IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 1696 of 2012 (M/S)

Ramesh Chandra Bhandari ……. Petitioner

versus

Ram Singh Salal ……. Respondent

Mr. M.S. Tyagi and Mr. Lalit Tiwari, Advocates for the writ petitioner.
Mr. K.N. Joshi, Advocate for the respondent.

U.C. Dhyani, J.

By means of present writ petition, the landlord-petitioner seeks to issue a writ, order or direction in the nature of certiorari quashing the judgment and order dated 10.07.2012 (Annexure no. 18 to the writ petition), passed by learned District Judge, Almora, in rent appeal no. 03 of 2009.

2) By the impugned order, learned District Judge, Almora, in rent appeal no. 03 of 2009, allowed the appeal, whereby the judgment dated 08.05.2009, passed by the Prescribed Authority / Civil Judge (Sr. Div.), Almora, in rent case no. 02 of 2006 was set aside. Accordingly, application no. 4-C filed in rent case no. 02 of 2006, titled as Ramesh Chandra Bhandari vs Ram Singh Salal was dismissed by impugned judgment and order dated 10.07.2012.

3) In rent case no. 02 of 2006, learned Prescribed Authority, vide order dated 08.05.2009, allowed the application (paper no. 4-C) under Section

21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as Act 13 of 1972). Respondent-tenant was, accordingly, directed to handover the vacant possession of the shop in question to the landlord within two months.

4) This is second round of litigation between the parties. In the first round, the matter travelled up to Hon'ble Supreme Court. In second round, Writ Petition no. 434 (M/S) of 2002, titled as Ramesh Chandra Bhandari vs Ram Singh Salal, was dismissed by this Court on 23.09.2004. Liberty was, however, granted to the petitioner to make a fresh application under Section 21(1)(a) of the Act no. 13 of 1972 on subsequent facts. It was also directed that if the application is made, the same shall be dealt with on merit after giving opportunity to the parties. The landlord filed special leave petition against said order before Hon'ble Supreme Court without getting any success. Hon'ble Supreme Court passed order on 10.04.2006 thus:

> "We do not find any ground to interfere with the impugned order. The special leave petition is, accordingly, dismissed."

5) Thereafter, the landlord moved an application before the Prescribed Authority under Section 21(1)(a) of Act no. 13 of 1972 for release of the shop on 24.06.2006, which, as stated earlier, was allowed by the Prescribed Authority, but was reversed by the Appellate Authority in

rent appeal. Aggrieved against the same, present writ petition has been filed by the landlord-petitioner.

6) The petitioner was in Indian Army. He retired from there in the year 1993. He wants to settle his son in the business, who is physically challenged. Petitioner thus filed an application under Section 21(1)(a) of the Act no. 13 of 1972 praying for release of his shop. In his application, landlord also stated that he has two married daughters, who use to come to their parental house quite frequently. The son, aged 37 years, got married on 17.06.2005.

7) According to the respondent, who has contested the release application, the petitioner is running the hotel business in the name of 'Prabhat Hotel' and, therefore, his need is not *bona fide*.

8) Learned counsel for the petitioner drew attention of this Court towards Explanation to Section 21(1)(a) of Act no. 13 of 1972, to say that where the landlord of any building is –

> (1) a serving or retired Indian Soldier as defined in the Indian Soldiers (Litigation Act, 1925 (IV of 1925), and such building was let out at any time before his retirement, or
>
> (2) …… and such landlord needs such building for occupation by himself or the members of his family for residential purposes, then his representation that he needs the building for residential

purposes for himself or the members of his family shall be deemed sufficient for the purposes of clause (a), and where such landlord owns more than one building this provision shall apply in respect of one building only."

(9) Learned counsel for the respondent-tenant countered that such a provision is meant when the landlord needs such building for occupation by himself or the members of his family for residential purpose.

