

**Munna Lal Vs. iind Additional District Judge/Fast Track Court and anr.**

**Munna Lal Vs. iind Additional District Judge/Fast Track Court and anr.**

**SooperKanoon Citation :** [sooperkanoon.com/492021](http://sooperkanoon.com/492021)

**Court :** Allahabad

**Decided On :** Oct-20-2008

**Reported in :** 2009(1)AWC121

**Judge :** V.K. Shukla, J.

**Appellant :** Munna Lal

**Respondent :** iind Additional District Judge/Fast Track Court and anr.

**Advocate for Pet/Ap. :** Ms. Sufia Saba

**Disposition :** Petition allowed

**Judgement :**

**V.K. Shukla, J.**

1. Munna Lal son of Ram Charan Agarwal, landlord has filed present writ petition questioning .the validity of the order dated the.2003 passed by the Additional Blstrict Judge Fast Tract Court No. 11, Jalaun, at Orai allowing tenant's appeal preferred under Section 22 of U. P. Act No. 13 of 1972 arising out of the order dated 15.10.1998 passed by the prescribed authority in P.A. Case No. 6 of 1994 Munna Lal v. Madan Lal in proceedings under Section 21 (1)(a) of U. P. Act No. 13 of 1972.

2. Brief facts giving rise to the instant writ petition in brief is that petitioner is landlord of shop in question which is subject-matter of dispute in the present writ petition which was let out to Madan Lal at the rate of Rs. 75 per month, subsequently enhanced to Rs. 200 per month. Release application was filed under Section 21(1)(a) of U. P. Act No. 13 of 1972 by the landlord against the tenant in question for vacating the shop in question, setting up need for settlement of his unemployed son Mrigendra Kumar for opening shop of cloth and garment. To the said release application, written statement was filed by the tenant and therein it was accepted that Madan Lal-tenant has taken the premises in question on rent, and in the said premises in question, he is carrying on his business of selling of utensil. Plea was also taken that landlord has got shop wherein he and his son are carrying on business of Sharrafa and the shop in question is not at all required. After the said written statement had been filed, amendment was made in the written statement which was allowed on 8.7.1997 mentioning therein that one shop was again fallen vacant. The prescribed authority on the basis of evidence, which was adduced found the need of the landlord of settling of his son to be bona fide and genuine one and even on the question of comparative hardship front, finding was recorded in favour of the landlord. After the said order has been passed tenant preferred an appeal and said appeal in question has been allowed on 1.8.2003 and order dated 15.10.1998 passed by the prescribed authority has been set aside. The view taken by the appellate court is that in the present case Madan Lal is unauthorized occupant, as he has no order of allotment in his favour and in this background once he was unauthorized occupant, the provision of Section 21 (1)(a) of U.P. Act No. 13 of 1972 are not applicable and remedy of petitioner was to file suit for getting possession of the property in question. The appellate authority considered the question of bona fide need and ruled against landlord. At this juncture present writ petition has been filed.

3. Counter-affidavit has been filed and therein it has been contended that landlord got constructed two shops in the main market near temple of Bihari Ji Maharaj, which is in the main market and same are vacant and suitable for settling his son Mrigendra. Anil Kumar elder son of petitioner has also got shop in the same market which is vacant. Reference has also been given of the Commissioner's report dated 19.2.2000, to fortify fact that landlord has got constructed shop in the

main market and in this background it has been contended that application itself was not maintainable and appeal in question had been rightly allowed.

4. To this counter-affidavit, rejoinder affidavit has been filed and therein plea has been taken that release application was not made for the use of Anil Kumar and Anil Kumar is an advocate. He has his own office/chamber and no shop is vacant in the main market. It has also been specifically contended that clinic of Mahendra Kumar is in a part of the chamber of Anil Kumar advocate which cannot be termed as separate. It has been reiterated that Mrigendra Kumar is still unemployed and intends to start his business. It has also been stated that Anil Kumar is residing at Konch Jalaun and is not residing at Madhya Pradesh. In respect of Rajeev Kumar it has been stated that he has built his own house/shop out of his own earnings. The petitioner or his other sons have no concern at all with the said house. Rest of averments have also been disputed.

5. After pleadings mentioned above, have been exchanged, present writ petition is being taken up for final hearing/disposal with the consent of the parties.

6. Ms. Sufia Saba, learned Counsel for the petitioner contended with vehemence that in the present case appellate court has totally misdirected itself while allowing the appeal, ignoring the factum of bona fide need and comparative hardship in favour of the tenant and taking totally unsustainable plea that application under Section 21(1)(a) of U. P. Act No. 13 of 1972 was not at all maintainable, as such order passed by the appellate court deserves to be set aside and the order of prescribed authority is liable to be restored.

7. Countering the said submission advanced on behalf of the landlord, Sri B. N. Agarwal, counsel representing the tenant contended that view taken by the appellate authority. is correct view, as application moved under Section 21 (1)(a) of U. P. Act No. 13 of 1972 was not at all competent and maintainable, as proceedings under Section 21 (1)(a) of U. P. Act No. 13 of 1972 envisages proceedings inter se landlord and tenant and here status of Madan Lal is that of unauthorized occupant in term of Section 13 of U. P. Act No. 13 of 1972, in this background tenant-respondent, who is unauthorized occupant, proceedings qua him under Section 21(1)(a) of U. P. Act No. 13 of 1972, is not at all contemplated

as such rightful view has been taken in the matter and further appellate court has rightly dealt with question of bona fide need, as such no interference be made with the order impugned and writ petition be dismissed.

8. In order to appreciate respective arguments advanced inter se parties. Sections 11, 12, 13, 16, 17, 21 and 31 are being extracted below:

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

12. Deemed vacancy of building in certain cases.-(1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof:

(a) he has substantially removed his effects therefrom, or

(b) he has allowed it to be occupied by any person who is not a member of his family, or

(c) in the case of a residential building, he as well as members of his family have taken up residence, not being temporary residence, elsewhere.

(2) In the case of a nonresidential building, where a tenant carrying on business in the building admits a person who is not a member of his family as a partner or a new partner, as the case may be, the tenant shall be deemed to have ceased to occupy the building.

(3) In the case of a residential building, if the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, notified area or town area in which the building under tenancy is situate, he shall be deemed to have ceased to occupy the building under his tenancy:

Provided that If the tenant or any member of his family had built any such residential building before the date of commencement of this Act, then such tenant shall be deemed to have ceased to occupy the building under his tenancy upon the expiration of a period of one year from the said date.Explanation. - For the

purposes of this Sub-section-

(a) a person shall be deemed to have otherwise acquired a building, if he is occupying a public building for residential purposes as a tenant, allottee or licensee ;

(b) the expression 'any member of family', in relation to a tenant, shall not include a person who has neither been normally residing with nor is wholly dependent on such tenant.

