

Ramesh Chandra (Sri) and anr. Vs. Ist Additional District Judge and ors.

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Court : Uttaranchal

Decided On : Dec-22-2004

Reported in : 2005(1)ARC812

Judge : Rajesh Tandon, J.

Acts : Cantonment (Extension of Rent Control Laws) Act, 1957 - Sections 3 and 3(4); Cantonments (House Accommodation) Act, 1923 - Sections 3(1); Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 1, 1(3), 2, 2(1), 3, 11, 12(3), 13(3), 14, 20(4), 21 and 21(1); Cantonment Act, 1924 - Sections 2, 2(1), 2(3), 3, 60 and 69; United Provinces Town Area Act - Sections 7; Uttar Pradesh Cantonment (Control of Rent and Eviction) Act, 1952; United provinces Town Areas Act, 1914; Under the Public Health Act, 1875; Compulsory Purchase Act, 1965; Madras Buildings (lease and Rent Control) Act, 1960 - Sections 14 (1); Uttar Pradesh Urban Building (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rule 16 and 16(2); [Constitution of India](#) - Articles 226 and 22

Appeal No. : Writ Petition No. 81 (MS) of 2002

Appellant : Ramesh Chandra (Sri) and anr.

Respondent : ist Additional District Judge and ors.

Advocate for Def. : B.P. Nauityal and; Hari Mohari Bhatia, Advs.

Advocate for Pet/Ap. : Arvind Vashisth, Adv.

Disposition : Petition dismissed

Judgement :

Rajesh Tandon, J.

Heard Sri Arvind Vashisth, Counsel for the petitioners and Sri. B.P. Nautiyal and Sri Hari Mohan Bhatia, Counsel for the respondents.

FACTUAL MATRIX OF THE CASE:-

1. By the present writ petition, the petitioners have prayed for a writ of certiorari praying for quashing the order 13th June, 1997 (Annexure 9) passed by the Prescribed Authority/1 st Additional Civil Judge, Senior Division, Dehradun passed in P.A. Case No. 5 of 1988 and judgment an order dated 7.2.2002 passed by 1st Additional District Judge, Dehradun in Rent Control Appeal No. 63 of 1997.
2. Briefly stated, the application was filed under Section 21 (1) (a) of the U.P. Act No. 13 of 1972 in respect of the shop situate in 487 Dakra Bazar, Dehradun at the rate of Rs. 8/- per month. In Paragraph 3 of the application, it was stated by the respondent No. 3 Sri Chandra Shekhar that the premises is in a dilapidated condition and the landlord has got prepared a map according to the regulations of the Cantonment Board.
3. In Paragraph 6 of the application, it has been mentioned that on 31st August, 2002, he has retired and after his retirement he has no place to run his own business and he will start the typing institute in the in the premises and as such, the shop is required for his personal use and occupation as well as after demolition and new construction.
4. A written statement was filed by the petitioners denying the averments contained in the application. The petitioners have also filed the additional written statement stating therein that property No. 489 was in possession of landlord and the same is available to him.

5. Both the Courts below have granted the decree for eviction against the petitioners hence the present writ petition has been filed.

6. Counsel for the petitioners Sri Arvinda Vashishtha has vehemently urged inter alia that the Act No. 13 of 1972 is not applicable to the cantonment area. So far as non residential accommodation is concerned, the bona fide need of the landlord has not been correctly decided according to the pleadings in the written statement as well as in the additional written statement, the petitioners shall suffer greater hardship rather than the landlord.

Applicability of the Act to the Cantonment Area:-

7. Counsel for the petitioner has substituted that the premises in dispute is not centered under U.P. Act No. 13 of 1972 being situate in the cantonment area.

8. The plea with regard to the applicability of Act No. 13 of 1972 is concerned to the Cantonment Board, the said plea was never taken before the Prescribed Authority. However, (The) Cantonment (Extension of Rent Control Laws) Act, 1957 provides as under:-

3. Power to extend to cantonments laws relating to control of rents and regulation of house accommodation.-- ((1) The Central Government, may by notification in the Official Gazette, to any cantonment with such restrictions and modifications and it thinks fit, any enactment to the control of rent and regulation of house accommodation which is in force.)***** the State in which the cantonment is situated.

Provided that nothing contained in any enactment so extended shall apply to,--

(c) any house within the cantonment which is, or may be, appropriated by the Central Government on lease under the Cantonments (House Accommodation) Act, 1923. (4) Where before the extension to a cantonment of any enactment relating to the control of rent and regulations of house accommodation therein (hereafter referred to as the 'Rent Control Act'),-

- (i) any decree or order for the regulation of or for eviction from any house accommodation in that cantonment, or
- (ii) any order in the proceedings for the execution of such decree or order; or
- (iii) any order relating to the control of rent or other incident of such house accommodation,

was made by any Court, tribunal or other authority in accordance with any law for the control of rent and regulation of house accommodation for the time being in force in the State in which such cantonment is situated, such decree or order shall, on and from the date on which the Rent Control Act is extended to that cantonment, be deemed to have been made under the corresponding provisions of the Rent Control Act, as extended to that cantonment, as if the said Rent Control Act as so extended were in force in that cantonment on the date on which such decree or order was made.)

9. Application of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 To Cantonment in Uttar Pradesh:

S.R.O. 259.--In exercise of the powers conferred by Section 3 of the Cantonments (Extension of Rent Control Laws) Act, 1957 (4 of 1967) and in suppression of the notification of the Government of India in the Ministry of Defence No. S.R.O. 8, dated 3rd April, 1972, the Central government hereby extends to all the Cantonments in the State of Uttar Pradesh the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) 1972 (U.P. Act No. 13 of 1972), as in force on the date of this notification in the State of Uttar Pradesh with the following modifications, namely:--

In the said Act,

(1) in Section 1,

(1) in sub-section (3) after Clause (d) the following clause shall be inserted, namely;

'(e) Every Cantonment in Uttar Pradesh declared to be Cantonment under Section 3 of the Cantonment Act, 1924 (2 of 1924)':

'(4) It shall come into force at once';

(2) In Section 2,

(i) in sub-section (1), after Clause (c) the following clause shall be inserted, namely:

(cc) Any building within the Cantonment which is or may be appropriated by the Central Government on lease under the Cantonments (House Accommodation) Act, 1923 (6 of 1923);

(ii) in sub-section (3), for the words 'State Government', the words 'Central Government' shall be substituted;

(3) in section 3,

(i) in Clause (b), at the end, the words 'or the tax mentioned in Section 69 of the Cantonment, Act, 1924: shall be added;

(ii) in Clause (h) at the end, the following words shall be added, namely:

'and shall also include the UP. Cantonments (Control of Rent and Eviction) Act, 1957';

(iii) in Clause (m) after the words 'town-area Committee' the words 'or Cantonment boards' shall be added;

(4) in Section 7, after the 'United Provinces Town Area Act, 1914, the following words shall be inserted, namely: 'or in Section 60 of the Cantonment Act, 1924.'

(5) in Section 12 in sub-section (3) after the words 'municipality' in the words 'Cantonment' shall be added;

(6) in Section 20, in sub-section (4) in the proviso after the word 'municipality' the word 'Cantonment' shall be inserted;

(7) in Section 21, in sub section (1), in Clauses (i) and (ii) of the explanation, the words 'Cantonment' shall be inserted;

(8) Section 14 shall be omitted.'

