

Rajendra Kumar and ors. Vs. A.D.J. and ors.

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Court : Rajasthan

Decided On : Jun-29-2009

Reported in : RLW2010(1)Raj39; 2009(3)WLN113

Judge : Dinesh Maheshwari, J.

Appellant : Rajendra Kumar and ors.

Respondent : A.D.J. and ors.

Advocate for Def. : Mr. R.K. Thanvi

Advocate for Pet/Ap. : Mr. M.C. Bhoot

Judgement :

Dinesh Maheshwari, J.

1. The application seeking immediate order for ejectment of the tenants from the demised premises (Case No. 1/1997: Old No. 10/1996) as made by the respondent No. 3 (hereinafter also referred to as 'the applicant' / 'the landlord') on 10.06.1996 with reference to the provisions of Section 16 of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (hereinafter referred to as 'the Act' / 'the Act of 1950') came to be allowed by the Additional District Magistrate, Banswara on 13.05.1997 making an order for ejectment of the tenants from the suit premises. The order so passed on 13.05.1997 was challenged by the tenants

under Section 16(11) of the Act of 1950 in Civil Revision Petition No. 1/2005 that came to be dismissed by the Additional District Judge, Banswara by the impugned order dated 15.12.2005. Aggrieved, the tenants in the first place preferred a regular first appeal (CFA No. 77/2006) that was dismissed by this Court on 12.05.2006 as being incompetent. The petitioners-tenants (the non-applicants Nos. 1 to 3) have thereafter challenged the aforesaid orders dated 13.05.1997 and 15.12.2005 by way of this writ petition.

2. The relevant facts and the background aspects of the matter could be taken into comprehension thus: The respondent No. 3 had been a member of the armed forces of the Union; and owns immovable property situated at Pipali Chowk, Mahatma Gandhi Road, Banswara, a part whereof had been let out to the petitioners. On 25.01.1993, the respondent No. 3 moved an application (Annex.1) under Section 16 of the Act of 1950 seeking the order for ejectment of the tenants from the premises in question on the grounds that after serving the Indian Navy, he had retired on 15.01.1976 from the post of Chief Electrician (Power); and that after retirement, for the purpose of subsistence, he took upon the engagement in National Engineering Industries Limited, Jaipur but retired therefrom in the month of August 1990 and thereafter, has settled at Banswara, his birth place. While stating the extent of properties held by him and the expanse of his family, said to be comprising of two sons, daughter-in-law, two daughters of the son, and two sons of the daughter, the applicant averred that his son Manoj had been carrying on business in one of the ground floor shops and the other shop was with the tenants; and that his other son was of marriageable age. The applicant alleged that he was finding it difficult to reside at the upper floor and thus, intended to use the demises premises for his residence after carrying out the necessary alterations. The applicant also produced a copy of the certificate issued by the Zila Sainik Board, Udaipur on 30.11.1992, certifying his bona fide requirement.

3. The application so moved by the respondent No. 3 was put to contest by the tenants and came to be rejected by the District Magistrate, Banswara by his order dated 31.03.1994 (Annex.3) essentially on the consideration that the applicant had retired on 15.01.1976 and as per Section 16(1)(a)(i) of the Act of 1950, the application was required to be moved within one year; and the same having been

filed after 16 years was barred by time. The learned District Magistrate also referred to the fact that the tenants had only 78 square feet of area with them that was about 8.73 per cent of 892 square feet of the area available with the applicant; and so also to the report dated 26.07.1993 as submitted by the Sub-Divisional Officer, Banswara and pointed out that there were no such comments that the tenants were definitely required to be evicted.

4. The aforesaid order dated 31.03.1994 was questioned by the respondent No. 3 before the District Judge, Banswara, who proceeded to deal with the matter in a so-called appeal (No. 10/1994) though the decision on the application under Section 16 of the Act of 1950 is not open to appeal as such; and as per Sub-section (11) of Section 16 of the Act of 1950, the District Judge could call for the record of the proceedings decided by the District Magistrate for the purpose of satisfying himself about legality of the order made by the District Magistrate and such powers are essentially of revision, as stated in Sub-section (12) of Section 16 of the Act. Be that as it may, the learned District Judge proceeded to decide the matter by his order dated 17.11.1995 (Annex.4) with the observations that the application, when filed under Section 16 (1)(a)(i) of the Act of 1950, was barred by limitation with reference to the year of retirement of the applicant-landlord, i.e., 1976. It was, however, submitted on behalf of the applicant that he had not filed the application under Section 16 (1)(a)(ii) of the Act of 1950 and the observations as made by the District Magistrate might create hurdle in his moving another application under the said provision to which, the learned District Judge observed that the applicant would be free to file the application afresh on the ground mentioned in Section 16(1)(a)(ii) of the Act of 1950.

5. It appears that the respondent No. 3 thereafter obtained a certificate, issued in the month of February 1996 (Annex.5), from the Lt. Cdr. At Arms, Staff Officer (GB), certifying that he had retired from Indian Navy with effect from 14.12.1965 and that he required his own premises for personal use in terms of Section 16(1)(a)(ii) of the Act of 1950; and, on the basis of this certificate, proceeded to submit the present application on 10.06.1996 (Annex.6). While expanding on the grounds as stated in the earlier application but pointing out that he retired from active service on 14.12.1965 and finally retired on 14.12.1975 after completing 10

years of reserve service, the applicant submitted that the premises in question were let out to the father of the non-applicants Nos. 1 to 3 on 06.12.1962 when the applicant was in active service; and that the tenant sub-let a part of the premises to the father of the respondent No. 4, who later on started making payment of rent directly to him. The applicant submitted that the requisite certificate having been issued by the concerned authority about his personal requirement of the suit premises and such certificate being conclusive, no other evidence was required to be adduced; and prayed for issuance of the order for ejectment of the tenants.