10) Learned counsel for the petitioner then referred to paragraph nos. 7 and 9 of a decision rendered by Division Bench of Hon'ble Allahabad High Court on 20.12.1972, in Civil Misc. Writ Petition no. 6296 of 1971, *M/s Jado Ram Hira Lal vs The Prescribed Authority and another*. Paragraph nos. 7 and 9 are being reproduced here-in-under for reference:

"Chapter IV of the Act contains provisions regulating eviction. Sections 20, 21 and 23 regulate eviction of a tenant. Sub-Section (1) of Section 20 imposes a bar on the filing of a suit for eviction of a tenant except in accordance with the provisions contained in sub-Section (2) of Section 20. Sub-Section (1) takes away the right of a landlord to file civil suit for the eviction of a tenant. Sub-Section (2) of Section 20 however enumerates the grounds on the existence of one or more of which a suit for eviction can be filed by the landlord before the Civil Court. Section 21 confers power on the prescribed Authority to pass an order for the eviction of a tenant from the building or any part thereof if it is satisfied on the application of the

landlord that any of the grounds enumerated in clauses (a) and (b) of the sub-Section (1) of Section 21 exist. Similarly by Sub-Section (2) of Section 21, the prescribed Authority is empowered to order eviction of a tenant from any surplus land appurtenant to the building under tenancy provided it is satisfied that the land is required for constructing one or more new buildings or dividing it into several plots with a view to the sale thereof for purposes of construction of new buildings. The conditions enumerated in sub-Sections (1) and (2) of Section 21, on the existence of which the prescribed Authority is empowered to order eviction of a tenant from the building or land or part thereof are the same as enumerated in Sub-Section (2) of Section 16 of the Act. Sub-Section (2) of Section 16 confers power on the District Magistrate to pass to an order of release in favour of the landlord whenever there is vacancy. But if such accommodation is in possession of a tenant and the landlord is able to satisfy the prescribed Authority that any of the grounds enumerated in Sub-Section (1) and (2) of Section 21 exist the building or any specified part thereof may be released in favour of the landlord. The Prescribed Authority is empowered by sub-section (4) to order for the eviction of the tenant in order to put the landlord into possession. The order for eviction of a tenant under Sub-Section (1) can be passed even before the tenancy is determined. The effect of sub-section (5) of Section 21 is that once an order is passed under sub-section (1) or sub-Section (2) of Section 21 of the Act for eviction of a tenant, the building or part or appurtenant land thereof shall stand released in favour

of the landlord. Sub-section (6), however, lays down that the tenancy of a tenant shall stand determined in its entirely on the expiration of a period of thirty days from the order of eviction passed under sub-section (1) or sub-section (2) of the said Section. Sub-sections (4), (5) and (6) of Section 21 make it abundantly clear that the order of eviction can be passed under sub-sections (1) and (2) of the section even before the tenancy of a tenant is determined but the order of eviction only amounts to an order of release in favour of the landlord and does not determine the tenancy. Instead the tenancy shall stand determined only on the expiry of thirty days from the date of the order of eviction passed by the Prescribed Authority under sub-sections (1) and (2) of the section".

…….The aforesaid discussion would show that the provisions contained in sub-section (6) of Section 21 of the Act are substantially the same as contained in Section 106 of the Transfer of Property Act as applicable to the State of Uttar Pradesh, because tenancy is determined only after the expiry of the thirty days from the order passed under sub-section (1) or sub-section (2) of Section 21 of the Act. The tenancy of a tenant is not terminated prior to the expiry of thirty days from the date of the order of eviction. Under the Transfer of Property Act, tenancy stands determined on the expiry of the thirty days of the notice served under Section 106 of that Act. The protection to a tenant granted under both the Acts in this respect is substantially the same, although the scheme contemplated under the provisions of the Act for regulating the creation and determination of tenancy

> and eviction of a tenant is quite different than that contained in the Transfer of Property Act."

11) Learned counsel for the petitioner placed reliance on the ruling in order to show that a notice under Section 106 of the Transfer of Property Act is not necessary under Section 21(1)(a) of Act no. 13 of 1972. Learned counsel for the petitioner further contended that since the son of the petitioner was married after the first round of litigation and his son's wife has also begotten a son, therefore, there is *bona fide* need on the part of the petitioner to obtain the release of the shop in question.

