Brochure
on

SUPREME COURT ON SOME ASPECTS OF RENT CONTROL

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Contents

BONAFIDE NEED

I- GENERAL

Under U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972, hereinafter referred to as U.P. Rent Control Act, landlord has been given right to seek release of the tenanted accommodation on the ground of his bonafide need under Sections 16 and 21. Release application under Section 16 of the Act is filed when building is actually vacant or deemed to be vacant under Section 12 of the Act while release application against sitting tenant is filed under Section 21 of the Act. Different parameters govern both the release applications. Under section 16 hardship of prospective allottee is not to be considered. (There is absolutely no question of considering the hardship of unauthorized occupant). Further, prospective allottee cannot even dispute the bonafide need of the landlord.He has got no right to oppose the release application of the landlord as it is a matter only in between the landlord and R.C. & E.O. (delegatee of the D.M.). Release application is to be disposed of first before passing an order on the application for allotment vide*Ram Narayan Sharma v. ShakuntalaGanu AIR 2002 SC 2204* (para 12). However in this case it was further held that a subsequent purchaser after the building has been allotted and allottee has been put in possession cannot seek release u/s 16 by getting has self impleaded in infructous revision which had been filed by unconcerned erstwhilealleged co-owners. Such purchaser can only file release application under Section 21 of the Act. However, even in proceedings under Section 16, landlord has to prove his bonafide need.

In proceedings under Section 21 of the Act landlord gives evidence of his bonafide needs and the sitting tenant gives evidence in rebuttal. After assessment of the evidence of both the parties, the Prescribe Authority is required to decide as to

whether landlord has proved his bonafide need or not. If the prescribed authority finds the need of the landlord to be bonafide then by virtue of fourth proviso to Section 21 (1) Prescribe Authority is also required to compare the hardship of both the parties. (The proviso along with explanation is quoted in the sub-chapter 'Comparative Hardship', infra). By virtue of the explanation hardship of the tenant is not to be considered in case of residential building, if he or any member of his family who has been normally residing with the tenant has acquired another residential accommodation, in the same city. Here again, even if the explanation is attracted, landlord has to prove his bonafide need, and it cannot be presumed. Vide *Sudha Agrawal v. X A.D.J., AIR 1999 SC 2975.* The explanation was compared with section 12(3) read with Section 16 of the Act and it was held that in such situation even in release proceedings u/s 16 the landlord has to prove his bonafide need.

Retired Landlord

Under Section 21 (1-A) a retired or retiring landlord has been provided right to seek eviction of the tenant provided that such landlord was in occupation of a public building for residential purposes which he had to vacate on account of the cessation of his employment. Under Section 21(1) word 'may' has been used while under Section 21 (1-A) word 'shall' has been used. Under sub-section (1-A) hardship of the tenant is not to be taken into account and bonafide need of the landlord is also not required to be proved as elaborately as under Sub-section (1). However, release order under Sub-section (1-A) cannot be passed if landlord has got equally good alternative accommodation available to him for shifting his residence after vacating the public building, vide *M/s Rahabhur Productions Pvt. Ltd. v. Rajendra K. Tandon, AIR 1998 SC 1639* and *Prakash Chand Gupta v. K.S. Gupta, AIR 1999 SC 2241,* both under Delhi Rent Control Act. (Section 14C of Delhi Act is somewhat (but

not exactly) similar to Section 21 (1-A) of U.P. Act.)

Rule 15 (2) of the Rules framed under U.P. Rent Control Act provided inter alia that release application u/s 21 of the Act shall be signed by all the co-landlords if there are more than one landlords. A full bench authority of the Allahabad High Court reported in *Gopal Das v. ADJ, 1987(1) ARC 281* declared the said part of the sub-rule to be ultra vires and held that it was not necessary that all the landlords must sign the release application.

Notice of 6 months

Under first proviso to Section 21(1) it is provided that if the building was in occupation of a tenant since before its purchase by the landlord, before filing release application three years period must elapse and landlord should give notice of six months to the tenant. In *Martin and Harris Ltd. v.V A.D.J., AIR 1998 SC 492* it was held that even though provision of notice is mandatory but it is for the benefit the tenant, hence, he can waive it by not raising any objection and if he does not raise any objection at the appropriate stage then subsequently he cannot argue that release application was not maintainable for want of notice. However, in *Anwar Hasan Khan v. Mohd. Shafi, AIR 2001 SC 2984* it was held that in case release application was filed after three and half years of purchase of the building then no notice was necessary. Each of these authorizes is by two Hon'ble Judges. In *Manoj Kumar v. Munni Devi, AIR 2005 SC 2391:2005 (2) ARC 1(SC),* an authority by 3 Hon'ble Judges the apparent conflict between the two authorities was noticed but matter was not persued further as it had been found that landlord had, in fact, given notice before filing release application. However, in *Nirbhai Kumar v. May Devi, 2009 (1) ARC 767(SC)* by three judges it has been held that even if more than three and half years period has passed before filing release application still giving of notice is

necessary and the view expressed in *Martin and Harris* has been approved. Regarding *AnwarHasan Khan* it has been held that in the said case the earlier authority of *Martin and Harris* was not placed. *AnwarHasan Khan* has virtually been overruled. Accordingly, now the legal position is that even if release application is filed by the purchaser landlord after more than three and half years still it is necessary to give 6 months notice. However, this benefit can be waived by the tenant.

What it bonafide need

The meaning and scope of banafide need has been discussed in detail in *Bega Begam v. Abdul Ahad Khan, AIR 1979 SC 272* (Paras 12 and 13), *Shiv Swarup Gupta v. Dr. Mahesh Chandra Gupta, AIR 1999 SC 2507*(Paras 12 to 14) and *Raghunath G. Panhale v. M/s ChaganlalSundarji& Co., Air 1999 SC 3864* (paras 6 to 9). It has been held that bonafide need or reasonable requirement is the same thing and it is something more than a mere desire but need not certainly be a compelling, absolute or dire necessity. It is something in between the two.