10. NOTIFICATION NO. SRO 47 DATED 17TH FEB, 1982 PUBLISHED IN THE GAZETTE OF INDIA DATED 27th FEB, 1982:--

S.R.O. 47 dated the 17th February, 1982:--In exercise of the powers conferred by Section 3 of the cantonments (Extension of Rent Control Laws) Act, 1957 (46 of 1957) and in supersession of the notification of the Government of India in the Ministry of Defence No. S.R.O. 259, dated the 1st September, 1973, the Central Government hereby extends to all the cantonments in the State of Uttar Pradesh the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. 13 of 1972) as in force in the State of Uttar Pradesh, with the following modifications, namely:-

In the said Act--(1) in Section 1-

(i) in sub-section (3), after clause (d), the following clause shall be inserted, namely

(e) every cantonment in Uttar Pradesh declared to be a Cantonment under Section 3 of the Cantonments Act, 1924 (2 of 1924),

(ii) for sub-section (4), the following sub section shall be substituted, namely:-

'(4) It shall come into force at once,' (2) in Section 2,--

(i) in sub-section (1), after clause (c), the following clause shall be inserted, namely:-

'(cc) any building within the cantonment which is, or may be appropriated by the Central Government on lease under the Cantonments (House Accommodation) Act, 1923 (6 of 1923)',

(ii) in sub-section (3), for the words 'State Government', the words 'Central Government' shall be substituted,

(3) In Section 3-

(i) in Clause (b), at the end, the words, 'or the tax mentioned in Section 69 of the cantonments Act, 1924' shall be added;

(ii) in clause (h), at the end, the following words shall be added, namely:-

'and shall also include the U.P. Cantonment (Control of Rent and Eviction) Act, 1952',

(iii) in clause (m), after the words 'town Committee' the words 'or cantonment Board' shall be inserted,

(4) in Section 7, after the words 'United provinces Town Areas Act, 1914, the words 'or in Section 60 of the Cantonment Act, 1924' shall be inserted;

(5) in Section 12, in sub-section (3), after the words 'municipality' the word 'Cantonment', shall be inserted;

(6) Section 14 shall be omitted,

(7) In Section 20, in sub-section (4), in the proviso, after the word 'municipality', the word 'Cantonment' shall be inserted;

(8) In Section 21, in sub-section (1), in clause (i) of the Explanation after the word 'municipality', the word 'Cantonment' shall be inserted;

(9) in Section 24-B, in Sub-section (after the word 'municipality', wherever it occurs, the word 'Cantonment' shall be inserted.

'Cantonment' shall be inserted.

11. Further by virtue Section 3 of the Cantonment (Extension of Rent Control Laws) Act, 1957 has been extended to all the cantonments in the in the U.P.

12. The aforesaid amendment came up for interpretation in Ruchira Vinayak (Smt.) and Ors. v. IInd Additional District Judge, Meerut 2004 (1) A.R.C., Page 24, it has been held to the following effect:- .

'2. In exercise of the powers conferred by Section 3 of the Cantonment (extension of Rent Control Laws) Act, 1957 and in suppression of the notification dated 1.9.1973 (SRO 259) Central Government through notification SRO 47 dated 17.2.1982 extended to all the cantonments in the state of U.P., U.P. Act No. 13 of 1972 with certain modifications mentioned therein. Two notifications of 1.9.1973 and 17.2.1982 are substantially similar with minor differences, which are not relevant for the decision of the instant case.

3. Section 1 (3) of U.P. Act No. 13 of 1972 provides that the said Act shall apply to (a) every city (b) every municipality, (c) every notified area and (d) every town area. Through the aforesaid notifications of September, 1973 and February, 1982 clause (e) has been added to Section 1 (3) of U.P. Act No. 13 of 1972 which is as under:-

(e) Every cantonment in U.P. declared to be a cantonment under Section 3 of the Cantonment Act, 1924.4. By virtue of Section 2 of U.P. Act No. 13 of 1972 the said Act does not apply to the building mentioned under the said Section. Through aforesaid notifications of September, 1973 and February, 1982 clause (cc) has been added to Clause 2 (1) of UP. Act No. 13 of 1972 which as follows:-

(cc) Any building within the cantonment, which is or may be appropriated by the Central Government on lease under the Cantonment (house accommodation) Act 1923.5. This is consonance with Section 3 proviso (c) of Cantonment (extension of Rent Control Laws) Act 1957 which is quoted below:-

'3 (1) The Central Government may by notification in the official gazette extend to any cantonment with such restriction and modification as it thinks fit any enactment relating to the control of rent and regulation of house accommodation which is enforce in the state in which the Cantonment is situated.

Provided that nothing contained in any enactment so extended shall apply to,

(a)

(b)

(c) any house within cantonment which is or may be appropriated by the Central Government on lease under the Cantonments (house accommodation) Act, 1923.'

6. The net result is that U.P. Act No. 13 of 1972 applies to cantonment areas but not to such house, which 'are or may be appropriated by the Central Government on lease under 1923 Act.'

7. There is no dispute that in respect of the Cantonment in which house in dispute is situate notification under Section 3 (1) of Cantonment (house accommodation) Act 1923 has been issued and is enforce.

10 (part). It is, therefore, held that U.P. Rent Control Act (U.P. Act No. 13 of 1972) applies to all the buildings with in a cantonment regarding which notification has been issued under Section 3 (1) of Cantonment (House Accommodation) Act, 1923 except the buildings which are appropriated on lease under the said Act. The result is that U.P. Act No. 13 of 1972 applies to the building in question. In the authority reported in, 1980 ARC Page 319, the validity of the aforesaid notification of 1973 applying U.P. Act No. 13 of 1972 to the buildings in cantonments was upheld. The said authority was approved by a Division Bench Authority reported in Lekhraj v. IVth A.D.J. Meerut 1982 (1) ARC 337 (DB) (the instant case also arises out from the same cantonment i.e. Meerut Cantonment). The Supreme Court in the authority reported in, 1989 (1) ARC Page 1, has upheld the aforesaid decisions (The Supreme Court did not agree with part of the reasoning of the first judgment). The Supreme Court also upheld the validity of notification dated 17.2.1982.

13. The matter came up for consideration before the Apex Court in Brij Sundar Kapoor, etc., etc. v. 1st Addl. District Judge, Jhansi 1989 (1) ARC Page 1 and the Apex Court in the aforesaid case has held as under, :-

'It has been mentioned earlier that, on 17.2.1982, the Central Government issue a further notification under Section 3 of Act 46 of 1957 in suppression of its earlier

notification dated 1st September, 1973. By this notification the Central Government extended to all cantonments in the State of Uttar Pradesh provisions of Act 13 of 1972 as in force in the State of Uttar Pradesh with certain modifications. Considering that Act 13 of 1972 had already been extended, this really meant the extension of Act 19 of 1974 and Act 28 of 1976 to cantonment areas. If, in the light of this fact, we read Section 3 (4) of Act XLVI of 1957 it will be seen that the order of Sri Srivastava has to be upheld. The provisions of Act 13 of 1972 as amended by Act 28 of 1976 have been extended to the cantonments in the State of Uttar Pradesh only with effect from 17.2.1982.'

14. The-matter was referred to the Division Bench of the Allahabad High Court, the Division Bench of the Allahabad High Court in the case of Lekhraj v. IV Addl. District Judge, 1982 (1) ARC Page 337, has observed as under:-

'In view of the foregoing discussion our answer to the question referred to us is that the provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act XIII of 1972) apply to the cantonment areas of Uttar Pradesh subject to the restrictions and unexceptions contained in Act, 46 of 1957 and the modifications contained in the notification dated, September 1, 1973, issued by the Central Government, published in the Gazette of India dated, September 29, 1973.'

15. Act No. 13 of 1972 defines the word 'building' Section 3 (i) defines the word 'building' means a residential or non-residential. It reads as under-

- (i) 'building', means a residential or non-residential roofed structure and includes-
- (i) any land (including any garden), garages and out-houses, appurtenant to such building;
- (ii) and furniture supplied by the landlord for use in such building;
- (iii) any fittings and fixtures affixed to such building for the more beneficial enjoyment thereof;

16. The word 'house' has been defined to be residential or non-residential in the case of *The Tata Engineering and Locomotive Company Ltd. v. The Gram Panchyat, Pimpri Waghere* reported in (1976) 4 SCC. The observations of the Apex Court are quoted below:--

17. That word 'house' is not defined in the Act. This Court in *Ramavatar v. Assistant Sales Tax Officer, Akola* said that the correct approach is to construe the word in that sense which people conversant with the subject matter with which the statute is dealing would attribute to it. Counsel for the respondent rightly contended that the word 'house' would in its ordinary sense include any building irrespective of its user. To ascertain the meaning of the word 'house' one must understand the subject matter with respect to which it is used in order to arrive at the sense in which it is employed in a statute. Formerly, houses were built in separate flats or storeys. For legal and ordinary purposes, they are separate houses. Each is separately let and separately occupied. One has no connection with those above or below, except in so far as it may derive support from those below instead of from the ground as in the case of ordinary house (see *Yorkshire Insurance v. Clatytone* and *Grant v. Langston* 8).