12) Learned counsel for the respondent, on the other hand, quoted the ruling of *Parmanand and others vs Prescribed Authority (Munsif City), Meerut and others, reported in 2001 (2) Allahabad Rent Cases 353,* in which decision, another decision rendered by Hon'ble Allahabad High Court in *Shakir Hussain vs Siraj Beg, AIR 1974 Allahabad 193,* was relied upon as follows:

> "That once a suit for eviction filed against a tenant fails, notice under Section 106 of Transfer of Property Act gets exhausted and his ejectment by a fresh suit cannot be claimed without terminating his tenancy afresh by a notice under Sections 106 of T.P. Act and no second suit can be maintained on the basis of earlier notice. Similar view was taken in the case of Makkhan Lal Vs. Chandrawati, 1976 A.W.C. 102."

13) It will also be useful to quote here-in-below paragraph no. 3 of the decision rendered by Hon'ble Allahabad High Court in Shakir Hussain's case (*supra*). The same is reproduced as under:

> "I heard the learned counsel for the parties. The only point that was pressed by the learned counsel for the appellant was that the notice dated 24.08.1964 under Section 106 of the Transfer of Property Act had exhausted itself when the plaintiff filed his previous suit on its basis which was ultimately dismissed on 06.03.1970 by this Court. After that the second suit for ejectment, which was the ultimate relief claimed by the plaintiff after repeatedly amending his plaint, could not be filed on the basis of the same notice. It is contended that after the previous suit was dismissed the defendant was restored to his previous position as a tenant and the attempt of the plaintiff to terminate that relationship by means of a notice dated 24.08.1964 under Section 106 of the Transfer of Property Act remained unsuccessful. After that the plaintiff should have given a fresh notice to terminate that tenancy and thereby give a fresh cause of action to the plaintiff to file his second suit. In my opinion this contention of the learned counsel is well founded. When the plaintiff's previous suit for ejectment was ultimately dismissed by this Court in second appeal on 06.03.1970 he could not file another suit on the same cause of action. "Cause of action" consists of a bundle of facts which are essential to be established to maintain a suit in a Court. In a suit of the present nature these facts are mainly that the bar imposed by Section 3 of the Act for filing a suit for

ejectment by a landlord has been removed either by stating one or more of the grounds mentioned in various clauses of sub-section (1) of Section 3, or a permission has been obtained to file the suit from the District Magistrate (or from a higher authority in revision). The other material fact constituting a cause of action is that the tenancy has been terminated by a notice served under Section 106 of the Transfer of Property Act."

14) Learned counsel for the respondent also placed reliance upon paragraph nos. 6 and 7 of the decision rendered by Hon'ble Allahabad High Court in *Durga Prasad and another vs Ist Addl. District Judge, Jhansi and another, Allahabad Rent Cases 1984 (2) 516*. Paragraph nos. 6 and 7 are reproduced here-in-below:

"In my opinion the contentions raised on behalf of the petitioners have force. Rule 18 Sub-clause (2) of the U.P. Act no. 13 of 1972 reads as below:-

"Where an application of a landlord against a tenant under Section 21 for the release of any building or any specified part thereof or any surplus land appurtenant to such building is rejected on merits and a fresh application on the same ground is made within a period of one year from that decision, the prescribed authority shall accept the findings in those proceedings as conclusive."

In the present case, I find that the appellate court has allowed the application for release filed by the landlord only after comparing the needs of the parties. The first requirement for granting an application for release filed by the landlord is the *bonafide* need and

> thereafter the question of hardship between the landlord and the tenants arises. In the present case, the trial court has held that in view of Rule 18, the landlord's application could not be filed as the earlier application was dismissed on 24.04.1976 and the second application has been moved in September 1976. The judgment of the appellate court is a judgment of variance and, I do not find that the Appellate Court has addressed itself to the question of *banafide* need of the landlord. In such a circumstance the impugned judgments suffer from patent error of law and deserves to be quashed."

15) Learned counsel for the petitioner, on the other hand, would contend that the period of one year shall start from the date when the application was rejected on merits which may be the decision rendered by the Appellate Authority in the instant case, whereby the findings given by the Prescribed Authority were reversed on 04.05.2002.

