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**Nutan Kumar and Others Vs. iind Additional District Judge, Banda and Others**

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**SooperKanoon Citation :** [sooperkanoon.com/452780](http://sooperkanoon.com/452780)

**Court :** Allahabad

**Decided On :** May-20-1993

**Reported in :** AIR1994All298

**Judge :** D.S. Sinha, ;S.C. Verma and ;S.R. Singh, JJ.

**Acts :** [Indian Contract Act, 1872](#) - Sections 2, 3, 10, 12 and 23 to 30; [Transfer of Property Act, 1882](#) - Sections 6, 105 and 108; [Constitution of India](#) - Article 13, 13(3) and 141; Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 - Sections 7(2); Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 11, 12, 13, 15, 15(1), 16, 16(1), 17, 17(1) and 31; Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Sections 15; Central Provinces and Berar Letting of Houses and Rent Control Order, 1949; Specific Relief Act; [Child Marriage Restraint Act, 1929](#); Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1969 - Sections 5(8); [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) - Sections 166; Uttar P

**Appeal No. :** Civil Misc. Writ Petition No. 12384 of 1987

**Appellant :** Nutan Kumar and Others

**Respondent :** iind Additional District Judge, Banda and Others

**Advocate for Def. :** W.H. Khan, S.C.

**Advocate for Pet/Ap.** : P.N. Saxena, ;P.K. Pandey and ;S.K. Shukla, Adv.

**Judgement :**

ORDER

**D.S. Sinha, J.**

1. On a reference by a learned single Judge the following two questions are up for consideration and answer :

1. Whether an agreement of lease between the landlord and the tenant for letting and occupation of a building in contravention of the provisions of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 is void?

2. Whether the said agreement is enforceable in law and a decree for ejection of the tenant can be passed in favour of the landlord on the basis thereof

2. In our country, except so far as specifically provided for and covered by any other legislation, the matter relating to all agreements constituting subsratum Of a valid contract are subject to and governting by the [Indian Contract Act, 1872](#), hereinafter called the Contract Act.

3. Clauses (h) and (g) of Section 2 of the Contract Act declare that all agreement which are enforceable by law are contracts and those which are not enforceable by law are void.

4. Essential components of a valid Contract are provided in Section 10 of the Contact Act. These are as below.

(i) Competence of the parties to the agreement;

(ii) Free consent of the parties;

(iii) Lawfulness of consideration and object of the agreement; and

(iv) Absence of express declaration underthe Contract Act rendering the agreement tobe void.

5. Of the above noted four basic ingredients, lawfulness of the object of the agreement and absence of express declaration under the Contract Act rendering the agreement to be void are pertinent in the context of investigation of the questions under consideration.

6. Section 23 of the Contract Act envisages that object of an agreement will be unlawful, if -

(a) it is forbidden by law; or

(b) is of such a nature that, if permitted, it would defeat the provisions of any law; or

(c) is fraudulent; or

(d) involves or implies injury to the person or property of another; or

(e) the Court regards it as immoral, or opposed to public policy.

The section also expressly declares that every agreement of which the object is unlawful, is void.

7. Thus, every agreement made for or about any matter or thing which is either forbidden by any statute, or would defeat the provisions of any law, or the court regards it as opposed to public policy, is unlawful and ipso facto void.

8. Interdiction of any matter or thing, on which an agreement is founded, may be expressly provided for in a statute. But it is not always necessary to do so. The statute may, instead of expressly declaring any matter or thing to be prohibited, merely provide penalty for the offender, and in that event also the matter or thing will be taken as forbidden by the statute. In a penalty a prohibition is implicit and inherent.

The appellation 'void', in relation to a juristic act, means without legal force, effect or consequence; not binding; invalid; null; worthless; cipher; useless; and ineffectual etc.

9. Void agreements are destitute of all legal effects and force. They are totally ineffectual rather ciper. No legally enforceable relationship, right or liability emanates therefrom.

10. With the avowed object 'to provide, in the interest of the general public, for the regulation of letting and rent of, and the eviction of tenants from, certain classes of buildings situated in urban areas, and for matters connected therewith' the legislature of the State of Uttar Pradesh enacted the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. 13 of 1972), hereinafter called the new Act, repealing the U.P. (Temporary) Control of Rent and Eviction Act, 1947 (U.P. Act No. HI of 1947), hereinafter called the old Act.

11. Sections 11, 13 and 17, falling in Chapter III of the new Act which relates to regulation of letting, have material bearing in the context, and are, therefore, extracted below.

'11. Prohibition of letting without allotment order. -- Save as hereinafter provided, no person shall let any building except in pursuance of an allotment order issued under Section 16.'

'13. Restrictions on occupation of building without allotment or release. -- Where a landlord or tenant ceases to occupy a building or part thereof, no person shall occupy it in any capacity on his behalf, or otherwise than under an order of allotment or release under Section 16, and if a person so purports to occupy it, he shall, without prejudice to the provisions of Section 31, be deemed to be an unauthorised occupant of such building or part.

17. Conditions of making allotment order. -

(1) Where the District Magistrate receives an intimation, under sub-section (1) of Section 15, of the vacancy or expected vacancy of building any allotment order in respect of that building shall be made and communicated to the landlord within twenty-one days from the date of receipt of such intimation, and where no such order is so made or communicated within the said period, the landlord may intimate to the District Magistrate the name of a person of his choice, and

thereupon the District Magistrate shall allot the building in favour of the person so nominated unless for special and adequate reason to be recorded he allots it to any other person within ten days from the receipt of intimation of such nomination :

Provided that where the landlord has made an application under clause (b) of sub-section (1) of Section 16, for the release of the whole or any part of the building or land appurtenant thereto in his favour, the said period of twenty-one days shall be computed from the date of decision on that application or where an application for review or an appeal is filed against such decision, from the date of decision on such application or appeal. (2) Where a part of a building is in the occupation of the landlord for residential purposes, or is released in his favour under clause (b) of sub-section (1) of Section 16 for residential purposes, the allotment of the remaining part thereof under clause (a) of the said sub-section (1) shall be made in favour of a person nominated by the landlord.

(Explanation. -- Where a building in the occupation of the landlord for residential purposes adjoins (whether horizontally or vertically) the building sought to be allotted, and -

- (a) there is a common entrance to or a common passage for both the buildings; or
- (b) the two buildings share the sanitary conveniences or other amenities (not including electric connection); then notwithstanding that the two buildings are independently fit for residential purposes, they shall be deemed to be part of each other for the purposes of this sub-section.)'.

Section 11 of the new Act contains express legislative injunction forbidding totally the letting of any building without an order of allotment issued under Section 16. Likewise Section 13 absolutely prohibits occupation of a building or part thereof in any capacity without an order of allotment or release under Section 16. Section 17(1) of the new Act, confers upon the landlord right of nomination for allotment in favour of any person of his choice and obliges the District Magistrate to allot the building in favour of the person so nominated unless for special and adequate reason to be recorded he allots it to any other person within the specified time. Sub-section (2) of Section 17 of the Act provides that where a part of a building is

occupied by the landlord for residential purpose, or is released in his favour for residential purpose, the allotment of the remaining part thereof shall be made in favour of a nominee of the landlord.

12. The provisions of Sections 11, 13 and 17 of the new Act, unmistakably, stipulate that a building covered by it can neither be let nor occupied except in pursuance of an allotment or release order. The object of letting or occupation of the building without allotment-release order is completely forbidden.

13. Surreptitious letting or occupation of a building without an order of allotment/release will clearly contravene the provisions of Sections 11 and 13 of the new Act. Under Section 31 such contravention is punishable with specified sentence of imprisonment or with fine or with both. By providing penalty for the offender the Legislature will be deemed to have intended to forbid the formation of any agreement of letting or occupation of a building which runs counter to the mandate contained in Sections 11 and 13 of the new Act. Obviously, the prohibition is designed to further and achieve one of the objects of the new Act, namely, regulation of letting of specified classes of buildings situate in urban areas.

14. Any agreement formed with the object to let or occupy the building subject to and governed by the new Act, except in pursuance of an allotment/release order, besides being clearly forbidden, if permitted, will defeat the provisions of Sections 11, 13 and 17 of the new Act resulting in frustration of one of the avowed objects of the said Act, namely, regulation of letting the building falling within its ambit. It will also be opposed to public policy of the new Act which is to vest the control of letting and occupation of the building in the District Magistrate for the benefit of such members of the public as are in need thereof.

15. Obedience of the fiat of the Law of the State is an essential ingredient of public policy. Any agreement which does not obey the command of Law is opposed to public policy and, therefore, void. Courts of law cannot countenance such an agreement.

16. In the case of Waman Shrinivas Kiniv. Ratilal Bhagwandas and Co : AIR 1959 SC689 a Bench of three Hon'ble Judges of the Hon'ble Supreme Court considered Section 15 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 which runs asunder :

'Notwithstanding anything contained in any law it shall not be lawful after the coming into operation of this Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein.

Provided that the (State) Government may, by notification in the Official Gazette permit in any area the transfer of interest in premises held under such leases or class or leases and to such extent as may be specified in the notification.'

The above provision forbids subletting or assignment or transfer by a tenant of the premises let out to him, and in this backdrop it was held by the apex court that an agreement contrary to the provision of Section 15 would be unenforceable as being in contravention of the express provisions of the Act. It may be recalled that clause (g) of Section 2 of the Contract Act envisages that an agreement not enforceable by law is said to be void.