(3A) If the tenant of a residential building holding a transferable post under any Government or local authority or a public sector corporation or under any other employer has been transferred to some other city, municipality, notified area or town area, then such tenant shall be deemed to have ceased to occupy such building with effect from the thirtieth day of June following the date of such transfer or from the date of allotment to him of any residential accommodation (whether any accommodation be allotted under this Act or any official accommodation is provided by the employer) in the city, municipality, notified area or town area to which he has been so transferred, whichever is later.

(3B) If the tenant of a residential building is engaged in any profession, trade, calling or employment in any city, municipality, notified area or town area in which the said building is situate, and such engagement ceases for any reason whatsoever, and he is landlord of any other building in any other city, municipality, notified area or town area, then such tenant shall be deemed to have ceased to occupy the first mentioned building with effect from the date on which he obtains vacant possession of the last mentioned building whether as a result of proceedings under Section 21 or otherwise.

(4) Any building or part which a landlord or tenant has ceased to occupy within the meaning of subsection (1) or Sub-section (2), Sub-section (3), Sub-section (3A) or Sub-section (3B) shall, for the purposes of this Chapter, be deemed to be vacant.

(5) A tenant or, as the case may be, a member of his family, referred to in Sub-section (3) shall have a right, as landlord of any residential building referred to in

the said Sub-section which may have been let out by him before the commencement of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction)(Amendment) Act, 1976 to apply under Clause (a) of subsection (1) of Section 21 for the eviction of his tenant from such building, notwithstanding that such building is one to which the remaining provisions of this Act do not apply.

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 unauthorized occupant of such building or part.

16. Allotment and release of vacant building.-(1) Subject to the provisions of the Act, the District Magistrate by order.

(a) require the landlord to let any building which is or has fallen vacant or is about to fall vacant, or a part of such building but not appurtenant land alone to any person specified in the order (to be called an allotment order), or

(b) release the whole or any part of such building, or any land appurtenant thereto, in favour of the landlord (to be called a release order):

Provided that in the case of vacancy referred to in Sub-section (4) of Section 12, the District Magistrate shall give an opportunity to the landlord or the tenant, as the case may be, of showing that the said section is not attracted to his case before making an order under Clause (a).(2) No release order under Clause (b) of Sub-section (1) shall be made unless the District Magistrate is satisfied that the building or any part thereof or any land appurtenant thereto is bona fide required, either in its existing form or after demolition and new construction, by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade, calling or where the land is the trustee of a public charitable trust, for the objects of the trust, or that the building or any part thereof is in a dilapidated condition and is required for purposes of demolition, and new

construction, or that any land appurtenant to it is required by him for constructing one or more new buildings or for dividing it into several plots with a view to the sale thereof for purposes of construction of a new buildings:

Provided that no application under this Sub-section shall be entertained for the purposes of a charitable trust the objects of which provide for discrimination in respect of its beneficiaries on the ground of religion, caste or place of birth.(3) The allotment order shall specify-

(a) whether the building shall be used by the tenant for residential or non-residential purposes ;

(b) in the case of business purposes, the names of proprietors or partners of the business:

(c) the date, which shall not be earlier than seven days after the date of the order, by which the landlord shall deliver possession to the allottee ;

(d) such other particulars as may be prescribed.

(4) Whether the allottee or the landlord has not been able to obtain possession of the building, allotted to him or, as the case may be, released in his favour, of any part thereof the District Magistrate, on an application of the allottee or the landlord, as the case may be, may by order evict or cause to be evicted any person named in the order as well as every other person claiming under him or found in occupation, and may for that purpose use or cause to be used such force as may be necessary and put or cause to be put the allottee or the landlord in possession of the building or part.

(5)(a) Where the landlord or any other person claiming to be lawful occupant of the building or any part thereof comprised in the allotment or release order satisfies the District Magistrate that such order was not made in accordance with Clause (a) or Clause (b), as the case may be, of Sub-section (1), the District Magistrate may review the order:

Provided that no application under this clause shall be entertained later than seven days, after the eviction of such person.(b) Where the District Magistrate on review under this subsection sets aside or modified his order of allotment or release, he shall put or cause to be put the applicant, if already evicted, back into possession of the building, and may for that purpose use or cause to be used such force as may be necessary.

(6) If the District Magistrate finds an application given under Sub-section (5) to be false or frivolous, he shall by order award to the allottee or the landlord, as the case may be, against the applicant special costs which shall not exceed five hundred rupees.

(7) Every order under this section shall, (subject to any order made under Section 19), be final.

(8) The allottee shall (subject to the provisions of Sub-sections (5) and (9) of Section 18), be deemed to become tenant of the building from the date of allotment or, where he is unable to obtain possession by reason of a stay order or of any other person having occupied or continued to occupy the building from the date on which he obtains possession.

(9) The District Magistrate shall, while making an order under Clause (a) of Sub-section (1), also require the allottee to pay to the landlord an advance, equivalent to-

(a) where the building is situated in a hill municipality, one-half of the yearly presumptive rent; and

(b) in any other case, one month's presumptive rent, and on his failure to make or offer the payment within a week therefore, rescind the allotment order;

Explanation.-In this subsection the expression 'presumptive rent' means an amount of rent which the District Magistrate prima facie considers reasonable having regard to the provisions of Sub-sections (2) and (2A) of Section 9, provided that such amount shall not be less than the amount of rent which was payable by the last tenant, if any.

(10) Nothing in Sub-section (9) shall be construed to require the District Magistrate to take any evidence or hold any formal inquiry before fixing the presumptive rent of the building allotted, and the amount mentioned in the allotment order as presumptive rent shall be subject to any agreement in writing between the parties or to any subsequent determination of standard rent after formal inquiry under Section 9:

Provided that until the presumptive rent is so revised by agreement or by an order under Section 9, the tenant shall continue to be liable to pay rent according to the presumptive rent specified in the allotment order, so however, that any subsequent order under Section 9 shall relate back to the date of commencement of the tenancy.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 1 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 unless for special and adequate reasons to be recorded the District Magistrate allots it to any other person.