16) On this, learned counsel for the respondent placed the decision of *Ram Swaroop vs XIth Addl. District Judge, Meerut and others, Allahabad Rent Cases 1992 (2) 519* to say that the period will commence from the date the matter has been disposed of finally, which is the decision of Hon'ble Supreme Court in the instant case. Judged by this reckoning, according to learned counsel for the respondent, the second release application

has been filed within three months from the date of judgment of Hon'ble Supreme Court.

17) The decision of *Jagdish Prasad vs Ist Addl. District Judge, Mathura and others, 2000 (1) Allahabad Rent Cases 516* is also pressed, which relied upon Dr. Sita Ram Gandhi's case, reported in 1984 ALJ 48 to show that the changed circumstances may be taken into account in deciding the second application for release made by the landlord. According to learned counsel for the respondent, the circumstances have not changed and the same ground on the basis of which the first application for release was rejected hold good in the second application for release on the basis of earlier notice.

18) In paragraph 6 of the decision rendered by Hon'ble Allahabad High Court in *Triloki Nath Vs. Dharm Prakash Gupta and others2004 (1) ARC 443*, the Hon'ble Court as observed as below:-

> "Firstly, the limitation of one year provided under Rule 18 is to be counted from the date of dismissal of earlier release application and not the date of decision of appeal. Secondly, in the second release application the ground of release was not exactly identical with the same in the earlier release application. In the following authorities it has been held that release application even on the same ground is maintainable after one year of dismissal of the earlier release application."

19) The following are the observations made by the Hon'ble Apex Court in *Sait Nagjee Purushotham and Co. Ltd. Vs. Vimalabai Prabhulal and others, (2005) 8 SCC 252*.

> "It is always the prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business this is no ground to say that the landlords are already having their business at Chennai and Hyderabad therefore, it is not genuine need. It is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business. However, the trial court held in favour of the appellant tenant. But the appellant court as well as the High Court after scrutinizing the evidence on record, reversed the finding of the trial court and held that the need of establishing the business at Calicut by the landlords cannot be said to be lacking in bona fides."

20) A Co-ordinate Bench of this Court in *Smt. Prabha Arora and another Vs. Km. Brij Mohini Anand and others, 2006 (2) U.D 627*, has held as below:-

> "Lastly, it is argued on behalf of the petitioners that the lower appellate court has ignored Rule 16(2) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972. Clause (a) of Sub-rule 2 of Rule 16 of said Rules, provides that "the greater the period since when the tenant opposite party, or the original tenant whose heir the opposite party is, has been

carrying on his business in that building, the less the justification for allowing the application." It has been decided in several cases that the aforesaid Rule is directory in nature and not mandatory one. If the Rule is accepted as mandatory, it would be impossible to evict for a landlord to get released his house from any old tenant who is occupying it for the business purpose. Referring to the case of *G.C. Kapur vs Nand Kumar Bhasin, 2001 (2) A.R.C. 603*, on behalf of the petitioners, it is argued that the desire of the landlady cannot be said to be her honest and sincere need. I agree with the principle of law that mere desire cannot be said to be the honest, sincere and *bonafide* need of the landlord."

21) Paragraph 6 of the judgment rendered by a co-ordinate Bench of this Court in *Gulab Rai (since deceased) through L.Rs. vs II Addl. District Judge, Nainital and others, 2009 (2) U.D 391*, is relied in context of the decision of this Court. The same is being reproduced here-in-below for reference:-

"On going through the impugned order dated 4.4.1990 passed by the Prescribed Authority, this Court finds that while recording the finding of fact that the landlord's need is not bona fide and that there is no greater comparative hardship to the landlord, the Prescribed Authority has observed that the petitioner's (Gulab Rai's) son can do his business of selling honey with his father. It is further observed by the Prescribed Authority in the impugned order that Gulab Rai can make his business prosperous by taking his son with

him in it. Such observations in recording finding as to *bona fide* need are totally irrelevant considerations. It is erroneous in law on the part of the Prescribed Authority to advise the landlord and his son, as to what business should they do and with whom should they do. The fact on the record remains that the landlord's son was unemployed graduate and intended to run business of hardware in the shop in question. From the papers on record, it is evident that the plea of the tenant that the landlord was having another building in Railway Bazar and the suggestion of the tenant that the petitioner could have made his son settled in business in Railway Bazar is unfounded as said building was found residential. Also the another suggestion of the tenant that the landlord's son Arvind Kumar was doing his business in Bareilly Road in the name and style of 'Mala paints' was found incorrect as said business was run by the elder son (Sudhir Chandra) of the landlord Gulab Rai that too in the tenanted premises. As such the finding recorded by the Prescribed Authority on the point of *bona fide* need against the landlord is totally perverse and against the record."