18. It may be stated generally that the word 'house' is a structure of permanent character. It is structurally severed from other tenements. It is not necessary that a house if adapted for residential purposes should be actually dwelt in (see *Daniel v. Coulsting* 6). A building in Covent Garden had formerly been a dwelling house but was converted into a fruitstore warehouse and offices in which no one slept and was held to be a 'house' as regards assessment to the rate within the provisions of the relevant statute.

19. The idea of the varieties of meaning can be had from the subject matter of the statute. A consecrated church was treated as a house as regards the Building Line which a local authority has a right to prescribe. (See *Folkestone v. Woodward* 7). Under the Public Health Act, 1875 'house' was not limited to an ordinary dwelling house and included a day school having no borders and where none of the staff resided. See *Wimbledon v. Hastings* (supra). Under the Compulsory Purchase Act, 1965 'house' has been extended to a building which is used for business

purposes and is not restricted to mere dwelling houses (see *Revenseft Properties v. London Borough of Hillingdon* 8).

20. The weight of judicial opinion is conclusively in favour of the view that the word 'house' extends to a building which is used for business and should not be restricted to a mere dwelling house, (see *Land Law, Cases and Materials* by R.H. Mandsley and E.H. Burn, Third Edition, p. 832).

21. In *Corpus Juris Secundum*, Vol. 4, Page 364 it is said that in a legal sense, the word 'house' is more comprehensive, but it is not limited to a structure designed for human habitation, and may mean a building or shed intended or used as a habitation or shelter for animals of any kind, a building in the ordinary sense or any building edifice, or structure enclosed with walls and covered, regardless of the fact of human habitation. Again in *Corpus Juris Secundum*, Vol. 41, Page 365 it is said that under particular circumstances, the term has been held equivalent to and interchangeable or synonymous with 'building', 'dwelling' and 'dwelling house' and sometimes 'premises'.

DISCUSSION ON THE BONA FIDE NEED OF THE LANDLORD.

17. So far as the need of the landlord is concerned, in Paragraphs 4, 5, 6 and 7, it has been stated by the landlord that building is in a dilapidated condition, 'the map has already been prepared in accordance with the regulations of the Cantonment Board. He has also stated that he has already retired and wants to run a typing institute in the premises in dispute. Paragraphs 4, 5, 6 and 7 are quoted below:-

^4-izkFkhZ HkouLokeh ds ikl mDr nqdku ds Vhu dh Nr okyk ifNyk th.kZ Hkk dks fxjkuso mls fxjkdj uofufeZr djus gsrq lk/ku /ku g SA

5- Hkou Lokeh] izkFkhZ us d SUV dks MZ dsfcfYMax jsxqys'ku ds vuqlkj uD'kk cuok fy;k g SA

6- izkFkhZ Hkou Lokeh 31-8-1992 dkslsokfuo`k gks pqdk gS vkSj mDr nqdku ij lsokfuo`k gksus dsmijkUr vc viuk O;olk; djuk pkgrk g SA

7- izkFkhZ Hkou Lokeh mDr nqdku ij VkbfiaxbULVhV~;wV [kksydj pykuk pkgrk gS ftlds fy, izkFkhZ Hkou Lokeh ds ikl i;kZIr lk/kug SA**

18. In the Written statement, Paragraph 4 has been replied as under:

^;g fd izkFkZuk i= dh pj.k la[;k 4 vIR; g SA;g dguk Hkh vIR; gS fd izkFkhZ ds ikl dfFkr nqdku fxjkus ;k mldks fxjkdj fufeZrdjus gsrq lk/ku miyC/k g SA izkFkhZ ,d diksy dfYir dgkuh ysdu ekuuh; egksn; dsU;k;ky; esa izLrqrg qvk g SA**

19. In Paragraph No. 6 of the written statement, it has not been denied that the landlord has been retired. Paragraph 6 is quoted below:-

^;g fd izkFkZuk i= dh pj.k la[;k 6 vIR; g SA;g dguk vIR; gS fd izkFkhZ 'kh/kz Isok fuo`k gksus okyk gS g SA ;g dgukvIR; gS fd izkFkhZ Isok fuo`k gksus ds mijUr viuk O;olk; djuk pkgrk gSokLrfodrk vfrfjDr fooj.k esa n'kkZ;h tk;sxhA Jh fo'kEHkj nk okfjlk dsikl cgqr lkjh IEifk gS izkFkhZ ds ikl IEifk la[;k 489 Mdkjkcktkj nsgjknwu miyC/k gS ftlesa izkFkhZ v;/klflr g SA okLrfodrk vfrfjDr fooj.kesa n'kkZ;h tk;sxhA

20. The Affidavit Paper No. 327-Ka filed by the landlord, shows that the landlord has stated that his father Umesh Datt and late Sri Kedar Datt were two brothers and sons of late Sri Vishambhar Datt. The entire property belongs to Vishambhar Dutt. Before the Prescribed Authority, the Khatauni of Village Bansni was filed showing that the properties belong to Vishambhar Dutt and later on the same was recorded in favour of Chandra Shekhar and Ravindra Kumar sons of Vishnu Dutt and Vinod was shown as Khatedar alone. The property was joint and later on by virtue of the partition in the family, some of the shops came in the share of the landlord/respondent No. 2 and some of the properties came in the share of the cousin brother Vinod Kumar.

21. A perusal of the order shows that as per List 73-Ka landlord has filed copy of the annual assessment 74 Ka, 75 Ka and 76 Ka, which establishes that properties No. 489, 490 and 492 is recorded in the name of the cousin brother of the landlord Sri Vinod Kumar Sharma and Property No. 487, 488, 491 is recorded in the name of Chandra Shekhar and Ravindra Kumar.

22. Petitioners have submitted that the property No. 492 is available with the landlord, which is both residential and non-residential. The affidavit paper no. 35 Ka in Paragraph No. 5, it has been specifically stated by the landlord that the property No. 492-A is has residential property and no part of that is non residential and after his retirement he required the premises for running the typing institute. The said averment is quoted below:-

^^ vc ;g fd izkFkhZ us lwph 73 ds Isokf'kZd dj fooj.k dh udy 74 d] 75d] 76 d nkff[ky dh gS ftuds voyksdu ls ;glkfcg gksrk gS fd IEIfk la- 489] 490, 492 izkFkhZ ds ppsjs HkbbZ fouksndqekj 'kekZ ds uke ntZ gS vkSj IEIfk la- 487] 488] 491 izkFkhZ o foi{khla- 2 pUnz'ks[kj o jfoUnz dqekj ds uke ntZ g SA foi{kh dk ;g Hkh dFku Fkk fdizkFkhZ us 492 IEIfk cuk yh gS tks fjgk;'k nksuksa g SA blds cktwnikzFkh us 'kiFk i= 35d dh pj.k la- 492, mldh fjgk;'kh IEIfk gS vkSj mldkdksbZ Hkx ,slk ugha gS tks jgus okyk u gksA mlus bl tk;nkn dks ckor uD'kk 325dHkh nkff[ky fd;k gS ftlesa foi{kh dk ;g dFku ux.; gks tkrrk gS fd oknh ds ikklIEIfk la- 492 o 492, O;olk; gsrq miyC/k g SA nwljs ;g fd vfHkys[kksa ls;g ckr lkfcg gS fd izkFkhZ@oknh fjVkj; gkspqdk gS ftldks foi{kh us badku ugha fd;k vkSj fof/k ds vuqlkj ;g Lokeh dks vf/kdkjgS fd og fjVkj; gksus ds ckn viuk O;olk; djuk pkgs rks dj ldrk gS ftlds fy, ogml txg dks tks mlds O;olk; ds fy;s mfpr gks] mldks [kkyh djus ds fy, izkFkZuk djldrk g SA bl izdkj izkFkhZ @ oknh us mijksDr izkFkZuk i= dks Vkbfiar baf LVV~;wVpykus gsrq fn;k ftldks fo}ku v/khuLFk U;k;ky; us mu dh t:jr In~Hkkoh ekurs gq,Lohdkj fd;kA mijksDr rF;ksa dks ns[kus ds ckn lkfcg gks tkrk gS fd izkFkhZ@oknh dh t:jr okLrfod ,ao In~Hkkoh gS D;ksafd vihydrkZx.k vxj pkgs gS rks vkSj HkhdkbZ LFkku fdjk;s ij ys ldrs Fks ysfdu mUgksus ,slk ugha fd;kA bl izdkj oknh dht:jr fo}ku v/khuLFk U;k;ky; us lgh :i esa okLrfod ekuh vkSj Lokeh ekukA**

23. The map 325-Ka is also on the record showing that the property No. 489 and 492 or 492-A are not available to the landlord for the business purposes.