6. On being served with the notice on the application so moved, the tenants proceeded to submit, on 22.07.1996, their reply-cum-application seeking leave to contest (Annex.7) with the submissions, inter alia, that the applicant had, in fact, retired on 15.12.1975 and thereafter had been in a private job until the year 1990 that was not co-related with his naval services; and that the applicant was residing comfortably in his elder son's house and the suit premises were not required for his use and occupation. It was also submitted that the nonapplicants Nos. 1 to 3 were having the premises only of 6 x 7 ft. size whereas the non-applicant No. 4 had the premises only of 3 x 4 ft. size and on the other hand, the applicant was having various other premises vacated by the other tenants. The tenants submitted that the premises in question had been constructed only for commercial purposes, had never been used for residence, and were not likely to be used for residence. While submitting that the applicant was not entitled to the order for ejectment on the basis of the certificate now obtained by him, the tenants also alleged that the similar nature application having been dismissed earlier, the present application was barred by res judicata and the claim of relief herein was also barred by the principles of Order II Rule 2 of the Code of Civil Procedure (CPC).

7. It is noticed from the record of the proceedings that after filing of the above referred reply-cum-application for leave to contest by the tenants on 22.07.1996, the matter was posted for evidence but without specific order granting leave to contest. However, on 26.08.1996, the applicant proceeded to move an application stating that the certificate as produced by him was that of conclusive evidence and the non-applicants having failed to seek and obtain the leave to contest, the order

for ejectment was required to be passed immediately. Upon moving of such an application by the landlord, the learned District Magistrate, Banswara observed, on 28.10.1996, that the matter having already been fixed for evidence, it would not be proper to deny the parties the right of adducing evidence.

8. The matter was thereafter proceeded in evidence but, on 17.03.1997, was transferred to the Additional District Magistrate, Banswara ('the ADM' / 'the Magistrate' hereafter), who had ultimately decided the application by his impugned order dated 13.05.1997 (Annex.8). The learned ADM considered the questions about maintainability of the application particularly for dismissal of the earlier application on 31.03.1994; but with reference to the order as passed by the District Judge, Banswara on 17.11.1995, observed that the applicant having been held entitled to move afresh under Section 16(1)(a)(ii) of the Act of 1950, the present application was not incompetent. The learned ADM further rejected the contention that Section 137 of the Limitation Act would apply and did not agree that the application was barred by limitation with the observation that no limitation as such was provided for filing an application under Section 16(1)(a)(ii) of the Act of 1950. The learned ADM also considered the submissions on the part of the tenants questioning the requirement as alleged but held such contentions untenable for the over-riding provisions of Section 16 of the Act of 1950. The learned ADM observed that the applicant retired from active service on 14.12.1965 and from reserve service on 14.12.1975; that the certificate (Annex.5) referred to the applicant only and there was no any doubt about its validity and correctness; and that in view of the provisions contained in Sub-section (3) of Section 16 of the Act of 1950, there was no reason to reject the facts stated in the certificate produced by the applicant. Accordingly, the learned ADM proceeded to allow the application moved by the respondent No. 3 and issued the consequential order for ejectment.

9. The revision petition taken by the tenants against the aforesaid order dated 13.05.1997 has been considered and dismissed by the learned Additional District Judge, Banswara by the impugned order dated 15.12.2005 (Annex.12). The learned Additional District Judge referred to the facts of the case and to the grounds as stated in the revision petition and, while rejecting the contention that the application was barred by limitation and while further holding that the

application was not barred by res judicata, the learned Additional District Judge observed that the fact having been proved from the certificates about the applicant's retirement from naval services after letting out the premises, his bona fide requirement could not be doubted; and held that the order passed by the subordinate Court, being not vitiated for any illegality, impropriety or irregularity, called for no interference.

10. As noticed at the outset, seeking to challenge the orders aforesaid, the petitioners earlier preferred a regular first appeal (CFA No. 77/2006) that was dismissed by this Court as not maintainable on 12.05.2006. The petitioners have thereafter questioned the orders aforesaid by way of this writ petition. This petition was admitted for consideration on 07.08.2007 and, having regard to the circumstances of the case, the relevant records have been requisitioned; and the learned Counsel for the parties have been heard at length.

11. Learned Counsel Mr. M.C. Bhoot appearing for the petitioners has in the first place laid emphasis on the submissions that the proceedings for ejectment as adopted against the petitioners remain wholly without jurisdiction. The learned Counsel submitted that admittedly the landlord retired from his service with the Union as back as on 14.12.1965 and his reserve services thereafter could not be counted as regular services but in any case, admittedly, the landlord did join a private job after retirement and continued with such private job for good 15 years before seeking the order for ejectment under Section 16 of the Act. According to the learned Counsel, for his having lastly retired from a private job, the landlord does not fall within the category of the persons for whose benefit has Section 16 been incorporated in the Act of 1950; and the application for eviction ought to have been rejected.

12. Learned Counsel next contended that in the scheme of Section 16 of the Act of 1950, the period of one year as referred in Clause (i) of Sub-section (1) (a) of Section 16 ipso facto applies to its Clause (ii) too; and when the earlier application moved by the landlord was rejected as time barred, the present application moved later could not have been considered within limitation. Learned Counsel submitted in the alternative that if at all it be taken that the limitation as such has not been

provided for an application under Clause (ii) of Section 16 (1) (a), it would at the most be of three years per Article 137 of the Limitation Act because in any case, the provisions of the Limitation Act are not done away with for the purpose of the application under Section 16 of the Act. Learned Counsel submitted that by their very nature, when the proceedings are meant for immediate recovery of possession of the premises, they have to be adopted at the earliest and in any case, cannot be considered maintainable when taken up more than 15 years after the date of retirement even from reserve services.

13. The learned Counsel further submitted that the earlier order dated 31.03.1994 operates *res judicata* for all practical purposes and the repeat application made merely with change of reference to the statutory provisions ought to have been rejected; and that in any event, the present application remains barred by the principles of Order II Rule 2 CPC.

14. The learned Counsel further submitted that for the purpose of passing of an order under Section 16(1)(a)(ii) of the Act, the requirement of the landlord is required to be established; and in this regard, even in the earlier order dated 31.03.1994, the findings had been recorded against the landlord and it was found not to be a case of pressing need. Learned Counsel contended that the subordinate Courts have acted illegally in assuming the certificate as produced by the landlord to be conclusive for all purposes and have failed to consider that once the tenants-petitioners were granted the leave to contest, the conclusiveness as attached to the certificate was lost and at any rate, the certificate was very much open to rebuttal. The learned Counsel elaborated on the submissions that in the scheme of Section 16, the tenant could seek leave to contest by showing the facts that would disentitle the landlord from obtaining the order for ejectment and once the leave is granted, by necessary implication, the certificate becomes subject of rebuttal and then, the alleged requirement could be examined only on the basis of evidence on record. The learned Counsel contended that in the present case, the order for ejectment cannot be sustained for having been issued merely with reference to the certificate produced by the landlord and without considering the other material on record.