In fact, *Bega Begum* (1979) is the turning point in the approach of the Supreme Court respecting bonafide need of the landlord. Almost, all the subsequent authorities of the Supreme Court dealing with the concept of bonafide need have followed this authority. After this authority the view of the Courts in India started changing gradually. Prior to that the assertion of the landlord regarding his need was mostly considered rather suspicious and every effort was made to protect the possession of the tenant. In para 13 of *Bega Begam*, supra, which has also been quoted in para 15 of *Yaduvendra Arya,* infra, it has been held as follows:-

"*It seems to us that the connotation of the term 'need' or requirement should not be artificially extended nor its language so unduly stretched or strained as to make it*

impossible or extremely difficult for the landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. This appears to us to be the general scheme of all the Rent Control Acts prevalent in other states in the Country. (Underlining supplied)."

In *Ram Dass v. Ishwar Chand, AIR 1988 SC 1422,* para 6 (three Judges) also it has been held that essential idea basic to all such terms (like bonafide need, reasonable requirement etc.) is the same.

Apart from *Shiv Sarup Gupta and R.G. Panhale,* supra, in several other authorities of the Supreme Court also, placing reliance on *Abdul Ahad,* supra, it has been held in the context of bonafide need, that Rent Control Acts must be interpreted in balanced manner keeping in mind the interest of the landlord also. It has also been held that tenants as a class cannot be treated to be weaker section (*Prabhakaran Nair v. State of Tamil Nadu, AIR 1987 SC 2117)* hence sympathetic or equitable view in their favour need not be taken. The latest authority on this point, discussing several others authorities, is a judgment of the Supreme Court delivered on 25.11.2014 in Civil Appeal no. 10529 of 2014 *SiddharthViyas v. Ravi NathMisra,* overruling in part a five judge Full Bench of Allahabad High Court reported in *Mangi Lal v. A.D.J., 1980 ARC 55.* The case arose out of release application filed by landlord u/s 16 of U.P. Rent Control Act on the ground of his bonafide need. Same view, in respect of bonafide need of landlord, has been taken in *Yaduvendra Arya v. Mukesh Kumar Gupta, AIR 2008 SC 773, Paras 13 to 15,* (under U.P. Rent Control Act), *Joginder Pal v. Naval Kishore Behal, AIR 2002 SC 2256* (under East Punjab Rent Control Act) (extensively quoted in *Sidhharth Vyas*, supra). The same principle of striking balance between rival

interests has been propounded forcefully in *MalpeVishwanath Acharya v. State of Maharashtra, AIR 1998 SC 602,* regarding periodical enhancement of rent.

In *Siddalingamma v. MamtaShenoy, AIR 2001 SC 2896* (Para 9) (three judges) it has been held that "Rent Control Legislation generally leans in favour of tenant, it is only the provision for seeking eviction of the tenant on the ground of bonafide requirement of landlord for his own occupation of use of the tenanted accommodation which treats the landlord with some sympathy.

In *B.C. Bhutada v. G.R. Mundada, AIR 2003 SC 2713* it has been held that the degree of urgency of need or the intensity of the felt need is relevant only for comparison of hardship and is not must relevant for bonafide need. *"Requirement implies an element of necessity. The necessity is a necessity without regard to the degree of which it may be."*

Particular Instances

If acquisition proceedings started 10 years before initiating eviction proceedings on the ground of bonafide need, the need cannot be said to be not bonafide as acquisition proceedings must be deemed to have been given up or lapsed, vide S.J. Ebenezer v. Velayudhan, AIR 1998 SC 746.

Agreement for sale executed by the landlord six years before filing case for eviction on the ground of bonafide need cannot be a ground to hold that the need is not bonafide, vide *Shashi Kbila v. R.P. Ashvin, AIR 2002 SC 101*.

Similarly, if at an earlier point of time, the landlord had offered to sell the tenanted accommodation to the tenant, it does not disprove his bonafide need vide *Atma S. Berar v.Mukhtiar Singh, AIR 2003 SC 624* (In this case from Punjab landlord who was residing abroad since long, had sought eviction of the tenant on the ground that he intended to reside in India for the rest of his retired life

along with his wife. The need was found to be bonafide.

In *Dhanna Lal v. Kalawatibai, AIR 2002 SC 2572* (para 26) it has been held that sale of other accommodation 8 or 9 years before initiating eviction proceedings on the ground of bonafide need is irrelevant.

In *Dinesh Kumar v. Yousuf Ali, AIR 2010 SC 2679* also it has been held that too remote an incident is not relevant. (About 20 years before the shop in question had been got vacated from the previous tenant and given on rent to the tenant in question.) It has also been held in this authority that increase in rent in the past (seven years before initiating eviction proceeding on the ground of bonafide need) is also irrelevant and it does not prove that the intention of the landlord was only to enhance the rent.

Until about a decade before it was considered almost indecent for a landlord to think about increasing the rent payable by an old tenant, however negligible it might be.

In *Smt. Shanti Devi v. Swami Ashanand, AIR 2003 SC 823* (under U.P. Rent Control Act) it has been held that a *Sanyasi* landlord can seek eviction of tenant for his own residence and constructing temple, *satsang* hall and *pooja* room, store room etc. after materially altering the tenanted accommodation, which would also help him to earn his livelihood.

If before filing release application, in the near past an accommodation became available to the landlord but le let out the same then it disproves his need vide *Ashok Kumar v. Sita Ram, AIR 2001 SC 1692.*

If tenanted accommodation is required for demolition and construction of multi-storied residential /non-residential complex by the landlords who are builders by profession, then the need is bonafide, *Harrington House School v. M.S. Ispahani, AIR 2002 SC 2268*.

Any Tenant may be Chosen

In case same landlord has got several accommodations which have been let out by him to same tenant or different tenants then for his bonafide need he may choose any accommodation or any tenant to proceed against vide *Savitri Sahay v. Sachidanand Prasad, AIR 2003 SC 156* and *Raghuvendra Kumar v. Firm Prem Machinery & Co., AIR 2000 SC 534* (In this authority it has also been held that the burden to prove that none of the other accommodations of landlord is vacant does not lie upon landlord.)