17. An agreement which purported to compel letting of a shop subject to and governed by the old Act in favour of a particular person notwithstanding the fact that control of letting was vested in the District Magistrate under the said Act and the Rules made thereunder, was held to be void by another Bench of three Hon'ble. Judges of the Hon'ble Supreme Court in Shrikrishna Khanna v. Additional District Magistrate, Kanpur : [1975]3SCR709 .

18. A Full Bench of five Hon'ble Judges of this Court in Abdul Hameed v. Md. Ishaq : AIR1975 All166 considered the legal status of an agreement formed in contravention of provision of Section 7(2) of the old Act which reads thus :

'7. Control of letting.....

(2) The District Magistrate may by general or special order require a landlord to let or not to any person any accommodation which is or has fallen vacant or is about

to fall vacant.'

Hon'ble D. S. Mathur, C. J., with whom Hon'ble Prem Prakash, J. concurred, held that an agreement to let out an accommodation in contravention of the old Act was an agreement forbidden by law or was at least of such a nature that, if permitted, it would defeat the provisions of the law as contemplated by Section 23 of the Contract Act rendering the agreement void. This dictum still holds the field and is fully applicable to an agreement made in contravention of the provisions of Sections 11 and 13 of the new Act.

19. The questions engaging the attention herein have been the subject matter of consideration of a Division Bench of this Court in Geep Industrial Syndicate Ltd., Allahabad v. The Rent Control and Eviction Officer, Allahabad, 1982 All U 857. The Division Court held as below:

'Section 11 of the Act imposes a prohibition or restriction against letting without an allotment order. Section 12 contemplates of certain contingencies in which a landlord or tenant of a building would be deemed to have ceased to occupy it. Section 13 provides for restriction on occupation of building without allotment order. A conjoined reading of Section 11 imposes a prohibition on letting without an allotment order. Section 13 places restriction on occupation without allotment or release. These two sections are required to be read together. Reading these two sections, it would appear that neither can a landlord let out a premises without an allotment order nor can any one occupy, it.'

20. In the case of Naveen Chandra Sharma v. 6th Additional District and Sessions Judges, Meerut AIR 1983 Allahabad 116 an Hon'ble Judge, after thorough investigation of all relevant aspects, analysis of the statutory provisions, and very careful examination of the case law on the subject, firmly ruled thus at Page 119 :

'an examination of the aforesaid provisions, in my humble view points irresistibly to the inference that the interdict against the letting and occupation of an accommodation after coming into force of the enactment is express and absolute. Letting or occupation otherwise than under an order of allotment after the commencement of the Act is totally forbidden by law and, further, these acts are

of such a nature that if countenanced, they would without doubt be opposed to public policy, frustrate the declared and basic object of the Act, namely that of bringing all the available vacant buildings (except those which are specifically excluded) under the control of the authorities so that the same are allotted or released in favour of those whose needs may be the greatest. Elaborate procedure has been prescribed for balancing competing claims of allotment. That seems to be the basic objective which the Act was intended to achieve.'

21. There are two more decisions of this Court, the one rendered in *Lachhman Prasad Richaria v. IV Additional District Judge, Hamirpur*, 1990 (1) Ail RC 497 and the other given in *Jagjit Singh V. District Judge, Dehradun*, 1990(1) All RC 517 which also, in substance, lay down that letting or occupation of a building in contravention of the provisions of Sections 11 and 13 of the new Act, to be precise without an order of allotment/release, will be void.

22. An agreement offending a Statute or public policy or forbidden by law is not merely void but it is invalid from nativity. It cannot become valid even if the parties thereto agree to it.

23. The concept that an agreement may be void in relation to a specified person and may be valid or voidable between the parties thereto is not applicable to an agreement the very formation whereof law interdicts; or which is of such a character that, if permitted, it would frustrate the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the court regards it as immoral or opposed to public policy. Neither party can enforce said agreement. No legal relations come into being from an agreement offending a Statute or public policy.

24. From the provisions contained in Ss. 11, 13, 17 and 31 of the new Act it is as clear as the light of day that an agreement involving transaction of either letting by the landlord or occupation by any person of any buildings except in pursuance of an order of allotment or release being prohibited has to be treated to have been invalidated by the Statute rendering it void and unenforceable in a court of law. No remedies are open to either party to an agreement the very formation of which is illegal by virtue of any provision of a Statute.

25. It is firmly settled that if an agreement is made to do or suffer a prohibited act, that agreement will be unenforceable, and no court will extend its assistance for its implementation. (See *Manna Lal Khetan v. Kedar Nath Khetan* : [1977]2SCR190 . No decree for ejectment of the tenant can, therefore, be passed in favour of the landlord on the basis of such agreement of lease between them as is in contravention of the provisions of the new Act.

26. Invoking support from and relying upon the decisions in the cases of *Udhoo Dass v. Prem Prakash* : AIR1964 All1 Murlidhar Agarwal v. State of Uttar Pradesh : [1975]1SCR575 ; *Nanak-Ram v. Kundalrai* : [1986]2SCR839 and *Smt. Ram Sakhi Dwivedi v. Rama Kant Gupta*, 1988 All LJ 989, it was sought to be argued that an agreement of lease between the landlord and the tenant for letting and occupation of a building in contravention of the provisions of the new Act would not be void; and that a decree for ejectment of the tenant, on the basis of such agreement could be passed in favour of the landlord. For proper evaluation of the said argument it will be apposite to examine and Scrutinize the aforementioned decisions.

27. In the case of *Udhoo Dass v. Prem Prakash*, the Full Bench of three Hon'ble Judge considered and tested the validity of an agreement of tenancy on the touchstone of S. 7(2) of the old Act which provided that a District Magistrate might by general or special order require a landlord to let or not to let any person any accommodation which was or had fallen vacant or was about to fall vacant. The court pointed out and ruled that an agreement of tenancy in contravention of an order made under S. 7(2) of the old Act by a District Magistrate was an act forbidden by a District Magistrate and not by within the meaning of S. 23 of the Contract Act and as such it would not be void qua parties to it. It is not necessary to scrutinize this reasoning in as much as enacting the provisions contained in Ss. 11 and 13 of the new Act and expressly stipulating therein total prohibition against letting or occupation of any buildings, except under an order of allotment or release passed by a District Magistrate, the Legislature has removed the lacuna rendering the impact of the decision in the case of *Udhoo Dass v. Prem Prakash*, completely nullified. The decision stands overruled by the Legislature. Incidentally, it may be noticed that even before the Legislative overruling, the decision was

overruled by a Full Bench of five Hon'ble Judges in the case of Abdul Hamid v. Md. Ishaq. No substantial support can, therefore, be drawn from it.

28. The decision of the Hon'ble Supreme Court in the case of Murlidhar Agarwal v. State of Uttar Pradesh, is founded on the decision in the case of Udhoo Dass v. Prem Prakash. By itself, it does not declare any law except approving the view of the Full Bench expressed in Udhoo Dass v. Prem Prakash. The ratio of Murlidhar Agarwal's case cannot, therefore, be taken to apply to the cases which are covered by the new Act (See Geep Industrial Syndicate Ltd., Allahabad v. The Rent Control and Eviction Officer, Allahabad).

29. The question that engaged the attention of the Hon'ble Supreme Court in Nanak Ram v. Kundalrai, was whether a lease between a landlord and a tenant for letting and occupation of a house in contravention of clause 22 of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 (hereinafter called 'the Rent Control Order') could be attacked as void transaction in a proceeding between the parties?

30. Clauses 22 and 23 of the Rent Control Order, being material, are extracted below :

'22(1). Every landlord of a house situate in an area to which this Chapter extends, shall-

(a) within seven days from the date of the extension of this chapter, if the house is vacant on such date; or

(b) within seven days from the date on which the landlord becomes finally aware that the house will become vacant or available for occupation by himself or for other occupation on or about a specified date;

give intimation of this fact to the Deputy Commissioner of the District in which the area is included or such other officer as may be specified by, him, in the form given in the Schedule appended to this Order, and shall not let or occupy the house except in accordance with clause 23.

(2) No person shall occupy any house in respect of which this Chapter applies except under an order under sub-cl. (1) of clause 23 or clause 24 or on an assurance from the landlord that the house is being permitted to be occupied in accordance with sub-cl. (2) of clause 23.'

'23(1). On receipt of the intimation in accordance with clause 22, the Deputy Commissioner, may, within fifteen days from the date of receipt of the said intimation, order the landlord to let the vacant house to any person holding an office of profit under the Union or State Government or to a displaced person or to an evicted person and thereupon notwithstanding any agreement to the contrary, the landlord shall let the house to such person and place him in possession thereof immediately, if it is vacant or as soon as it becomes vacant :

Provided that, if the landlord has, in the intimation given under clause 22, stated that he needs the house for his own occupation, the Deputy Commissioner shall, if satisfied after the enquiry that the house is so needed, permit due landlord to occupy the same. (2) if no order is passed and served upon the landlord within the period specified in sub-cl. (1) he shall be free to let the vacant house to any person.'

31. Clause 22(1) of the Rent Control Order forbids the landlord from letting or occupying the house except in accordance with the provisions of clause 23. Occupation of any house by any person (other than landlord) except under an order under sub-clause (1) of clause 23 or clause 24 or on an assurance from the landlord that the house is being permitted to be occupied in accordance with sub-clause (2) the Rent Control Order.

