

Rajendra Kumar and Others Vs. Gopal Krishna and Others

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Court : Allahabad

Decided On : Mar-09-1994

Reported in : AIR1995All82

Judge : Sudhir Narain, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 11(1) and 21(1); [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petn. No. 40352 of 1993

Appellant : Rajendra Kumar and Others

Respondent : Gopal Krishna and Others

Advocate for Def. : P.K. Jain, Adv.

Advocate for Pet/Ap. : K.M. Dyal and ;Atul Dayal, Adv.

Disposition : Petition Dismissed

Judgement :

ORDER

1. This writ petition is directed against the order dated 10th Sept. 1992 passed by the Prescribed Authority, Muzaffarnagar, releasing the disputed shop in favour of the landlord-respondents in the proceedings under Section 21(1)(a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred

to as the Act) and the order dated 6-11-1993 passed by respondent No. 1 affirming the said order in appeal.

2. The petitioners are tenants of shop No. 3 at monthly rent of Rs. 50/- in a portion of Premises No. 100 Martinganj, Muzafarnagar. Respondents Nos. 1 to 8 are landlords of the said premises. The property No. 100, Martinganj was jointly purchased by Kishan Chand and his three sons, namely, Gopal Krishna, Sarvesh Kumar and Alok Kumar, by registered sale deed dated 4th August, 1975. After purchase of the property in the year 1977 they filed an application purporting to be under Section 21(1)(b) of the Act for demolition and new construction of the shops and other constructions of that property against Hans Raj, the father of the petitioners, and on another tenant, Har Prasad. The parties entered into a compromise on 12th January, 1977 and in pursuance of the said compromise it was agreed that the landlords will construct the shops as provided under the terms of the compromise and after the construction of the shops the same shall be given to Hans Raj on rent.

3. Paragraph 7 of the said compromise provided that the landlords shall not evict the tenant for 11 years in pursuance of the proceedings under Section 21 of U.P Act No. 13 of 1972. The Prescribed Authority passed the order in terms of the compromise. The shops were constructed by the landlords. Hans Raj, the father of the petitioners, was given possession of the disputed shop after its construction.

4. On 4th February, 1988 Kishan Chand and his sons respondents Nos. 1 to 3, filed an application under Section-21(1)(a) of the Act for release of the disputed shop on the allegation that Kishan Chand and Sarvesh Kumar were doing Sarafa business in shop No. 4, Bhagat Singh Road, where Gopal Krishna was doing business of photostat in back portion of the same as temporary arrangement. The extent of the shop at 4, Bhagat Singh Road was only 6'-9' in width and its depth was 36. The width was too short and as there was no other arrangement for carrying on business by Gopal Krishna he started business of photostat in back portion as a temporary arrangement. Gopal Krishna required the disputed shop for carrying on grocery business.

5. The application was contested by the petitioners. They alleged that Gopal Krishna was already established in photostat business at Shop No. 4, Bhagat Singh Road, Muzaffarnagar and does not require the disputed shop. Property No. 100, Martinganj was never partitioned. The partition amongst the co-sharers, if any, is fictitious and collusive. Ashok Kumar and Vijai Kumar have to a shop in the disputed premises which is the source of livelihood of the entire family. Sanjai Kumar was in service and the other two brothes were carrying on business on a road Patri. They have neither any alternative accommodation nor could find out any to carry on their business.

6. Prescribed Authority after considering the material evidence on record came to the conclusion that the need of Gopal Krishna for grocery business in the disputed shop was bona fide and genuine. The photostat business which he is carrying on at shop No. 4, Bhagat Singh Road, was insufficient and only is a stop gap arrangement. He also considered the hardship which may caused to the petitioners and allowed the application on 10-9-1992. The appeal filed by the petitioners was dismissed by the appellate authority on 6-11-1993.

7. I have heard Sri K.M. Dayal, Senior Advocate for the petitioners and Sri P.K. Jain learned counsel for the respondents.

8. Learned counsel for the petitioners assailed the findings recorded by the Prescribed Authority and the appellate authority on the question of bona fide need of Gopal Krishna as well as on the question of hardship which the petitioners may suffer in the event of their eviction.