Section 21. Proceedings for release of building under occupation of tenant.-(1)  
The prescribed authority may, on an application of the landlord in that behalf order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely:

(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him either for residential purposes or for purposes of any profession, trade, or calling or where the landlord is the trustee of a public trust for the objects of the trust;

(b) that the building is in a dilapidated condition and is required for purpose of demolition and new construction:

Provided that where the building was in the occupation of a tenant since before its purchase by the landlord, such purchase being made after the commencement of this Act, no application shall be entertained on the grounds mentioned in Clause (a), unless a period of three years has elapsed since the date of such acquisition and the landlord has given a notice in that behalf to the tenant not less than six months before such application and such notice may be given even before the expiration of the aforesaid period of three years:

Provided further that If any application under Clause (a) is made in respect of [any building let out exclusively for nonresidential purposes] the prescribed authority while making the order of eviction shall after considering all relevant facts of the case award against the landlord to the tenant [an amount not exceeding two years rent) as compensation and may, subject to rules, impose such other condition as he thinks fit:

Provided also that no application under Clause (a) shall be entertained-

(i) for the purposes of a charitable trust, the objects of which provide for discrimination in respect of its beneficiaries on the ground of religion, caste or place of birth:

(ii) in the case of any residential building for occupation for business purposes ;

(iii) In the case of any residential building, against any tenant who is a member of the armed forces of the Union and in whose favour the prescribed authority under the Indian Soldiers (Litigation) Act, 1925 (Act No. IV of 1925) has issued a certificate that he is serving under special conditions within the meaning ' of Section 3 of that Act or where he has died by enemy action while 'so serving then against his heirs':

[Provided also that the prescribed authority shall, except in cases provided for in the Explanation, take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose shall have regard to such factors as may be prescribed.)

Explanation...

31. Penalties.-(1) Any person who contravenes any of the provisions of this Act or any order made thereunder or attempts or abets such contravention, shall be punished on conviction with imprisonment of either description for a term which may extend to six months or with fine which may extend to five thousand rupees or with both.

(2) Whoever demolishes any building under tenancy or any part thereof without lawful excuse shall be punished, on conviction, with imprisonment of either description for a term which may extend to one year or with fine which may extend to five thousand rupees or with both.

(3) Where a person has been convicted for contravention of Sub-section (1) of Section 4, the Court convicting him may direct that out of the fine, if any, imposed and realised from the person so convicted, an amount not exceeding the amount paid as premium or additional payment over and above the rent for admission as a -tenant or subtenant to any building may be paid to the tenant or sub-tenant by whom such payment was made:Provided that any amount so paid to the tenant shall be taken into account in awarding compensation or restitution to him in any subsequent claim.

9. In the light of, the provisions, which have been quoted above, first issue as it goes to the root of the matter, as to whether proceedings under Section 21 (1)(a) of U. P. Act No. 13 of 1972 is maintainable or not at the behest of landlord against tenant who has been let out and occupying premises in contravention of provisions of U. P. Act No. 13 of 1972, and is unauthorized occupant within the meaning of Section 13 of U. P. Act No. 13 of 1972. is being adverted to. This fact is undisputed that building in question is governed by the provision of U. P. Act No. 13 of 1972 and said building in question without allotment order issued, under Section 16 could not have been let out to the tenant in question. Landlord in the present case has let out the building in question without there being any allotment order, as has been admitted by Madan Lal himself in his written statement filed, in the year 1980 for the purpose of selling of utensil on rent of Rs. 75 per month which he was paying, which was subsequently enhanced to Rs. 200 per month. Thus as per own admission of Madan Lal he became tenant of the premises in question without there being any valid letter of allotment issued in his favour as provided for under Section 16 of U. P. Act No. 13 of 1972.

10. Earlier view of this Court was that agreement of letting without allotment order is void and not binding even in between landlord and tenant vide *Nootan Kumar v. A.D.J. 1993 (2) ARC 204 : 1993 (2) AWC 1090 (FB)*. Said view has been subject-matter of challenge before Hon'ble Apex Court and Hon'ble Apex Court in the case of *Nutan Kumar and Ors. v. Und Additional District Judge and others, 2002 (2) ARC 645 : 2003 (1) AWC 213 (SC)* disapproved the Full Bench view of this Court and held that such agreement is binding in between landlord and tenant, and in spite of same it is open to Rent Control and Eviction Officer to exercise power of allotment vested in him. Hon'ble Apex Court in the sa}d case disapproved the view taken by the Full Bench reiterating the view taken in the case of *Nanakram v. Kundalraj* wherein the question was whether a lease in violation of statutory provision was void and the view taken was that in the absence of any mandatory provision obliging eviction in case of contravention of the provisions of the Act the lease would not be void and the parties would be bound as between themselves to observe the conditions of lease. It was also held that neither of them could assail the lease in a proceeding between themselves. In the case of *Nanakram v. Kundalraj* suit was filed by landlord for recovery of the premises In spite of the

contract which permitted subletting. This Court permitted the landlord to enforce his right of eviction. Thus in spite of the contract between the parties, against provision of law, ejection proceedings were held to be maintainable. Relevant paras 7, 8, 11, 12 and 13 of Nutan Kumar's case is being extracted below:

7. In the case of Nanakram v. Kundalraj the question was whether a lease in violation of statutory provisions was void. It was held that in the absence of any mandatory provision obliging eviction in case of contravention of the provisions of the Act the lease would not be void and the parties would be bound, as between themselves, to observe the conditions of lease. It was held that neither of them could assail the lease in a proceeding between themselves. This authority was in respect of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949, whereunder also the landlord was obliged to intimate a vacancy to the Deputy Commissioner of the District and the Deputy Commissioner could allot or direct the landlord to let the house to any person. The provisions were more or less identical to the provisions of the said Act. This authority has directly dealt with the questions under consideration and answered them. The majority judgment takes note of this authority and holds as follows : AIR 1986 SC 1194 para 37 of AIR and All LJ

With utmost humility and reverence it is stated that above observations are not compatible with provisions of Sections 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 and Co.; Shrikrishna Khanna v. Additional District Magistrate, Kanpur and Ors. and Manna Lai Khetan v. Kedar Nath Khetan : : .

Thus it is to be seen that the majority judgment, with a pretence of humility and reverence refuse to follow a binding authority of this Court. It was not open for the Full Bench to comment that the authority was not compatible with provisions of Sections 10 and 23 of the Contract Act. The Full Bench also realized that there are no conflicting authorities. They therefore say that this authority is 'perhaps in conflict with' the decisions in Waman Srinivas Kini, Shrikrishna Khanna and

Manna Lal Khetan. One must therefore see whether there is any conflict of decisions. If there is no conflict then judicial discipline and propriety required that the majority of the Full Bench followed the binding authority of this Court.