Clause 23(1) of the Rent Control Order empowers the Deputy Commissioner to order the landlord within a stipulated period to let out the house to any person falling in any of the specified categories. The power to order the landlord to let out the house can be exercised only if the landlord while intimating vacancy does not state that he needs the house for his own occupation or he fails to satisfy the Deputy Commissioner that the house is so needed. If the landlord states his need for the house and satisfies the authority about the need the Deputy Commissioner has no choice except to permit him to occupy the house.

32. Sub-clause (2) of clause 23 of the Rent Control Order provides that if no order either requiring him to let out the house or permitting him to occupy the same is passed within the period specified in sub-clause (1), the landlord shall be free to let the vacant house to any person.

33. It is to be noticed that neither the prohibition against letting of the house nor the power of the Deputy Commissioner to order the landlord to let out the house to its nominee is absolute. In the circumstance specified in sub-clause (2) of clause 23 the landlord enjoys complete freedom to let out the house. Likewise the Deputy Commissioner may, if he so chooses, require the landlord to let out the house to a particular person. He is not obliged to do so as is clearly indicated by the expression 'may' used in sub-clause (1) of clause 23. Further, proviso to sub-clause (1) of clause 23 obliges the Deputy Commissioner to permit the landlord to occupy the house if his need is proved.

34. The provisions in the new Act in this regard are materially different. Sections 11 and 13 of the new Act completely ban the letting or occupation of any buildings except under an order of allotment/release passed by the District Magistrate. Even where the District Magistrate fails to exercise power of allotment under S. 16 of the new Act, the landlord cannot either let out the building to any one nor can he occupy it himself. In such a circumstance, under S. 17(1) of the new Act, the only right conferred upon him is to nominate a person in whose favour the District Magistrate shall pass an order of allotment if he does not allot the building to any other person for special and adequate reason to be recorded within the specified period. Under sub-sec. (2) of S. 17 of the new Act too, under which allotment of a part of the building in favour of the nominee of the landlord is mandatory, there cannot be any letting or occupation of the building except under an order of allotment passed by the District Magistrate.

35. In no circumstance letting or occupation of any buildings except under an order of allotment/release to be passed by the District Magistrate under the new Act is permitted. The ban on letting or occupation of any buildings falling within the purview of the new Act is complete and absolute.

36. The provisions of the Rent Control Order are not in pari materia with the provision of the new Act. The controversy in Nanak Ram v. Kundalrai, related to the provisions which are totally different from the provisions of the new Act. This decision, therefore, does not lend much support to the contention that an agreement for letting and occupation of a building in contravention of the provisions of the new Act will not be void, and that it will be binding on parties thereto.

37. It is true that in paragraph 12 of the judgment in Nanak Ram v. Kundalrai, it has been observed that 'there is no reason why the lease between the landlord and the tenant, although inconsistent with clause 22, should not be binding as between the parties thereto, it is not a void transaction.'

With utmost humility and reverence it is stated that above observations are not compatible with provisions of Ss. 10 and 23 of the Contract Act. Otherwise also, it is most respectfully pointed that the statement of law contained in the said observation is, perhaps, in conflict with the law declared in the decisions of the Hon'ble Supreme Court in Waman Shrinivas Kini v. Rati Lal Bhagwan Das & Co., Shrikrishna Khanna v. Additional District Magistrate, Kanpur and Manna Lal Khetan v. Kedar Nath Khetan.

38. Hon'ble A. N. Ray, the then Chief Justice of India, in his judgment rendered in the case of Manna Lal Khetan v. Kedar Nath Khetan, enunciated the legal position in this regard thus :

'Where a contract, express or implied, is expressly or by implication forbidden by statute, no court will lend its assistance to give it effect (see Melliss v. Shirley Local Board, (1885) 16 QBD 466). A contract is void if prohibited by a statute under a penalty, even without express declaration that the contract is void, because such a penalty implies a prohibition. The penalty may be imposed with intent merely to deter persons from entering into the contract or for the purposes of revenue or that the contract shall not be entered into so as to be valid at law..... One is not concerned at all with the intent of the parties, if the parties enter into a prohibited contract, that contract is unenforceable. (See St. John Shipping Corporation v. Joseph Bank, (1957) 1 QB 267. (See also Halsbury's Laws of

England, Third Edition, Vol. 8, page 141)'.

39. The decisions of the Hon'ble Supreme Court in the cases of Waman Shrinivas Kini v. Rati Lal Bhagwan Das & Co., Shrikrishna Khanna v. Additional District Magistrate, Kanpur and Manna Lal Khetan v. Kedar Nath Khetan, were rendered by the Benches consisting of three Hon'ble Judges. The conflicting judgment in the case of Nanak Ram v. Kundalrai, also was given by a Bench of three Hon'ble Judges of the Hon'ble Supreme Court, though later in point of time.

40. Intransigent discord between the decisions of the apex court of the country having equal binding force leads to an embarrassing situation. The question arises which of the conflicting decisions should be followed? A Full Bench of this Court in Ganga Saran v. Civil Judge, Hapur : AIR1991 All114 , answered the question thus :

'..... the courts must follow the judgment which appear to them to state the law accurately and elaborately.'

41. For the reasons discussed above it has to be held that the decision of the Hon'ble Supreme Court in Nanak Ram v. Kundalrai, to the extent it holds that the lease between the landlord and the tenant, although inconsistent with statutory provision, is binding as between the parties thereto, and is not a void transaction, does not state the law accurately and elaborately. No support may, therefore, be drawn from the said decision.

41 A. The foregoing discussion leads to an irresistible conclusion that the case of Smt. Ram Sakhi Dwivedi v. Rama Kant Gupta, so far as it purports to hold that an agreement of lease between the landlord and the tenant for letting and occupation of a building in contravention of the provisions of the new Act will not be void, and will be valid and binding between the parties thereto, does not lay down law accurately, and shall stand overruled. The law stated in the judgment in Naveen Chandra Sharma v. 6th Additional District and Sessions Judge, Meerut is sound and, therefore, approved.

42. Outcome of the above deliberation unequivocally leads to the following inevitable and inescapable answers to the twin questions referred :

1. An agreement of lease between the landlord and the tenant for letting and occupation of a building in contravention of the provisions of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 is void.

2. The said agreement is unenforceable in law and no decree for ejection of the tenant can be passed in favour of the landlord on the basis thereof.

**S.C. Varma, J.**

43. I am in full agreement with the opinion of Brother D. S. Sinha, J.

**S.R. Singh, J.**

44. Petition on hand came up for hearing before one of us (S. C- Verma, J.) who, during the course of argument before him, found that there was a conflict of opinion expressed in Navin Chand Sharma v. 6th Addl. District Judge, Meerut 1983 (1) ARC 50: (AIR 1983 All 116), on one hand, in Smt. Ram Sakhi Dwivedi v. Rania Kant Gupta, 1988 (2) ARC 164 : (1988 All LJ 989), on the other, as to 'whether a contract of tenancy entered into after the enforcement of the Act being in contravention of the Act is void or the contract is enforceable at law at the instance of the landlord and a decree for ejection and rent can be passed against the tenant'-- referred the question aforesaid to a larger Bench. The present Full Bench has been constituted accordingly.

45. Keeping in view, the various conceivable aspects of the question formulated in the referring order, I would like it to be re-framed as under :

(1) Whether a contract of tenancy and the lease created pursuant thereto regarding a building governed by the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, without an order of allotment under Section 16 of the Act are illegal and void in law?

(2) Whether such a contract of tenancy and the lease as aforesaid are enforceable by law and whether a decree for ejectment and recovery of mesne profits/damages for use and occupation of the building under a void lease, can be passed in favour of the lessor against the lessee?

For proper appraisal of the controversy up before us, a brief 'resume' of the facts -- shorn of unnecessary details -- as they emerge from the impugned judgments, may be given as thus.

46. Petitioners are the owners of the suit premises namely, Quarter No. 13, 'Dubey Building' situate at Station Road, Banda City, District Banda which admittedly falls within the purview of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U. P. Act No. 13 of 1972) and was so even in June-July 1977, when it was let out to the defendant Sri S. K. Tripathi arrayed as respondent No. 3 on a monthly rent mutually agreed upon between the parties. The tenancy in favour of the respondent No, 3 was created otherwise than pursuant to an order of allotment. The defendant fell in arrears of rent for a period exceeding four months and failed to pay the same to the petitioners within one month from 9-8-1982 -- the date of service upon him of the notice of demand dated 4-8-82 which being a combined notice of demand and termination of tenancy, the petitioners filed a suit, it being SCC Suit No. 17 of 1982 in the Court of Civil Judge, Banda who was exercising the powers of Judge, Small Causes Court, for ejectment, recovery of arrears of rent and damages for use and occupation etc. The defendant filed written statement and admitted the plaintiff-petitioners to be the owners of the suit premises as also the creation of contractual tenancy in his favour though he disputed the rate of rent. At the same time, it was also pleaded by the defendant in his written statement that the U. P. Act 13 of 1972 was applicable to the suit premises and therefore, the contract of lease being in contravention of the Act was void and unenforceable by law. The plea as to the suit instituted on the basis of the said contract being not cognizable by Small Causes Court, was also raised.