24. The landlord has also filed paper No. 78-Ka his own affidavit and he has filed the documents showing that he retired on 31st August, 1992 from Lal Bahadur Shashtri Academy and he has also passed the typing examination from the said Academy on 8th August, 1964 and as such he is well aware of the typing for which the need has been shown.

25. So far as the partition is concerned in 1995, during the family partition property No. 489 and 492 came in the possession of Sri Ravindra Kumar Dangwal and property No. 487 alone is in the ownership of the respondent No. 2.

26. A perusal of the affidavit (Paper No. 78 Ka) in which Office Order No. 303 is enclosed, shows that Sri Chandra Shekhar Singh had retired on 31.8.1992, the same is quoted below:-

^dk;kZy; vkns'k la[k 303

Isok vk;q iw.kZ djus ds i'pkr~ Jh pUnz'ks[kj]lgk;d 31-8-92 vijkg~u esa Isok fuo`k gks x;s gSaA**

27. A perusal of the affidavit (paper No. 78 Ka) of Sri Chandra Shekhar, son of Late Sri Vishambhar Dutt shows that the walls of the back portion of the aforesaid shop having tin shed is broken from many places the bricks have fallen down. The relevant portion of the affidavit is quoted below:-

^^;g fd mDr nqdku ds Vhu dh Nr okys fiNys Hkkxdh nhokjsa txg Is VwV x;h gSa rFkk txg&txg; ij Is feh ftlls mDr nqdkuds ,d Hkkx dh Nr dh Vhusa cqjh rjg Is IM+ dj xy xbZ gS rFkk ydM+h ftuds lgkjsVhusa fVdh gqbZ Fkh IM+ dj xy dj uhps fxj xbZ gSa Nr dh Vhu ds ydM+h ds cRrslM+dj fxj x;s gSa vkSj fxj jgs gSaA nhokj ij yxh bZVkssa vkSj feh us viuhidM+ th.kZ rFkk iqjkuh gksus ds dkj.k NksM+ nh g SA

bl izdkj IHkh izdkj Is mDr nqdku ds Vhu dh Nrokyk fiNy Hkkx ds gkyr [kLrk gS vkSj fdLH Hkh le; fxj ldrk g SA d SUV cks MZ dhvkSj Is mDr Hkkx dks fMeksfy'k djus ds vkns'k ikfjr fd;s x;s gSaA

pawfd mDr nqdku dk Vhu dh Nr okyk fiNy Hkkxth.kZ 'kh.kZ voLFkk esa gS rFkk fo/oal pkgrk gS vr% izkFkhZ@HkouLokeh mls fxjkdj u;k cukuk pkgrk g SA

;g fd izkFkhZ@HkouLokeh ds ikl mDr nqdku dh Vhu dh Nr okyk fiNys Hkkx dks fxjkus o mls fxjkdj uofufeZrdjus gsrq lk/ku o /ku g SA

;g fd izkFkhZ@HkouLokeh fnukad 31-8-92 esa viuh Isokfuok`k gks pqdk gS vkSj mDr nqdku ij Isokfuok`k gksus ds mijUr vc viuk O;olk; djuk pkgrk g SA

;g fd izkFkhZ @ HkouLOkkeh mDr nqdku ijVkbZfiar bf ULVV~;wV [kksydy pykuk
pkgrk gS ftlds fy, izkFkhZ HkouLokeh ds ikli;kZlr lk/ku g SA izkFkhZ VkbZfiar dk
dk;Z tkurk g SA

;g fd izkFkhZ@HkouLokehds ikl fjVk;jes UV ds i'pkr~ fuft O;olk; pykus gsrq mDr
nqdku ds vfrfjDr vU;dksbZ LFkku ugha gS vr% mDr nqdku dh HkouLokeh dks fuft
iz;ksx gsrq fu;qfDr gsrqHkh izkFkZuki= izLrq g SA**

28. Paper No. 78 Ka. is an affidavit, by which it will appear that the landlord has
retired from his service. The relevant paragraph of the affidavit is quoted below;-

**; fd mDr vkifRri= dh /kkjk 6 esa of.kZrleLr dFku xyr o vLohdkj gS bl /kkjk esa
of.kZr ;g dFku fd Jh fo'kEHkj nkds okfjlk ds ikl cgqr lkjh IEifk gS rFkk izkFkhZ ds
ikl IEifkla[;k 489 Mdjk cktkj nsgjknwu esa LFkku miyC/k g SA izkFkhZ fnukad 31 8-
92 dksviah Isok Is Isokfuok`k gks pqdk g SA izkFkhZ 'kiFkdrkZ VkbZfiar tkurk
gSvkSj fookfnr nqdku esa VkbZfiar dk O;olk; djuk pkgrk g SA fookfnr nqdku
lsvfrfjDr izkFkhZ ds ikl dksbZ fjDr LFkku miyC/k ugha gS ftlesa
izkFkhZ@'kiFkdrkZmDr O;olk; lqfo/kkiwoZd dj ldsA**

29. In the aforesaid affidavit (Paper No. 78 Ka), it has also been stated that the
property No. 492, 489 and 490 do not belong either to_ the applicant-landlord and
the landlord has no other vacant shop, which is in vacant position, in which he
Court start his typing institute. Paragraph 23 of the affidavit is quoted below:-

^^;g fd mDr vkifRri= dh /kjk 11 esa of.kZrdFku lklj xyr gS vkSj vLohdkj gS bl /kkjk
esa mRrjnkrk foi{kx.k }kjk IEifRrla[;k 488 o 490 rFkk 492 dh ckcr fd;k x;k leLr dFku
xyr o vLohdkj g SA IEifRrla[;k 490 o IEifRr la[;k 492 Mdjk cktkj nsgjknwu Jh
fouksn dqekj 'kekZ dsLokfeRo dh IEifRr gS IEifRr la[;k 490 o 492 Mdjk cktkj
nsgjk nwu ls izkFkhZ ofoi{k la[;k 2 dk fdlh izdkj dk dksbZ IEcU/k ugha g SA IEifRr
nqkdj la[;k 488 Jhcnzh izlkn dh fdjk;snkj esa g SA bl izdkj izkFkhZ ds ikl fjDr
voLFkk esa dksbZ nqdku ugha gSaA mkjnkrk foi{kx.k tkucw>dj vkl ikl dh IEifk
dksizkFkhZ dh IEifk crkdj U;k;ky; dks xqejkg djus dk iz;kl dj jgs gSaAizkFkhZ o
foi{k la[;k 2 dk IEifk la[;k 492, 489 o 490 Mdjk cktkj nsgjknwu ls fdlh izdkj dk
dksbZ IEcU/k ugha g SA**

30. In *Mst. Bega Begum v. Abdul Ahmad Khan*, 1979 AIR SC Page 272 : 1986 SCFBRC 346, it has been held:-

'The connotation of the term of the term 'requirement should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get an order of release. 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 contemplated under Section 21 of the Act. The provisions contained in the Act strike a just balance between the genuine need of the landlord on the one hand and the great inconvenience and troubles of the tenants on the other. Since Section 21 of the Act is meant for the benefit of the landlord, therefore, it must be so construed as to advance the object behind the said provision. The tenant has to establish that if he is evicted he will suffer greater hardship as compared to the landlord and must lead clear evidence to show that in spite of the best efforts he was unable to get another alternative suitable accommodation in the absence whereof the scale of relative hardship may be tilted in favour of the landlord as the inconvenience, loss or trouble resulting from a denial of the order of release in favour of the landlord will for-out weight the prejudice or the inconvenience which may likely be caused to the tenants.'