9. Learned Counsel for the petitioners urged that it was admitted to the landlord that Gopal Krishna is already carrying on photostat business in the name of Katariya Photostat and his need to get released the disputed shop was not bone fide. He had not placed any material to show that his income in said shop was insufficient and he to augment of his income wants the disputed shop. He placed reliance upon *Ved Prakash Agarwal v. III Additional District Judge, Bulanshahr*, 1981 All Rent Cas 30 : (1981 All LJ 117) wherein it was held that where landlord's own case is that the source of his income was insufficient for him to earn his livelihood and therefore he required the shop in dispute, in such a case

for examining whether the need set up by the landlord was bona fide or not, the income of the landlord becomes a relevant consideration. In *M/s. Lalita Printers v. IV Additional District Judge, Kanpur* 1981 All Rent Cas 649, wherein the landlord in the application set up a case that her sons had completed their education and were to set up in business the Prescribed Authority, however, found that her sons were already carrying on some business, the Court held that in such a situation it was necessary to record a finding regarding sufficiency of income of these sons and if insufficient, whether they still needed the disputed accommodation for carrying on business specified in the release application.

10. In the case of *Ram Swarup v. The District Judge, Etah*, (1983) 1 All Rent Cas 464, an application was filed by the landlord for release of disputed shop on the allegation that he required the same with a view to augment his income to marry his two daughters. It was held, that if the petitioner or his family members are carrying on business and the application is filed with the averment to augment his income, it was the burden of the landlord to prove the sufficiency of income from the present source of income.

11. Similar view was expressed in *Ram Bharose v. Nanak Ram*, (1982) 2 All Rent Cas 542 and *Shiv Nath Srivastava v. Kali Charan* (1991) 2 All Rent Cas 513.

12. Where an application is filed by a landlord that he has no business and wants to employ himself in some business in a shop which is under the tenancy of a tenant and ultimately it is found that he is already carrying on some business, his need shall not be treated as bona fide. A person who comes with an allegation that he is not employed anywhere and has no source of income, subsequently cannot turn and say that he is having source of income but that is insufficient. In that case Prescribed Authority will have to take into consideration the other relevant facts and also the total income which the landlord might be receiving from the business which he is already carrying on to test his bona fide and genuine need.

13. There may be another class of cases where landlord comes with a case that though he is already engaged in a business but he requires another shop for carrying on further business to augment his income. The Prescribed Authority will have to examine the income which the landlord might be receiving from the business

which he is already carrying on and getting income from other source. Mehas to find out all elements of necessity when such application is filed for the purpose of augmentation of his income.

14. There is third situation where a land lord wants to wind up business at a place where he is carrying on such business for certain reasons and, craves to establish the same or different business at another place. It will not be a plea for augmentation of income by the landlord. The Prescribed Authority will have to consider the necessity of the landlord taking into account all the relevant factors.

15. Gopal Krishna, respondent No. 1, came with the allegations that he was carrying on business of photostat in Shop No. 4 Bhagat Singh market as temporary arrangement. The shop was not owned by him. Secondly, in that shop his father Kishan Chand and brother Sarvesh Kumar were already carrying on Sarafa business. The size of shop facing the road is 6 feet 9 inches and its depth is 36 feet. He had his photostat machine in rear portion of the shop which badly affected the business. He wants to open a grocery shop in the disputed accommodation and will not carry on photostat business at 4, Bhaghat Singh Market.

16. Ashok Kumar and Vijai Kumar, petitioners, filed counter affidavit, a copy of which is filed as Annexure 3 to the writ petition and in para 23 of the counter affidavit it has been admitted that Sarvesh Kumar was carrying on Sarafa business at 4 Bhagat Singh Market. The extent of the accommodation in the said shop was not denied. The Prescribed Authority as well as the appellate authority came to the conclusion that Sarvesh Kumar and Kishan Chand were carrying on Sarafa business and as the frontage of the shop was too small it was not possible for Gopal Krishna to carry on business in the said shop. The appellate authority, accepted the case of Gopal Krishna that his business of photostat was a stop gap arrangement till he gets the disputed shop for this grocery business. It is clear from the findings recorded by the authorities that Gopal Krishna did not file application on the basis that he wants to augment his income. He has disclosed in his application that he is doing the work of preparing photostat copies from the photostat machine in shop No. 4 Bhagat Singh Road which is owned by his father,

Kishan Chand. The photostat machine is fixed in the rear portion of the shop and he will start grocery shop in the disputed shop after winding up the photostat work. Respondents Nos. 11 and 12 accepted his case and found that the need of Gopal Krishna to open a grocery shop in the disputed premises is bona fide and genuine.