47. A preliminary issue was struck by the learned trial Court as to whether the court had jurisdiction to try the suit. The said issue was decided in favour of the plaintiffs. Thereafter the suit was taken up for final disposal and as many as six

issues were framed including the issue as to whether the contract between the parties being void, was not enforceable by law (Issue No. 5). The learned Judge, Small Causes Court held that the U.P. Act 13 of 1972 was applicable to the building in question and that the tenancy in favour of the defendant was not created under any order of allotment passed by the Rent Control and Eviction Officer and he was allowed to occupy the suit premises without giving any intimation to the District Magistrate of the vacancy caused as a result of the erstwhile tenant Nihal Singh ceasing to occupy the premises. It was accordingly held by the learned Judge, Small Causes Court that the landlord was not entitled to evict the tenant. Reliance was placed by learned Judge, Small Causes Court upon the decision of a learned single Judge of this Court in Navin Chandra Varma v. 6th Addl. District Judge, Meerut AIR 1983 All 116. The suit was accordingly dismissed vide judgment and order dated 30-9-1986 though findings on issues as to the defendant being in arrears of rent and committing default in payment thereof despite service of notice of demand and as to the validity of notice terminating tenancy, were returned in favour of the plaintiffs. The revision preferred against the judgment, was dismissed by the learned District Judge, Banda by means of the judgment and order dated 25-4-1987. The writ petition on hand is directed against these judgments and orders.

48. Sri P. N. Saxena, learned counsel appearing for the petitioners at the very outset, canvassed that a lease even in respect of a premises governed by the U. P. Act 13 of 1972, created otherwise than in pursuance of an order of allotment issued under S. 16 of the said Act, is not illegal and void and the parties to the lease are bound by it even though it does not operate as a binding transaction on the authorities under the Act. Reiterating his submissions, learned counsel urged that S. 11 of the Act does not create an absolute bar against creation of tenancy in that the Act has been enacted for the purposes of regulating the letting and rent of, and eviction from the building falling within the purview of the Act and not for the purpose of abrogating or taking away the right of the owner/landlord of the building to enter into contract of tenancy. Sri Saxena urged that S. 11 of the Act being regulatory in nature, contravention thereof would not result in invalidation of the lease and that the transaction of lease in breach of the provision would not be hit by S. 23 of the [Indian Contract Act, 1872](#). He urged that the lease created in

contravention of S. 11 of the Act, does not in any manner, operate as an obstacle in the working of the Act inasmuch as the occupation of the lessee being unauthorised in law in view of S. 13 of the Act, the building continues to remain open for release or allotment, as the case may be, under S. 16 of the Act and therefore urged the learned counsel, the provisions of U.P. Act 13 of 1972 would not in any manner be defeated on account of a contractual lease created otherwise than in pursuance of the order of allotment.

49. Sri Wajahat Hussain Khan, learned counsel appearing for respondent No. 3, urged that tenancy created in contravention of express prohibition contained in S. 11 of the U.P. Act 13 of 1972, is illegal and void by virtue of S. 6(h) of the Transfer of Property Act read with S. 23 of the Contract Act and being a void transaction, the lease shall be deemed to be non-existent for all legal purposes and therefore, unenforceable by law.

50. With a view to appreciating the submissions made at the bar, the concept of tenancy and the element of contract and of transfer of interest in immoveable property involved in a lease, may first be scanned.

51. In Halsbury's Laws of England (4th Edition, Vol. 27, Part I dealing with general principles of creation of tenancy), 'lease' has been described as under :

'The relationship of landlord and tenant arises as a rule when one person, the landlord with intent to create a tenancy, confers on another, the tenant, the right to the exclusive possession of land, mines or buildings. The grant or demise must be either for a time which is subject to a definite limit originally, as in the case of a lease for the term of years certain, or for a time which, although originally indefinite, can be made subject to a definite limit by either party as of right by that party giving appropriate notice to the other, for example a tenancy from year to year. The interest in the property which remains in the landlord is called reversion, and as a rule, there is incident to it the right to receive from the tenant payment of rent for the use of the property.'

52. The concept of tenancy as visualised by S. 105 of the [Transfer of Property Act, 1882](#), is more or less the same as aforesaid, 'lease' according to the section, is a

transfer of a right to enjoy the property of the less -- or made for a certain time or in perpetuity under which the lessee is put in possession of the property in consideration of the price called premium paid or promised or of money or other thing of value called the rent.

53. A contractual tenancy as distinguished from a statutory tenancy -- which may arise under or by reason of statute and is very often thrust upon the parties even against the lessor's wishes -- for its sustenance must stand the test of a valid contract as visualised by Contract Act and of a valid transfer as visualised by Transfer of Property Act.

54. It has, therefore, to be seen whether a lease in respect of a building governed by U.P. Act 13 of 1972 created otherwise than in pursuance of an order of allotment issued under S. 16 of the Act is valid in law when tested on the touchstone of the principles of a valid contract and of a valid transfer of interest in immoveable property and for that purpose the concept of contract and of transfer of interest in immoveable property involved in a lease has to be examined.

55. According to S. 2 of the Contract Act when a person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal and when the person to whom the proposal is made, signifies his assent thereto, the proposal is said to be-accepted. A proposal when accepted becomes a promise.

56. Section 2 further provides that when at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise. Every promise and every set of promises, forming consideration for each other, is an agreement.

57. An agreement not enforceable by law is said to be void while an agreement enforceable by law is a contract. According to S. 10 of the Contract Act, all agreements are contracts, if they are made by free consent of the parties competent to contract, for a lawful consideration and with a lawful object, and are

not expressly declared to be void by the Act.

58. In other words, contracts may be invalidated either by the illegality of the object or consideration itself or by the incapacity of the promisor to enter into such contracts. Section 23 of the Contract Act provides that the consideration or object of an agreement is lawful, unless -- (1) it is forbidden by law or, (2) is of such a nature that, if permitted, it would defeat the provisions of any law or, (3) is fraudulent or involves or implies injury to the person or property of another, or is immoral or opposed to public policy and that an agreement the consideration or object of which is unlawful is void. The term 'promise' has been used for 'agreement' in S. 23 inasmuch as properly we speak of the consideration for a promise and not the consideration of an 'agreement' - (See Pollack and Mulla on 'Indian Contract and Specific Relief Acts', 10th Edition, page 228).

59. A 'lease' of a building involves two promises: (1) by the lessor to transfer his right to enjoy his premises to the lessee in consideration of the latter's promise to pay rent to the former, and (2) by the lessee to pay rent and to abide by other terms of the lease in consideration of the lessor's promise to transfer his right to enjoy the building to the lessee as aforesaid. Thus, it can be said that the promise of the lessor forms consideration to the promise of the lessee and vice versa. These promises may be described as reciprocal promises within the meaning of S. 2(f) of the Contract Act. The tenancy comes into being after the reciprocal promises forming consideration for each other as explained above, become an accomplished fact that is to say, after the contract results into the transfer of an interest in the premises within the meaning of the term 'lease' as defined in S. 105 of the Transfer of Property Act. The rights and liabilities of the parties are then governed by the said Act.

60. Section 6 of the Transfer of Property Act provides that property of any kind may be transferred except as otherwise provided by the Act or by any other law for the time being in force. Clause (h) of S. 6 expressly provides, inter alia, that no transfer can be for an unlawful object or consideration within the meaning of S. 23 of the [Indian Contract Act, 1872](#).

61. While the term 'consideration' has been defined in S. 2 as aforesaid, the word 'object' though not defined in the Act, has been explained by Authors and Jurists. Pollack and Mulla in their Book in 'Indian Contract and Specific Relief Acts', 10th Edition, Page 228, have explained the word 'object' as distinguished from the word 'consideration' to mean 'purpose' or 'design'. In Chandra Sreenivasa Rao v. Rama Mohana Rao : AIR1952 Mad579 , Subharao, J. (as his Lordship then was) while considering the word 'object' in S. 23 of the Contract Act in the context of enforceability of the debt secured to celebrate the marriage of a minor which was prohibited by [Child Marriage Restraint Act, 1929](#), held that the word 'object' in S. 23 means 'purpose' or 'design' of the contract. The same meaning has been given to the word 'object' by Supreme Court in Gurmukh Singh v. Amar Singh : [1991]1SCR885 . It has been observed at pages 82-83 as under :

'Section 23 of the Contract Act adumbrates that the consideration or object of an agreement is lawful unless it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provision of any law; or is fraudulent, or involved or implied injury to the persons or property of another; or the court regard it as immoral or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void. The word 'object' would mean the purpose and design which is the object of the contract, if it is opposed to public policy which tends to defeat any provision of law or purpose of law, it becomes unlawful and thereby it is void under S. 23 of the Contract Act.'

It is true that S. 23 of the Contract Act applies to a contract as distinguished from a transfer governed by the provisions of the Transfer of Property Act but since a contractual tenancy is based upon the principles of Contract, the related provisions of Contract Act would govern the validity of such a lease apart from the relevant provisions contained in this regard in the Transfer of Property Act. That apart by virtue of Sec. 6(h) of the said Act, the provisions of Sec. 23 of the Contract Act continue to govern the validity of a lease.

62. Accordingly, if the contract of tenancy is hit by S. 23 of the Contract Act, the 'lease' i.e. the transfer of the lessor's right to enjoy the property to the lessee,

resulting from such a contract of tenancy will also be invalidated in view of S. 6(h) of the Act.

63. It is, therefore, to be seen whether an agreement to let out a building governed by the provisions of U.P. Act 13 of 1972 without an order of allotment and the tenancy created pursuant thereto are illegal, or void or both in view of S. 11 of U.P. Act 13 of 1972 and S. 23 of the Contract Act and S. 6(h) of Transfer of Property Act?

64. To begin with the submissions made by Sri P. N. Saxena as to the validity of the tenancy created otherwise than in pursuance of an order of allotment, it may be observed that in this regard the arguments were advanced under three sub-heads : (i) whether it is forbidden by law? (ii) whether it defeats the provisions of any law? and (iii) whether it is opposed to public policy?