31. In the case of *Ragavendra Kumar v. Firm Prem Machinery & Co.*, (2000) 1 Supreme Court Cases 67 : 2000 SCFBRC 24, it has been held:--

'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-*Prativa 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.

32. Following the decision of *Bega Begum* (supra), in the case of *Joginder Pal v. Naval Kishore Behal*, 2002 SC & FB, Rent Cases, 388, 'the Apex Court has held as under:-

5. In *Maple Vishwanath Acharya and Ors. v. State of Maharashtra and Anr.*, 1998 SCFBRC 75 : (1998) 2 SCC 1) this Court emphasized the need of social

legislations like the Rent Control Act striking a balance between rival interests so as to be just to law. 'The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society'. While the shortage of accommodation makes it necessary to protect the tenants to save them from exploitation but at the same time the need to protect tenant is coupled with an obligation to ensure that the tenants are not conferred with a benefit disproportionately larger than the one needed. Socially progressive legislation must have a holistic perception and not a shortsighted parochial approach. Power to legislate socially progressive legislation is coupled with a responsibility to avoid arbitrariness and unreasonability. A legislation impregnated with tendency to give undue preference to one section, at the cost of constraints by placing shackles on the other section, not only entails miscarriage of justice but may also in constitutional invalidity.

8. The need for reasonable interpretation of rent control legislations was emphasized by this Court in *Sega Begum v. Abdul Ahad Khan*-6. Speaking in the context of reasonable requirement of landlord as a ground for eviction, the Court guarded against any artificial extension entailing stretching or staining of language so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. The Court warned that 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. In *Kewal Singh v. Lajwanti* this Court has observed, while the rent control legislation has given a number of facilities to the tenants, it should not be construed so as to destroy the limited relief which it seeks to give to the landlord also. For instance, one of the grounds for eviction which is contained in almost all the Rent Control Acts in the country is the question of landlord's bona fide personal necessity. The concept of bona fide necessity should be meaningfully construed so as to make the relief granted to the landlord real and practical. Recently in *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta*-8 the Court has held that the concept of bona fide need for genuine requirements needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

9. The rent control legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The legislative intent has to be respected by the Courts while interpreting the laws. But it is being uncharitable to legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants, got to the extent of being unfair to the landlords. The legislature is fair to the tenants and to the landlords--both. The Courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the Court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble.

30. In providing key to the meaning of any word or expression the context in which it is set has significance. Colour and content emanating from context may permit sense being preferred to mere meaning depending on what is sought to be achieved and what is sought to be prevented by the legislative scheme surrounding the expression. Requirement of landlord for his own use, is an expression capable for attributing an intention to the legislature that what was intended to be fulfilled is such requirement as would persuade the landlord to have the premises vacated by the tenant, to forego the rental income, and to put the premises to such use as the landlord would deem to be his own use and in the given facts and circumstances of a case the Court too would hold it to be so in contradiction with a mere ruse to evict the tenant. The legislature intending to protect the tenant also intends to lift the protection when it is the requirement of landlord to put the accommodation to such use as he intends, away from leasing it out.

31. If we do not meaningfully construe the concept of requirement the provision may suffer from the risk of being branded as unreasonable, arbitrary or as placing uncalled for and unreasonable restrictions on the right of the owner to hold and

use his property. We cannot place a construction on the expression 'for his own use' in such a way as to deny the landlord a right to evict his tenant when he needs the accommodation for his own son to settle himself well in his life. We have to give colour and content to the expression and provide the skin of a living thought to the skeleton of the words, which the Legislature has not itself chosen to define. The Indian Society, its customs and requirements and the context where the provision is set in the legislation are the guides leading to acceptance of the meaning which we have chosen to assign to the words 'for his own use' in Section 13 (3) (a) (ii) of the Act.

32. (v) In the present case, the requirement of landlord of the suit premises for user as office of his chartered accountant son is the requirement of landlord 'for his own use' within the meaning of Section 13 (3) (a) (ii)'.

33. In the case of Prem Prakash Gupta and Ors. v. Second Additional District Judge, Allahabad and Ors.-Allahabad Rent Cases 1993 (1) Page 77, it has been held that no doubt true that the tenant will have to be ousted from a house, if a decree of eviction has been passed, yet such an event by itself will not be a valid ground for refusing a decree for eviction. The observation in the case of Prem Prakash Gupta (supra) is quoted as below:

'As observed by this Court in its decision in the case of Rajeshwari Prasad v. Fateh Bahadur Chaturvedi and Ors. reported in 1984 (1) A.R.C. 387, the bona fide need is the foundation of application for eviction of a tenant without which it cannot be allowed. Hardship is relative word'.....

Bonafide Requirement of the Building After Demolition and New Construction:

34. It has come in the affidavits filed by the landlord that the landlord requires the building bonafide after demolition and new construction 21 (1) (a) of the Act read as under:--

'21 (1) (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 for 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 charitable trust, for the objects of the trust;'

35. in the case of Smt. Champa Kunwar Trust v. Dist. Judge, Rampur reported in A.I.R. 1976 Allahabad Page 252, it has been held:--

21. A perusal of the aforesaid provision would show that a landlord is entitled to get an order of release in his favour provided he established that the building is bona fide required after demolition and new construction for occupation for the objects of the Trust. For the purpose of establishing the bona fide requirement after demolition and new construction the Court must be satisfied that the intention to reconstruct is genuine and not colourable. In order to establish the bona fide requirement, the landlord will further be required to prove that his need to reconstruct is honest in the circumstances and that the application has not been filed with any ulterior motive. There is however, no justification in reading the words 'the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation' as equivalent to 'the building is bona fide required after demolition.' Either the building requires demolition or not is immaterial for the purposes of application of Clause (a) of sub-section (1) of Section 21 of the Act. A case of a dilapidated building may call for an immediate demolition without there being any further provision for bona fide requirement by the landlord. But, clause (a) of Section 21 (1) does not deal with the case of dilapidated condition of a building. The conditions required for fulfillment in order to obtain the eviction of a tenant under this clause is that the building is bona fide required after demolition and new construction by the landlord for his occupation. The expression of his provision, therefore, wide enough to cover cases where a landlord bona fide requires a building for demolition in order to fulfill its objects. In my view, therefore, the proper interpretation which is required to be put to this provision is to find out whether the landlord immediately requires the building for demolition in order to fulfill his requirements and if he establishes the same, he becomes entitled, of course, subject to fulfillment of other conditions, to get an order of eviction of the premises under Clause (a) of Section 21 (1) of the Act. As stated above, the bad condition of the building is not necessary to be taken into account for the purposes mentioned above.

36. 23. in *Bhushan Singh v. Ganeridra Kumar* (AIR 1950 Cal 74), a Bench of the Calcutta High Court took the view that the words 'bona fide required by the landlord' could not be read as 'premises bona fide requiring rebuilding.' Harris, C.J., delivering the judgment of the Bench put the matter as under:-

'It was suggested that this provision giving the landlord a right to possession if he established that he required the premises bona fide, for rebuilding could have no application whatsoever unless the state of the premises was such that they required to be rebuilt. It is to be observed that proviso (f) to Section 11 (1) of the Act does not mention premises requiring rebuilding. What is stated is that sub-section (1) shall have no application if the landlord requires the premises bona fide for rebuilding. The state of the premises, therefore, is not an essential factor in the case. However, it cannot be overlooked that in this case the learned Judge has accepted the evidence of a witness which showed that these premises were very old, dilapidated, dangerous and likely to fall if extensive repairs were not done to them quickly.