Meager Rent

In *Mohd. Ahmad v. Atma Ram Chauhan, AIR 2011 SC 1940* (arising out of proceedings under Section 21 of U.P. Rent Control Act) it has been held in para 21 that:-

"*According to our considered view majority of these cases are filed because landlords do not get reasonable rent akin to market rate.*"

A suggestion

In the above case Supreme Court laid down guide lines for enhancement of rent. However, it did not provide any method for enforcing the same. The Prescribed authorities in cases under Sec. 21 of U.P.Rent Control Act after exchange of pleadings may persuade the parties, through their learned advocates, to settle the matter amicably by asking the tenant to enhance the rent reasonably (tentatively half of the current market rate) and asking the landlord to get the release application dismissed as not pressed with the rider that for a period to be fixed by the Court (say three, four or five years) landlord will not file fresh release application. Same exercise may be done by the D.Js./A.D.Js. Hearing appeals u/s. 22 of the Act against orders passed by the Prescribed Authorities u/s. 21. This will be perfectly in accordance with the principle of Section 89 C.P.C.

Landlord need not be witness

In proceedings for release/eviction on the ground of bonafide need landlord need not necessarily enter the witness box or file his own affidavit as it is not such thing which can be proved only and only by landlord vide

Ramkubai v. HajarimalDholakchandChaudak, AIR 1999 SC 3089

Residential not to be released for business

Under clause (ii) of third proviso to Section 21(1) it is provided that residential building cannot be released for business purposes. Interpreting this clause it has been held in *Kush Sahgal v. M.C. Mitter, AIR 2000 S.C. 1390 (*paras 33 & 34)that residential building cannot be released for establishing clinic.

Time Frame for reconstruction

Under Section 21 (1) (b) it is provided that if the tenanted building is in dilapidated condition, it may be released for demolition and reconstruction. Under this clause bonafide need of the landlord is wholly irrelevant and by virtue of Section 24 (2), after reconstruction the new building is to be let out to the tenant. Unfortunately, the Act or the Rules framed there under do not provide for the period during which demolition and reconstruction shall take place. A landlord may not reconstruct the building for indefinite period. This lacuna is filled up by the Court by fixing time frame for demolition and reconstruction. The Supreme Court in *Syed Jamil Abbas v. Mohd. Yamin, AIR 2004 SC 3683,* interpreting somewhat similar provision of M.P. Rent Control Act fixing one year's time for reconstruction and further directed that in case of delay, after one year till complete reconstruction and delivery of possession to the tenant, landlord would be liable to play monthly compensation to the tenant and rent which t3enant would have been liable to pay for the newly constructed building.

Similar directions may be issued by the Courts in U.P. while allowing Release application under Section 21 (2)(b) of U.P. Rent Control Act.

Deserted/divorced wife of tenant

If husband is tenant of a residential house, residing therein with his wife, and after some time, due to dispute with his wife, walks out of the marriage and the house, such deserted wife is entitled to be impleaded in the eviction

proceeding initiated by the landlord against the husband tenant on the ground of, inter alia, bonafide need. The reason is that in such scenario the husband will not be interested in or serious about contesting the proceedings. The deserted wife will have to be treated as tenant. If the marriage is dissolved by decree of divorce, then wife will be entitled to contest the proceeding of eviction and to remain in possession as tenant (of course until decree of eviction is passed) if in the divorce decree she is granted right of residence, vide *B.P. AchalaAnand v. S. Appi Reddy, AIR 2005 SC 989* (3 judges) (under Karnataka Rent Control Act).

II- <u>FOR BUSINESS PURPOSE</u>

1. It is not necessary for the landlord to state that what **precise business** he intends to start in the tenanted accommodation for the reason that *"even if the nature of business would have been indicated no body could bind the landlord to start the same business in the premises after it was vacated",* vide Raj Kumar Khaitann v. Bibi Zubaida, AIR 1995 SC 576.
2. Landlordneed not have **knowhow or experience** of the business sought to be started, vide Mohinder Prasad Jain v. Manoher Lal Jain, AIR 2006 SC 1471(para 11, whole sale of Ayurvedic Medicines); D.L. Kamble v. A.R.M. Kotkune, AIR 1999 SC 2226 (Para 9 & 11, sale of electrical goods); Raghu Nath G. Panhale v. M/s Chhagan Lal Sundarji& Co., AIR 1999 SC 3864 (para 11 grocery business); Ram Babu Agarwal v. Jay Kishan Das, AIR 2010 SC 721 (para 7, footwear business) and Shamshad Ahmad v. Tilak Raj Bajaj, AIR 2008 (Supp.) SC 526 (para 28) : 2008 (9) SCC1(business of readymade garments).

   However lack of experience, coupled with other facts like desire to change business at the age of 63 years, repeated attempts to evict tenant, initiating eviction proceedings after two years of expiry of period of lease may be relevant for

holding that the need of the landlord is not bonafide vide Mattu Lal v. Radhey Lal, AIR 1974 S.C. 1596 (para 13 latter portion)

3. It is not necessary for the landlord to have **ready money** as it will be foolishness and bad business sense to keep the money locked for indefinitely long period during which proceedings including execution may remain pending vide Mattu Lal (supra) (para 13 earlier portion); Rathunath G. Panhale (Supra) (para 11) G.C. Kapoor v. Nand Kumar Bhasin, AIR 2002 SC 200 (Para 11).

   Similarly it is not necessary for the landlord to make **other arrangements** in advance Raghunath G. Panhale (Supra) (para 10, purchasing furniture for the shop) and Shamshad Ahmad, supra (paras 10, 28 to 30; office, space for preparation of readymade garments and go-down) .

   As far as **licence, permit** etc. for doing business is concerned, it has been held that it is not necessary to obtain the same in advance vide Mattu Lal (supra) (para 13 earlier portion; approaching Iron & Steel Controller for the required permits etc. for doing Iron and Steel business). In Rishi Kumar Govil v. Maqsoodan, 2007 (4) SCC 465 it has been held that licence (for repairing fire arms) can only be obtained when there is a vacant shop available.

4. It is not necessary that for seeking release to do business landlord **shall not be in service**, and if in service, he should resign before filing release application, vide Vinai Kumar v. District Judge, (1995) Supp. (2) SCC 586 (under U.P. Rent Control Act) (Son of the landlord who was a doctor was in Government service. He intended to start a private clinic. He filed affidavit offering to resign) and R.G. Panhale, supra (para 11, private company service). Similarly make shift profitable engagement does not mitigate against the need as landlords are "not supposed to starve on street till the shop is actually vacated for them." *Krishna Kumar Rastogi v. Sumitra Devi, AIR 2014 SC 3635 (para 15)* under U.P. Rent Control Act.