8. In the case of Waman Srinivas Kini v. Ratilal Bhagwandas and Co. (1959) Supp 2 SCC 17, there was an agreement of lease which permitted sub-letting. However, Section 15 of the Bombay Hotel and Lodging Houses Rates Control Act, 1947 provided that it would not be lawful for any tenant to sub-let the whole or any part of the premises let to him or to assign or to transfer in any other manner his interest thereon. Therefore in this case there was a specific provision of a statute which made sub-letting unlawful. In view of the specific provision this Court held that the provision of the statute would prevail over the contract. This authority, therefore, is not laying anything contrary to what has been laid down in Nanakram's case. It is in consonance with what has been laid down in Nanakram's case. What is more important is that the suit was filed by the landlord for recovery of the premises in spite of the contract which permitted sub-letting. This Court permitted the landlord to enforce his right of eviction. Thus, in spite of the contract between the parties, which is against a provision of law, ejection proceedings were held to be maintainable. It must also be mentioned that Nanakram's case noticed Waman Srinivas Kini's case and proceeded on the principles of Waman Srinivas Kini's case, ; .

11. is, thus, to be seen that the principles laid down in Nanakram's case still hold the field. There is no contrary or conflicting decision or authority. The Full Bench was bound by the authority in Nanakram's case and could not have taken a contrary view.

12. As Nanakram's case was decided by three Hon'ble Judges of this Court, it would also be binding on us. We are therefore, not going into the question of correctness or otherwise of such a view. We may however, mention that the impugned judgment dated 20.5.1993, of the Full Bench, is not correct for another reason also. Section 13 of the said Act specifically provides that a person who occupies, without an allotment order in his favour, shall be deemed to be an unauthorized occupant of such premises. As he is in unauthorized occupation he

is like a trespasser. A suit for ejectment of a trespasser to get back possession from a trespasser could always be filed. Such a suit would not be on the contract/ agreement between the parties and would thus not be hit by principles of public policy also.

13. In this view of the matter the decision of the Full Bench dated 20.5.1993 cannot be sustained and is set aside. It is held that the law, as laid down in Nanakram's case, still holds the field. Thus unless the statute specifically provides that a contract contrary to the provisions of the statute would be void the contract would remain binding between the parties and could be enforced between the parties themselves. Consequently the judgment dated 20.9.1993 dismissing the writ petition is set aside. The matter is sent back to the High Court for deciding the writ petition in accordance with law.

The appeals stand disposed of accordingly. There will be no order as to costs.

11. As per judgment of Hon'ble Apex Court, this principle laid down in the case of Nanakram v. Kundalraj still holds the field and in the aforesaid case as already noted above, the landlord was permitted to enforce his right of eviction in spite of the contract between the parties, being against provision of law, ejectment proceedings were held to be maintainable.

Before this Court reference was made as follows:

(i) Whether in case a landlord lets a building/

accommodation covered under the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U. P. Act No. XIII of 1972) to a person without allotment order, and the building/ accommodation is declared vacant on account of such letting, the landlord is deprived of seeking release of such building/accommodation under Section 16(1)(b) of the said Act.

(ii) Whether the release application filed by such a landlord under Section 16 (1)(b) of the said Act is liable to be ignored, and the release order passed on such application is void and cannot be given effect to.

(iii) Whether the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India can deprive such a landlord of his right to seek release of the aforesaid building/

accommodation under Section 16 (1)(b) by issuing declaration declaring the release order in favour of authority not to give effect to such release order.

12. Said reference was answered by Division Bench of this Court in the case of Ajai Pal Singh v. D.J. 2004 (1) ARC 362 and Division Bench of this Court took note of judgment in the case of Nanakram v. Kundalraj and also took into account, the view of Hon'ble Apex Court in the case of Nootan Kumar v. A.D.J.2002 (2) ARC 645 : 2003 (1) AWC 213 (SC), relevant paras 11, 12, 13, 14, 15, 16, 18, 23, 24, 25 and 26 of the said judgment are being extracted below:

11. The Full Bench of this Court held that any agreement between the landlord and the tenant for letting the occupation of the building in contravention of the provisions of the 1972 Act would be void. Such an agreement is unenforceable in the eyes of law and no degree for ejection of such unauthorized occupant can be passed in favour of the landlord on the basis thereof. The Hon'ble Supreme Court, having regard to the provision of Sections 11, 12, 13, 17 and 31 of 1972 Act, while overruling the Full Bench judgment held that the contract between the unauthorized occupant (tenant) and the landlord would be binding between the parties and would be enforced between the parties themselves. However, such an agreement, being hit by Section 11 read with Section 13 of 1972 Act, will have the effect of declaring the tenant as an unauthorized occupant and therefore the premises would be deemed to be vacant under Section 12 of the Act and available for release/allotment.

12. The Hon'ble Supreme Court specifically held that the law laid down by the Hon'ble Supreme Court in the case of Nanakram v. Kundalraj still holds field. The relevant paragraphs 12 and 13 of the judgment of Hon'ble Supreme Court read as follows.

12. As Nanakram case was decided by three Hon'ble Judges of this Court, it would also be binding on us. We are therefore not going into the question of correctness

or otherwise of such a view. We may however mention that the impugned judgment dated 20.5.1993 of the Full Bench, is not correct for another reason also. Section 13 of the said Act specifically provides that a person who occupies, without an allotment order in his favour, shall be deemed to be an unauthorized occupant of such premises. As he is in unauthorized occupation he is like a trespasser. A suit for ejectment of a trespasser to get back possession from a trespasser could always be filed. Such a suit would not be on the contract/ agreement between the parties and would thus not be hit by principles of public policy also.

13. In this view of the matter the decision of the Full Bench dated 29.5.1993 cannot be sustained and is set aside. It is held that the law, as laid down in Nanakram case still holds the field. Thus unless the statute specifically provides that a contract contrary to the provisions of the statute would be void the contract would remain binding between the parties and could be enforced between the parties themselves. Consequently the judgment dated 20.9.1993 dismissing the writ petition is set aside. The matter is sent back to the High Court for deciding the writ petition in accordance with law.

13. In view of the aforesaid legal position, as explained by Hon'ble Supreme Court, it will be seen that the legislature, despite being aware of induction of a person by the landlord contrary to the provisions of the Act into the premises, has not chosen to declare such an agreement as void. The only consequence provided is under Section 12 of 1972 Act which declares that a premises, which has been given in possession to a person contrary to the provisions of the Act, would be deemed to be vacant resulting in following consequences.