17. Learned counsel for the petitioners further submitted that the landlords came before the Prescribed Authority with false plea that there was a partition amongst co-sharers of 100 Marlinganj and in pursuance of the partition the disputed shop was allotted to Gopal Krishna. The property No. 100 Martinganj was jointly purchased on 4th August, 1975 by Krishna Chand and his three sons, namely, Gopal Krsihna, Sarvesh Kumar and Alok Kumar. An application under Section 21(1)(b) of the Act was filed separately against Hans Raj and Har Prasad which was compromised on 12-1-1977. The partition is alleged to have taken place in the last week of December, 1987. The total property was divided in four parts. In this property it was shown that there were three shops and one residential portion. Shop No. 1 was allotted to Sarvesh Kumar, Shop No. 2 was allotted to Alok Kumar and shop No. 3 was allotted to Gopal Krishna and the western protion of these shops was claimed to be residential portion and was allotted to Kishna Chand. In the municipal record the partition was given effect to and shop No. 3 was given municipal No. 100/1, Shop No. 2 as municipal No. 100/2, Shop No. 3 as municipal No. 100/3 and the remaining portion as municipal No. 100 Martinganj. Shop No. 1 was allotted to Sarvesh Kumar, is at present under the tenancy of Vishnu Kant and the disputed shop is in the tenancy of the petitioner and shop No. 2 is in possession of Alok Kumar and the remaining portion is alleged to be residential and it has not been shown that there is any other shop.

18. Learned counsel for the petitioner urged that Sarvesh Kurnar filed an application under Section 21(1)(a) of the Act against Vishnu Kant (tenant) for ejectment on the ground of his personal need. The said application was rejected by the Prescribed Authority on 10th Sept. 1992 the date on which the application as against the petitioners was allowed by the Prescribed Authority in an application filed by respondents Nos. 1 to 3 and Kishan Chand regarding the disputed shop. In the case filed against VishnuKant the Prescribed Authority held that the partition was collusive and the Prescribed Authority could not have

recorded a different finding in the case relating to the disputed accommodation.

19. The Prescribed Authority and the appellate authority has not recorded finding of bona fide need on the basis that there is a partition amongst the co-sharers relating to Property No. 100 Martinganj. The Prescribed Authority proceeded on the basis that Gopal Krishna and no other suitable accommodation to carry on business. It has been shown that there is any portion of the property No. 100 Martinganj where Gopal Krsihna can carry on business. It was suggested that the residential portion shown to be in the share of Kishan Chand can be converted into shops and thereafter the landlords may occupy the same. It is a suggestion but at present there is nothing to show that there is any shop. It is also disputed that the said portion shall be utilized for commercial purposes. The position of shop in which Gopal Krishna is carrying on business at 4 Bhagat Singh Road has already been discussed above.

20. In view of these facts the question of partition was not relevant. Gopal Krishna is admittedly one of the co-sharers and has 1/4 share in the property in question.

21. It was next conteded that Kishan Chand who was one of the co-sharers and father of respondents Nos. 1 to 3 died in the year 1990 during the pendency of the proceedings before the Prescribed Authority and after his death Gopal Krishna was entitled to his share in the property 4 Bhagat Singh Road and also his share which is alleged to have been allotted to Kishan Chand in partition of Property No. 100 Martinganj.

22. Respondents Nos. 1 to 3 asserted that Gopal Krishna could have only 1/16 share in the property, 4 Bhagat Singh Road as half of the share belongs to Smt. Laxmi Devi, the mother of respondents Nos. 1 to 3, and the remaining share three sons and two daughters inherited the property Similarly in the residential portion of 100 Martinganj he willhave hardly any share and even if share is given there is no shop where Gopal Krishna could carry on grocery business. It was further asserted that after the death of Kishan Chand his grandson, Kapil, who is the son from his first wife, has started business with Smt. Laxmi Devi at 4 Bhagat Singh Road.