5. Doing some **job during pendency** of proceedings does not amount to satisfaction of the need. See point no. 4 under Subsequent Events.
6. If need is set up for the son of the landlord the fact that the son has **gone abroad temporarily** does not negative the need, vide Pratap Rai Tanwani v. Uttam Chand, AIR 2005 SC 1274.

For Increasing Income/Expanding Business

1. If landlord is carrying on a business which is not yielding good income, the need for the tenanted accommodation to start same or some other business to augment the income, is bonafide,vide Bega Begam v. Abdul Ahad Khan, 1979 SC 272 (in this case a fourstoreyed building in which tenant was running a hotel was released even though the landlords on a small scale were carrying on business in another accommodation.)

   "*The Court cannot direct the landlord to do a particular business or imagine that he could profitably do a particular business rather than the business he proposes to start" Mohd. Ayub v. Mukesh Chand, AIR 2012 SC 881* (para 13)

2. Need for expansion of business in another city to fetch higher income, is bonafide vide Sait Nag JeeProshottam& Co. v. VimlabainPrabha Lal AIR 2006 SC 770 (in this case landlord was already having business in two cities)
3. In S. Venu Gopal v. A Karruppu Sami, AIR 2006 SC 1930 it has been held that need for construction of a multi-storied complex to fetch higher rent and also to serve landlord's business, is bonafide.

Separate Business by Every

1. Every landlord and every adult member of landlord's family is entitled to do separate

Landlord

business and he cannot be compelled to do business with his father, mother, brother or join in family business and if he is assisting in family business, it is irrelevant, vide Akheleshwar Kumar v. Mustaqeem, AIR 2003 SC 532, (under Bihar Rent Control Act) Susheela v. II A.D.J., Banda, AIR 2003 SC 780 (Para 5) Rishi Kumar Govil v. Maqsoodan, 2007 (4) SCC 465 (quoting paras 10 and 11 of *Susheela*in para 18) and Yaduvendra Arya v. Mukesh Kumar Gupta, AIR 2008 SC 773 (All under U.P. Rent Control Act).

2. In Magan Lal Kishan Lal Godha v. N.U. Gadewar, AIR 2009 SC 278 it has been held that if son wants to do business in a city, the need is bonafide.

Landlord Wealthy Or Retired Or Both

1. In *Shamshad Ahmad v. Tilak Raj Bajaj, AIR 2008 (Supp.) SC 526: 2008 (9) SCC 1*, it has been held that a retired employee can seek release for establishing business and the fact that he is a man of high status and has got no experience as well as the fact that even without doing business he can maintain himself very properly, are irrelevant. (Pars 27, 28 & 30). The Supreme Court allowed Landlord's appeal when he was 75 years of age (having retired in 1993).
2. In *Ganga Devi v. D.J. Nainital, 2008(7) SCC 770* need of a retired military man, who was getting only Rs. 2000/- per month pension, to do business from the tenanted shop was found to be bonafide.

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A tenanted shop available to landlord is no ground to reject his release application. Landlord can do business from any suitable place. (See

under Alternative Accommodation Available to landlord.)

III- ALTERNATIVE ACCOMMODATION AVAILABLE TO LANDLORD

If landlord has got alternative accommodation which is equally suitable as the tenanted accommodation sought to be released or more suitable than that then the need is not bonafide. However, availability of less suitable accommodation is no ground to reject the release application as held in the following authorities:-

Commercial

1. *A.G. Nambiar v. K. Raghwan, AIR 1998 SC 3146* under Kerala Rent Control Act (Alternative accommodation not suitable for the business to be started.)
2. *Chandrika Prasad v. U.K. Verma, AIR 2002 SC 108*, para 10 (Bihar Rent Control Act) (Landlord sought eviction of the tenant for establishing clinic for his doctor son-in-law. The fact that the doctor's father had a house was held to be irrelevant as the house was away from the main road and for establishing doctor's clinic main road is more suitable.)
3. *Dhannalal v. Kalawati&Ors., AIR 2002 SC 2572*, Para 26 (M.P. Rent Control Act) (Shop available to landlord on first floor is no ground to deny eviction of tenant from a shop on the ground floor as the shop on the first floor cannot attract the same number of customers and earn the same business as the shop situate on the ground floor would do.) (Para 26)
4. *Akhilesh Kumar v. Mustaqim AIR 2003 SC 532*, para 4, under Bihar Rent Control Act (for shop; a shop constructed on septic tank, almost inaccessible is not

suitable alternative accommodation available to landlord)

5. *Dinesh Kumar v. Yusuf Ali AIR 2010 SC 2679* (M.P. R.C. Act) (Landlord carrying on business as tenant from a 3 feet by 4 feet gumti constructed on a drain illegally para 30 Landlord is best judge of his need para 8)

6. *Anil Bajaj v. Vinod Ahuja, AIR 2014 SC 2294* para 6 (under Delhi Rent Control Act)(Landlord carrying on his business from a shop premises located in a narrow lane. Tenanted accommodation located on the main road. Need of landlord is bonafide).

Residential

7. *Ram Narain Arora v. Asha Rani, AIR 1998 SC 3012*, para 10 (Residential building; Delhi Rent Control Act)
8. *M.L. Prabaker v. Rajiv Singal, AIR 2001 SC 522* (Residential building, Delhi Rent Control Act)
9. *P.S. Pareedkaka v. Shafee Ahmad Saheb, AIR 2004 SC 2049*, para 8 (Karnataka Rent Control Act) (The Landlord was residing in a house situated on a *Nala* (drain), hence, his need for the tenanted accommodation was found bonafide and the facts that the accommodation situated on *Nala*was earlier got vacated by the landlord from a tenant and he was having no son, were held to be immaterial.)