65. The first limb of argument of Sri P. N. Saxena on the question of validity of the contract of tenancy is that the expression 'forbidden by law' occurring in Section 23 of the Contract Act visualises a total and absolute statutory inhibition against creation of tenancy whereas the provisions of the U.P. Act 13 of 1972 are intended only to regulate letting, rent and eviction and not to completely abrogate or take away the right of the owner-landlord of any building to let it out. Accordingly, urged Sri Saxena, a lease created in contravention of S. 11 of the Act, does not come within the 'forbidden by law' clause of S. 23 of the Contract Act.

66. The submission made by Sri Saxena is misconceived and dehors any merits. What is meant by the expression 'forbidden by law' in S. 23 of the Contract Act has very succinctly been stated by Pollack and Mulla in their book on 'Indian Contract and Specific Relief Acts', 10th Edition, P. 231 as thus :

'Forbidden by law' -- 'An act or undertaking is equally forbidden by law whether it violates a prohibitory enactment of the legislature or a principle of unwritten law. But in India, where the criminal law is codified, acts forbidden by law seem practically to consist of acts punishable under the Penal Code and of acts prohibited by special legislation or by regulations or orders made under authority derived from the legislature.'

The above meaning of the term 'forbidden by law' occurring in S. 23 of the Contract Act has been approved of by the Supreme Court in Gheru Lal Parekh v. Mahadeo Das : AIR 1959 SC781 .

67. A combined reading of Ss. 11, 13 and 31 would unequivocally make it clear that letting of a building governed by U.P. Act 13 of 1972 otherwise than in pursuance of an order of allotment is 'forbidden by law' within the meaning of Section 23 of the Contract Act as explained above.

68. A conspectus of the aforesaid provisions of the U.P. Act 13 of 1972 would show that the letting and occupation of a building -- falling within the purview of the Act -- without an order of allotment release are expressly forbidden by Ss. 11 and 13 of the Act as would be evident from the expression 'save as hereinafter provided, no person shall let any building except in pursuance of an order of allotment issued under S. 16' -- occurring in S. 11 and the expression 'no person shall occupy it in any capacity..... otherwise than under an order of allotment or release under S. 16' -- used in S. 13 of the Act. A contract to let out without an order of allotment and the lease created in pursuance of such a contract are therefore, unlawful and void being hit by Ss. 11 and 13 of U.P. Act 13 of 1972 read with S. 6(h) of U.P. Act.

69. It is true that unlike the provisions contained in S. 5(8) of the U.P. Imposition of Ceiling on Land Holdings Act, 1969 and Section 166 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 and similar provisions in other statutes declaring transfers made in contravention of statutory provisions to be void, the U.P. Act 13 of 1972 contains no provisions declaring an agreement of lease entered into between the lessor and the lessee and the lease created in pursuance of such agreement without an order of allotment i.e. In contravention of the Act to be void but letting and occupation of a building without any order of allotment being expressly prohibited by Ss. 11 and 13 and punishable under Sec. 31 of the U.P. Act 13 of 1972, the lease created without an allotment order is rendered illegal and void by virtue of S. 6(h) of the Transfer of Property Act read with the 'forbidden by law' clause of S. 23 of the Contract Act.

70. At the risk of repetition, it may be observed that Ss. 11 and 13 of U.P. Act 13 of 1972, prohibit, in clear and unambiguous words, letting and occupation of any building falling within the purview of the Act except in pursuance of an order of allotment or release, as the case may be, issued under S. 16 and that being so, not only the promise made by the lessor to let out the building in question and the reciprocal promise made by the lessee to pay rent for its use and occupation without an order of allotment under S. 16 of the Act are hit by S. 23 of the Contract Act but the tenancy arising out of such a contract is also hit by the same very provisions of law and is nothing but a still-born transaction being illegal and void from the very inception. It is true that what is void cannot be equated with what is forbidden by law as held by the Supreme Court in *Cheru Lal Parekh's case* : AIR 1959 SC781 . But the converse is not, in view of S. 23 of the Contract Act. The tenancy is illegal because it was created against express and explicit statutory prohibition contained in S. 11 of the Act and void because it is based on 'consideration' and 'object' which are 'forbidden by law' within the meaning of S. 23 of the Contract Act. I am, therefore, of the opinion that agreement to let out a premises governed by U.P. Act 13 of 1972 otherwise than in pursuance of an order of allotment is illegal and void and the lease created in pursuance thereof, outside the limited statutory sanction contained in the expression 'save as hereinafter provided' used in S. 11 of the U.P. Act 13 of 1972, is also rendered illegal and void for the same very reason and that being so, the lease shall be treated as non-existence.

71. The distinction between illegal and void contracts has well been high-lighted in the undermentioned cases.

72. In *Deep Narain Singh v. Nageshwar Prasad* : AIR1930 All1 , it has been observed as under :

'There is a clear distinction between an agreement which may be forbidden by law and one which is merely declared to be void. In the former case, the legislature penalises it or prohibits. In the latter case, it merely refuses to give effect to it.'

73. It may be observed that the distinction between illegal and void contracts may be very thin but it is there. Sir William Anson in his Book 'On Law of Contracts' has

very succinctly stated the legal position as thus :

'..... The law may either forbid an agreement to be made, or it may merely say that, if it is made the Courts will not enforce it. 'In the former case, it is illegal, in the latter only void, but inasmuch as illegal contracts are also void, though void contracts are not necessarily illegal, the distinction is for most purposes not important and even Judges seem sometime to treat the two terms as interchangeable.' See Gherulal Parekh's case : AIR 1959 SC781 .'

74. In *Manna Lal Khetan v. Kedar Nath Khetan* : [1977]2SCR190 para 11, it has been observed by the Supreme Court as under.

'A contract is void if prohibited by statute under a penalty, even without express declaration that the contract is void, because such a penalty implies a prohibition.'

The above authorities lead to a conclusion that although for all practical purposes, illegal contracts and void contracts are taken at par with each other nevertheless the distinction between the two is there. Illegality of a contract arises as a result of infraction, contravention or breach of any express or implied provisions of law properly so-called that is a constitutionally valid enactment made by the legislature or of a subordinate legislation i.e. rules, bye-laws, regulations or orders -- or even usages and customs -- having the force of law. On the other hand, the void contract is one which is declared as such by virtue of sections 23 to 30 etc. of the Contract Act or by a provision of any other enactment.

75. Coming now to the argument of Sri P. N. Saxena on the question as to whether the consideration or object of the agreement of lease and of the lease itself is of such a nature that 'if permitted' it would defeat the provisions of U. P. Act 13 of 1972, it may be observed that the words 'if permitted' occurring in the expression 'consideration or object of an agreement is lawful, unless it is of such nature that, if permitted, it would defeat the provisions of any law' used in Section 23 of the Contract Act, in the context of the section, mean 'if accepted', 'if allowed'. As explained earlier in this judgment, the landlord's promise to let out his building to the tenant in consideration of the latter's promise to pay money called rent for use and occupation of the building without an order of allotment is of such a nature

that 'if permitted' it would defeat the provisions of Sections 11 and 13 of U. P. Act 13 of 1972. The purpose and design of an agreement of lease without an order of allotment run counter to the scheme of the Act and object sought to be achieved by it.

76. In Navin Chandra Sharma's case (supra), A. N, Verma, J, has very succinctly and correctly laid down the law on the question in the following words-

'..... the interdict against the letting and occupation of an accommodation after coming into force of the enactment is express and absolute. Letting or occupation otherwise than under an order of allotment after the commencement of the Act is totally forbidden by law and further these acts are of such a nature that if countenanced, they would, without doubt be opposed to public policy, and frustrate the declared and basic object of the Act, namely that of bringing all the available vacant building (except those which are specifically excluded) under the control of the authorities so that the same are allotted or released in favour of those whose needs may be the greatest.....That seems to be the basic objective which the Act was intended to achieve.'

xx xx xx xx'My conclusion, therefore, is that the contract of tenancy relied on by the petitioner was forbidden by law by virtue of the express prohibition contained under Sections 11 and 13 and, is by its very nature such that if permitted it would defeat the provisions of the aforesaid Act. The contract is plainly opposed to public policy being repugnant to public interest. The policy which is unmistakably discernible from the various provisions of the Act is that no one shall let any accommodation or occupy the same after the coming into force of the Act except in pursuance of an order of allotment or release. That policy will clearly be defeated if such contracts of tenancy receive the seal of approval of the Court. And the mere fact that the authorities would not be bound by that contract and can on that account evict the unauthorised occupant are not enough consideration for holding that the contract of tenancy would be binding on the parties in any case when the same is expressly forbidden by law. It is common knowledge that it takes years before an unauthorised occupant is thrown out.'

77. The argument of Sri Saxena is that the position of a lessee occupying the building without an order of allotment being that of an 'unauthorised occupant' the building continues to remain open for allotment notwithstanding the contract of tenancy and therefore, urged the learned counsel, the question of frustration of the object of the Act does not arise.' The submission, in my opinion, is misconceived inasmuch as having regard to the uncertainty of litigation and the delay that takes place at every stage of the litigation, it cannot be gain said that letting out the building otherwise than in pursuance of an order of allotment would certainly come in the way of an effective implementation of the purpose of the Act and is bound to frustrate its object inasmuch as the immediate availability of the building for being allotted to a needy person is frustrated/thwarted.

