A **ALI MOHAMMED**

v.

AZAD WALI

B [COURT OF APPEAL—Gould, V.P., O'Reagan, J.A., Mishra, J.A.]

Civil Jurisdiction

Date of Hearing: 22 July 1983
Date of Judgment: 28 July 1983.

C

(Landlord& Tenant—Application for possession of dwelling—6 months notice—"own use and occupation" means personal physical occupation)

J. G. Singh for the Appellant
R. Chandra for the Respondent

D

Appeal against a judgment of the Supreme Court which had overruled a decision given in the Magistrate's Court wherein the appellant had been given an order against the respondent for immediate possession of flat premises in Suva Street.

The appellant owned a number of flats there, one of which was occupied by the
E respondent. The Fair Rents Act applied to the flat. The appellant lived in a three bedroom house in Marlows Road. He gave the respondents 6 months notice to quit upon the ground that the flat was required for his own occupation. After the expiry of that period he brought an action in the Magistrate's Court.

Section 19(1) of the Fair Rents Act (Cap. 269) read:

F "19(1) No judgment or order for the recovery of possession of any dwelling-house to which this Act applies or for the ejectment of a lessee therefrom shall be made..... unless

(a) .....
(b) .....
(c) .....
(d) .....
G *(e)* the premises are bona fide required by the lessor tor his own occupation as dwelling-house and .....
.....
the court considers it reasonable to make such an order."

No alternative occupation was offered presumably by reason of the 6 months
H notice.

The Magistrate made an order in favour of the appellant. In his judgment he said:

"I further find as a fact that the Plaintiff does require the said premises for his own occupation as a dwelling house for his family. Assuming that I am held wrong in this finding, I consider that the fact that a six months' notice had been given is sufficient to entitle the Plaintiff to vacant possession bearing in mind the said proviso to S.19." A

The order was set aside in the Supreme Court on the ground that appellant had failed to prove he did require the flat for his own occupation. B

Held: The appellant did not contemplate physical occupation of the flat at all, he had his own home in Marlows Road.

Therefore it could not be said that the premises were required for the appellant's "own occupation as a dwelling house" within the meaning on that expression in s.19. C

Further, no alternate accommodation had been provided.

Cases referred to:

Hasking v. Lewis (1931) 2 K.B.1. D
Shepphard v. Devon County Council 130 New Law Journal. 14

MISHRA, J. A.

E

Judgment

This appeal was dismissed at the hearing. We now give reasons for its dismissal.

The appellant owns a number of flats in Suva Street, one of which is occupied by the respondent as a monthly tenant. The Fair Rents Act applies to this flat. The appellant himself lives in a three bedroom house in Marlows Road. F

He gave the respondent six months' notice under the Act to vacate the flat advising him that the flat was required for his own occupation. After the expiry of that period he brought an action in the Magistrate's Court and obtained an order for immediate possession.

The Magistrate, in his judgment said: G

"I further find as a fact that the Plaintiff does require the said premises for his own occupation as a dwelling house for his family. Assuming that I am held wrong in this finding, I consider that the fact that a six months' notice had been given is sufficient to entitle the Plaintiff to vacant possession bearing in mind the said proviso to S.19."

The respondent appealed to the Supreme Court which set aside the order on the ground that the notice in question did not absolve the appellant from the burden of proving that the flat was bona fide required for his own occupation and that he had failed to do so. H

A The appellant now comes to this court to have the order of possession restored on the following grounds:

"1. The learned Supreme Court Judge erred in law in holding that the words "for his own occupation" as used in S.19 (i) *(e)* of the Fair Rents Act indicates that the landlord must require the premises to live in himself with or without his family.

B 2. That it was open for the learned Supreme Court Judge on the English authorities to hold that the words "for his own occupation" did not necessary connote that the Landlord must personally occupy the premises and the learned Supreme Court Judge erred in law in holding to the contrary."

It is conceded, and is also clear from the grounds of appeal, that the only part of the relevant legislation requiring construction by this court is—

C "19(1) No judgment or order for the recovery of possession of any dwelling-house to which this Act applies or for the ejectment of a lessee therefrom shall be made, ... unless

(a) .....
(b) .....
(c) .....
D *(d)* .....
(e) the premises are bona fide required by the lessor for his own occupation as dwelling-house and .....
.....
the court considers it reasonable to make such an order."

The requirement as to notice has been complied with by the appellant.

E Romer L. J., in *Hasking v. Lewis* (1931) 2 K.B 1 at 18 said—

"It has frequently been pointed out in the courts, and it has been pointed out by Scrutton L. J. in the judgment that he has just given, that the principal object of the Rent Restrictions Act was to protect a person residing in a dwelling house from being turned out of his home."

F Subsection (5) of Section 19 of the Fair Rents Act emphasises the same object and a court will, therefore, have to be satisfied that each of the elements referred to above has been satisfied before it will make an order for possession.

The appellant, admittedly did not intend personally to occupy the flat. He wanted it for his son who was, at the commencement of proceedings, contemplating marriage. He would leave Marlows Road and establish a separate home if, and when, he got this flat. The learned G Magistrate made a one sentence finding that the appellant required the flat "for his own occupation as a dwelling house for his family." He did not deal at all with the evidence on the subject, apparently satisfied that the six months' notice was, in any case, sufficient by itself to entitle the appellant to an order for possession. This error made it necessary for the learned judge to scrutinise the facts in order to see what conclusions could properly be drawn from them. An appellate court is entitled to do that. As was said in *Shepphard v. Devon County* H *Council* (130 New Law Journal p. 14)—

"When hearing an appeal on a question of fact it was the duty of the Court of Appeal not to come to a conclusion different from the trial Judge unless it was satisfied that any advantage enjoyed by him by reason of his having seen and

heard the witnesses could not be sufficient to justify his conclusion. Further, the Court either because the reasons given by the trial Judge were not satisfactory or because it unmistakably appeared so from the evidence, might be satisfied that he had not taken proper advantage of his having seen and heard the witnesses."

The learned judge relied largely on facts not in dispute or on the appellant's own admissions.

He found that—

(i) the respondent had applied successfully to the Fair Rents Board for a reduction of rent;
(ii) when the appellant gave the respondent notice to vacate two other of his flats in the same block were vacant;
(iii) the son, according to the appellant, wanted no flat other than the one occupied by the respondent.

The learned judge was entitled, on the evidence, to make the above findings and we accept them as correct.

It is not possible to devise a formula for construing the phrase "his own occupation" in section 19 to cover all possible situations. For this reason this and similar phrases in similar legislation elsewhere, have always posed difficult questions for courts. The learned judge recognised this while discussing cases cited to him. He was, however, quite certain that on the particular facts of this case where the appellant did not contemplate physical occupation of the flat at all, having his own well established home in Marlows Road, and wanted the flat to establish a separate home for his married son, it could not be said that the flat was required for the appellant's own occupation. We agree with that conclusion.

Furthermore, the vacant flats in the same block were not offered to the respondent when the son allegedly considered them unsuitable for his occupation. The learned judge, on this evidence, was entitled to find that the appellant's claim was not bona fide and that the purpose of his action was mainly to get rid of the respondent thereby depriving him of the only home he had. Under the circumstances the learned judge was also correct in holding that the appellant had failed to satisfy the court that it would be reasonable to make an order for possession in the appellant's favour.

For these reasons the appeal was dismissed. There will be an order for costs in favour of the respondent to be taxed if not agreed.

Appeal dismissed.