Under Rent Control Acts of some States (Andhra Pradesh and C.P. and Berar) it is provided that eviction proceedings on the ground of bonafide need may be initiated only if landlord has got no other accommodation. Supreme Court has held that such clause cannot be read literally and it is not availability of any other accommodation, however small or

unsuitable it may be which debars the landlord from seeking eviction. The bar applies only when the accommodation available to the landlord is suitable, vide Boorgu*Jagadeshwaraiah v. Pushpa Trading Co., 1998 (5) SCC 572* (three judges) and *Rasik Auto Stores v. Navin V. Hantodkan, AIR 1999 SC 113*. In the latter authority (Rasik) landlord and his wife both were private doctors. They were having only 300 sq. ft building for their chambers/clinics. The need for additional accommodation was held to be bonafide.

Landlord best judge of his requiremen t

In the following authorities the Supreme Court has held that landlord is the best just of his requirement and tenant or the courts have no concern to dictate the landlord as to how and in what manner he should live or do business. However, this principle is applied only when the accommodation available to the landlord is less suitable. It cannot be applied to more suitable accommodation, available to landlord.

Residential

1. *ShivSarup Gupta v. Dr. M.C. Gupta AIR 1999 SC 2507*, para 13 & 14 (Delhi R.C. Act)

2. *Siddalingamma v. MamthaShenoy, AIR 2001 SC 2896*, para 9 (Karnataka Rent Control Act)

3. *Prativa Devi v. K.V. Krishnan, 1996 (5) SCC 353* (3 judges) (under Delhi Rent Control Act) The landlady who was a 70 years old widow was residing with the family of a friend. The High Court had held that she should continue to reside with the family of the friend and her need for the tenanted accommodation where she would be required to reside alone, was not bonafide. Supreme Court reversed the judgment of the High Court holding that landlord is the best judge of

the requirement. It was further held that the alternative accommodation available to the landlord must be such over which he has got a right (is owner thereof.

4. *Sarla Ahuja v. Union of India, AIR 1999 SC 100*, para 14 (under Delhi Rent Control Act)Landlady who was residing at Calcutta wanted to shift to New Delhi where accommodation in dispute was situated. The Supreme Court held that Landlady was not the owner of the house where she was residing and the alternative accommodation to debar the landlord from seeking eviction on the ground of bonafide need should be situated in the same city or town and at least within the reasonable proximity thereof. Regarding cordial relationship of the landlady with her daughter-in-law it was held that the right of the landlady to get her house vacated on the ground of bonafide need could not be postponed until she developed sore relations with her daughter-in-law.

5. *S.N. Kapoor v. Basant Lal Khatri, 2002 (1) SCC 329*(Delhi Rent Control Act). Alternative house available to the landlady in another town was held to be irrelevant.

6. R.*C. Tamrakar v. Nidi Lekha, AIR 2001 SC 3806*, para 10 (M.P. Rent Control Act). The need of the landlady to reside separately from her Doctor son who had constructed a house was held to be bonafide.)

7. *Ragavendra Kumar v. Firm Prem Machinery & Co. AIR 2000 SC 534*, para 10 (M.P. Rent Control Act) *"It is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. (See*

Prativadevi (Smt.) v. T.V. Krishnan (1996) 5 sCC 353). In the case in hand the plaintiff landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted." This has been quoted with approval in *Yadvendra Arya v. Mukesh Kumar Gupta, AIR 2008 SC 773* and *Rishi Kumar Govil v. Maqsoodan, 2007 (4) SCC 465* (Para 19) which in turn was quoted in *Krishna Kumar Rastogi v. Sumitra Devi, AIR 2014 SC 3635 (para 12)* (All under U.P. Rent Control Act)

Ancestral House

In the following authorities effect of share of landlord in ancestral accommodation has been considered:

i. Martin & Harris v. ADJ, AIR 1998 SC 492,(U.P. Rent Control Act)If wife of the landlord inherits undivided share in her father's property/house, it is immaterial while considering the bonafide need of the landlord- husband.

ii. *John Mathai Abrraham v. M/s British Physical Lab. India Ltd., AIR 2002 SC 105*, (Karnataka Rent Control Act) If landlord is in possession of a part of building in which he has a fractional share it is no bar to seek eviction of the tenant on the ground of bonafide need.

iii. *Smt. Shashi Jan v. Tersem Lal, AIR 2009 SC 2617* (East Punjab Rent Control Act) If a parental house of landlord is unfit and unsafe, it cannot be treated to be suitable alternative accommodation available to the landlord.

iv. *K.N.A. Gupta v. Smt. T.B. Usha Vijai Kumar, AIR 2008 SC 539*, (Karnataka Rent Control Act) Courts should take into consideration the ancestral house of the father-in-law of the widow landlady in which she along with her children is residing.

v. *T. Sivasubramaniam v. Kasinath Pujari AIR 1999 SC 3190* (Tamil Nadu Rent Control Act). Sons and grandsons had pleaded that they wanted to live separately from father/grandfather but no reason like paucity of accommodation in the parental house or its unsuitability was given. It was held that it was mere desire which was not substitute of need)

Landlord's possession as tenant/ licencee

In the following authorities the effect of possession of landlord of another accommodation as tenant or licencee has been considered:-

1. *G.K. Devi v. Ghanshyam Das, AIR 2000 SC 656* (A.P. Rent Control Act)

2. *Dhannalal v. Kalawati&Ors., AIR 2002 SC 2572*(M.P. Rent Control Act)

3. *Dinesh Kumar v. Yusuf Ali AIR 2010 SC 2679*, para 30 (M.P. Rent Control Act)

4. *Krishna Kumar Rastogi v. Sumitra Devi, AIR 2014 SC 3635* (para 15)

In these four authorities it has been held that a tenanted commercial accommodation available to the landlord

is no ground to dismiss the case initiated by him for eviction of the tenant from his own accommodation on the ground of bonafide need.

5. *Kailash Chandra v.Dharamdas, AIR 2005 SC 2362* (H.P. Rent Control Act). One brother landlord was residing at first floor and the other in a rented house. It was held that the ground floor which was in tenancy occupation of a tenant had to be vacated for bonafide need of the landlord, who was residing in a tenanted house.

6. *M.E. Kashirsagar v. Traders and Agency, AIR 1997 SC 59* (Bombay Rent Control Act) Occupation of another accommodation by landlord as licencee is precarious, hence, such accommodation cannot be taken to be available to landlord.