15. Per Contra, learned Counsel Mr. R.K. Thanvi appearing for the respondent-landlord submitted in the first place that the arguments sought to be canvassed and developed in this writ petition questioning the requirement of the landlord remain foundationless and the attempt on the part of the petitioners to assert new grounds cannot be countenanced. With reference to the contents of the order dated 13.05.1997 as passed by the Additional District Magistrate, Banswara, the learned Counsel contended that the submissions on the part of the petitioners had essentially been that the earlier decision dated 31.03.1994 operated as res judicata and the other arguments beyond such submissions, particularly those relating to the merits of the grounds of eviction, cannot be raised in the writ petition. The learned Counsel further referred to the impugned order dated 15.12.2005 and submitted that the requirement of the landlord was not questioned as such even before the Revisional Court and any argument in that regard does not deserve consideration in this writ petition, it being not in the nature of an appeal or revision. The learned Counsel strenuously urged that the ground as suggested by the petitioners does not deserve any consideration and then, the requirement as suggested by the landlord having gone unrebutted, the order for ejectment requires no interference. The learned Counsel has referred to and relied upon the decision of the Hon'ble Supreme Court in the case of Shamshad Ahmed and Ors. v. Tilak Raj Bajaj (deceased) through LRs and Ors. 2008 (2) RCR 346. The learned Counsel also submitted that the application as moved by the respondent No. 3 was neither barred by the principles of res judicata nor by the principles of Order II Rule 2 CPC; and has referred to the decisions in Deva Ram and Anr. v. Ishwar Chand and Anr. 1995 DNJ (SC) 454 and State of Maharashtra and Anr. v. National Construction Company and Anr. 1996 DNJ (SC) 46.

16. The learned Counsel for the contesting respondent further submitted that the contentions as urged in relation to limitation remain untenable because the requirement of the premises for personal use is essentially that of a recurring cause of action; and referred to the decision of the Hon'ble Supreme Court in the case of N.R. Narayan Swami v. B. Francis Jagan 2001 (2) Apex C 1.

17. Learned Counsel yet further submitted that even if the landlord had taken up some private job after his retirement from naval services, he did not cease to be

an ex-serviceman for the purpose of Section 16 of the Act. Learned Counsel contended that Section 16(1)(a)(ii) and Section 16(1)(a)(i) operate in different fields; and so far Section 16(1)(a)(ii) is concerned, the application seeking order for ejectment could be maintained upon fulfilling the basic conditions that the member of armed forces has retired any time prior to the insertion of such provisions, that there is no agreement or lease in writing subsisting at the time of making the application, that the premises have not been let after the date of retirement, and that the premises are required for the use and occupation of himself or his family. According to the learned Counsel, the application as moved in the present case being in accord and conformity with the requirements of Section 16 of the Act of 1950 and then, in the scheme of the provisions contained in Section 16, the certificate being of conclusive evidence, the subordinate Courts have not committed any illegality in passing and affirming the order for ejectment of the tenants; and there is no ground for interference by this Court in the writ jurisdiction.

18. The learned Counsel for the petitioners rejoined with the submissions that so far the requirement of the applicant is concerned, the learned Magistrate himself has observed that the applicant had not been able to establish the same by any other evidence; and it was only the certificate that was considered and taken as conclusive; and similar has been the approach of the learned Revisional Court. According to the learned Counsel, it cannot be said that the submissions as made before this Court questioning the requirement of the landlord were not as such urged before the subordinate Courts. The learned Counsel reiterated that in the present case, with the leave to contest having been granted, the certificate could not have been treated conclusive for all purposes; and the subordinate Courts having not properly appreciated the scheme of Section 16, the impugned orders deserve to be set aside.

19. The submissions as made by the learned Counsel for the parties have been given a thoughtful consideration and the records have been scanned through. It may be pointed out that looking to the questions arising for consideration, essentially relating to the provisions contained in Section 16 of the Act, the learned Counsel for the parties were heard over again on the scheme and scope of the

said provisions; and were posed the questions about the decided cases in that regard. Learned Counsel have placed for perusal before the Court two decisions: one, in the case of M.D. Rao v. Satish Augustin and Anr. 1995 DNJ (Raj.) 68 and another, in the case of Col. Raghveer Singh Choudhary v. The District Collector, Alwar and Anr. .

20. Having given an anxious consideration to the entire matter, this Court finds itself unable to approve the procedure as adopted in the present case and, for the fundamental error of approach on the part of the learned ADM and looking to the overall circumstances, it appears just and proper that the orders impugned be set aside and the matter be remanded for consideration afresh even though the proceedings relate to the application seeking immediate order for ejectment of the tenants under Section 16 of the Act of 1950 and had been instituted way back in the year 1996.

21. As the matter is proposed to be remanded to the learned ADM for consideration afresh, inexpedient it is to deal with and pronounce upon the objections as suggested on behalf of the petitioners regarding operation of the provisions of the Limitation Act, regarding bar of res judicata, and so also regarding operation of the principles of Order II Rule 2 CPC. Such arguments having been advanced before the Court and other aspects relating to the merits of case having surfaced on record, have only been noticed but without expression of final opinion thereupon. The matter, however, deserves to be remanded for the reasons as shall appear henceforth.

22. It has been contended on behalf of the petitioners that the learned subordinate Courts have proceeded illegally in assuming the certificate produced by the landlord to be conclusive for all purposes and have failed to consider that once the petitioners had been permitted to contest, by necessary implication, the said certificate was subject to rebuttal; and the alleged requirement of the landlord ought to have been examined on the basis of the evidence on record and could not have been taken concluded merely with reference to the said certificate. The submissions have been resisted on behalf of the contesting respondent firstly with the objections that such were not the contentions urged before the subordinate

Courts; and the requirement of landlord was not as such challenged even before the Revisional Court. It is also submitted that such contentions are beyond the scope of consideration of this Court under Article 227 of the Constitution of India. The objections as raised on behalf of the respondent cannot sustain themselves.