(a) the person inducted would be deemed to be an unauthorized occupant within the meaning of Section 13 of 1972 Act, and

(b) the premises in his possession as such would be deemed to be vacant for the purpose of Rent Control Act.

14. In any deemed vacancy the landlord has been conferred a right under Section 16(1)(b) of 1972 Act to make an application for release of the occupation in his

favour and at that stage of proceedings it is settled law that the tenant or the prospective allottee has no right to be heard nor he has a locus to challenge the release order by way of revision under Section 18 of the Act. Reference in that regard may be had to the judgments in the cases of Swaroop Narain Srivastava v. IVth Additional District Judge ; Smt. Krishna Rani v. District Judge Dehradun 1990 AWC 894 : 1990 (1) ARC 442; Babloo Mohd. Yaqoob v. R.C. and E.O., 1987 (2) ARC 84; Leelawanti (Smt. ) and Anr. v. In-charge District Judge, Kanpur Nagar and others, 2001 (2) ARC 110 ; Talib Hasan v. 1st Additional District Judge. 1986 (1) ARC 1 (FB) ; Vijay Kumar Sonkar v. Incharge District, Judge and Ors. 1995 (2) ARC J and Dev Raj Singh Chauhan v. 1st Additional District Judge, Ghaziabad and Ors. 1997 (1) ARC 590.

15. However, an issue has arisen as to whether by conduct the landlord, who inducts an unauthorized occupant, disentitles himself from making a release application under Section 16(1)(b) of 1972 Act inasmuch as no person should be permitted to take benefit of his own wrong. The aforesaid issue qua the legal right of the landlord to make an application under Section 16(1)(b) of 1972 Act and its consideration by the competent authority, after a vacancy has been declared under Section 12 (4), has to be examined with reference to the statutory provisions which regulate the proceedings as contained in Act No. XIII of 1972.

16. Section 16 of 1972 Act talks both of allotment and release of a premises which is available for the purpose, including the premises where there is a deemed vacancy under Section 12 (4) of 1972 Act. However, Section 16(1)(b) provides that No. allotment in respect of a building, covered by an application under Section 16(1)(b), shall be made unless such application is rejected. It is with reference to the aforesaid provision that the Full Bench of this Court in the case of Talib Hasan (supra) held that a prospective allottee comes into picture only after the disposal of the landlord's application for release under Section 16(1)(b) and only if the same is rejected.

18. The statutory right of the landlord under Section 16(1)(b) has not been infringed or diluted in any manner because of the vacancy having been deemed because of an unauthorized occupant having been put in possession of the

premises by the landlord. The Act confers a right upon the landlord to make an application for release of the building or part thereof or any land appurtenant thereto, even in respect of premises which are deemed to be vacant under Section 12 (4). The authority concerned, however has been conferred a discretion to allow the application only on certain conditions being proved to exist to his satisfaction. If the landlord in a given case fails to satisfy the authority concerned on any of the aspects, which are necessarily to be examined for allowing the application, the authority may reject the application and thereafter consider the allotment applications made by the prospective allottees.

23. In such circumstances, the intention of the Legislature is cleared that the right of the landlord to make an application for release in respect of deemed vacancy covered by Section 12 (4) be not hampered or impaired part in any manner only because of his being inducted an unauthorized occupant. No restriction on his right to make an application under Section 1B(1)(b) has been provided for and therefore, no restriction is required to be provided by the Court in such right of the landlord.

24. The Court may, at this stage, add a word of caution, namely all application for release of the accommodation under Section 16(1)(b) can be granted by the authority concerned only if the District Magistrate is satisfied that the building or any part thereof or any land appurtenant thereto is bona fide, required either in existing form or after demolition and new construction, by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade, calling etc. subject to the restriction placed under other sub-clauses of Section 16. Reference may also be had to the power of review conferred upon the District Magistrate under Section 16 (5) to review his order of release and to seek eviction of the persons put in possession thereto on being satisfied that the earlier order was not in accordance with the Clauses (a) and (b) of Section 16 (1), as the case may be. Section 16 (6), however, provides that in case the earlier order of release has been obtained by false or on frivolous allegation, the District Magistrate has the power to impose special cost.

25. Therefore, the bona fides of the landlord for release of the accommodation are necessarily to be pleaded and established to the satisfaction of the authority concerned and in absence thereof no release can be granted. The conduct of the landlord to induct a person through back door into a premises, without there being an order of allotment in violation of Section 16 of 1972 Act, would be a relevant consideration to be considered by the concerned authority while examining the release application. The duration for which such unauthorized occupant has continued, the changed circumstances between Induction of unauthorized occupant and release application as well as other material facts are to be taken into consideration by the authority concerned while examining bona fide of the release application made by the landlord. The aforesaid are only illustrative in nature and not exhaustive issue qua consideration of release application.

26. In view of the aforesaid, we are of the considered opinion that the application made by the landlord under Section 16(1)(b) for release of an accommodation, which is deemed to be fallen vacant under Section 12 (4) because of his having put in occupation an unauthorized occupant, is not hampered or impaired in any manner under the 1972 Act. The application has to be considered on merit in accordance with law by the District Magistrate. Unauthorized occupant/prospective allottee has no right to interfere in the aforesaid proceeding of release, as has been held by successive judgments of the Hon'ble Supreme Court as well as by this Court repeatedly. It is only after the release application is rejected, that a prospective allottee comes into picture and therefore revision against an order of release under Section 18 at the behest of prospective allottee would not be maintainable. The questions referred to this Bench by the Hon'ble single Judge are, therefore, answered as follows.

(a) Landlord is not deprived of his legal right to make a release application in respect of a building, which had been earlier given in possession, by him, to an unauthorized occupant in violation of the provisions of Act No. XIII of 1972.

(b) The release application made by the landlord cannot be ignored nor the order passed thereon can be termed to be void or of no effect.

(c) The High Court in exercise of powers under Section 226 of the Constitution of India need not declare the order made in favour of such a landlord as void, in view of the answer given to question No. 1 referred to above.