IV- SUBSEQUENT EVENTS

Normally need of the landlord is to be seen as on the date of filing of release application under Section 21 of U.P.Rent Control Act. However, if during pendency of proceedings till the highest court including the Supreme Court, such development takes place which completely eclipses or satisfies the need then such subsequent event will have to be taken into consideration, and eviction order has to be denied or set-aside if already passed.

Landlord getting other accomodation

1. In the following authorities it has been held that if during pendency of proceedings at any stage,

landlord obtains possession of another, suitable accommodation, this fact has to be taken into consideration and release order has to be denied or set-aside :-

I. P*asupuletiVenkateshwarlu v. The Motor and General Traders, AIR 1975 SC 1409*(3 Judges)

II. Hasmat Rai v. Raghunath Prasad, AIR 1981 SC 1711 (3 Judges) (In para 14 it was held that "*This requirement must continue throughout the progress of the litigation and must exist on the date of the decree and when we say decree we mean the decree of the final Court.)*

III. M/s Variety Emporium v. V.R.M. Mohd. Ibrahim Naina, AIR 1985 SC 207.

IV. Molar Mal v. M/s Kay Iron Works (P) Ltd., AIR 2000 SC 1261.

V. Denanath v. Puran Lal, AIR 2001 SC, 2655.

VI. Gulabbai v. NalinNarsi Vohra, AIR 1991 SC 1760.

VII. *Amarjit Singh v. KhatoonQuamarain AIR 1987 SC 741* (In this case a house became available to the landlady during pendency of proceedings which was again let out to another tenant by her)

2. However, subsequent events must be brought on record promptly, properly and must be substantiated by evidence. Proper opportunity to rebut the allegations must also be providedto the tenant, vide *Atma S. Berar v. Mukhtiar Singh, AIR 2003 SC 624*.

3. In *Ram NibasGagar v. Debojyoti Das and others, AIR 2003 SC 632*, it was asserted by the tenant in appeal that during pendency of proceedings before the court below, landlord had let out a shop available to him to another tenant. The Supreme Court held that as this fact was not brought on record before the court below, hence it could not be agitated, for the first time, before the higher court.

4. If release is sought for the business purposes then a job or any other profitable engagement during pendency of proceedings does not bring to an end the bonafide need as landlord is not expected to sit idle till the decision of the release application by the final court and delivery of possession which takes a very long time, in normal course, vide *Gya Prasad v. Pradeep Srivastava, AIR 2001 SC 803; Smt. Ram Kubai v. H.D. Chandak, AIR 1999 SC 3089; Pratap Rai Tanwani v. Uttam Chand, AIR 2005 SC 1274, and R.G. Panhale v. M/s C.L. Sundarji, AIR 1999 SC 3864* (para 11)

5. In *AnsuyabenKantilal Bhatt v. RashiklalManilal Shah, AIR 1997 SC 2510* the landlord in his mid fifties had initiated execution proceedings in respect of the tenanted shop for doing business. However, when the Supreme Court decided the matter the landlord had become 87 years of age. Hence, the Supreme Court held that it was not possible for such an old person to do business. The Supreme Court accordingly decided the matter against the landlord but enhanced the rent. However, in *Shamshad Ahmad v. T.R. Bajaj, 2008 (9) SCC 1*, release application filed by a landlord after his retirement, under Section 21 of U.P. Rent

Control Act was ultimately allowed by the Supreme Court when landlord was 75 years of age.

Death of Landlord

6. If landlord files the release application pleading that the tenanted accommodation is required for his son then landlord's death is immaterial vide *Ashok Kumar v. Ved Prakash, AIR 2010 SC 330 (para 6).* Similarly if eviction is sought by landlord for his and his family members' need, then death of landlord is immaterial and the need of the family members will be considered, vide *Shanti Lal Thakor Das v. Chiman Lal Magal Lal, AIR 1976 SC 2358* overruling *Phool Rani v. Naubat Rai, AIR 1973 SC 2110.*

If landlord initiates eviction proceedings on the basis of only his own need, then, unless, after his death, his heirs plead their need, proceedings cannot continue and if release order had been passed by the Court below the same will have to be set-aside in appeal, revision writ petition or appeal before Supreme Court vide*Seshambal v/s Chelur Corporation. Chelur Building AIR 2010 SC 1521* (Husband & wife initiated the proceedings. Both the Courts below as well as the High Court held that there was no bonafide need. Matter was carried to the Supreme Court by the widow as husband had died during pendency of proceedings before the High Court.Widow also died and was substituted by three married daughters all of whom were residing in other cities, having not even a claim of their bona fide need. The Supreme Court held that proceeding came to an end due to death of

land lords. It was a case from Kerala.)

In another case from U.P. reported *in KedarNath Agarwal v. Dhanraji Devi, 2004 (8) SCC 76: 2004 (2) ARC 765 (SC)* release application on the ground of bonafide need u/s 21 of U.P. Rent Control Act filed by two landlords had been allowed by both the courts below. The tenant filed writ petition during pendency of which both the land lords respondents died. High Court refused to set aside the release order on the ground of death of landlords and dismissed the writ petition on merit. The supreme Court set aside the order holding that after the death of the landlords release order in their favour did not survive. The matter was remanded to the High Court to reconsider the same in accordance with section 21(7) of U.P. Rent Control Act according to which after the death of landlord, his heirs may plead and prove their need.

Even in the absence of such provision the position will remain the same and after the death of landlord his heirs may get the plaint/application amended to plead their own need vide *Siddalingamma v. MamthaShenoy, AIR 2001 SC 2896* (para 10), (under Karnantaka Rent Control Act) and *Raghunath G. Panhale v. M/s CnaganlalSundarji& Co., AIR 1999 SC 3864* (Paras 12 to 14) (under Bombay Rent Control Act.)

In the authority of *KedarNath Agarwal*, supra, 12 authorities of Supreme Court and one of Federal Court have been considered but a direct contrary authority under the same Act

(U.P. Rent Control Act) reported in *Kamleshwar Prasad v. Pradumanju Agarwal, AIR 1997 SC 2399* has not been considered. It is submitted with respect that *Kamleshwar Prasad* holding that death of landlord, respondent during pendency of writ petition does not affect the release order passed by the Courts below does not lay down correct law as it did not take into consideration *Pasupuleti*, 1975 (supra) and *Hasmat Rai,* 1981, (Supra) each by three Hon'ble Judges relied upon in *KedarNath Agarwal*. In fact, in *Kamleshwar Prasad*, no authority has been considered. In *Seshambal*, supra, both the authorities (*Kamleshwar and K.N. Agarwal*) have been mentioned without noticing the direct conflict.