22) In *Bhagwan Das vs Smt. Jiley Kaur and others, reported in 1991 (1) ARC 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."

23) In the case of *Joginder Pal vs Naval Kishore Behal, 2002 SC & FB, Rent Cases 288*, the Apex Court has held as under:

"In *Maope Vishwanath Acharya and others Vs State of Maharashtra and another (1988) 2 SCC 1*, this court has emphasized the need of social legislation 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."

[Emphasis supplied]

24) In *Ram Kishun v Xith Addl. District Judge, Varanasi, 1995 (2) ARC 297*, the Hon'ble Allahabad High Court has held that:

> "the bona fide need of the landlord must be considered with reference to the time when a suit for eviction was filed and it cannot be assumed that once the question of necessity is decided against the plaintiff, it has to be assumed that he will not have a bona fide and genuine necessity even in future. I am fortified in this view by the authorities cited as Janki Prasad v VIth Additional Distict Judge, 1978 ARC 137 and Suraj Mal v. Radheshyam, 1988 SCFBRC 314 (SC). Even in Dr. Sita Ram Gandhi's authority, *1983 (1) ARC 782*, relied upon by the learned counsel for the petitioner, it has been held that in a case where no new facts have come into existence and there have been no intervening change or circumstance the second application may not be maintainable on the principles of *res-judicata* but where the landlord establishes a change of situation since the first application, the said case would require the Court trying second application to reinvestigate not only the question of bona fide requirement but also of the greater hardship and to find out the basis of intervening change circumstances as to whether the landlord is entitled to a release to be made in his favour under Section 21 of the Act. The test is whether the second proceeding involves a new cause of action or whether it is merely an attempt to reiterate the same facts and to get a judgment in his favour on the same old cause of action. Whether or not, the matter of *res-judicata* must depend solely upon where the issue

to be decided by the Court has already been litigated and decided between the parties. If the circumstances had changed, it could not be contended that the issue between the parties remains the same. It is quite clear that a Court can, upon fresh evidenced, alter and vary the judgment previously made, if cause of action of the subsequent proceedings is different than what it was in former, but of course if there is no evidence of any fresh circumstance, the second application may be barred by the principles of *res-judicata*. A trivial of insignificant change will not oust the applicability of the principles of *res-judicata*."

25) Further, in *Dr. Sita Ram Gandhi V. IVth Additional District Judge, Meerut and another, 1983 (1) ARC 782*, it was observed by Hon'ble Allahabad High Court in paragraph nos. 13, 14 and 15 of the decision as under:

"It may worthy or being noted that the question of greater hardship which is required to be decided under the proviso is also one which can change with the lapse of time. Every sort or circumstance may rise to change relevant fact on which the issue of greater hardship falls to be decided. In deciding the question of greater hardship the court must bear in mind that the change of circumstance may occur from day today and a court will consider changed circumstances while deciding the second application for release made by the landlord. A trivial or insignificant change will not oust the applicability of the principles of *res judicata*. Each case will have to be decided on its own fact for finding

out as to whether the change is of a nature has altered the position of the parties. If the answer is in affirmative the principles of *res judicata* would not be applicable.

Reference was made by the learned counsel for the petitioner to Rule 18 of the Rules framed under the Act and it was submitted on its basis that as the legislature did not want the principles of *res judicata* to apply to an application under Section 21, the only restriction imposed is that within an year of the dismissal of the previous application, the second one cannot be moved. This is not the purpose and object of Rule 18. Rule 18 no doubt restricts a landlord from moving the second application within a year of the dismissal of the first but it does not rule out the applicability of the principles of res judicata. The principle behind the *res judicata* is difference than one which led to the legislature to frame Rule 18. the two things should not be mixed up and confused.