78. Therefore, in my opinion, the contract of letting and occupation of a building otherwise than in pursuance of an order of allotment is of such a nature that 'if permitted' it would defeat the provisions of law. Any other view of the question would be non-sequitur and destructive of the objectives of the Act.

79. It is true that mere agreement of lease in itself may not be illegal for what is forbidden is letting without an allotment order but if the consideration or objects of the agreement are found to be tainted with the kind of illegality which is struck by Section 23 of the Contract Act, the agreement would be rendered void. The object of the agreement of lease when carried out and given effect to, gets materialised in letting and occupation which, in absence of an order of allotment are unlawful being prohibited by Sections 11 and 13 of the U. P. Act 13 of 1972 and punishable under Section 31. Such an agreement is tantamount to a mechanism or device meant and evolved by the parties to the agreement to defeat and circumvent what the law has actually forbidden.

80. The Supreme Court has held in *Firm Pratap Singh v. Firm Kotrike* : [1975]3SCR1 that the object of an agreement cannot be said to be forbidden or unlawful merely because the agreement results in what is known as 'void contract' and that a void agreement, coupled with other facts may become a part of the transaction which creates legal rights but 'this is not so if the object is prohibited or 'mala in se'.'

81. The consideration or object of the agreement of lease without allotment order is opposed to public policy as well. In *Ratan Chand Hira Chand v. Askar Nawaz Jung* : [1991]1SCR327 , the Supreme Court has held as under :

'..... It cannot be disputed that a contract which has a tendency to injure public interests or public welfare is one against public policy....'

xx xx xx xx'A contract tending to injure public interest or public welfare or fraudulent to defeat the rights of the third parties is void under Section 23 of the Contract Act.'

In the light of the above authorities, I am of the opinion that the tendency of an agreement of lease in respect of a building governed by U. P. Act 13 of 1972 entered into between the lessor and the lessee otherwise than in the background of an order of allotment is such as may be regarded 'opposed to public policy' within the meaning of Section 23 of the Contract Act. Such an agreement if permitted would defeat the rights of the prospective allottees.

82. in support of his argument as to validity of the lease, the learned Counsel appearing for the petitioner placed reliance upon the Full Bench decision of this Court in *Udho Das v. Prem Prakash* : AIR1964 All1 Shop in question in that case was governed by the U. P, (Tenancy) Control of Rent and Eviction Act, 1947 (UP) Act No. 3 of 1947. One 'R' was admitted by the landlady as a tenant of the shop on 1-2-1952. An allotment order was passed under Section 7(2) of the U. P. Act No. 3 of 1947 in favour of 'N' on 20-2-1952 calling upon the landlady to let the shop to 'A'. The question arose as to whether the tenancy created in favour of 'R' without an order of allotment was valid. M. C. Desai, C. J. held as under :--

'Allowing an accommodation to be used is not forbidden by any law; it is entering into a contract of tenancy in contravention of an order made under Section 7(2) by a District Magistrate -- that may be said to be a forbidden act. But it is an act forbidden by a District Magistrate and not by law within the meaning of Section 23. An order made under Section 7(2) by a District Magistrate may have the force of law but is not law. The U. P.(Tenancy) Control of Rent and Eviction Act does not contain any provision prohibiting the letting out of an accommodation by a landlord.'

It contains no such provision as 'do not let out in contravention of an order made under Section 7(2) 'or' do not let out in contravention of any provision contained hereunder or any order made hereunder.' in *ARLP Firm v. U. P. Kyaing* AIR 1939 Rangoon 305 (FB), it was stated that 'law' in the phrase 'forbidden by law' means judicial statute law. An agreement does not cease to be a contract merely because it is forbidden by law; it ceases to be a contract only if its consideration or objects is forbidden by law or it itself is declared to be void under Sections 24 etc. of the Contract Act. Sections 24 etc. have not declared an agreement or tenancy to be void on the ground that it is made in contravention of an order under Section 7(2).'

83. V. G. Oak, J. (as he then was) though delivered a separate judgment, but agreed with Desai, C. J. and held that since no general or special order of the District Magistrate under Section 7(2) of the U. P. Act No. 3 of 1947 was in existence on 1-2-1952 (the date on which 'R' was inducted as tenant), the question of tenancy having been created in contravention or violation of any order did not arise. However, since the point, was of general importance, it was gone into by the learned Judge and the Principal reason given in support of the validity of the contract or tenancy was that it was not 'prohibited by law' as would be evident from the observations made in paras 32 and 33 of the report, at p. 5, quoted below.

'32. According to Cl.(3) of Art. 13 of the Constitution, 'law' includes an order having force of law. But that definition is for purposes of Article 13 only, Indian Contract Act is Act No. IX of 1872. That was long before the [Constitution of India](#), was drafted. The definition of 'law' contained in Art. 13 of the Constitution can have no application for the interpretation of Section 23 of the Contract Act.'

'33. I think, the term 'law' in clauses (i) and (ii) of Section 23, Contract Act limited sense. The term 'law' obviously covers statute law. It is perhaps possible to include statutory rule also. But I do not think that Administrative Orders issued under a Statute are covered by the term 'law' used in Cls. (i) and (ii) of Section 23, Contract Act. I have already shown that the agreement of tenancy under consideration does not infringe any specific provision of the Rent Control Act.'

The U. P. Act 13 of 1972 is materially different from U. P. Act No. 3 of 1947 in that letting except under an order of allotment is now expressly prohibited by Section 11. The occupation of any vacant building governed by the Act without an order of allotment or release, as the case may be, is also now expressly forbidden by Section 13. That being so, Udho Das (supra) is no longer relevant to the question of the validity of an agreement of lease in the context of U. P. Act No. 13 of 1972. Further the term 'law' in Section 23 of the Contract Act has, in my opinion, been used in a wider sense and must be understood in the sense of the term explained in Art. 13(3) of the Constitution.

84. It may also be noted that 'Udho Das' was specifically overruled by a larger Bench of five Judges in Abdul Hamid v. Mohd. Ishaq : AIR1975 All166 . It was, of course, referred to and approved by the Supreme Court in Murlidhar v. State of U. P : [1975]1SCR575 .

85. In Murlidhar (supra) the lease in favour of the tenant was created in violation of the provisions of Section 7(2) of U. P. Act No. 3 of 1947 and the tenant was sought to be evicted as unauthorised occupant. The Supreme Court dealt with the question as under :

'In Udho Das v. Prem Prakash : AIR1964 All1 a Full Bench of the Allahabad High Court took the view that a lease made in violation of the provisions of S. 7(2) would be valid between the parties and would create the relationship of landlord and tenant between them although it might not bind the authorities concerned. In the light of this ruling the correctness of which we see no reason to doubt -- we think that the respondent was a tenant.....'

'Now, the landlord and the tenant cannot, by their agreement, bind the District Magistrate. In spite of the lease, the District Magistrate may treat the accommodation as vacant and evict therefrom the tenant who is in occupation of the accommodation without an allotment order. This is his statutory obligation. But the appellants would be estopped from denying that the respondent is a tenant. The Act makes a distinction between a tenant by virtue of an allotment order, and a tenant otherwise than by virtue of an allotment order. In most of the sections of the Act the word 'tenant' alone is used. If the word 'tenant' in Section 3 is construed

as 'tenant' under an allotment order, then the tenants who have been occupying an accommodation without an allotment order will be deprived of several material privileges conferred upon them by the Act. Having regard to the definition clause and the scheme of the Act, we are of opinion that the respondent is a tenant under Section 3 even though he is occupying the accommodation without an allotment order.

86. In my humble opinion, Murlidhar's case does not help the petitioner inasmuch as that too was a case based on interpretation of U. P. Act No. 3 of 1947 which as stated above, was materially different from the present Act No. 13 of 1972. The legislature has materially altered the position on which were based the decisions in Udho Das and Murlidhar (supra).

87. In Geep Industrial Syndicate Ltd. Alld. v. Rent Control and Eviction Officer Alld., 1982 (1) Allahabad Rent Cases 585 : (1982 All LJ 85I) (DB), K.C.Agrawala,J.(as he then was) speaking for the Bench has held as under :

'Section 11 of the Act imposes a prohibition or restriction against letting without an allotment order. Section 12 contemplates of certain contingencies in which a landlord or tenant of a building would be deemed to have ceased to occupy it. Section 13 provides for restriction on occupation of building without allotment order. A conjoined reading of Section 11 imposes a prohibition on letting without allotment order, Section 13 places restriction on occupation without allotment or release. These two sections are required to be read together, Reading these two sections, it would appear that neither can a landlord let out a premises without an allotment order nor can any one occupy it. These two provisions were enacted with a view to undo the effect of a Full Bench decision of this Court reported in Udho Das v. Prem Prakash.....'

After referring to Murlidhar's case (supra), the learned Judge observed as below.

'From the above, it would appear that in case of an illegal letting or subletting, the view taken was that the contract may be binding on the parties to it, but not on the authorities which would mean that the possession of a person who has been illegally let in would be unauthorised. Sections 11 and 13 of the present Act make

that position very clear. No one now can neither let out any premises without an allotment order nor can anyone occupy the same. If any one occupies the premises without an allotment order, he would not only be an unauthorised occupant but also liable to prosecution under Section 31 of the said Act.'

88. In my opinion, the above observation in Geep Syndicate case (supra) represents the correct legal position that Udho Das and Murlidhar (supra) are no longer relevant and quotable as binding precedents in view and context of Sections 11, 13 and 31 of U. P. Act No. 13 of 1972 particularly because of the reason that U. P. Act 3 of 1947 had no provision similar to U. P. Act 13 of 1972.