13. On the parameters set out, the facts of present case is being dealt with. Once it has been held by the Hon'ble Apex Court in the case of Nanakram v. Kundalraj 1986 (3) SCC 83 that inter se parties contract, even if, it is if against the provisions of law is binding and ejection proceedings therein have been held to be maintainable. Thus as far as Madan Lal-respondent is concerned once he had entered into an agreement of tenancy which fact has been admitted by him in his written statement, then vis-a-vis petitioner-landlord he cannot come forward and say that he is unauthorized occupant and as such proceeding under Section 21(1)(a) of U. P. Act No. 13 of 1972 is not maintainable. Vis-a-vis landlord, his status is that of tenant, as tenant in relation to building means a person by whom rent is payable. In term of Section 13, without an order of allotment, tenant's status under deeming provision is that of an unauthorized occupant and that of trespasser and suit for getting back possession from trespasser can always be filed. In such a situation as far as landlord is concerned, it would be case of election of remedies for him. It is for the landlord to chose, the forum provided for. Tenant cannot gain any advantage or benefit out of the said situation. Inter se parties who have entered contract of tenancy and have developed landlord tenant relationship though contrary to law qua the same, landlord has got right to enforce his right on the basis of aforementioned contract which is inclusive of his right of eviction. Said contract of tenancy is not binding on Rent Control and Eviction Officer and even on prospective allottee, and the machinery for declaring vacancy can always be set in motion and on vacancy being declared landlord has every right to file release application under Section 16(1)(b) of U. P. Act No. XIII of 1972. Proceedings under Section 21(1)(a) of U. P. Act No. 13 of 1972 deals with situation when landlord requires premises in question for bona fide need of the landlord vis-a-vis tenant. Madan Lal had entered into agreement as tenant and has paid rent also, in this background it does not lie in the mouth of Madan Lal to say that by operation of law as his status is that of unauthorized occupant, as such proceedings are not conroetent and maintainable. This plea is totally in breach of rights settled in the case of Nanakram (supra), which still holds the field. This

Court even before reversal of *Nutan Kumar v. Ind A.D.J.* 1993 12) ARC 204 : 1993 (2) AWC 1090 (FB) took the view in the case of *Brij Nandan Sahai Hajela v. Ind A.D.J. Sahjahanpur* 1996 (1) ARC 165 : 1996 (1) AWC 242 (NOC), wherein it was held that if tenant has not raised this plea when an application under Section 21 was filed and accepted himself as tenant, such question cannot be raised subsequently. Said Judgment has been followed by this Court, in the case of *Shaliq Ahmad v. A.D.J.* 1999 (1) ARC 321 as follows. The petitioner in the present case having never raised the question that he is unauthorized occupant, it is not now open to him to urge that the application under Section 21(1)(a) of the Act is not maintainable. In case petitioner had alleged that he was in unauthorized occupation, it was open to landlord respondent to file application for release under Section 16(1)(b) of the Act'. The view has again been reiterated in the case of *Kailash Chandra Gaur v. Raj Kumar Sharma.* 1999 (1) ARC 333. The issue, which is sought to be raised by the petitioner after reversal of the Full Bench judgment by Hon'ble Apex Court, has already been answered by this Court in the case *Munna Lal Agarwal v. Rent Control and Eviction Officer/City Magistrate, Mathura and Ors.* 2005 (1) ARC 144 : 2005 (2) AWC 1647, as the agreement of letting is binding in between the landlord and tenant, hence landlord is fully entitled to file release application under Section 21 of the Act. Relevant Paras 8 and 9 is being extracted below:

8. In my opinion during the currency of Full Bench judgment of the *Nootan Kumar* landlord could be permitted to file release application under Section 16 of the Act on the ground that even though he himself let out the building to the tenant still as it was done without allotment order, hence legally building was vacant. The reason is that in view of the Full Bench landlord had been left with no other option. He could not file release application under Section 21 of the Act where need of the landlord might be contested by tenant and tenant could assert his hardship. By virtue of the Full Bench judgment even suit on the grounds of default etc., as mentioned under Section 20 (2) of the Act could not be filed if the landlord had let out the building after July, 1976 without allotment order.

9. However, reversal of the Full Bench judgment by the Supreme Court has changed the entire scenario. How the agreement is binding in between landlord

and tenant and landlord can file suit for eviction on the ground mentioned under Section 20 (2) of the Act and also release application under Section 21 of the Act on the ground of bona fide need. I am, therefore, of the opinion that if landlord lets out building on which U.P.R.C. Act is applicable without allotment then he himself cannot file release application on the ground of deemed vacancy under Section 12/16 of the Act. In release proceedings under Section 16 of the Act tenant/unauthorized occupant cannot participate and he cannot assert that need of the landlord is not bona fide. As the agreement of letting is being in between landlord and tenant, hence landlord is fully entitled to file release application under Section 21 of the Act.

14. Thus inevitable conclusion on the basis of the discussion made above is that inter se tenant and landlord contract of tenancy is enforceable even though it has been entered in violation of law. Tenant vis-a-vis landlord is stopped in law from raising plea that he is not a tenant specially when there is admission on his part, qua his status and he has been paying rent to the landlord. In this background even though by operation of law Madan Kumar is unauthorised occupant, but once release application has been filed by the landlord under Section 21(1)(a) of U. P. Act No. 13 of 1972, then he cannot challenge his status and take stand that he is unauthorized occupant and as such proceedings are not maintainable. View taken by the appellate authority on this score, holding proceeding under Section 21(1)(a) of U. P. Act No. 13 of 1972 not being maintainable, is totally misconceived view and cannot at all be subscribed in law, as such said part of the order is disapproved.

15. In the present case, it has been stated that for the purposes of considering bona fide need and comparative hardship, matter again be remitted back. This is well settled that once sufficient period have already elapsed and there is already material available on record, then matter should be decided instead of remanding the matter back. The Supreme Court in *G. C. Kapoor v. N. K. Bhasin*, AIR 2002 SC 2000 : 2002 (1) AWC 73 (SC), allowed the release application outrightly which had been rejected by the prescribed authority, lower appellate court as well as High Court. Supreme Court has also held in *R. E. v. Gounder v. V.V.P. Temple* and *R. C. Kesharwani v. Dwarika Prasad* 2002 (2) ARC 2989 (SC), that when

matter is pending for long, remand must be avoided. Supreme Court in its authority in *Shail v. Manoj Kumar* 2004 ACJ 1213 placing reliance upon *Surya Dev Rai v. R.C. Rai*, has held that in exercise of writ jurisdiction High Court has the jurisdiction also to pass itself such a decision or direction as the inferior Court or Tribunal should have made. In this background the question of bona fide need and comparative hardship on admitted position is being looked into.