23. It is not necessary to dwell on this question as to whether Kapil and Smt. Laxmi Devi are carrying on business or Sarvesh Kumar is carrying on business. It is still a matter which is sub judice before the appellate authority against an order in the proceedings initiated against Vishnu Kant. It is, however, clear from the assertion of the petitioners in their written statement that Sarvesh Kumar was carrying on Sarafa business. Either Sarvesh Kumar, Kapil or Smt. Laxmi Devi may be carrying on business of Sarafa but so far as Gopal Krishna is concerned his share is minor and he cannot ask them to vacate the accommodation to permit him to carry on business exclusively in the said shop. The concurrent findings recorded by respondents that the need of Gopal Krishna to carry on grocery business in the disputed shop is neither perverse nor vitiated in law. It was then ultimately urged that findings of respondents regarding hardships of the petitioners was erroneous and based on misconception of law and facts and they did not consider the material evidence while considering their hardships.

24. On behalf of the landlord-respondents much emphasis was laid on the terms of compromise which was entered into between the parties on 12th January, 1977. It was contended that Bans Raj, father of petitioners, who had entered into the compromise, had agreed to vacate the accommodation after expiry of 11 years from the date of the compromise. He was given 11 years time to vacate the accommodation and they placed reliance upon para 7 of the compromise application. The Prescribed Authority did not accept this submission of the landlords and held that the only term of the compromise was that the landlord shall not evict the tenant for 11 years under the provisions of Section 21 of U.P. Act No. 13 of 1972. There was no agreement that the tenant shall be evicted after expiry of 11 years. The appellate court, however, from the terms of the compromise inferred that the tenant agreed to vacate the accommodation after expiry of 11 years and the landlords waited for 11 years and immediately after expiry of 11 years they had filed application under Section 21(1)(a) of the Act against the petitioners who had inherited the tenancy rights from their father, Hans Raj. A perusal of para 7 of the compromise application, which forms part of the order of the Prescribed Authority in the proceedings under Section 21(1)(b) of the Act does not show that tenant was liable to vacate after expiry of 11 years. The intention of the parties was that no application under Section 21 of the Act shall be moved before expiry of 11

years. This only puts a bar of filing application against the tenant. There was no agreement or undertaking given by the tenant to vacate after expiry of 11 years from the date of compromise. The inference drawn by the appellate authority that there was a compromise by the tenant to vacate the premises after 11 years is incorrect. The appellate authority was to consider independency regarding the hardship of the tenant. It is still to be examined whether the appellate authority was right in holding that the landlord-respondents will suffer a greater hardship in case the application filed by them for eviction of the petitioners is rejected.

25. As found above that Gopal Krishna does require the disputed shop for grocery business, the hardship of the tenants has to be considered. The tenants case is that they have no other alternative accommodation. Hans Raj was a tenant and he died leaving behind him five sons. A joint written statement was filed by Ashok Kumar and Vijai Kumar and it was pleaded that Sanjay Kumar and Munish Kumar were in Service. Rajendra Kumar was carrying on business of readymade garments and hosiery at the road-side Patri near the Town Hall. Ashok Kumar and Vijai Kumar have sweetmeat shop and tea stall in the disputed shop. They alleged that there was no alternative accommodation with them.

26. It was further pleaded in para 57 of the written statement that no other shops were available in the market as suggested by the landlords nor they were able to get a shop at Rs. 50/-per month in those markets and nor they were suitable for carrying on their business.

27. In every case where tenant is evicted he suffers hardship. The hardship is because either he will not be able to get accommodation or even if he gets an accommodation either it will not be suitable or of the same rent which he might be paying to the landlord. In every case it has to be examined where such hardship will be taken into account for rejecting application of the landlord and what would be the test when such consideration will not weight when the landlord has established his bona fide and genuine need for the tenanted accommodation.

28. In Mst. Bege Begum v. Abdul Ahad Khan AIR 1979 SC 272, where argument was raised that if the tenants are evicted they would not be likely to get an alternative accommodation. Their Lordships of the Supreme Court observed as

under (at p. 278 of AIR);--

'It is no doubt true that the tenant will have to be ousted from the house if a decree for eviction is passed, but such an event would happen whenever a decree for eviction is passed and was fully in contemplation of the legislature when Section 11(1)(h) of the Act was introduced in the Act. This by itself would not be a valid ground for refusing the plaintiffs a decree for eviction.