89. The next case law relied upon by Sri P. N. Saxena is a decision of the Supreme Court in Nanakram v. Kundaraj : [1986]2SCR839 . In that case, the question of the validity of a lease in the context of the provisions of Central Provinces and Berar Letting of House and Rent Control Order, 1949 (In short the 'Rent Control Order)' was up for consideration before the Supreme Court. For a proper appreciation of the authority referred to above, clause 22 of the Chapter III of the Rent Control Order, in so far as it is relevant may be quoted as below:

'22(1) Every landlord of a house.....;

shall

(a) within seven days from the date of extension of this Chapter, if the house is vacant on such date; or

(b) within seven days from the date on which the landlord becomes finally aware that the house will become vacant. .... on or about a specified dates give intimation of this fact to the Deputy Commissioner.....;and shall not let or occupy the house except in accordance with clause 23.

(2) No person shall occupy any houses... except under an order under sub-clause (1) of clause 23 or clauses 24 or and an assurance from the landlord that the house is permitted to be occupied in accordance with sub-clause (2) of clause 23.'

Clause 23(1) of the Rent Control Order empowers the statutory authority named therein to order the landlord to let the house to any person of the category specified therein. The proviso to clause (1) empowers the authority to permit, on satisfaction of the need, the landlord to occupy the house. Under sub-clause (2) of Section 23, the landlord has been given liberty to let the house to any person of his choice if no order is passed and served upon the landlord as aforesaid. It is thus evident that the Rent Control Order contains provisions prohibiting letting and occupation to a great extent similar to the ones contained in Sections 11 and 13 of the U. P. Act No. 13 of 1972. The Supreme Court after noticing with approval the law laid down in the two cases of Udho Das and Murlidhar (supra) held as under :

'Nowhere does the Rent Control Order mandate that the Deputy Commissioner must eject a person who had entered into possession of a house in violation of clause 22. If upon consideration of the situation prevailing then the Deputy Commissioner takes no action in the matter; there is no reason why the lease between the landlord and the tenant, although inconsistent With clause 22 should not be binding as between the parties thereto. It is not avoid transaction. There is nothing in the Rent Control Order declaring it to be so. Now if the lease is not void then it is not open to either party to avoid the lease on the ground that is inconsistent with clause 22. The parties would be bound, as between them to observe the conditions of the lease, and it cannot be assailed by either party in a proceeding between them'.....

90. Sri S. N. Saxena urged that just as the provisions of the Rent Control Order, the provisions of the U. P. Act No. 13 of 1972 too do not mandate that the District Magistrate must eject a person who has entered into possession of a house in violation of Section 11 of the U. P. Act No. 13 of 1972, and therefore, urged the learned Counsel, the proposition of law laid down by the Supreme Court in Nanakram's case (supra) is applicable to the facts of the present case on all fours.

91. The submission made by the learned counsel is attractive. But with the greatest respect at my command, I am of the view that the above quoted authority of the Supreme Court in Nanak Ram's case (supra) cannot be taken as binding precedent on questions which have not decided therein and have rather just been

assumed by the Supreme Court in the background of the Full Bench decision of this Court in the case of Udho Das and its own decision in Murlidhar's case (supra) as would be evident from the underlined portion in the passage extracted and quoted above from Nanak Ram's case (supra) which make it abundantly clear that the question as to whether the lease transaction entered into between the lessor and the lessee in contravention of clause 22 of the Rent Control Order was illegal and void being hit by S. 23 of the Contract Act read with S. 6(h) of the Transfer of Property Act was not adverted to and decided by the Supreme Court.

92. In State of U.P. v. M/s. Synthetic Chemicals Ltd. : 1993(41)ECC326 , the law on the doctrine of precedent has been declared by the Supreme Court in the following words-

'..... the 'quotable in law' is avoided and ignored if it is rendered, in ignorance of a statute or other binding authority; (1944-1 KB 718, Young v. Bristol Aeroplane Ltd.). same has been accepted, approved and adopted by this Court while interpreting Art. 141 of the Constitution which embodies the doctrine of precedent as a matter of law.'

x x x x 'A decision based on sub-silence, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or is present to its mind.'

x x x x '..... A decision which is not expressed and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Art. 141.'

93. As seen hereinbefore, the decision in Nanak Ram's case (supra) proceeds on an assumption -- possibly because of Udho Das and Murlidhar -- that the lease transaction was not void and that there was nothing in the Rent Control Order declaring it to be so. Obviously, as observed earlier the effect of letting in contravention of express prohibition contained in clause 22 of the Rent Control Order was not considered and examined by the Supreme Court in Nanak Ram's case (supra) in the light of S. 23 of the Contract Act and S. 6(h) of the Transfer of Property Act. In my humble opinion, therefore, the decision in Nanak Ram's case

does not warrant any change in the view that I have expressed earlier in relation to the validity and legality of the lease transaction.

94. The only other case law which requires consideration on the point, is the decision of learned single Judge (A. P. Misra, J.) in *Smt. Ram Sakhi Devi v. Rama Kant Gupta*, 1988 (2) All RC 164 : 1988 All LJ 989. The learned Judge has held at p. 172 as under :

'In view of the clear enunciation of law on this point, there is no room for doubt that any lease or agreement would not be void merely because it is illegal or in contravention of the Act unless it can be shown that it is an obstruction in the implementation of public policy laid down under the said Act. Even in the present case, nothing has been shown as to the Act which declares such transaction to be void .....

95. In my humble opinion, the aforesaid view taken by the learned single Judge in the case of *Smt. Ram Sakhi Devi* (supra) does not lay down the correct law and, therefore, it cannot be approved of. The Division Bench decision in case of *Geep Syndicate Ltd. Allahabad* (supra) appears to have been distinguished by the learned Judge under some misconception. The observation 'from the above, it would appear that in case of an illegal letting or sub-letting, the view taken was that the contract may be binding on the parties to it but not on the authorities, which would mean that the possession of a person who has been illegally let in would be unauthorised,' appears to have been taken as if it was the view expressed by the Division Bench in the case of *Geep Industrial Syndicate Ltd.* (supra) whereas the said observations pertained to the view taken in *Udho Das and Murtidhar*. The learned Judge (A. P. Misra, J.) has based his conclusion as to the validity and binding nature of the lease transaction between the landlord and the tenant on the authority of the cases of *Udho Das*, *Murlidhar Agarwal* and *Nanak Ram*, which in my humble opinion, have no relevance to the question in view of the discussion made hereinbefore.

96. The discussion made thus far inevitably yields and begets an affirmative answer to the first question and the same stands answered accordingly.

97. Now coming to the second question as to whether such a lease as aforesaid is enforceable and a suit of ejectment and recovery of arrears of rent and damages etc. based on such lease can be maintained by the lessor against the lessee, the following propositions of law enunciated by Sir William Anson in his book 'Law of Contract' (26th Edn. Edited by A. G. Guest), may usefully be quoted below as guiding principles on the question :

'It is scarcely surprising that the Courts will refuse to enforce an illegal agreement at the suit of a person who is himself implicated in the illegality. But it is also a rule of English law that money or property transferred by such a person cannot be recovered. In the colourful words of Wilmot C.J. : 'All writers upon our law agree in this, no polluted hand shall touch the pure fountains of justice. Whoever is a party to an unlawful contract, if he hath once paid the money stipulated to be paid in pursuance thereof, he shall not have the help of a court to fetch it back again.' This principle is expressed in the maxim *in pari delicto potior est conditio defendantis*.'

98. The principle expressed in the maxim popularly known as '*in pari delicto*' is, however, subject to following among other exceptions under which the man will be relieved of the consequences of an illegal contract into which he has entered :

(a) Where the plaintiff seeking recovery of the property given to the defendant in an illegal transaction has withdrawn from a transaction and approached the court before the illegal purpose of the transaction can be executed in whole or in part;

(b) Where the plaintiff is not *in pari delicto* with the defendant;

(c) Where the plaintiff though *in pari delicto* with the defendant suffered from any incapacity of the nature which vitiates a contract or was as a matter of fact forced to be party to the illegality by reason of the compulsions of social or economic inequality having a bearing upon the bargaining capacities of the parties; and,

(d) Where the plaintiff does not have to rely on the illegality to make out his claim.

99. The learned author has further stated the principle in the following words :

'There is yet one more factor which may defeat an ostensibly valid contract. It is that of illegality. Public policy imposes certain limitations upon freedom of contract. Certain objects of contract are forbidden or discouraged by law; and though all other requisites for the formation of a contract are complied with, yet if these objects are in contemplation of the parties when they entered into agreement the law will not permit them to enforce any rights under it.' (p. 292)

'The nature and effects of statutory illegality may vary considerably. A statute may declare that a certain type of contract is expressly prohibited. There is then no doubt of the intention of the legislature that such a contract should not be enforced. What is done in contravention of the provisions of an Act of Parliament cannot be made the subject matter of an action.' (p. 293)

100. Equally useful are the following views expressed on the point by Pollock and Mulla in their book 'On Indian Contract and Specific Relief Acts', 12th Edn. at p. 232 :

'If a contract is expressly or by necessary implication forbidden by statute or it is ex facie illegal or both parties know that though ex facie legal it can be performed by illegality or is intended to be performed illegally, the law will not help the plaintiffs in any way i.e. by direct or indirect enforcement of rights under the contract. And for this purpose both the parties are presumed to know the law. If expressly prohibited by law, the contract is void ab initio. If both parties have knowledge that a contract could not be carried out without a violation of the law, the contract would be un-enforceable. But if only one party has such knowledge the innocent party is not precluded because otherwise it would injure the innocent, benefit the guilty and put a premium on deceit. If a contract can be performed in one of two ways, i.e. legally or illegally it is not an illegal contract though it is un-enforceable at the suit of a party who chooses it to perform illegally.'

