Rent Control Act,1986, which correspond to clauses (e) and (g) in E the present case. While dismissing the appeal of the tenant and declining to take a view contrary to one expressed in *Ramniklal* [supra], this Court, at page 317, held as under:-

"....The ground of eviction given in the two provisions being mutually exclusive have flowing therefrom separate F individual rights and obligations and they cannot be permitted to overlap so as to confer on the court the discretion of employing one provision over the other. An application of the landlord, if not falling under Section 21 (1) (h), would on its own, merit dismissal. The court cannot G treat it in its discretion as one under Section 21(1)(j) and order an unwanted eviction. The distinction qualitatively has to be maintained. We therefore, decline to take a view to the contrary, even if it be possible, than the one taken by the high court based as it is on the decision of this court H

A in *Ramniklal Pitambardas Mehta vs. Indradaman Amratlal Sheth.*"

19. In *Radhey Shyam & Ors. Vs. Kalyan Mal,* (1984) 4 SCC 447, this Court followed *Ramniklal* [supra] and while B dismissing appeal of the tenant, at page 449 observed as under: -

"a case more or less similar on facts had come up before this Court in *Ramniklal Pitambardas Mehta v. Indradaman Amratlal Sheth* which arose from C proceedings taken under the Bombay Rents, Hotel and Lodging House, Rates Control Act 57 of 1947. There the eviction was sought under Section 13 (1)(g) and 13 (1) (hh) of that Act. Section 13 (1) (g) of that Act corresponds to section 12 (1) (f) of the Madhya Pradesh Accommodation D Control Act and Section 13 (1)(hh) of that Act corresponds to Section 12 (1)(g), namely, that the building is required for effecting either repairs or alterations. This court has observed in that case that once the landlord establishes that he *bona fide* requires the premises for his occupation, E he is entitled to recover possession of it from the tenant under the provisions of sub-clause (g) of Section 13 (1) irrespective of the fact whether he would occupy the premises without making any alterations or after making the necessary alterations....'.

F After so observing, it was held at page 449 as under: -

"Though the facts of that case are slightly different in that the requirement was for occupation after making some alterations whereas in the present case the requirement G is for locating the landlord's factory after demolishing and re-constructing the building, the principle deducible from that decision would apply to the facts of even these cases We agree with Mr. U.R. Lalit, learned counsel for the respondent landlord that the order of eviction is based H mainly under Section 12 (1)(f) of the Act and that from the

mere fact that Section 12(1)(h) also is added would not make the order of eviction only one under Section 12(1)(h) of the Act and Section 18 of the Act will not be attracted." A

20. We may now notice some more decisions wherein also clauses akin to clauses (e) and (g) were interpreted in the way they have been in *Ramniklal* [supra] and other decisions referred to above. B

21. In *Matthew James Mckenna & Anr. Vs. Porter Motors Ltd.,* (1956) AC 688, while construing clauses (h) and (m) of sub-section (1) of Section 24 of Tenancy Act, 1948 of New Zealand, and dismissing the appeal of the appellant-tenant, the Privy Council held as under:- C

"..... The real question turns on the meaning of "his or their own occupation." Apart from paragraph (m) there would be no doubt that a landlord required demised premises for his own occupation although he was intending for the purposes of his occupation to make substantial alterations, or put up a wholly new building. The difficulty arises from the existence of paragraph (m). Is that to be construed as covering all demolition or reconstructions cases, including those where the landlord will remain in occupation, or do the words of paragraph (h) limit its operation. D E

Their Lordships are of the opinion that its scope is so limited. This gives their natural meaning to the words "for his or their own occupation" while leaving a scope for paragraph (m), which accords with the distinction plainly drawn by paragraphs (g) and (h) between landlords who require to relet or resell and landlords who require to occupy. ....." F G

22. In *Betty's Cafes Ltd. Vs. Phillips Furnishing Stores Ltd.,* (1959) AC 20, the House of Lords, while dismissing appeal of the tenant, whose eviction was sought by the landlord H

A under clauses (f) and (g) of the Landlord and Tenant Act, 1954, held that the fact that the landlords might intend to occupy the rebuilt premises themselves did not deprive them of the right to possession under paragraph (f), since they could satisfy its conditions; such a deprivation was not implied in it when read
B with paragraph (g).

