PETITIONER:
ANANDI D.JADHAV (DEAD) BY LRS.

Vs.

RESPONDENT:
NIRMALA RAMCHANDRA KORE & ORS.

DATE OF JUDGMENT: 05/04/2000

BENCH:
S.N.Hegde, S.S.M.Quadri

JUDGMENT:

SYED SHAH MOHAMMED QUADRI,J.

This appeal raises an interesting question : whether on respondents 2 and 3, sons of the first respondent (tenant), building a house the appellants-landlords can seek eviction of the first-respondent under clause (l) of Section 13(1) of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947. The appellants are the legal heirs of the landlord subsequent owner of premises consisting of one room admeasuring 10 x 10 in City Survey No.2349, E.Ward, District Kolhapur (referred to as the suit premises). The suit premises was let out to the first respondent on a monthly rent of Rs.100/- by the erstwhile owner in 1987. Respondents 2 and 3 lived with their mother till they built a bungalow in R.S.No.690/B, Sambhajinagar, (hereinafter referred to as 'the house'). The said owner filed the suit, out of which the appeal arises, under Section 13(1)(l) of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947 (referred to in this judgment as the Act) against the respondents for their eviction on the ground that the respondents had built the house and thus have alternate suitable accommodation for their residence. They contested the suit stating that the first respondent had been in occupation of the suit premises for the last 30 years and that she has no concern with the house, built by respondents 2 and 3, which is not a bungalow as alleged by the appellants. It is stated that initially the monthly rent of the suit premises was Rs.50/- which was enhanced to Rs.100/- and that the suit was filed only to harass her. The trial court found that respondents 2 and 3 had constructed the house which could not be said to be a suitable residence of the first respondent and dismissed the suit on January 1, 1997. On appeal, the IInd Additional District Judge at Kolhapur held that though respondents 2 and 3 had built the house, a two storeyed building consisting of eight rooms, in which they were residing, yet respondent No.1 could be said to have acquired suitable alternative accommodation. Thus, the suit was decreed by allowing the appeal with costs. The first respondent challenged the validity of that order of the Appellate Court dated December 20, 1997 in Writ Petition No.167 of 1998 before the High Court. Holding that the alternate accommodation stood in the name of respondents 2 and 3 and the consideration for it was not provided by the first respondent the High Court opined that she could not be said to have a suitable alternate residence and accordingly set

aside the order of the District Judge by allowing the writ petition on January 27, 1998. It is against that order of the High Court that the present appeal is filed by special leave. Mr.A.M.Khanwilkar, learned counsel appearing for the appellants, vehemently contended that the first respondent and her sons lived in the suit premises as members of the family for over 30 years and the newly built house is a family house even if it was built by her sons; in any event she had acquired alternate accommodation. The High Court, submitted the learned counsel, took into consideration irrelevant matters to non-suit the appellants; he argued that under the Hindu Adoptions and Maintenance Act, 1956 the first respondent had a right to be maintained by her sons and, therefore, she was entitled to live in their house and so a suitable alternate accommodation was available to her. Mr.A.S.Bhasme, learned counsel appearing for the respondents, contended that the first respondent had no interest in the house; she was visiting that house as a guest and had no right to live in the house so no case under Section 13(1)(l) of the Act was made out and as such the High Court rightly allowed the writ petition. It will be useful to quote Section 13(1)(l) of the Act here : 13(1). Notwithstanding anything contained in this Act but subject to the provisions of sections 15and 15A, a landlord shall be entitled to recover possession of any premises if the Court is satisfied

(l) that the tenant after the coming into operation of this Act has built, acquired vacant possession of or been allotted a suitable residence.

A plain reading of the above provision shows that under clause (l) a landlord is entitled to recover possession of a premises from any tenant provided the Court is satisfied that after coming into operation of the Act, the tenant has built or has acquired vacant possession of or has been allotted a suitable residence. From the scheme of the provision it is discernible that it is only when the tenant gets a right to reside in a house other than the demised premises on the happening of any one of the three alternatives mentioned therein, namely, either by building or by acquiring vacant possession of or by allotment of a house, that the landlord can seek recovery of possession of the demised premises from the tenant. The learned counsel placed before us two judgments of this Court dealing with a similar provision in the Delhi Rent Control Act. Ganpat Ram Sharma & Ors. Vs. Gayatri Devi [1987 (3) SCC 576] is a case arising under Section 14(1)(h) of the Delhi Rent Control Act, 1958, which provides that if the tenant has built, acquired possession of or been allotted a residence, the landlord may seek his eviction. This Court has laid down that the burden to prove that any of the alternatives mentioned in the Section is on the landlord and it is only when he establishes this that the burden will shift on the tenant to show that it is not a suitable alternative accommodation. B.R.Mehta vs. Atma Devi & Ors. [1987 (4) SCC 183] also arose under Section 14(1)(h) of the Delhi Rent Control Act, 1958. There the wife of the tenant, a Government employee, was allotted accommodation by the Government wherein she was living separately as the relations between the husband and the wife were strained. While pointing out that the aims and objects of the Act are to control unreasonable evictions and to ensure that in an atmosphere of acute shortage of accommodation there is proper enjoyment of available spaces by those who want and