23. So far operation and scope of Article 227 of the Constitution of India is concerned, suffice is to say such powers of general superintendence are basically intended to keep the subordinate Courts/Authorities within the bounds of their authority and to ensure that they discharge their duties in a legal manner. Thus, the cases of erroneous assumption of jurisdiction, or refusal to exercise jurisdiction, or errors apparent on the face of the record, or violation of principles of natural justice, or arbitrary or capricious exercise of authority, or recording the findings that are perverse or without reasonable basis or patently unreasonable or the cases of like nature might call for interference by this Court when any such error leads to manifest injustice but then, exercise of supervisory jurisdiction has not been considered proper unless the order of the subordinate Court/Authority is found to be suffering from such fundamental flaws; and it remains settled that the power under Article 227 is an extra-ordinary one and is not intended to be a substitute for the ordinary revisional or appellate powers, as observed by the Hon'ble Supreme Court in Shamshad Ahmed's case (supra) that,-

Though powers of a High Court under Articles 226 and 227 are very wide and extensive over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is supervisory in nature. The High Court does not act as a court of appeal or a court of error. It can neither review nor reappreciate, nor reweigh the evidence upon which determination of a subordinate court or inferior tribunal purports to be based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior court or tribunal. The powers are required to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts and inferior tribunals within the limits of law.

24. It may, however be pointed out that in Shamshad Ahmed's case the appellate authority had recorded the finding that the requirement of the landlords for doing

business by the husband of the appellant No. 6 was bona fide and genuine; but the High Court, while considering the writ petition under Articles 226 and 227 of the Constitution of India, proceeded to set aside the order of eviction and to dismiss the application filed by the landlords with a brief order on irrelevant considerations and without even setting aside such findings on facts as recorded by the appellate authority; and such an order passed by the High Court was not approved by the Hon'ble Apex Court.

25. In the present case, evident it is that the order for ejectment is based only and solely on the certificate produced by the applicant. It is submitted by the petitioners that order for ejectment could not have been passed on the basis of the certificate alone while ignoring other material on record. Such contentions as urged on behalf of the petitioners strike at the very root of the legality of the proceedings as adopted; and, on the approach that led to the conclusion against the petitioners in the order dated 13.05.1997. A look at the order dated 13.05.1997 makes it clear that amongst other questions, the learned Magistrate was precisely aware of the questions as to whether the so-called certificate was valid and reliable and as to whether the ground of requirement of the demised premises for use and occupation by the applicant was required to be established despite existence of such a certificate. The learned Magistrate held the certificate reliable and having validly been issued in conformity with the requirements of Section 16 (3) of the Act; and thereafter, with reference to the phraseology of Sub-section (3) of Section 16, held that there was no option with him wherefor the facts as stated in the certificate be not accepted. The learned Magistrate also observed that the provisions of Section 16 were of over-riding effect and it was not expected of the Court to doubt the facts stated in the said certificate. Such considerations have weighed heavily with the learned Magistrate while rejecting the other contentions urged on behalf of the tenants despite noticing that the applicant had otherwise not been able to establish his bona fide requirement by any other proof.

26. While dealing with the revision petition preferred by the tenants, the learned Additional District Judge noted the contention in paragraph 4 of the impugned order dated 15.12.2005 to the effect that the entire proceedings before the Trial Court were unauthorised and contrary to law. The other contentions were also

taken note of that for his having retired from active service in the year 1965, the applicant was not entitled to the benefit of Section 16 of the Act; that the premises were let out for commercial purposes and were fit to be used only for commercial purposes and the requirement for residence as alleged was not bona fide. In the frame of the order passed by the learned Additional District Judge it could, of course, be suggested as if only two aspects of the matter called for determination, i.e., regarding bar of limitation and bar of res judicata but then, even after deciding such questions against the petitioners-tenants, the learned Judge ultimately held the order for ejectment justified for the retirement of the applicant from military services having been established from the certificates; and for, according to the learned Judge, there being no illegality, irregularity or impropriety in the order as passed by the learned Magistrate.

27. It is more than manifest that the order for ejectment in the present case had been made and sustained only on the basis of the certificate produced by the applicant. Thus, the question as to whether in the given fact situation and in the true operation of the provisions of Section 16 of the Act, the order for ejectment could have been made only on the basis of the certificate and the aspects related with such question cannot be said to be those of the questions posed for the first time or beyond the core of the submissions made before the subordinate Courts nor could be said to be of the questions not worth consideration in the writ jurisdiction.

28. Looking to the nature and implication of the application moved wherein an order was sought for ejectment of the tenants and looking to the submissions made, the questions deserve examination herein as to whether the procedure as adopted and the order as passed are in conformity with the scheme of the provisions contained in Section 16 of the Act; and are not vitiated for any fundamental flaw'

29. Apposite it shall be to notice the relevant provisions of Section 16 of the Act of 1950, as inserted by the Rajasthan Premises (Control of Rent & Eviction) (Amendment) Act, 1987, thus:

16. Right of landlord to recover immediate possession in certain cases- (1) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force or in any contract or usage, a landlord who was a member of the armed forces of the Union, his war widow or his other legal representatives shall, on an application being made in this behalf, be entitled to obtain an immediate order of ejectment of the tenant from the premises let out by such member and to recover immediate possession thereof on any of the following grounds, namely:

(a) that he has retired from service (which term shall include compulsory or voluntary retirement)-

(i) within a period of one year prior to the date of commencement of the Rajasthan Premises (Control of Rent and Eviction) (Amendment) Act, 1987, hereinafter in this section referred to as the said Act, or, as the case may be, the date of making of such application; or

(ii) at any time prior to the commencement of the said Act subject to there being no agreement of lease in writing concerning such premises subsisting at the time of making such application and such premises having not been let out to the present tenant on or after the date of such retirement;

and that such premises are required for the use and occupation of himself or his family members; or

(b) that she is the war widow of a member of the armed forces of the Union and such premises are required for the use and occupation of such war widow; or (c) that he is a legal representative (not being a war widow) of a member of the armed forces of the Union and such member has died during the course of employment within a period of one year prior to the date of commencement of the said Act or, as the case may be, the date of making of such application and that such premises are required for the use and occupation of such legal representative:

Provided that where the possession of the premises is so recovered and such premises are not occupied for a period of three months from the date of such

recovery for other than bonafide reasons or are again let out within a period of three years from such date, the tenant ejected from such premises shall, on an application being made in this behalf to the Magistrate making the order of ejectment, be entitled to the restoration of possession of such premises to him on the original terms and conditions and the landlord shall be liable to such fine not exceeding two thousand rupees as such Magistrate considers reasonable.(2) Nothing in Sub-section (1) shall be construed as conferring a right on a landlord owning in the same city or town two or more premises to recover the possession of more than one of them. The landlord shall in that case indicate the premises of which he intends to recover possession from the tenant.