16. Now next question to be looked into, is question of bona fide need of the son of landlord. Landlord has come up with specific case that his son Mrigendra Kumar is unemployed and as stop gap arrangement he has been helping his father in his small shop and shop in question is required for his settlement. Prescribed authority has accepted the bona fide need of the landlord, inasmuch as this much has come on record that Mrigendra Kumar as stop gap arrangement has been helping in the business of his father and he has no independent business on his own.

17. Hon'ble Apex Court in the case of *Smt. Sushila v. 2nd Additional District Judge, Banda and Ors.* 2003 (1) ARC 256 has taken the view that need for settling married and major son is bona fide need, and he cannot be compelled to join his father and do work. Relevant paragraphs 5, 10 and 11 of the said judgment are being extracted below:

5. We find that Prem Prakash is a young man who is unemployed. He is married and has children, There is every justification for him or for his mother to settle him in life independently. He cannot be compelled to join his father in his goldsmith and money-lending work in his small shop. In our opinion, he is entitled to start business of his own choice and independently. The appellate court took a view, as indicated above, which is palpably wrong and wholly unacceptable.

10. In the case in hand we find that even though the period of tenancy of the respondent is no doubt long but availability of another shop to him where he can very well shift his business as found by the prescribed authority, neutralises the factor of length of tenancy in the accommodation in dispute. We further find that the landlady has no other shop where she can establish her son who is married and unemployed. There is nothing on the record to indicate that the business of father of Prem Prakash is so huge or that it is a very flourishing business so as to

attract application of Clause (c) of Rule 16 (2). As observed earlier it is clear that length of period of tenancy as provided under clause (a) of Sub-rule (2) of Rule 16 of the Rules, 1972 is only one of the factors to be taken into account in context with other facts and circumstances of the case. It cannot be a sole criterion or deciding factor to order or not the. eviction of the tenant. Considering the facts in the light of Rule 16 pressed into service on behalf of the respondent, we find that according to the guidelines provided therein balance tilts in favour of the unemployed son of the landlady whose need is certainly bona fide and has also been so accepted by the respondent before us.

11. It may be mentioned that we are not taking into account Clause (d) of Sub-rule (2) of Rule 16 of the Rules; where yet another factor is to be borne in mind, in favour of releasing the shop, if the person has some technical education to his credit but not employed in any Government service and wants to engage in self-employment. The petitioner had shown that her son Prem Parkash had undergone a training course in household electrical wiring and had obtained a certificate from Industrial Training Institute, Banda. He did not get any Government job and wanted to be self-employed by starting a shop of electrical goods and utensils. The prescribed authority considered this factor but we find that the appellate court expressed doubt on the fact that the certificate related to Prem Parkash being lead by the fact that his residence was shown as village Lukhtara, undisputedly that village also falls in the district of Banda. It was also observed by the appellate court that it could not be shown as to what Government job Prem Parkash could get by virtue of the certificate he had obtained from Industrial Training Institute, Banda. The whole approach to the point was misdirected. Be that as it may, we make it clear that even by excluding the factor of Prem Parkash being technically educated, otherwise as well as find that the need and requirement of the landlady is bona fide even after considering the same in the light of Rule 16 of the Rules and in the background of comparative hardship which we find would be more to the landlady, in the event of disallowing the application for eviction.

18. Hon'ble Apex Court in the case of Akhileshwar Kumar and Ors. v. Mustaqim AIR 2003 SC 532 : 2003 (3) AWC 2545 (SC), took the view that simply because educated unemployed son was provisionally assisting his father in family business

same does not mean that he should not start his own independent business. Relevant paragraphs 3 and 4 are being extracted below:

3. In our opinion, the approach adopted by the High Court cannot be countenanced and has occasioned a failure of justice. Overwhelming evidence is available to show that the plaintiff No. 1 is sitting idle, without any adequate commercial activity available to him so as to gainfully employ him. The plaintiff No. 1 and his father both have deposed to this fact. Simply because the plaintiff No. 1 is provisionally assisting his father in their family business, it does not mean that he should never start his own independent business. What the High Court has overlooked is the evidence to the effect, relied on by the trial court too, that the husband of plaintiff No. 4, i.e., son-in-law of Ram Chandra Sao, was assisting the latter in his business and there was little left to be done by the three sons.

4. So is the case with the availability of alternative accommodation, as opined by the High Court. There is a shop in respect of which a suit for eviction was filed to satisfy the need of plaintiff No. 2. The suit was compromised and the shop was got vacated. The shop is meant for the business of plaintiff No. 2. There is yet another shop constructed by the father of the plaintiffs which is situated over a septic tank but the same is almost inaccessible inasmuch as there is a deep ditch in front of the shop and that is why it is lying vacant and utilized. Once it has been proved by a landlord that the suit accommodation is required bona fide by him for his own purpose and such satisfaction withstands the test of objective assessment by the Court of facts then choosing of the accommodation which would be reasonable to satisfy such requirement has to be left to the subjective choice of the needy. The Court cannot thrust upon its own choice on the needy. Of course, the choice has to be exercised reasonably and not whimsically. The alternative accommodation which have prevailed with the High Court are either not available to the plaintiff No. 1 or not suitable in all respects as the suit accommodation is. The approach of the High Court that an accommodation got vacated to satisfy the need of plaintiff No. 2, who too is an educated unemployed, should be diverted or can be considered as relevant alternative accommodation to satisfy the requirement of plaintiff No. 1 another educated unemployed brother, cannot be countenanced. So also considering a shop situated over a septic tank and inaccessible on account of a

ditch in front of the shop and hence lying vacant cannot be considered a suitable alternative to the suit shop which is situated in a marketing complex, is easily accessible and has been purchased by the plaintiffs to satisfy the felt need of one of them.

19. Hon'ble Apex Court in the case of Ragavendra Kumar v. Firm Prem Machinery and Company has held as follows:

It is settled position of law that the landlord is best Judge of his requirement for residential or business purpose and he has got complete freedom in the matter. See Pratlva Devi (Smt. ) v. T. v. Krishnan . In the case in hand the plaintiff-landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted.

20. Hon'ble Apex Court in the case of Yadvendra Arya and Anr. v. Mukesh Kumar Verma 2008 (1) ARC 256 : 2007 (7) AWC 6981 (SC) has taken the view that it is landlord who is the best Judge of his requirement. He has complete freedom in the matter and the landlord has got every right to file release application for settling his unemployed son in independent business, and the son cannot be accommodated with the father in his business.