For all that I have said above the judgment of the appellate court is to be set aside and the case to be sent back to him for deciding the appeal of respondent no. 2 afresh for taking into account the affidavits which were filed in the appeal as well as those which were filed in the writ petition. The parties may file the copies of the affidavits filed in the High Court within one month of the receipt of this judgment by the appellate court."

26) In the decision of *Ram Shankar Jaiswal v. Additional District Judge (Sc/St Act), Lucknow and*

others, 2015 (1) ARC 474, in paragraph 11 of the judgment, the following was observed:

> "The need in respect of additional accommodation as envisaged in Section 21 of the Act must be a bonafide need and not a mere desire. If the landlord has a desire to have more accommodation, that will not attract the provisions of Section 21 because the intention of the legislature is that a building should be released to the landlord only if his need in respect of the accommodation in occupation is bonafide, genuine and hard pressing. It is not a case where the landlord has no accommodation at all. It is an admitted case of the parties that the opposite parties landlords have an independent house in their occupation. They need additional accommodation which is in occupation of the petitioner-tenant. Therefore, the accommodation in occupation of both the parties has to be taken into account while considering the need of the opposite parties landlords. The Prescribed Authority will have jurisdiction to make an order of release only it is satisfied that the need of the landlord is bonafide and genuine. Once it is found that the need of the landlord is bonafide, the Prescribed Authority is required to proceed to consider the comparative hardship of the parties. Unless it is found that the need of the landlord is bonafide, there is no occasion to consider the comparative hardship. In this case although the Prescribed Authority has discussed in detail the evidence led by the parties but has not recorded any finding that the need of the opposite parties landlords for additional

> accommodation was bonafide and genuine. The learned Prescribed Authority without recording any finding as to the need of the landlord, proceeded to compare the hardship of the parties. The learned appellate Court found the need of the landlords as bonafide only on the ground that the son of the petitioner-tenant has been living separately and construction of two rooms constructed by the opposite parties landlords were not subject matter of this litigation."

27) In *Kaushlaya Devi and another v. Ist Addl. District Judge and others, 2015 (1) ARC 261*, it was observed by Hon'ble Allahabad High Court that the scope of judicial review under Article 227 is very limited and narrow as discussed in detail by this Court in Writ-A No. 11365 of 1998 (Jalil Ahmad vs. 16th Addl. Distt. Judge, Kanpur Nagar and others, reported in 2012 (3) ARC 339) decided on 30.07.2012.

28) In *Indian Overseas Bank vs. Indian Overseas Bank Staff Canteen Workers' Union (2000) 4 SCC 245*, the Court observed that it is impermissible for the Writ Court to re-appreciate evidence liberally and drawing conclusions on its own on pure questions of fact for the reason that it is not exercising appellate jurisdiction over the awards passed by Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the purpose ordinarily should be considered to have become final. The same cannot be disturbed for the

mere reason of having based on materials or evidence not sufficient or credible in the opinion of Writ Court to warrant those findings. At any rate, as long as they are based upon some material which are relevant for the purpose no interference is called for. Even on the ground that there is yet another view which can reasonably and possibly be taken the High Court can not interfere.

29) Likewise, in Prakash Chandra and others vs. XII A.D.J. and another, 2013 (2) ARC 91, it was observed that once the very basis of filing application under Section 21(1)(a) of the Act, 1972 is not substantiated and findings recorded by Appellate Court is not shown to be manifestly erroneous, this court would not be justified in interfering in exercise of writ jurisdiction since it is not an appellate jurisdiction conferred upon this Court. In supervisory jurisdiction of this Court over subordinate Courts, the scope of judicial review is very limited and narrow. It is not to correct the errors in the orders of the court below but to remove manifest and patent errors of law and jurisdiction without acting as an appellate authority.