(3) A certificate issued by the Head of the service in which the member of the armed forces was last employed or by his Commanding Officer to the effect that such member or his war widow or his other legal representative requires the premises for the use and occupation of himself or herself or the family members of such member on any of the grounds specified in Clause (a) or Clause (b) or Clause (c) of Sub-section (1) shall be conclusive evidence of the facts stated therein.

(4)(a) Every application by a landlord for ejectment of his tenant on any of the grounds specified in subsection (1) shall be made to the District Magistrate having jurisdiction in the area where the premises are situate and it shall contain the following particulars namely:

- (i) the names and particulars of the landlord and the tenant;
- (ii) sufficient description of the premises from which the tenant is to be ejected;
and
- (iii) the ground of eviction.

(b) A copy of the certificate obtained by the landlord under Sub-section (3) shall be attached to the application.

(c) The application shall be verified in the manner prescribed for verification of a plaint under the Code of Civil Procedure, 1908 (Central Act 5 of 1908)

(5)(a) The District Magistrate shall issue notice of every application referred to in Sub-section (4) to the tenant fixing a date for his appearance. The District Magistrate shall, in addition to and simultaneously with the issue of such notice, also issue a notice to be served by registered post, acknowledgement due, addressed to the tenant or his agent empowered to accept service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and may, if the circumstances of the case so require, also direct the publication of the notice in a newspaper having circulation in the locality in which the tenant is last known to have resided or carried on business or personally worked for gain.

(b) When an acknowledgement purported to have been signed by the tenant or his agent is received by the District Magistrate or the registered article containing the notice is received back with an endorsement purported to have been made by a postal employee to the effect that the tenant or his agent has refused to take delivery of the registered article, the District Magistrate may declare that there has been a valid service of the notice.

(6) The tenant, on whom the notice has been served (whether in the ordinary way or by registered post), shall not be entitled to contest the application for eviction unless he files an affidavit stating the grounds on which he seeks to contest such application and obtains leave from the District Magistrate as hereinafter provided. In default of his appearance in pursuance of the notice or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to have been admitted by the tenant and the District Magistrate shall forthwith make an order for ejectment of the tenant on the ground mentioned in the application.

(7) The District Magistrate may grant to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for ejectment on any of the grounds mentioned in Sub-section (1).

(8) Where leave is granted to the tenant to contest the application, the District Magistrate shall immediately commence the hearing on the application and shall

decide it, as far as practicable, within two months of such commencement.

(9) If the District Magistrate is satisfied that the ground on which ejectment is sought is correct, he shall make an order for ejectment of the tenant from the premises and for restoring immediate possession thereof to the landlord. If the District Magistrate is not satisfied regarding the correctness of the ground, he shall dismiss the application.

(10) If the District Magistrate allows the application and makes an order for ejectment of the tenant, he shall take immediate and suitable steps for the ejectment of the tenant from the premises and for the restoration of possession thereof to the landlord within a period of forty-five days and, for that purpose, may use or cause to be used such force as may be necessary.

(11) No appeal shall lie against an order for ejectment of the tenant made by the District Magistrate under this section:

Provided that the District Judge for the purpose of satisfying himself that an order made by the District Magistrate under this section is according to law, may call for the record of the case within thirty days of the order and make such order in respect thereto as he thinks fit.(12) Where no application has been made to the District Judge in revision, the District Magistrate may exercise the powers of review in accordance with the provisions of order XLVII of the First Schedule to the Code of Civil Procedure, 1908 (Central Act 5 of 1908).

(13) ...

(14) ...

(15) ...

30. It may be pointed out that Sub-section (13) that prohibits the claim of compensation by tenant where the landlord exercises the rights conferred by Sub-section (1) and of adjustment/refund of the excess rent, if received in relation to unexpired portion of contract; Sub-section (14) that permits transfer of the application moved by the landlord to and from an Additional District Magistrate;

and Sub-section (15) that makes the provision for the purpose of dealing with the suit or other proceedings, if instituted, by the landlord in a matter relating to ejectment and pending in a Court have been omitted hereinabove as being not relevant and of no bearing on the question involved in this case.

31. Before embarking on the questions involved herein pertaining to the relevant provisions of Section 16, appropriate it shall be to notice, in brief, the facts of and ratio from the two decisions aforesaid, rendered in relation to the proceedings under Section 16. In the case of Col. Raghuveer Singh (*supra*), while seeking leave to contest, the tenant even made a claim of ownership; and the District Magistrate proceeded to order impleadment of the concerned local authorities and the department as parties to the application. In a challenge to such an order made by the Magistrate, this Court observed that the proceedings under Section 16 are summary in nature and leave to contest is to be granted as per the affidavit and material placed by the alleged tenant and it is only after granting the leave to contest that the Magistrate could decide the matter as per the material available on record. This Court further observed that it was only after granting of leave that the application under Section 16(4) could be decided on merits but in any case, the Magistrate cannot convert the application into a regular suit; and the impugned order, suggesting as if the District Magistrate was going to enquire into the working of the departments concerned, was held beyond the scope of the inquiry in the application. This Court, therefore, set aside the impugned order and directed the Magistrate to decide the application seeking leave and then to proceed in accordance with law. The said decision, though not of direct application, does indicate that the application for leave to contest is to be decided on the basis of the affidavit and the material placed on record by the tenant; and after granting the leave to contest, the Magistrate is to decide the matter on merits on the basis of the material available on record. This Court said,-

6. Thus, it is evident that the proceedings under Section 16 are only summary proceedings and application under Section 16 cannot be decided as a regular suit. The District Magistrate has only to see that the applicant under Section 16 satisfies the conditions under Sub-section (1) and further if permission to defend is sought by the person on whom the notices have been served under Subsection (5)

of Section 16, the District Magistrate has to grant the permission as per the affidavit and material placed by the alleged tenant. It is only after leave to contest the application is granted, the District Magistrate may decide the matter as per the material available on record. In my opinion, it is only after leave to defend is granted by the District Magistrate, the application under Section 16 (4) can be decided on merits. It also goes without saying that looking to the rival claims of both the parties when even the ownership is being contested and tenancy is denied, the District Magistrate can always reject the application. Since in absence of any detailed procedure provided under the Act in regard to deciding applications under Section 16 as the same been only summary proceedings, the District Magistrate cannot convert the application into a regular suit.