It appears to me that the premises are bona fide required by the landlord for the purpose of 'rebuilding' if the landlord honestly requires them for that purpose. The equivalent of the phrase 'bona fide' is 'honestly'. It refers to the state of the landlord's mind. The landlord therefore, will be entitled to possession as against the tenant if he established that he honestly requires the premises for rebuilding.

37. In *Mahboob Badsha v. M. Ganga Devi*, (1965) 2 Mad LJ 209, the Madras High Court considering the scope of Section 14 (1) (b) of the Madras Buildings (Lease and Rent Control) Act, 1960, observed as below:-

'There is nothing in the language of Section 14 (1) (b) to warrant the interpretation that the words 'bona fide required by the landlord' is referable only to the condition of the building ruling out every other consideration. It must not be forgotten that the Madras Buildings (Lease and Rent Control) Act is in essence expropriatory in character involving serious curtailment of the rights of owners of properties and therefore, Courts should not give any undue or wide interpretation to the provision beyond what the express language of the provision warrants, in consonance with the avowed object of the legislation, namely, unreasonable eviction of tenants.

There is nothing in the object of the enactment or in the language of Section 14 (1) (b) which compels or necessarily warrants the view that once a building is let out, the landlord can never obtain possession of the property either for better investment or for improvement in the sense that the tenant acquires a permanent right, as it were, subject only to the dilapidated condition of the building. The condition of the building is obviously an objective test to be established by evidence and capable of verification by personal local inspection. If the crux of the question centers round the physical state or condition of the building, there will be very little scope for the notion of a bonafide requirement. There is no warrant for reading the words 'bonafide required by the landlord', either the building requires demolition or not. But it is not possible to have a conception of a building bona fide requiring demolition. A decrepit building no doubt may call for immediate demolition and without anything more the landlord could be said to have satisfied the requirement or condition of his bona fide requiring the building for immediate demolition. But the terms of the section are clearly wide enough to cover cases where the landlord bona fide requires a building for the expansion his own business or for legitimate purposes. A concrete and immediate proposal or scheme to demolish an existing building and reconstruct it into a bigger, more productive and higher income yielding one cannot by any means be said to be mala fide. The proper view to take of Section 14 (1) (b) would be that whenever the condition of the building is not such as to require immediate demolition the case of the landlord should be scrutinized to find out whether he bona fide intends to immediately demolish the building or whether the provision is invoked merely with a view to evict the tenant. In that context the plans or schemes of the landlord his resources, his getting sanction from the Municipal Authorities for the reconstruction etc., would have a bearing as tending to establish the bona fide requirement of the landlord. Section 14 (1) (b) is not rendered inapplicable merely because the building is not old or dilapidated but is in a good condition. In other words, if the intention of the landlord for demolition and reconstruction is proved to be genuine and not spurious or specious, he will be entitled to obtain an order for eviction under Section 14 (1) (b) whether or not the condition of the building not being a sine qua non for such eviction.

38. 26. In *Panchamel Narayana v. Basthi Venketesha*, (AIR 1971 SC 942), the argument advanced by the learned Counsel for the tenant was that the condition of the building must be such that it was immediately necessary to demolish it. The argument was repelled by the Supreme Court by observing that in considering the bona fide requirement of the landlord to put the property to a more profitable use after demolition and reconstruction was also a factor that might be taken into account in favour of the landlord. The Supreme Court further observed that in its opinion it was not necessary for the landlord to establish that the condition of the building was such that it required immediate demolition.

39. 27. In *S.M. Gopala Krishna Chetty v. Ganeshan*, (1975) 2 SCC 408 : (AIR 1975 SC 1750), the Supreme Court admitting the right of a landlord observed that a landlord had every right to demolish his property in order to make a new construction on the site with a view to improve his business and to get better utilization of his investments, and such a step per se could not be characterized as mala fide on the part of the landlord.'

40. In the case of *Gur Prasad v. First Addl. District Judge, Kanpur and Anr.*, reported in 1997 (1) A.R.C. Page 462, it has been held:-

'The learned Judge has categorically held that if 'the building is required for personal occupation of the landlord whether in its existing form or after demolition and new construction, the case will be covered by clause (a) of Section 21 (1)'. The learned Judge has also not held that the building which is in dilapidated condition and which needs demolition and new construction cannot be released under clause (a) even if the landlord bona fide requires it for his own occupation after demolition and new construction. In the case of *Hans Raj Sharma* '(supra), the landlord's application under Section 21 (1) was rejected by the Prescribed Authority and the appeal filed by him before the learned District Judge was dismissed on the ground that his application is barred by first proviso to Section 21 (1) as the period of three years has not elapsed since the date of purchase of the building by the landlord. This Court treated the landlord's application as the one failing under clause (b) and therefore, held that the first proviso to Section 21 (1) will not apply to such a case. The controversy which we are called upon to decide

in the instant case was neither raised nor decided by the learned Judge in the case of Hans Raj Sharma (supra). Any observation made or impression given by the learned Judge is that case which is contrary to what is contained in this Judgment stands over-ruled.

41. 7. Our answer to the question referred to is as under:--

'The need of the landlord under Section 21 (1) (a) can be considered even if the landlord had pleaded that the building is in dilapidated condition and requires demolition and new construction.'

COMPARATIVE HARDSHIP

42. The landlord in his affidavit has stated that there is no hardship to the tenant No. 1/1 to 1/3 and 3, if the shop is released in favour of the landlord. There is a building of five shops in front of shops of tenant No. 1/1 to 1/5 and 3, all are of tenant No. 1/1 to 1/5 and 3 and after eviction from the shop in question, there is no hardship to them. The paragraph to that effect is quoted below:-

^;g fd mDr nqdku ds fdjk;snkj foi{kh la[;k 1@1ls 1@5 foi{kh la[;k 3 dks mDr nqdku dk izkFkhZ Hkou Lokeh ds i{k esa fueqZfDr djus ls dksbZ gkMZf'ki ugha g SA foi{kh la- 1@1ls 1@5 o foi{kh la[;k 3 fdjk;snkj mDr nqdku ds ikl mDr nqdku ds Bhd lkeus 5 nqdkuksa dk ,d Hkou gS ftlesa lHkh foi{kh la[;k 1@1ls 1@5 o foi{kh la[;k 3 ds ikl gSa vkSj mDr nqdku lscsn[kyh ij dksbZ gkMZf'ki foi{kh la[;k 1@1 ls 1@5 o foi{kh la[;k 3 dks ugha g SA**

43. It has been stated in the affidavit (Paper No. 78 Ka) that in front of the shop in dispute there is a huge building of the petitioners consists of five big shops towards the road, which are in possession of the petitioners whereas the landlord has no other place or shop instead of shop in question, where he can do his business after his requirement. Paragraph 26 of the affidavit is quoted below:-

^;g fd iz'uxr nqdku ds lkeus mkjnrk foi{khx.k ds ikl cgqr cM+k Hkou miyC/k gS ftlesa lM+d dh vksj ikap cM+h nqdkusagSa tks mkjnrk foi{khx.k ds dCts esa gSaA izkFkhZ ds ikl iz'uxr nqdkus vfrfjDr dksbZ ,slk LFkku vFkok nqdku miyC/k ugha gS tgka izkFkhZ lsokfuokgksus ds ckn viuk O;olk; dj ldsA iz'uxr nqdku esa foi{kh

la[;k 1@3tks dkjksckj dj jgk gS o iz'uxr nqdku ds lkeus fLFkr Hkou esa ftlesa 5
cM+hnqdkusa miyC/k gSa rFkk tks mkjnkrk foi{kx.k ds dCts esa gS rFkk ftuesals
nks nqdkus fJDr voLFkk esa gSa esa lqfo/kkiwoZd f'k QV dj ldrk g SA iz'uxrnqdku
ls ;fn mkjnkrk foi{kx.k dks csn[ky fd;k tkrk g SA foi{kh dks dksbZgkMZf'ki ugha
gksxhA mkjnkrk foi{kx.k ds LOkfeRo o v;/klu okyh ikapnqdkusa] nqdku la[;k 382]
383] 384] 385 o 386 Mkdjk cktkj nsgjknwu tks esu jksMij fLFkr g SA nqdku la[;k
384 o 385 esa foi{kh la[;k 1@2diM+s o tujy eps ZUV dk dkjksckj dj jgk gS rFkk
nqdku la[;k 386 Mkdjk cktkj esafoi{kh la[;k 1@1 ls 1@5 dkizsl dk dkjksckn py jgk g
SA nqdku 382 o 383 Mkdjk cktkj nsgjknwu foi{kh la- 1@3ds dCts esa fJDr voLFkk
esa miyC/k g SA foi{kh la[;k 1@1xM+h d SUV esa LorU=k :i ls QkStH VSUV gkml
ds uke ls VSUV gkml o dkdjh dkdjksckj dj jgk g SA bl ds vfrfJDr Hkh mkjnkrk
foi{kx.k ds ikl fJDrvoLFkk esa LFkku miyC/k g SA bl izdkj foi{kx.k ls dksbZ
gkMZf'ki iz'uxr nqdku lscsn[ky djus ij ugha gksxhA**