23. In *Krishna Das Nandy vs. Bidhan Chandra Roy,* AIR 1959 Calcutta 181, a 2-Judge Bench of the Calcutta High Court, while answering a question whether *bona fide* requirement for own occupation of a landlord would include building or re-
C building of the suit premises so as to make the premises livable as per his requirement, observed at pages 188-189 as under:-

> "The plaintiff's case is that he requires the disputed premises for building and/or re-building for his own
D occupation or, in other words, that he requires it for his own occupation and, for that purpose, he will build and/or re-build it.....Where the requirement is for building and re-building, that must be for purposes other than the landlord's own occupation and where the requirement is for the
E landlord's own occupation, no question of building and re-building should arise; or, to put it straight, if the landlord's case is that he requires the premises for building and re-building, he cannot claim to occupy it himself and if his case be that he requires it for his own occupation, he must
F occupy it as it is and must on his own showing or admission, it will not be fit for his own occupation unless built and/or rebuilt, his case of requirement for his own occupation must fail under the statute."

G After so observing, the Court held at page 189 as under:-

> "...occupation of the premises for purposes of building and/ or rebuilding in order to make it fit for one's own occupation would be part of such occupation".

H 24. In *Smt. Rohinibai vs. Vishnumurthy,* 1980 (1) ILR 340,

a 2-Judge Bench of the Karnataka High Court, in an identical situation, held at pages 344-345 as under:-

> "It is no doubt true that there could not be an order of eviction both under clauses (h) and (j) of Section 21 (1) of the Act. This is clear from not only the wording of clauses (h) and (j) of Section 21 (1) of the Act, but also provisions of Sections 25 to 28 of the Act. Under clause (h) an order of eviction could be made only for the purposes of *bona fide* use and occupation of the premises by the landlord. However, as pointed out in the aforesaid decisions, the clause does not require that a landlord after securing an order of eviction of tenant from a premises should occupy it as it existed on the date of eviction. There is no restriction on the landlord to have alteration or to have new construction after demolishing the premises as existed on the date of eviction....In the nature of things the scope of clause (h) is entirely different from clause (j). Therefore, there could not be an order of eviction on both the grounds specified in clauses (h) and (j). It is for this reason , they are mutually exclusive but this does not mean that a landlord seeking eviction on the grounds mentioned in clause (h) cannot plead that he wants to occupy the premises after demolition and reconstruction, and that by taking such a plea the case goes outside the scope of clause (h) and falls under clause (j)."

25. In view of the foregoing discussion, we hold that in a case where eviction has been sought both on the grounds of *bona fide* requirement by the landlord for occupation of the premises for himself or any member of his family, as required under Section 12(1)(e) of the Act and for carrying out repairs, as enumerated under Section 12(1)(g) of the Act, the court is required to consider both the grounds on merits, as they are mutually exclusive, but not destructive of each other. In case decree for eviction is passed only under clause (e), the landlord would be entitled to move into the premises without or after

making any repairs and the provisions of Section 17 of the Act would apply. But if the same is passed under clause (g) alone, the provisions of Section 18 would apply. However, in case decree is passed under clauses (e) and (g) both, in that eventuality, the same shall be deemed to have been passed mainly under clause (e), as such the provisions of Section 17 of the Act would alone apply and not Section 18 thereof.

26. In the case on hand, the trial court as well as the first appellate court, having found the requirements of suit premises by the landlady under clauses (e) and (g) proved, rightly granted decree for eviction under both the clauses. In our view, High Court was not justified in setting aside the said decrees by following the judgment in the case of *Smt. Parmeshwari Devi* [supra] as law laid down therein runs contrary to the principles laid down by this Court in the case of *Ramniklal Pitambardas Mehta* [supra] and other decisions referred to above.

27. In the result, the appeal is allowed, impugned judgment of the High Court is set aside and the same rendered by first appellate court confirming decree for eviction is restored. The respondent are granted six months' time to vacate the suit premises on furnishing usual undertaking to this Court within eight weeks from today. There shall be no order as to costs.

R.P. Appeal allowed.