32. The decision in M.D. Rao's case (supra) essentially relates to the scope of the powers of the District Judge under Sub-section (11) of Section 16. In the said case, while dealing with the application moved under Section 16, the concerned Magistrate proceeded to refuse the tenant's prayer for leave to contest by the order dated 04.12.1990. This order was challenged by the tenant in a revision petition that was allowed by the District Judge who proceeded to grant the prayer for leave to contest. The tenant, thereafter, filed his return to which the landlord desired to file a rejoinder; and such a request was allowed by the District Magistrate on 21.07.1992. This order was challenged by the tenant by way of another revision petition before the District Judge that was allowed on 05.03.1993 and the District Magistrate was directed to hear the application and to pass a reasoned order. The District Magistrate again proceeded to grant the request for filing of rejoinder by the order dated 06.07.1993 that was challenged in yet another revision petition. An objection was taken about the competence of such revision petition against the interlocutory order passed by the District Magistrate but the same was turned down; and the District Judge again allowed the revision petition on 19.03.1994. The order so passed by the District Judge was in challenge before this Court.

33. This Court examined the scheme of the provisions of Section 16 of the Act and pointed out, inter alia, that under Sub-section (6), the tenant on whom the notice had been served is not entitled to contest the application unless filing affidavit

stating the ground on which he seeks to contest; that only under the given situation the Magistrate could consider, in his discretion, whether to grant or not to grant the leave to contest; and that the contents of the affidavit should be making out a case against the entitlement of the landlord to seek the order for ejectment.

34. This Court further pointed out that the emphasis of the provisions is on the decision with utmost expediency inasmuch as even upon granting the leave, the District Magistrate has to immediately commence the hearing and to decide the matter as far as practicable within two months of commencement of hearing. This Court also noted the language of Sub-section (9) that on being satisfied about the grounds of ejectment, the Magistrate would be ordering restoration of immediate possession to the landlord and in case of his being not satisfied regarding correctness of the grounds, the application shall have to be dismissed. This Court further noticed the requirements of expeditious execution of the order of ejectment and observed that in the cumulative effect, the entire proceedings from the commencement of hearing until actual delivery of possession are to be completed within 105 days.

35. In the aforesaid sequence, this Court pointed out that under Sub-section (11), the order for ejectment is not open to appeal and the District Judge has been given the jurisdiction of sending for the record for the purpose of satisfying himself that the order made by the Magistrate is in accord with law or not; and held that it would only be against the final order of ejectment that a revision would lie to the District Judge and the incidental orders could be challenged only in such revision petition filed against the final order. This Court found incorrect the proposition of the learned District Judge holding competent the revision petition against the interlocutory orders and rather commented that after refusing leave to contest, the District Magistrate ought to have ordered ejectment of the tenant forthwith as envisaged by Sub-section (6). This Court also observed that though Section 16 does not make a provision for filing of a rejoinder but it was for the District Magistrate to see as to whether permission to file rejoinder could be granted or not and such an exercise was not against the spirit of the provisions; and found that the procedure as adopted by the District Judge rather resulted in loss of valuable time. Thus, while allowing the writ petition and quashing the impugned orders, this

Court directed the District Magistrate to proceed with the hearing of the case without further loss of time.

36. For an entirely different set of questions addressed to, the aforesaid decision in M.D. Rao's case, even when dealing extensively with the provisions of Section 16 of the Act, is not of much assistance in determination of the issues involved in the present case.

37. The questions herein are essentially on the ambit and scope of the provisions related with the certificate to be produced by the landlord while maintaining an application under Section 16 of the Act, particularly on the operation of the rule that the certificate so produced would be 'conclusive evidence' of the facts stated therein; and on the effect and import of the provisions dealing with the prayer for leave to contest and with the consequences of the grant of such leave.

38. A comprehension of the provisions as contained in Section 16 of the Act makes it absolutely clear that notwithstanding anything to the contrary in the Act of 1950 or any other law or contract, a right has been given to the landlord who had been a member of the armed forces of the Union, his war widow, or his other legal representative to obtain an immediate order of ejectment on the grounds set forth in Clauses (a), (b) and (c) of Sub-section (1). Section 16 of the Act of 1950 starts with a non obstante clause, confers a special right on a specific class of persons, and is in the nature of a self-contained Code. Thus, there remains little scope for importing any external aid for the purpose of interpretation of the provisions of Section 16 of the Act of 1950; but then, the relevant provisions as contained in various Sub-sections of Section 16 shall have to be read together to gather their true meaning and scheme; scope and requirements; and significance and implications, particularly in relation to the concerned certificate.

39. The certificate to be issued by the Head of service in which the member of the armed forces was last employed or by his Commanding Officer to the effect that such member or his war widow or legal representative requires the premises for the use and occupation of himself or herself or the family members is the backbone of the claim for ejectment of tenant under Section 16 of the Act; and per Sub-section (3), such certificate is the 'conclusive evidence' of the facts stated

therein. Sub-section (4) of Section 16, while providing that such application seeking order for ejectment is to be moved to the District Magistrate having jurisdiction in the area where the premises are situate, delineates as to what should be contained in, and what should be attached with, such an application; and, significantly, a copy of the certificate obtained by the landlord under Sub-section (3) is required to be attached to the application.