In our opinion both sides must adduce all 4 relevant evidence before the court; the landlord must show that other reasonable accommodation was not available to him and the tenant must also adduce evidence to that effect. It is only after sifting such evidence that the court must form its conclusion on consideration of all the circumstances of the case as to whether greater hardship would be caused by passing the decree than by refusing to pass it.'

29. This view has been followed in various decisions of this Court. In *SurajPrasad Sharma v. II Additional District Judge, Mirzapur*, (1983) 1 All Rent Cas 427 (1983 All LJ 769) it was observed as under:-

'It is common place fact that invariably when an application under Section 21 of Act is allowed, the tenant has to quit and this involves discomfort but if this alone were sufficient to non suit the landlord, no application for release could ever be allowed. Judging comparative hardships is a matter of deeper import and it would be a lopsided order which dismisses a landlord's application for release merely with the plaintitudinous observation that the tenant would be 'thrown on the street.' The physical dispossession of the tenant is the necessary concomitant of every release application of ' the landlord which is allowed. Howsoever well found that the application may be, and dement of inconvenience or discomfort is inherent in the very process of vacating on accommodation. A release application cannot be thrown out merely with the bald observation that the tenant would suffer greater hardship. All the relevant factors have to be taken into account and a balance has to be struck and then if it is found that inconvenience suffered by the tenant in the event of eviction is of such gravity that it out weighs the hardship which would be occasioned to the landlord by refusal of release, the application may be rejected.'

30. Similar view was taken by Hon'ble R..M. Sahai, J. in *Rajeshwari Prasad v. Fateh Bahadur*, 1984 All LJ 541, and made the following observation:--

'But the appellate authority to committed the error of dismissing the application by going to another extreme when it held that, comparative necessity necessarily means the possibility of an alternative accommodation to the tenant. Test of availability of alternative accommodation to tenant for deciding comparative hardship has not been approved by this Court. Section 21 is for benefit of landlord. Proviso only restricts the exercise of right in hard cases. If non availability of alternative accommodation to tenant is sufficient establish his hardship then probably the proviso would defeat the entire objective of Section 21.'

31. The same principle was followed in *N.S. Dutta v. VIII Additional District Judge, Allahabad*, (1984) 1 All Rent Cas 113 : (1984 All LJ 256) and *Ajai Kumar Tandon v. IV Additional District Judge, Kanpur*, (1989) 1 All Rent Cas 509.

32. Learned counsel for the respondents placed reliance upon *Yash Pal Mehta v. II Additional District Judge*, 1977 (UP) RCC 75, wherein it was held that mere reference to the need of the tenant by the authority is not enough and there must be actual comparison by them. In *Nain Uddin v. Smt. Kamla Devi*, (1985) 2 All Rent Cas 216, it was found that as there was a compromise between the landlord and tenant the conduct of the tenant in not finding out alternative accommodation was not mala fide.

33. These cases do not lay down any principle contrary to the decisions referred to above. Learned counsel for the petitioner laid much stress on the following observation of their Lordships of the Supreme Court in *M/ s. Variety Emporium v. V.R.M. Mohammad Ibrahim Naina*, 1985 SC FBRC 52 : (AIR 1985 SC 207 at Pp 209 and 210):--

'Apart from this, it is quite disparaging to describe a tenant's attempt to resist eviction by lawful means as a 'hue and cry'. And, it is inequous in the extreme that any court of law, and least of all a Rent Act tribunal which has to deal with a human problem of great magnitude, should regard it is a matter of no moment that an order of eviction will throw the tenant on the street. A Judge does not have to

wear a shoe in order to know where it pinches. Therefore, he does not have to face the prospect of being driven to the street in order to realise what it means. His training, legal equipment and experience of life are his tools of education and social awareness. We do not suggest that a decree of evidence never be passed against a tenant but, whether the provisions of a law. specifically require it or not, the court has to have regard for all the aspects of the matter before it and the foreseeable consequences of the order which it proposes to pass. Finally, it is impossible to subscribe to the view of the appellate court that the very fact that the respondent had filed the eviction petitions immediately after he purchased the property, proves that the purpose purchasing the property was to set up a business there, 'Whether wholesale or retail.'