44. So far as the comparative hardship is concerned, it has come on the record that various properties are available to the petitioners whereas the disputed property alone belongs to respondent No. 2 as will appear from the following passage of the Prescribed Authority:-

^tgka rd rgyuukRed dfBukbZ dk iz'u gS izkFkhZus vius izkFkZuk i= d ds iSjk 9
esa dgk gS fd fookfnr nqdku ds Bhd lkeusfoi{kx.k 1@1 rk 1@5 loafoi{kh la[;k 3 dh
ikap nqdkus gSa vkSj Hkou gSa tks lHkh foi{kx.k ds ikl gS vr%csn[kyh ls mUgsa
rgyukRed dfBUkbbZ izkFkhZ dh vis{kk T;knk gksrh g SA blfoi{kx.k 1@1 rk 1@4
us viusvkifk i= 27 d ds iSjk 9 esa ;g dgk fd izkFkhZ dk vius izkFkZuki= dhpj.kla[;k 9
esa dFku vLR; gS fd iz'uxr lEifk ds lkeus ikap nqdkus vkSjHkou gSa vkSj foi{kh dks
dksbZ ijs'kkuh u gksA tcfd foi{kh la[;k 1@3fooknfr lEifRr esa O;kikj dj jgk gS vkSj
mls ikl vU; dksbZ lEifRr ugha gSaAeSa ikrk gwa fd izkFkhZ pUnz'ks[kj us vius
'kiFki= 78 d esa iSjk 26 esaLi'V dkg gS fd foi{kx.k ds LokfeRo ,oa dCts esa ikap
nqdku 382] 383] 384vkSj 386 gSaA ftlesa nqdku la[;k 385 vkSj 383 Mkdjk cktkj
foi{kh la[;k 1@3ds dCts esa fJDr voLFkk esa miyC/k g SA ftlesa og O;kikj dj ldrk g
SA eSa ikrkgwa fd bl foi{kh la[;k 1@3 jesa'k pUnz us visu 'kiFki=84 d nkf[ky fd;kA
ftlds iSjk 38 esa ;g dgk fd lEifRr la[;k 382 bl foi{kh la[;k1@3 dk vkokl gS vkSj
vkoklh; lEifRr gS rFkk lEifRr la[;k 383 dSyk'kpUnz dk fuokl g SA eSa ikrk gwa fd ;fn
;g foi{kh ;g le{krk Fkkfd lEifRr la[;k 382 vkSj 383 Mkdjk cktkj esa dksbZ nqdku ugha

gS vkSj izkFkhZHkwry ij nqdku crk jgk gS rks bl IEifRr dk uD'kk nkf[ky dj ldrk Fkk vkSjU;k;ky; dks ;g fn[kk ldrk Fkk fd bl IEifRr esa Hkwry ij dksbZ nqdku ugha gSAfdUrq foi{kh la[;k 1@3 esa ,slk ugha fd;kA Li'VgS fd foi{khx.k dk ;g dFku xyr gS fd muds ikl 482 vkSj 483 esa bu foi{kh la[;k1@3 }kjk O;kikj djus ds fy, dksbZ [kkyh txg miyC/k ugksA vr% e SA fu;r djrk gwa fd rgyukRed dfBukbZ izkFkhZ ds gd esa gSaA pwfmdlds ikl dksbZ txg fookfnr nqdku ds vykok O;kikj djus gsrq miyC/k ugah gS]tcfD foi{khx.k ds ikl fookfnr IEifRr ds lkeus gh ikap nqdku g SA ftlesa IEifRrla[;k 482] 483 ds Hkwry ij nqdku gksuk lkfcr g SA blds vfrfjDr e SA fu;r djrkgwa fd ;g dsl lu~ 1988 ls py jgk gS foi{kh us dgh ;g lkfcr ugha fd;k mlusoSdfYid O;oLFkk nqdku dh djus ds fy, D;k iz;Ru fd;s] foi{khx.k ikap nqdkuscukdj mlesa O;kikj djrk jgs vkSj izkFkhZ viuh nqdku gksus ij Hkhln~Hkkoukiw.kZ vko';drk ds vk/kkj ij Hkh [kkyh u dj;sa,slh voLFkk eSa ikrk gwa fd rgyukRed dfBukbZ izkFkhZ ds gd esa gS vkSj nqdku [kkyhu gksus ls mls gh vR;f/kd vlqfo/kk gksuh gS] tcfD foi{khx.k dh rgyukReddfBukbZ nqdku [kkyh gksus dh fLFkfr esa izkFkhZ ls de gksxhA**

45. The Appellate Authority has also confirmed the same.

46. Rule 16 of the Act No. XIII of 1972 has been interpreted in the case of Munni Lal Gupta v. 7th Additional District and Sessions Judge, Aligarh reported in 1997 (1) A.R.C. 301. After relying upon the judgment of Rajendra Kumar Gupta v. Gopal Krishan and Ors., AIR 1995 Allahabad 82 : 1994 (2) ARC 11, it has been held that suitable alternative accommodation, which may become available on an effort being made in that direction is also a factor to be considered and want or earnest efforts in looking for suitable alternative accommodation, disentitles protection given to the tenant while considering the comparative hardship of the parties. The observations in the decision of Munni Lal Gupta (supra) are quoted below:-

'A suitable alternative accommodation which may become available on an effort being made in that direction is also in the comprehension of the expression and in the facts and circumstances of the case, it has been held that the petitioner was wanting in earnest efforts in looking for suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretched. In Rajendra Kumar Gupta v. Gopal Kishan and Ors., AIR 1995 All. 82 : 1994 (2) ARC 11, it has been held by Sudhir Narain, J. and I

concur with the view taken therein that 'one of the principles for considering comparative hardship of the parties is to find out as to whether the tenant had made a sincere efforts to find out alternative accommodation and had placed materials before the authorities to come to their conclusions that he made such an effort'. The fact that earlier application for release, met the fact of rejection some 10 years ago, could not be projected backward to operate as an obstacle in the way of release application being allowed as with the passage of time, the situation has undergone considerable change. Indubitable, landlord Sanjai Gupta did his M.A. after rejection of the earlier applications and his failure to secure employment for himself, lends cogency to his moving the present application.'

47. In the case of *Sushila v. Ind Additional District Judge, Banda and Ors.* reported in 2003 (1) AIR Page 256 : 2003 SCFBRC 109 : 2003 (1) ARC 256, it has been held as under:-

'A bare perusal of Rule 16 of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Rules, 1972, makes it clear that the rule only prescribes certain factors which have also to be taken into account while considering the application for eviction of a tenant on the ground of bonafide need. Sub-rule (2) of Rule 16 quoted earlier relates to the cases of eviction from an accommodation for business use. Clause (1) of sub-rule (2) provides greater the period of tenancy less the justification for allowing the application; where as according to Clause (b) in case tenant has a suitable accommodation available to him to shift his business. Greater the justification to allow the application. Availability of another suitable accommodation to the tenant, waters down the weight attached 'to the longer period of tenancy as a factor to be considered as provided under clause (a) of sub-rule (2) of Rule 16. Yet another factor which may in some cases be relevant under clause (c) is where the existing business of the landlord is quite huge and extensive leaving aside the proposed business to be set up, there would be lesser justification to allow the application. The idea behind sub-clause (c) is apparent i.e. where the landlord runs a huge business eviction may not be restored to for expansion or diversification of the business by uprooting a tenant having a small business for a very period of time. In such a situation if eviction ordered it is definitely bound to cause greater hardship to the tenant.