40. A combined reading of the provisions contained in Subsections (1), (3) and (4) of Section 16 brings to the fore the salient features that: (a) the claim for ejectment under Section 16 is to be founded on the certificate that has to be obtained from the named authority stating that the applicant requires the premises for use and occupation of himself or the family members; (b) a copy of the said certificate has to be attached to the application for ejectment; and (c) the certificate is to be taken as the conclusive evidence of the facts stated therein.

41. It is also clear from Sub-section (6) of Section 16 of the Act of 1950 that the tenant on whom notice of the application has been served is not entitled to contest the application as a matter of course but, for the purpose, he has to file an affidavit stating the grounds on which he seeks to contest and has to obtain leave from the District Magistrate to contest. The consequence of default in appearance by the tenant or his omission to obtain leave are that the statement as made in the application for eviction would be treated as admitted and the District Magistrate would forthwith make an order for ejectment. However, when the tenant applies, the leave to contest could be granted by the District Magistrate per Subsection (7) if the affidavit filed by him discloses such facts as would disentitle the landlord from obtaining the order for ejectment on the grounds mentioned in Sub-section (1); and upon granting of the leave, per Sub-section (8), the District Magistrate is to commence the hearing on the application and to decide the same, as far as practicable, within two months.

42. Sub-section (9), an integral part of the scheme of Section 16, provides that upon the District Magistrate being satisfied about the correctness of the ground on which ejectment is sought, he would make an order for ejectment of the tenant and for restoration of immediate possession to the landlord; but in case the District

Magistrate is not satisfied regarding correctness of the ground, he would dismiss the application.

43. Thus, the gist of the provisions contained in Subsections (6), (7), (8), and (9) of Section 16 is that: (a) though the tenant is not entitled to contest the application seeking order for ejectment as a matter of right but he can file an affidavit seeking leave to contest while stating the grounds on which he seeks to contest; (b) the Magistrate may grant the leave to contest if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for ejectment; (c) where leave to contest is so granted, the Magistrate has to commence the hearing immediately and to decide the matter expeditiously; and (d) while rendering such decision, per Sub-section (9), the Magistrate would either make an order for ejectment if he be satisfied 'that the ground on which ejectment is sought is correct' or dismiss the application if he be 'not satisfied regarding the correctness of the ground'.

44. As noticed, the certificate has to accompany the application, has to be to the effect that the applicant requires the premises for use and occupation, and then, is required to be treated as 'conclusive evidence'. However, and notwithstanding the use of expression 'conclusive evidence' for such a certificate in Sub-section (3), the provision as contained in Sub-section (6) makes it clear that the tenant could yet seek and be granted the leave to contest the application so moved by the landlord; and as per Sub-section (7), such leave would be granted by the District Magistrate on being satisfied that the affidavit filed by the tenant is disclosing such facts as would disentitle the landlord from obtaining an order of ejectment. Thus, irrespective of existence of the 'conclusive evidence' in the form of the certificate, the tenant could still place, and the District Magistrate could still consider, existence of such facts as would disentitle the landlord from obtaining the order for ejectment. Then, a reading of Sub-section (9) puts it beyond a pale of doubt that once the tenant had been granted the leave to contest, the District Magistrate would be passing the order for ejectment only on being satisfied about the correctness of the ground for ejectment; and in the other event, i.e., upon the District Magistrate being not satisfied regarding correctness of the ground for ejectment, he would be dismissing the application.

45. After examining the said provisions in Sub-sections (3), (4), (6), (7), (8), and (9) together, the questions per force arise if the certificate itself is decisive of the entire matter for use of the expression 'conclusive evidence' in Sub-section (3), where and how would operate Sub-section (7) whereunder the Magistrate could grant leave to contest on being satisfied that the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining the order for ejectment; and what would remain, then, of Sub-section (9) whereunder the Magistrate is, obviously, empowered to examine the correctness of the ground of eviction'

46. The cardinal rule of literal interpretation requires that the words and expressions in the statute should be given their plain and ordinary meaning. This rule, when is applied to the expression 'conclusive evidence' in relation to the certificate aforesaid, there appears little scope to put the certificate at any other pedestal; and only for existence of certificate, the professed requirement might be treated to be a fact existing unquestionably and beyond scrutiny. However, the same rule of literal interpretation, when is applied to the other provisions of Section 16, particularly to Sub-sections (7) and (9) of Section 16, the result cannot be gainsaid that despite existence of such a certificate, leave to contest could be granted; and once such a leave has been granted to the tenant, the Magistrate would be issuing an order for ejectment only after reaching to the satisfaction on the correctness of the ground taken by the landlord and not otherwise. The second clause of Sub-section (9) of Section 16 empowers the Magistrate to reject the application if he is not satisfied about correctness of the ground. The provisions as contained in Sub-section (9), being an integral and inseparable part of the scheme of Section 16, could neither be ignored nor be treated secondary or superfluous nor be relegated to irrelevancy.

47. Once the provisions as contained in Sub-section (9) are read in their ordinary but true meaning, it is but apparent that the application as moved under Section 16 could also be dismissed if the District Magistrate would not be satisfied about the correctness of the ground as put forward by the landlord for an order for ejectment.

48. When the scope of enquiry by, and the powers of, the District Magistrate as delineated in the aforesaid Sub-sections of Section 16 are taken into comprehension, it is difficult to hold that the requirement of the landlord justifying the order for ejectment is fait accompli once the referred certificate is produced only for the use of expression 'conclusive evidence' in Sub-section (3) of Section 16 because if the said certificate, that has to contain the facts that the premises are required by the applicant and has to be attached to the application seeking order for ejectment, be given the status of itself making out a case for ejectment, the other provisions, particularly those of Sub-sections (7) and (9) would be rendered redundant, superfluous and useless. Such an interpretation shall have to be avoided and the said provisions shall have to be harmonised.

49. In the opinion of this Court, the said provisions as contained in Section 16 could be harmonised only in the manner that though the said certificate is to be treated as the primary evidence without formal proof and the landlord might not be required to prove in the first place the ground on which ejectment is sought; and the Magistrate might presume the ground for eviction existing on the basis of the certificate alone yet, when the tenant applies for leave to contest, the Magistrate shall consider if in the tenant's affidavit there are disclosed such facts as might disentitle the landlord from obtaining the order for ejectment; and when the tenant is granted the leave to contest, irrespective of the certificate, the Magistrate shall examine the correctness of the ground stated by the landlord on the basis of the entire material on record; and order for ejectment would follow only upon the satisfaction of the Magistrate about correctness of the ground.