deserve and that the rationale behind the scheme of Section 14(1)(h) of the Act is that if for all practical and real sense the tenant has acquired or built or has been allotted another residence then his need for the old tenanted residence goes and the tenant loses his right to retain his tenanted premises, it was emphasised that to attract the provision the tenant should have domain of the alternative accommodation so as to use it as a substitute for the place which he is using in the tenancy. It was held that in view of the strained relations between the husband and the wife, the alternative accommodation ceased to be a matrimonial home and the tenant could not use it as a substitute for the demised premises. The judgment of the Court of Appeal in Strandingford vs. Probert [1949 (2) All.E.L.R. 861] relied upon by the learned counsel has absolutely no relevance. There the question was whether alternative accommodation was suitable for the tenant. It was held that the alternative accommodation must fulfil the requirement of the tenant and his family which included his married sons. That was because of a specific provision in the English Act that accommodation shall be deemed to be suitable if in the opinion of the Court it is reasonably suitable to the needs of the tenant and his family as regards proximity to place of work etc. There is no such provision in the Act in question. Therefore, the judgment in the above case would be of no assistance to the appellants. Now the question arises what is the ambit of the term tenant in Section 5(11) of the Act. Insofar as it is relevant for our purpose, it reads thus : 5(11). tenant means any person by whom or on whose account rent is payable for any premises and includes

(a) such sub-tenants and other persons as have derived title under a tenant before the 1st day of February 1973;

(aa) **** **** **** ****

(b) **** **** **** ****

(bb) **** **** **** ****

(bba) **** **** **** ****

(c)(i) in relation to any premises let for residence, when the tenant dies, whether the death has occurred before or after the commencement of the Bombay, Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1978, any member of the tenants family residing with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided in default of agreement by the Court;

(c)(ii) **** **** **** **** The definition of tenant is too exhaustive to include any member of the family residing with him. Such members of his family who were residing with the tenant at the time of his death, or in their absence any heir of the deceased tenant, as may be decided in default of agreement by the court, would become tenant only on his death. It is true that the first respondent and her sons, respondents 2 and 3, were let into possession of the suit premises about 30 years before the institution of the suit but the first respondent alone was the tenant and respondents 2 and 3 were there as members of her family. They were, therefore, not tenants of the suit premises. The concurrent findings of the courts below are

that respondents 2 and 3 built the house for which the first respondent did not contribute any money; she did not shift her residence to the said house though she was visiting that house off and on. Inasmuch as the first respondent did not build any house and respondents 2 and 3 are not the tenants, the first of the three alternatives, referred to above, is not available to the appellant to seek eviction of the first respondent. Now with regard to the second alternative, namely, whether the first respondent acquired vacant possession of the house built by respondents 2 and 3, the learned counsel for the appellants has submitted that she is entitled to claim maintenance from them under Section 20 of the Hindu Adoptions and Maintenance Act which imposes an obligation on a son/daughter to maintain his/her infirm parents or the unmarried daughters who are unable to maintain himself/herself and, therefore, she acquired a right to live in the said house. The submission though attractive lacks substance. The first respondent being aged mother undoubtedly has a right to be maintained by respondents 2 and 3 but that does not mean that she is entitled to live along with her sons families. The expression acquired vacant possession, in the context, in our view, means acquisition of vacant possession of a suitable accommodation in which one has a right to reside. It must be a legally enforceable right. The first respondent does not have any such legal right to reside in the house of respondents 2 and 3. Though, it cannot be disputed that respondents 2 and 3 had for a period of 30 years before building their own house lived with the first respondent as her sons and morally they are obliged to take care of the aged mother by accommodating her in their house, yet in law we cannot enlarge that obligation to legal duty to provide her residence in the house along with their family. Thus, the second alternative will also have no application. Admittedly the third alternative is not attracted to the facts of this case. From the above discussion, it follows that the requirements of clause (l) of Section 13(1) of the Act are not satisfied. The judgment of the High Court, under appeal, does not suffer from any illegality to warrant interference. The appeal is dismissed but in the facts and circumstances of the case without costs.