101. In Anson's Law of Contract (supra), it has also been propounded that where the plaintiff is not relying upon the illegal contract, he may sue the defendant for possession delivered to the latter under the illegal contract. To quote the learned Author -

'It is settled law that the ownership of property can pass under an illegal contract if the parties so intend, as in the case of goods sold to a buyer under an illegal contract of sale.

Where, however, only a limited interest is transferred, as under a contract of bailment or a lease, it is equally well established that the owner of the property can recover it from the bailee or lessee if he is not forced to found his claim on the illegal contract, but simply relies on his title to the property.'

'This principle is extremely difficult of application since it is frequently hard to determine whether a plaintiff is relying upon his title, or upon the contractual provisions of title, or upon the contractual provisions of the illegal agreement. For example, it seems probable that a landlord can recover premises let to a tenant under an illegal agreement once the term of years has expired; but it is a matter of doubt whether he could recover them in the meantime under a covenant which provided for forfeiture for non-payment of rent. Would he be relying on his independent right of ownership, or (more probably) upon the contractual provisions of the illegal lease ?'

102. In *Waman Srinivas v. R. B. and Company* : AIR 1959 SC689 , 'A' was the tenant for about 20 years in the premises known as 'Fida Ali Villa' situate at Kalyan in Bombay. The building was purchased by 'R' who gave notice to 'A' to vacate as he wanted to construct a new building on the site of the old building. 'A' agreed to vacate and 'R' to let to him a portion of his new building. 'A' had four sub-tenants in the building aforesaid, three of them also shifted to the new premises which were let to 'A' by 'R'. The new premises was let to 'A' on certain agreement regarding sub-tenancy. 'R' brought a suit for ejectment on the ground of non-payment of rent and sub-letting of premises. The defence of 'A' was that under the terms of lease, he had the right to sub-let the premises.

103. Section 15 of Bombay Hotel and Letting House Rent Control Act, 1947 prohibited sub-letting and made it unlawful for a tenant to assign or to transfer his interest in the premises let to him. It was held by Supreme Court that an agreement contrary to the provisions of Section 15 could be unenforceable as being in contravention of the express provisions of the Act which prohibited it; (2)

that it was not permissible to any person to rely upon the contract.

104. While commenting on the maxim --'in pan delicto Eotiolest conditie posidentes' -- the Supreme Court in the above noted case observed as under :

'The maxim must not be understood as meaning that where a transaction is vitiated by illegality the person left in possession of goods after its completion is always and of necessity entitled to keep them. Its true meaning is that where the circumstances are such that the court will refuse to assist either party, the consequence must, in fact, follow that the party in possession will not be disturbed.'--(Per Du Paroq L. J. In Dow Makess Ltd. v. Barnet Instruments Ltd. 1945-1 K. B. 65, 72).

105. The Supreme Court further held :--

The first respondent in the present case did not call upon the court to enforce any agreement at all. When the instrument of lease was executed and possession given and sub-letting done it received its full effect; no aid of the court was required to enforce it. The respondent's suit for ejection was not brought for enforcement of the agreement which recognised sub-letting but he asked the court to enforce the right of eviction which flows directly from an infraction of the Act (S. 15) and for which the Act itself provides a remedy. There is thus a manifest distinction between this case where the plaintiff asked the court to afford him a remedy against one who by contravening Section 15 of the Act has made himself liable to eviction and those cases where the court was called upon to assist the plaintiff in an agreement the object of which was to do an illegal act. The respondent. is only seeking to enforce his rights under the statute and the appellant cannot be permitted to assert in a court of justice any right founded upon or growing out of an illegal transaction. ' --

106. The Supreme Court further held --'..... Whether Court would aid the appellant in enforcing a term of agreement which Section 15 of the Act declares to be illegal. By enforcing the contract the consequence will be the enforcement of an illegality and infraction of a statutory provision .....

107. The observations of the Supreme Court in *Manna Lal Khetan* : [1977]2SCR190 (supra) at p. 430, para 20 may also be quoted usefully on the point under discussion.

'It is well established that a contract which involves in its fulfilment the doing of an act prohibited by statute is void. The legal maxim 'A' pactis provatorum publico juri non derogatur means that private agreements cannot alter the general law. Where a contract express or implies, is expressly or by implication forbidden by statute, no court can lend its assistance to give it effect. (See *Mellis v. Shirley* LB) What is done in contravention of the provisions of an Act of the legislature cannot be made the subject of an action.'

108. In *Nand Ram Singh v. Hari Saran Das* : AIR1925 All100 where the defendant took possession of land under a lease and executed a 'kabuliat' and paid rent for at least three years in accordance with it, it was held that even if the 'Kabuliat' did not constitute a valid tenancy the defendant was liable to pay compensation for the use and occupation of the land, the measure of that being the amount which he agreed to pay under the lease. Reliance was placed by the learned Judges upon the Full Bench decision of this Court in *Sheo Karan Singh v. Maharaja Prabhu Narain Singh*, (1909) 31 All 276 (FB) the facts of which were that certain persons entered into possession of property executing a registered 'kabuliat' and paid rent for sometime but in a suit for rent pleaded that in the absence of a lease there was no contract of tenancy and rent could not be recovered by suit. The Full Bench held that the suit might be 'treated as one for compensation for the use and occupation of the land and in view of the fact that the defendants entered into and have continued in occupation of the land, with the plaintiff's consent, they undertaking to pay rent to the former, cannot be heard now to say that they are not liable for rent for use and occupation. They certainly cannot be treated as trespassers and it is admitted that they heretofore have paid rent to the plaintiff in respect of their occupation of the land in question. It is not their case that they are trespassers. Under the circumstances we failed to discover on what ground they can resist the plaintiff's claim to recover compensation for the use and occupation of his land.' The rent agreed was taken by the Full Bench to be the measure of compensation.

109. In *Ajodhya Singh v. Khusro Begum* AIR 1924 Oudh 98, the plaintiff who failed to prove a lease was allowed a decree on the basis of use and occupation on the finding that the defendants were proved to hold the land. In this case, the Full Bench aforesaid was relied on.

110. In depth consideration of the question in the light of the authorities referred to above and scheme and object of the Act leads me to a firm view that what is unenforceable is the claim relating to rights and liabilities attached to the tenancy either flowing from any provisions of the U.P. Act 13 of 1972 or from Section 108 of the Transfer of Property Act or from any term or covenant of the agreement of lease running counter to the provisions of the U.P. Act 13 of 1972. Thus the landlord's right to recover rent from the tenant occupying the building under void lease is unenforceable by law for that is a right flowing directly from a void (nonexistent) transaction. The rent being an integral constituent of lease is not recoverable from the tenant if the tenancy is void ab initio. But the claims pertaining to other rights and liabilities flowing from ownership or from Section 13 of the U.P. Act -13 of 1972, are enforceable. In my opinion, the landlord's right to recover possession and claim damages for use and occupation by the so called tenant, of the building in occupation of the latter under a void lease, being referable to landlord's paramount title as against the tenant, is enforceable by law. The right flows from ownership as also from Section 13 of U.P. Act 13 of 1972, which declares the possession of a tenant occupying the building otherwise than under an order of allotment as unauthorised thereby impliedly conferring the right upon the landlord to recover possession from the so called tenant notwithstanding the contractual tenancy. The tenant becomes liable to eviction also on an order of release in favour of the landlord or an order of allotment, in favour of any person being passed under Section 16 of the Act.

111. The person occupying the building without an order of allotment, but under a 'lease' which is void, shall be deemed to be in occupation of the building with the consent of the landlord and that being so he may not be excluded, as held by the Supreme Court in *R.C. Misra v. Mahendra* : [1977]2SCR128 , from the field of consideration for allotment, but this limited right of the tenant occupying the building without an order of allotment, though with the consent of the landlord,

would not, in my opinion, preclude the latter from exercising his right, if he so chooses, to evict the former treating him by virtue of Section 13 of U.P., Act 13 of 1972 to be an unauthorised occupant and to claim damages/mesne profits for use and occupation of the building, the measure of which would be the rent agreed upon. A suit by the landlord for the enforcement of such rights is as a matter of fact, not a suit for the enforcement of rights under the illegal and void lease. Rather, it is for the enforcement of the right flowing from ownership or from superior title.

112. In view of the above discussion the first part of the second question is answered in the negative while its second part is answered in the affirmative.

113. In the result, it is held, in answer to the reference that the contract of tenancy and the lease created pursuant thereto in respect of a building governed by U.P. Act 13 of 1972 otherwise than in pursuance of an allotment order, are illegal, void and un-enforceable by law. The landlord's claim for recovery of arrears of rent, if any or any other claim of the landlord flowing from any terms/ covenant of the lease would be unenforceable and so would be the claim of the so-called tenant for the enforcement of any rights flowing from the contract of tenancy or from any provision of U.P. Act 13 of 1972, yet a decree for ejection and recovery of damages for use and occupation of the building can be passed depending upon the pleadings and proof in favour of the landlord and against the so called lessee.

114. The reference is answered accordingly.

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