21. Once this much has come in evidence that Mrigendra Kumar was merely assisting his father in his business and not carrying his own independent business then by no stretch of imagination it can be said that need set up was not at all bona fide need, rather said need in the fact of the present case was clearly falling within the purview of bona fide need. The appellate authority has proceeded to mention that Mrigendra Kumar has been assisting the landlord. Every landlord has every right to see that each one of his son settles independently. The view, which has been taken by the appellate authority on this score that earlier in the past notice has been given and proceedings were taken too late, as such need cannot be accepted to be genuine one cannot be subscribed. View taken suffers from perversity on the fact of it, inasmuch as this much fact has been accepted that son is still unemployed and not doing his own independent business, then by no stretch of imagination, it can be contended that need in question is not bona fide and genuine one. In this background presumption drawn in respect of

enhancement of rent is not based on any logic and is merely hypothetical. Finding recorded on this score by the appellate authority cannot be subscribed and view of prescribed authority on the question of bona fide need is restored.

22. Now the question of comparative hardship front is being looked into. Bona fide need of the son of landlord has been found established as this much has come on record that he is not carrying on his own independent business, rather he has been assisting his father in his business. Prescribed authority on the question of comparative hardship had given finding in favour of landlord and had also mentioned that by shifting business, much inconvenience would not be caused to tenant. Appellate authority has proceeded to mention that in the year 1989 in the name of his wife Smt. Premwati shop measuring 21 x 3 x 11 feet was got purchased by tenant and in this background it has been mentioned that defence of tenant is not at all liable to be considered. The question of bona fide need of landlord being established and as far as tenant is concerned, no attempt whatsoever having been made by him to search any alternative accommodation and the fact that he has alternative accommodation, in totality would tilt the balance in favour of unemployed son of landlord.

23. As far as comparative hardship is concerned. Hon'ble Apex Court in the case of Mst. Begam Begum and Ors. v. Abdul Ahad Khan (d) by L.Rs. and Ors. had occasion to deal in detail with the comparative hardship's aspect as follows:

Moreover Section 11 (h) of. the Act uses the words 'reasonable requirement' which undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire as the High Court has done in this case. It seems to us that the connotation of the term 'need' or 'requirement' should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for one landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. This appears to us to be the general scheme of all the Rent Control Acts, prevalent in other State in the country. This Court has

considered the import of the word requirement and pointed out that it merely connotes that there should be an element of need.

In this connection our attention was drawn to the evidence led by the defendants that the main source of their income is the hotel business carried on by them in the premises and if they are thrown out they are likely to get any alternative accommodation. The High Court has accepted the case of the defendants on this point, but does not appear to have considered the natural consequence, which flow-from a comparative assessment of the advantages and disadvantages of the landlord and the tenant if a decree for eviction follows. It is no doubt true that the tenant will have to be ousted from the house if a decree for eviction is passed, but such an event would happen whenever a decree for eviction is passed and was fully in contemplation of the Legislature when Section 11(1)(h) of the Act was introduced in the Act. This by itself would be valid ground for refusing the plaintiffs for eviction.

Thus, on careful comparison and assessment of the relative advantage and disadvantages of the landlord and the tenant it seems to us that the scale is tilted in favour of the plaintiff. The inconvenience, loss and trouble resulting from denial of a decree for eviction in favour of the plaintiffs far outweigh the eviction from that point of view.

24. Judgment quoted above has been followed by Hon'ble Apex Court in the case of *Badrtnarayan Chunnilal Bhutada v. Govind Ram Mundada* 2003 (2) SCC 320, and apart from the same in paragraph 13 mentioned as follows:

13. In *Piper v. Harvey* (1979) 1 SCC 273 the issue as to comparative hardship arose for the consideration of the Court of appeal under the Rent Act, 1957. Lord Denning opined : (All ER p. 457E-F):

When I look at all the evidence in this case and see the strong case of hardship which the landlord put forward, and when I see that the tenant did not give any evidence of any attempts made by him to find other accommodation, to look for another house, either to buy or to rent, it seems to me that there is only one reasonable conclusion to be arrived at, and that is that the tenant did not prove

(and burden is on him to prove) the case of greater hardship. Hodson, L.J. opined: (All ER p. 458): The tenant has not been able to say anything more than the minimum which every tenant can say, namely, that he has in fact been in occupation of the bungalow, and that he has not at the moment any other place to go to. He has not, however, sought to prove anything additional to that by way of hardship, such as unsuccessful attempts to find other accommodation, or, indeed, to raise the question of his relative financial incompetence as compared with the landlord.

25. Hon'ble Apex Court in recent judgment of Ganga Devi v. District Judge Nainital 2008 (7) ADJ 501 : 2008 (3) AWC 3124 (SC), where tenant has not made any effort to search accommodation, has not accorded any relief to the tenant. Paragraphs 15, 16 and 19 of the said judgment are being extracted below:

15. There is also nothing on record to show that for the last so many years the appellant had made any effort to find out a tenanted premises for herself so that she can continue with her business. No such material at least has been brought on record. Any subsequent event as regards thereto has neither been pleaded nor proved.

The provisions of the statutory rules must be interpreted so as to give effect to the object and purport of the Act. It cannot be applied in a vacuum, as the statute requires comparison of the hardship of both the tenant as also the landlord. It is, therefore, not a case where Rule 16 has any application.

16. The Court would not determine a question only on the basis of sympathy or sentiment. *Stricto sensu* equity as such may not have any role to play.

19. In the facts and circumstances of this case, we are of the opinion, that six months' time should be granted to the 1st respondent to vacate the premises, which should serve the ends of justice. It is directed accordingly. Subject to the aforementioned directions, this appeal is dismissed. In the facts and circumstances of this case, there shall be no order as to cost.

26. Consequently, in the fact of the present case as application under Sections 21(1)(a) of U. P. Act No. 13 of 1972 was fully competent and maintainable. Son of landlord is unemployed and merely helping his father, bona fide need is there and no attempt had been made by the tenant to search out alternative premises in question, and he has alternative premises at his disposal, as such release application is allowed.

27. Release application has been filed in the year 1994 and today we are in the year 2008, fourteen years period has already elapsed.

28. Consequently, order dated 1.8.2003 is hereby quashed and set aside. Order of prescribed authority is restored. However, tenant shall vacate the premises in question within six months, and undertaking be furnished by him before prescribed authority within one month for handing over peaceful vacant possession in case such an undertaking is not furnished in. time, then landlord would be free to take execution proceeding.

29. Consequently, writ petition is allowed. No order as to cost.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**