In *P.V. Papanna v. K. PadmanaBhaiah, AIR 1994 SC 1577*, after referring to Pasupaleti, 1975 (supra) Hasmat Rai, 1981 (supra) and several other authority it was held in para 17 as follows :-

"Events which take place subsequent to the filing of an eviction petition under any Rent Act can be taken into consideration from the prupose of adjudication until a decree is made by the final court determining the rights of the parties."

However in the said case death of the landlord took place after the order of eviction had been maintained by the final court hence it was held that death would not make any effect on execution proceedings and his legal representatives could execute the release order even without showing their need.

In Shakuntala Bai v. Narayan Das, AIR

2004 SC 3484 the afore quoted observation of P.V. Papanna was severely criticised in para 13. It is submitted that the criticism was not only unwarranted by also uncalled for. Firstly in P.V. Papanna's case reliance had been placed on two larger benches (Pasupuleti and Hasmat Rai) but in Shakuntala Bai's no reference was made to those authorities. Secondly in Shakuntala Bai's case after the death of landlord his heirs through amendment had pleaded their own need as noticed in para 16 thereof. For these reasons Supreme Court in a recent authority reported in Baldev Krishan v/s Satya Narain, 2013 (3) ARC 247 (SC) has criticized with equal vehemence the authority of Shakuntala Bai and reaffirmed the principle that death of landlord until decision by final court renders order of eviction or eviction proceedings on the ground of bona fide need in-fructuous unless his heirs plead through amendment their own need and prove the same.

However, the proposition enunciated in P.V. Papanna's case that death of landlord after eviction order by final court is immaterial has not been doubted in any authority.

V- COMPARATIVE HARDSHIP

By virtue of fourth proviso to Section 21 (1) of U.P. Rent Control Act, the Prescribed Authority after finding the need of the landlord to be bonafide is required to compare the hardships of landlord and tenant. The Proviso along with explanation is quoted below:

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

Explanation:- In the case of a residential building:-

(a) Where the tenant or any member of his family (who has been normally residing with or is wholly dependent on him) has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, municipality, notified area or town are, no objection by the tenant against an application under this sub-section shall be entertained;

Note:- For the purposes of this clause a person shall be deemed to have otherwise acquired a building, if he is occupying a public building for residential purposes as a tenant, allottee or licensee."

Rule 16 of the Rules framed under the Act provides guidelines for considering bonafide need and comparative hardship. (Sub Rule (1) deals with residential buildings and Sub Rule (2) with commercial buildings).

Comparative hardship under U.P. Rent Control Act has been considered by the Supreme Court in *Shyam Babu*[1] *R.N. Sharma*[2]*, Ashok Kumar*[4]*, Bhagwan Das*[6]*, Bishan Chand*[7]*, Shamshad Ahmad*[8]*, Mohd. Ayub*[10]*, Krishna Kumar*[11]*, Ganga Devi*[12]*, Sushila*[14] and *R.K. Govil*[15](all discussed below)

Hardship of sub-tenant is to be considered only if he has been inducted with the consent of the landlord vide *Shyam Babu*[1].

Likely hardship of prospective allottee is not to be considered in case of release in favour of landlord u/s. 16 of the Act on the ground of actual vacancy or deemed vacancy u/s 12 of the Act. Section 16(1) (b) does not require any comparison of hardship. In fact, as held in *R.N. Sharma*[2] *(para 12)* prospective allottee cannot even oppose bonafide need of the landlord.

Comparative hardship is not to be pleaded by the landlord, plea in this regard has to be taken by the tenant vide *H.M.Doshi*[3] *(Para 25),* under Bombay Rent Control Act *(Quoted with approval in Ashok Kumar*[4] *(*Para 16).

In the leading authority of *Bega Begum*[5](under J&K Rent Control Act) meaning and scope of comparative hardship has been discussed in paras 19 to 26. In the said case tenanted property in dispute was a four storied hotel. Landlord's income was less than rupees ten thousand per year. Tenant was earning huge income. The following factors were held to be relevant and favourable for landlord:

(b) Low income of landlord and necessity to increase the same.
(c) Huge income of the tenant from the business carried out in the tenanted premises in question (Paras 21 and 22)

> "*Being the owners of the house they cannot be denied eviction and be compelled to live below the poverty line merely to enable the respondents to carry ontheir flourishing hotel business at the cost of the appellant*"

(d) Financial capacity of the tenant due to which he is in a position not merely to rent but to buy a house (or shop etc.) (para 20)

(e) It is not necessary that tenant must be able to get another accommodation of the same size and in the same locality. It is asking for the impossible. (para 23)

(f) Consequence of tenant being thrown out is wholly irrelevant as in every case of eviction it happens (para 19)

(g) Each party has to prove its relative advantages or disadvantages and the entire onus cannot be thrown on the landlord to prove that lesser disadvantages will be suffered by the tenant and that they were remediable (para 20).

The last observation at serial no.(f) was quoted with approval in *Bhagwan Das*[6], (towards end of para 7), thereafter towards end of para 8 it was further held that

> "*the question as to whether in a given circumstance alternative accommodation is available or not is not a matter of which any judicial notice can be taken but is one which had to be proved by evidence as has been emphasized inBega Begum's case (AIR 1979 DV 272(Supra)".*

However, if bonafide need has not been found proved, non-consideration of comparative hardship is not fatal vide *Ashok Kumar*[4].

In *Bishan Chand*[7]a judgment of few lines, it was held that if the trial Court/ Lower Appellate Court recorded the finding that hardship of both was equal, eviction could not be ordered in the absence of some additional circumstance in favour of landlord. Explaining the said authority it was held in *Bhagwan Das*[6]that if landlord's son is unemployed after completing education and tenant has not made any effort to search alternative accommodation during pendency of

litigation then these are the outweighing circumstances in favour of the landlord (para 7). It was also held that Rule 16 (2) relates to comparative hardship.

In *Shamshad Ahmad*[8] *(para 48)* it has been held that the mere fact that tenant will have to pay higher rent for the other accommodation which he may take, is no ground to hold that he would suffer greater hardship.