30) According to the petitioner, dispute relates to Mohalla Thapaliya, Almora of which the petitioner is the owner. Petitioner was in the Indian Army and in due exigency of service he mostly remained posted out of Almora. He retired from the Indian Army in the year 1983. According to the petitioner, he wants to settle his

physically handicapped son in the business. Petitioner filed application under Section 21(1)(a) of the Act no. 13 of 1972 for release of the shop. Written statement was filed by the respondent, who contested the release application. It was stated in the written statement that petitioner is running the hotel business in the name of 'Prabhat Hotel' and, therefore, his need is not genuine. Prescribed Authority allowed the application and released the premises. Respondent preferred an appeal, which was allowed by the Appellate Authority. Aggrieved against the same, a writ petition no. 434 (M/S) of 2002 was filed by the petitioner, which was dismissed by a co-ordinate Bench of this Court on 23.09.2004. Aggrieved against the same, the landlord filed an SLP before Hon'ble Supreme Court. Said SLP was also dismissed.

31) The landlord-petitioner retired from Indian Army in the year 1983. His son is physically challenged person, and according to the petitioner, it is not possible to run any other business for his physically challenged son. The tenant, on the other hand, replied that he is a tenant on very small portion of the premises and rest of the portion has been occupied by the landlord, who is running a hotel in the name of 'Prabhat Hotel'. According to the tenant, landlord can easily accommodate his son in the hotel. There is no need for him to start a separate business. The son of the petitioner, as per certificate issued by the Chief Medical Officer, Almora, is suffering from 'cerebral palsy'. His

son, according to the petitioner, cannot do any work due to weakness of body and spastic paralysis of brain. His son also filed an affidavit to this effect on 19.03.1988.

32) According to the tenant, the need of the landlord is mere desire. He is not a case of genuine requirement and unless the requirement is established, the shop should not be released as contemplated under Section 21(1)(a) of the Act no. 13 of 1972. The High Court cannot reassess the value of the evidence and interfere with a finding of fact merely because it thinks that the appreciation of the evidence by the lower court is wrong and the lower court should have reached a different conclusion of fact from what it did. There is, therefore, limited scope and ambit of the revisional powers of the High Court under sub-section (3) of Section 29 (of the Act no. 13 of 1972). According to the tenant, the issue of comparative hardship also goes against the landlord, for, it has come in evidence on record that the landlord is running a hotel, which is in the control of the landlord. There is no reason at present to oust a sitting tenant when the landlord himself can accommodate his physically challenged son in the business of the hotel itself.

33) Landlord, on the other hand, says that, in the earlier round of litigation, his physically challenged son was not married. Now he is married and his wife has begotten a son. When his family has enlarged, he

requires to stand on his own feet for his survival, for how long a self esteemed person can remain dependent upon his aging father? The tenant never made a sincere search for finding an alternate accommodation for him. Mere affidavit is not enough, for nowhere it is shown that he ever moved an application before the authorities concerned for allotting him an alternate accommodation.

34) Although in Ram Swaroop's case (*supra*) it has been held by Hon'ble Allahabad High Court that the period will commence from the date the matter is disposed of finally, but in a later case (in 2004) decided by Hon'ble Allahabad High Court in Triloki Nath's case (*supra*) it has given a definite decision that the limitation of one year provided under Rule 18 of the Rules framed under Act no. 13 of 1972 is to be counted from the date of dismissal of earlier release application and not the date of decision of appeal. The release application even on the same ground is maintainable after one year of the dismissal of the earlier release application. In the instant case, although, the release application has been filed within three months of the decision of the Hon'ble Apex Court, but after a year of rejection of landlord's release application. So, in the instant case, it cannot be said that the application for release was premature.

35) Hardly had the ink of Hon'ble Apex Court's order dated 10.04.2006 dried, that the landlord moved a fresh application for release, although after one year of

rejection of his release application. Technically landlord's application for release was not bad in the eyes of law. Liberty was already granted to the landlord by a co-ordinate Bench of this Court while deciding writ petition no. 434 (M/S) of 2002, as follows:

> "However, liberty is given to the petitioner to make a fresh application under Section 21(1)(a) of the Act on subsequent facts. If the application is made, the same shall be dealt with on merit after giving opportunity to the parties."

36) Apart from the aforesaid liberty, the rules permit the landlord to move a fresh application on his renewed need and hardship. It is an admitted fact that the physically challenged son of the landlord was married subsequent thereto, and his daughter-in-law has begotten a son, after earlier round of litigation. Petitioner was in the Indian Army, and after his retirement, is running a hotel. In the same premises, the tenant is also running a sweet shop. Nowhere has it come on the record that the tenant ever tried to find or search a suitable accommodation for running his business.