48. Further there being no material on record to indicate that the petitioners have made any effort to search out the accommodation during the pendency of the case. This factor also goes against the petitioners.

49. In the case of Bhagwan Das v. Smt. Jiley Kaur and Ors. reported in 1991 (1) ARC Page 377, the Apex Court has held as under:-

'Thirdly, it was a case where was even this additional circumstance that the appellant had brought no material on record to indicate that at any time during the pendency of this long drawn out litigation he made any attempt to seek an alternative accommodation and was unable to get. In Mst. Bega Begum v. Abdul Ahad Khan, (1979) 1 SCC 273 : 1986 SCFBRC 346 (SC), it was held that in deciding the extent of the hardship that may be caused to one party or the other, in case a decree for eviction is passed or is refused, each party has to prove its relative advantages or disadvantages and the entire onus cannot be thrown on the plaintiffs to prove that lesser disadvantages will be suffered by the defendants and that they were remediable.'

FINDINGS OF FACT .

50. The writ petition is concluded by findings of fact as held in Surya Dev Rai v. Ram Chander Rai and Ors. as referred in State of U.P. v. Special Judge Sitapur and Ors., 2004 (1) ARC Page 519 Para 7 is quoted below:

'In Surya Dev Rai v. Ram Chander Rai and Ors., JT 2003 (8) 465 : 2003 SCFBRC 512 : 2003 (2) ARC 385, it has been held by the Supreme Court that neither in the writ of certiorari nor in supervisory jurisdiction under Article 227 of the Constitution, mere errors of fact or of law cannot be corrected unless it is found that the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and a grave injustice or gross failure of justice has occasioned thereby. Since the writ petition has been filed by taking new pleas which have never been taken earlier in the litigation between the parties, I am of the view that the writ petition is to be dismissed.'

51. Relying upon the earlier judgment in the case of Surya Devi Rai v. Ram Chander, SCC 2003 Vol. 6 Page 675 : 2003 (2) ARC 385 the Apex Court has held in the case of Ranjit Singh v. Ravi Prakash (2004) 3 Supreme Court Cases 682 : 2004 (1) ARC 613 as below:-

In Surya Dev Rai v. Ram Chander Rai this Court has ruled that to be amenable to correction in certiorari jurisdiction, the error committed by the Court or authority on whose judgment the High Court was exercising jurisdiction, should be an error which is self-evident. An error, which needs to be established by lengthy and complicated arguments or by indulging in a long-drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution also, it has been held in Surya Devi Rai that the jurisdiction was not available to be exercised for indulging in re-appreciation or evaluation of evidence or correcting the errors in drawing inferences like a Court of appeal. The High Court has itself recorded in its judgment that- 'considering the evidence on the record carefully' it was inclined not to sustain the judgment of the appellate Court. On its own showing, the High Court has acted like an appeal Court which was not permissible for it to do under Article 226 or 227 of the Constitution.'

52. In the case of Munni Lal and Ors. v. Prescribed Authority and Ors., 1981 ARC 470, the Apex Court has held as under: -

'There can be no doubt that a finding that the need of the respondent No. 3, landlord, was greater than that of the appellant-tenant, is a finding of fact and when the High Court has refused to interfere with the finding of fact, we cannot find fault with the High Court even if the findings were wrong on the evidence before the Court. It is not for the High Court in exercise of its jurisdiction under Article 226 of the Constitution reappraise the evidence and come to its own conclusion which may be different from that reached by the District Judge or the Prescribed Authority. We do not, therefore, see any reason to interfere with the decision of the High Court.'

53. In the case of India Pipe Fitting Co. v. Fakruddin M.A. Baker and Anr. reported in 1978 ARC 224 : 1978 AIR (SC) Page 45, the Apex Court has held as under: -

'The limitation of the High Court while exercising power under Article 227 of the Constitution is well settled. Power under Article 227 is one of judicial superintendence and cannot be exercised to upset conclusions of facts however, erroneous those may be. it is well settled and perhaps too late in the day to refer to the decisions of the Constitution Bench of this Court in Waryam Singh v. Amarnath, 1954 SCR 565 ; (AIR 1954 SC 215) where the principles have been clearly laid down as follows:- (at p. 217 of AIR).

'This power of superintendence conferred by Article 227 is. As pointed out by Harris C.J., in Dalamia Jain Airways Ltd. v. Sukumar Mukherjee, AIR 1951 Cal 193 (SB) to be exercised most sparingly and only in appropriate cases in order to keep to Subordinate Courts within the boundary of their authority and not for correcting mere errors.'

54. In the case of Bhola Nath Verma v. Vth ADJ, Kanpur Nagar reported in 2002 (1) ARC Page 78, the Bench of Allahabad has held as under:-

'The another decisions relied upon by learned Counsel for the respondent-landlord are reported in 2001 (1) Allahabad Rent Cases, 176, Pradeep Kumar Rastogi v. XVIth Additional District Judge, Meerut and 2 Ors.; AIR 1983 SC 535, Smt. Labhkumar Bhagwani Shaha v. Jaradan Mahadeo Jalan, AIR 1975 SC 1296, Babhutmal Raichand v. Laximbai and AIR 1974 SC 1996, Nattul Lal v. Radhey. In AIR 1974 SC 1696, it has been held 'High Court under Article 226 of the Constitution has no power to reappraise evidence and to record its own finding.' In AIR 1975, SC 296 the Hon'ble Supreme Court held that 'the High Court has no jurisdiction under Article 227 to reconsider the evidence.'

55. The law laid down in this case is applied to the facts to the present case under Article 226 of the Constitution as well. This Court in the case of Ram Rakesh Pal and Ors. v. 1st Additional District Judge and Ors., reported in 1976 UPRCC, 376, has held that 'the question of bona fide requirement of the premises as well as that of comparative need are questions of fact and, therefore, High Court has no power

to correct the question of fact even if erroneously decided.' A reference may also be made to the decision of this Court in the case of Jagan Prasad v. District Judge and Ors., reported in 1976 UPRCC, 342; Laxmi Narain v. IInd Additional District Judge and Ors., reported in 1977 UPRCC 230; and Smt. Nirmala Tandon v. Xth Additional District Judge, Kanpur Nagar, reported in 1996 (2) ARC 409, the matter has recently been considered by the Apex Court in the case of Kamleshwar Prasad v. Pradumanjuu Agarwal, reported in 1997 (1) ARC 627, wherein it was held that 'under the Act, the order of the Appellate Authority is final and the said order is a decree of the Civil Court and a decree of a competent Court having become final cannot be interfered with by the High Court in exercise of its power of superintendence under Articles 226 and 227 of the [Constitution of India](#) by taking into account any subsequent event which might have happened. That apart, it was further observed that the fact that the landlord needed the premises in question for starting a business which fact has been found by the Appellate Authority, in the eye of law, must be that on the day of application for eviction, which is the crucial day, the tenant incurred the liability of being evicted from the premises. The finality of the decisions cannot be disturbed on account of any subsequent events on a petition under Article 226 of the [Constitution of India](#).' The view has been endorsed by the Apex Court in the case reported in AIR 2001 SC 807 : 2001 (1) ARC 352, Gaya Prasad (supra).'

56. In view of the aforesaid I find no merit in the writ petition. The findings of fact recorded by both the Courts below cannot be interfered under Article 226/227 of the [Constitution of India](#).

57. However, in view of the facts, the petitioners are granted time by 31st March, 2005 to vacate the premises provided undertaking is given before the trial Court by 31st December, 2004.

58. Consequently, writ petition is dismissed. No order as to costs.