50. In other words, in the case where the tenant seeks to contest, the Magistrate would not be refusing him leave merely for production of the certificate by the landlord; but could refuse such leave only if satisfied that the affidavit filed by the tenant does not disclose such facts wherefor the landlord might be disentitled to the order for ejectment. Moreover, when the leave is granted and is the case is put to contest, the Magistrate would not be issuing the order for ejectment of the tenant merely on the basis of the certificate aforesaid. The order for ejectment would be issued only upon the satisfaction of the Magistrate about the correctness of the ground for ejectment after appreciation of the entire material on record. In

case the Magistrate reaches the conclusion otherwise, i.e., if the Magistrate finds incorrect the professed ground for ejectment, per the force of second part of Subsection (9), he would dismiss the application moved by the landlord. In such a case, where the District Magistrate has reached the finding after appreciation of the material on record contrary to the claim made by the landlord, the certificate, being essentially a piece of evidence, shall have to give way to such finding and cannot override the consideration and conclusion of the District Magistrate. To this extent, in the scheme of the provisions as contained in Section 16, the said certificate, even when not requiring formal proof, is not, by itself, decisive of the matter; and cannot be regarded immune from rebuttal.

51. In the present case, the basic snag in the matter had been that despite the tenants making the prayer for leave to contest in their reply-cum-application dated 22.07.1986, the learned District Magistrate then dealing with the matter did not pass a reasoned order thereupon and directly placed the matter for evidence. Thereafter, on 26.08.1996, the landlord came forward with rather a pre-emptive application that the order for ejectment be issued with the baseless submission that the tenants had not applied for leave to contest. The application so moved by the landlord on 26.08.1996 was incorrect on facts because the tenants had already filed the reply-cum-application for leave to contest on 22.07.1996. Though the learned District Magistrate did not grant such application of the landlord aimed at obtaining the order for ejectment with foreclosure of contest by the tenant but then, instead of passing a considered and reasoned order regarding grant of leave to contest, the learned District Magistrate merely observed that the matter having already been fixed for evidence, it would not be proper to deprive the parties of evidence. Thus, the learned District Magistrate omitted to pass a reasoned order for grant of leave to contest after applying himself to the questions contemplated by Subsection (7) of Section 16, i.e., as to whether the affidavit filed by the tenant was disclosing such facts as would disentitle the landlord from obtaining an order for ejectment.

52. Though the aforesaid error might appear an innocuous or a technical one but magnified itself on the substance of matter in the final decision where the learned ADM took the certificate alone decisive of the entire matter and totally omitted to

consider that if the leave to contest was treated to have been granted, the matter was to be decided as per Subsection (9) and not otherwise. As noticed, as per Sub-section (9), the ADM was to record the satisfaction about correctness of the ground on which ejectment was sought after appreciation of the material on record; and he could have dismissed the application if not satisfied about the correctness of the ground. However, the learned ADM has not recorded the finding on the correctness of the ground after appreciation of the entire material on record and, instead, has merely relied on the certificate for the purpose of passing the order for ejectment. As said above, the certificate itself was not the end of the matter.

53. Looking to the scheme of the provisions of Section 16, this Court is of opinion that upon making of the application for leave to contest, in the first place the District Magistrate ought to have passed a reasoned order thereupon; and if granting leave, to have stated his satisfaction that the application was making out a relevant ground for which the landlord might not be entitled to the order for ejectment. It was only with such an order that the learned Magistrate could have adhered to the true scheme of Section 16. With such an order, the issue in the matter would have crystallised and the consideration of the application on merits would have been in accord with the requirements of the statute.

54. Omission to pass a reasoned order on the application for leave to contest has resulted in the learned Magistrate falling back only and exclusively on the certificate and in proceeding as if the leave to contest was confined only to the legal objections like *res judicata* and limitation. These grounds apart, the ADM was required to record the satisfaction about correctness of the ground of ejectment per Sub-section (9); and such a satisfaction could have been pronounced only after consideration of the matter on merits with reference to the material on record as pointed out by this Court in Col. Raghuvver Singh's case (*supra*). The certificate, a piece of evidence, even when declared as conclusive one in Subsection (3), could not have been regarded, in the scheme of the other provisions of Section 16, by itself decisive of the matter nor the learned ADM was absolved of the requirements of recording the finding on the correctness of the ground of ejectment after appreciation of the entire material on record.

55. In the aforesaid view of the matter, the impugned orders though otherwise dealing with other objections in sufficient detail, cannot be sustained for fundamental errors and for having been rendered bereft of the finding on the correctness of the ground of ejectment after appreciation of entire material on record; and, even when the matter relates to the proceedings under Section 16 of the Act that are essentially for grant of relief on urgent basis and present one is fairly an old matter, in the given set of circumstances and for the reasons foregoing, it appears necessary and in the interest of justice that after setting aside the orders impugned, the matter be remanded for appropriate consideration from the stage of moving of the application for leave to contest.

56. It may in the passing be observed that the landlord retired from active service way back in the year 1965, even retired from the reserve service in the year 1975, and admittedly carried on with a private job for 15 years before seeking order for ejectment per Section 16 of the Act of 1950. For that purpose too, he moved earlier an application in the year 1993 that was rejected and then moved the fresh application on the strength of the observations made by the District Judge in the earlier proceedings that were considered as if of appeal. This Court would hasten to add that no final finding in relation to any of the aspects related with the merits of the case is being rendered herein but a few aspects have only been noticed to indicate the features of this case. It shall otherwise for the learned ADM to deal with the matter in accordance with law.

57. In the result, this writ petition succeeds to the extent indicated above; the impugned orders dated 13.05.1997 and 15.12.2005 are set aside and the matter stands remanded to the Additional District Magistrate, Banswara for consideration afresh in accordance with law from the stage of moving of the application by the tenants for leave to contest. The parties shall stand at notice through their counsel present before this Court to appear before the Additional District Magistrate, Banswara on 27.07.2009. Relevant records be returned forthwith.

58. In the circumstances of the case, however, the parties are left to bear their own costs of this petition.