37) It is wrong on the part of the Courts to advise the landlord and his son, as to what business should they do and with whom (they do). It is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business.

38) The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. In other words, 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 the tenants is coupled with an obligation to ensure that the tenants are not conferred with a benefit disproportionately larger than the one needed. Judging by this yardstick, this Court is of the opinion that since the family of the landlord has enlarged, his spastic son has married, whose wife has begotten a son, therefore, the physically challenged son needs to stand on his own legs for his livelihood and earning, for how long he should remain dependant on his aging father? With the passage of time, when there is increase in the number of family members, the newly added family members, especially the wife, needs some space for her and her husband / son. In a joint family there are many problems, which are not there, in a nuclear family. The wife of the son, normally has to maintain distance from her father-in-law and mother-in-law. The wife also wants that the man, whom she has married, should stand on his own legs for his livelihood and earning, and should no longer remain dependent upon her in-laws. In a nutshell, there is an element of ‘self esteem’ also, for no wife wants that her physically challenged husband should be castigated by the family members or the members of the society. She needs a space in the form of time as well as accommodation to protect the self esteem of her

family. Although the statutory protection which is granted under the Act / Rules to an ex-army man is not available to the petitioner, in as much as he does not want the tenanted premises for the residential purpose, but wants the same for commercial purpose. But, it does not mean that if he does not conform to the legal requirement, his need is not genuine. The shop belongs to him. If the tenant does not vacate the premises in favour of the landlord in his hour of crises, what is the use of having such accommodation? It would have been a case of hardship for the tenant, had he made frantic and sincere search to find out accommodation for him in crowded city like Almora, but no evidence has been offered to show that he really made sincere efforts for the same.

39) There is, yet another aspect of the matter. This fact is under no dispute that the son of the petitioner is suffering from cerebral palsy. The Economic and Social Commission for Asian and Pacific Region convened a meeting at Beijing in December 1992 to launch the Asian and Pacific Decade of Disabled Persons 1993-2002. In that meeting the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and the Pacific Region was adopted. India being a signatory to the abovesaid Proclamation, it was obligatory to enact a suitable legislation. According, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter

referred to as ‘Act no. 1 of 1996’) was enacted by the Parliament to provide for the following:

(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;

(ii) to create barrier free environment for persons with disabilities;

(iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-à-vis non-disabled persons;

(iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;

(v) to lay down a strategy for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities; and

(vi) to make special provision of the integration of persons with disabilities into the social mainstream.

Section 2(e) of the Act no. 1 of 1996 defines cerebral palsy as follows:

> “Cerebral palsy” means a group of non-progressive conditions of a person characterised by abnormal motor control posture resulting from brain insult or injuries occurring in the pre-natal, peri-natal or infant period of development.”

40) As has been stated above that the son of the petitioner needs to stand on his own feet for his livelihood, earning and survival so that he or his family members comprising of his wife and son should not have a feeling of dependence upon the petitioner. They should not suffer from inferiority complex and should have a feeling of full participation and equality with the other people, which is the mandate of Act no. 1 of 1996. On this ground also, this Court feels that the need of the petitioner is *bona fide* and genuine.

41) This Court is, therefore, of the view that there is a new found need in favour of the landlord. The element of comparative hardship is more in favour of landlord, rather than the tenant, which is a natural corollary of the first ingredient of *bona fide* need. When the findings have been given contrary to the record, then comes the area of 'perversity'. If there is a perverse finding, the High Court can intervene while exercising its constitutional powers in the writ petition. The impugned order, therefore, deserves to be set aside. The writ petition is allowed. The order impugned is set aside. The respondent-tenant is, however, granted two years' time to vacate the tenanted premises and handover the vacant possession of the same to the landlord as under:

a) The respondent-tenant shall vacate the premises in question on or before 30.08.2017 and handover vacant and

peaceful possession of the premises in question to the petitioner-landlord.

b) The respondent-tenant shall continue to pay the rent to the petitioner-landlord, as is being done by him at present, for the use and occupation of the premises in question.

(U.C. Dhyani, J.)

Dt. August 31, 2015.
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