34-35. These observations were made on the facts of that case. The landlord was running a wholesale business in textile on the first floor of a building at 93 Godown Street, Madras. He filed an application on the allegation that it was inconvenient and uneconomic to carry on business there and he was incurring heavy losses in his wholesale business by reasons of conditions peculiar to location of his business and therefore he wanted to wind up the wholesale business and start a retail business in the building which was in occupation of his seven tenants. Rent Control Authorities allowed the application against all the seven tenants accepting the version of the landlord and the appellate Judge without much considering about the hardship of the tenant made an observation 'the hue and cry of the tenants in the ground floor portion of the premises that they will be thrown to the street in the event of an order of eviction being passed need not at all be considered.'

36. In this case the hardship of the tenant was not at all considered. The Supreme Court, however, did not lay down as law that unless any alternative accommodation is provided or is available to the tenant, no order of eviction can be passed against a tenant. While considering the comparative hardship it cannot be the sole ground to urge that as the tenant has no alternative accommodation he will suffer a greater hardship. It depends upon various facts and circumstances and both the parties have to lead evidence to indicate circumstances and facts which may justify as to which of the parties shall suffer a greater hardship. In a

case the landlord is already running a business even in a tenanted accommodation and has sufficient income, in that case the tenant can take a plea that he would suffer a greater hardship in case he is evicted. The tenant has also to place material to show that he would suffer greater hardship and his mere plea that he has no alternative accommodation is itself not sufficient to hold that he would suffer greater hardship. One of the principles laid down by this Court for considering comparative hardship of the parties is to find out as to whether the tenant had made a sincere effort to find out alternative accommodation and has placed material before the authorities to come to the conclusion that he made such an effort.

37. In *Jagjit Singh v. VII Additional District Judge, Kanpur*, (1986) 1 All Rent Cas 361, it was held that where the tenant led no evidence or brought on record material establishing that in spite of their efforts in this regard they were unable to secure reasonable alternative accommodation for themselves it cannot be held that there was no comparison of hardship between the parties.

38. In *Pushpendra Kumar v. Additional District Judge, Lalitpur*, (1991) 2 All Rent Cas 191, it was held that where the tenant satisfied the court that he made attempts for finding out alternative accommodation for shifting his business and places material in support of such version, he cannot complain of a comparative hardship.

39. In the present case the landlord had suggested various shops indifferent markets. A counter affidavit dated 9-4-1990 was filed by the tenants, Ashok Kumar and Vijai Kumar, a copy of which has been filed as Annexure-3 to the writ petition and in para 41 it has been stated that tenants made efforts to find out suitable alternative accommodation but no suitable accommodation was available. In para 42 it has been stated that they made efforts to find out alternative accommodation even at high rent but they failed to obtain any alternative shop. But in para 52 of the counter affidavit it has been stated that they are not able to get a shop at Rs. 50/- per month of the same space as that of the disputed shop and these shops which have been suggested by the landlords were not suitable for carrying on business by them.

40. The mere assertion of the tenants that they tried to find out suitable alternative accommodation but it was not available to them is not acceptable. The landlords had filed an affidavit and in that affidavit they have given details of various shops at different markets which had been constructed recently and were not within the purview of U.P. Act No. 13 of 1972. The petitioners did not lead any evidence that they contacted the owners of the those shops and they refused to let them. It is true that the petitioners will not be able to get another shop on the same rent and with the same space which they are occupying at present, but the mere fact they have to pay higher rent is not a ground on which they assert that they would suffer greater hardship. In *Mohammad Shafi v. VII Additional District Judge, Bareilly*, 1978 All Rent Cas 373, the Court held that a mere fact that the tenant will have to pay higher rent for alternative accommodation, after eviction, was immaterial.

41. In view of the above the orders passed by the Prescribed Authority and the appellate authority do not require any interference under Art. 226 of the [Constitution of India](#). The writ petition accordingly fails and is dismissed.

42. The application was filed in the year 1988. Almost six years are expiring. The petitioners are, however, granted six months time to vacate the disputed shop provided they give a written undertaking within two weeks from today before the Prescribed Authority concerned indicating that they would vacate the disputed accommodation within the time granted by this Court and will hand over peaceful possession to the landlords respondents.

43. The parties shall bear their own costs.

44. Petition dismissed.