If tenant is paying inadequate rent then denying the order of eviction to the landlord even if he has proved his bonafides, would amount to sort of double punishment to the landlord. The first is that he was made to suffer the tenant for inadequate or negligible rent for decades, or years and second is that he cannot get possession of the accommodation even though he bonafidely needs that for the reason that on payment of the inadequate or negligible rent, which the tenant is paying to him, the tenant cannot get any other accommodation.

TENANT TO SEARCH ALTERNATIVE ACCOMMODATION:-

Apart from *Bega Bega,*[5]*Bhagwan Das*[6] and *Shamshad Ahmad*[8]*,* supra, in the following authorities also it has been held that if the tenant during pendency of litigation does not make efforts to search alternative accommodation (which he may take on rent or purchase) then question of hardship will have to be decided against him. *B.C. Bhutada*[9] *(para 13),*under Bombay Rent Control Act, *Mohd Ayub*[10] (para 15)under U.P. Rent Control Act,*Krishna Kumar Rastogi*[11](para 12) U.P. Rent Control Act, *Shamshad Ahmad*[8] *(Supp.) 526 (para 48)*U.P. Rent Control Act, *Ganga Devi*[12] *(para 20)*U.P. Rent Control Act, *B.B. Patil*[13](para 9) Karnataka Rent Control Act.

LONG POSSESSION OF TENANT:-

Rule 16(2)(a) of the Rules framed under U.P. Tent Control Act provides as under:-

> *"(a) 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."*

Long possession of tenant is only one of the factors to be considered and not decisive vide *Bhagwan Das*[6]*, Mohd. Ayub*[10] *(paras 13 & 16), Sushila*[14]*,(Para 11), R.K. Govil*[15] *(paras 3, 18, &19 ;*43 years at the time of filing release application in 1984*) Ganga Devi*[12](paras 8 and 24; more than 50 years) and *Shamshad Ahmad*[8] *(para 44; about 50 years).* Long possession of tenant and his likely hardship may be compensated by granting reasonable time to vacate, vide *B.B. Patil*[13] (para9)and *R.K. Govil*[15](paras 18 & 19)

Gravity of need of landlord (e.g. being unemployed) or failure of tenant to reach alternative accommodation or availability of alternative accommodation to the tenant outweighs his long possession.

The provision [Rule 16(2) (a)] appears to have become obsolete, vide *Ganga Devi*[12](para 25)

AFFLUENCE OF LANDLORD:-

Affluence of landlord is neither fatal for his bonafide need (see under 'For Business Purpose') nor it downgrades his hardship, vide *B.B.Patil*[13] (Paras 8&9) and *Mohd. Ayub*[10](para 14)

PART RELEASE:-

Under Rule 16(1) dealing with residential buildings it is provided under clause (d) that Court must consider part release, whenever practicable. Under Rule 16 (2) dealing

with business accommodations there is no provision of part release. However, in the very first sentence of Section 21 it is provided that tenant may be evicted from the tenanted building or part thereof. Accordingly in suitable cases eviction of tenant from part of business accommodation may also be ordered. Under T.P. Act chapter V dealing with leases of immovable property part eviction is not permissible. However, if building is covered by some such Rent Control Act which permits part eviction (like U.P.) then it may be ordered. In *Dinesh Kumar*[16] (under M.P. Rent Control Act) looking to the magnitude of business sought to be started by the landlord only half part of the shop (having dimension of 18 feet by 14 feet) was released. However in *Mohd. Ayub*[10]High Court had released only one of the four rooms. The Supreme Court released all the four rooms.

In *B.C. Bhutada*[9](under Bombay Rent Control Act) part release was directed to be considered.

MISC. Even though bonafide need of landlord and likely hardship which would be caused to him in case release is refused are distinct matters but to some extent they overlap e.g. availability of suitable alternative accommodation to the landlord mitigates against his bonafide need and it also mitigates his hardship.

Landlord may do any business from any such place which he considers suitable and in this regard he has complete freedom. He cannot be compelled to do business from less suitable place even if fully available in vacant state. Similarly tenanted accommodation available to landlord cannot be taken into consideration. (See under Alternative Accommodation available to Landlord and For Business Purpose.)

While considering the hardship sympathy, sentiment or equity has no role to play vide *Ganga Devi*[12]

(paras 21 & 22) followed in *Mohd. Ayub*[10](para 12)

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1. *ShyamBabu v. D.J. Moradabad, AIR 1984 SC 1399 (3judges)*
2. *Ram Narayan Sharma v. Shakuntala Gaur, AIR 2002 SC 2204*
3. *Heera Lal Mool Chand Doshi v. Barot Raman Lal Ranchhoddas, AIR 1993 SC 1449*
4. *Ashok Kumar v. Sita Ram, AIR 2001 SC 1692,*
5. *Bega Begum v. AdulAhad Khan, AIR 1979 SC 272*
6. *Bhagwan Das v. Smt. Jiley Kaur, AIR 1991 SC 266*
7. *Bishan Chand v. V A.D.J. Bulandshahr, AIR 1982 SC 1230*
8. *Shamshad Ahmad v. Tilak Raj Bajaj, AIR 2008 SC (Supp.) 526*
9. *BadrinarayanChunni Lal Bhutada v. GovindramRamgopalMundada, AIR 2003 SC 2713*
10. *MohdAyub v. Mukesh Chand, AIR 2012 SC 881*
11. *Krishna Kumar Rastogi v. Sumitra Devi, AIR 2014 SC 635*
12. *Ganga Devi V. D.J. Nainital, 2008 (7) SCC 770*
13. *BhimangoudaBasanagaudaPatil v. Mohammad Gudusaheb, AIR 2003 SC 1634*
14. *Sushila v. II A.D.J., Banda, AIR 2003 SC 780*
15. *Rishi Kumar Govil v. Maqsoodan (2007) 4 SCC 465*
16. *Dinesh Kumar v. Yousuf Ali, AIR 2010 2679*

VI- COMPROMISE

The Supreme Court in *Hira Lal MoolchandDoshi Vs. Barot Raman Lal Ranchhoddas, AIR 1993 SC 1449*, (two judges) after referring to four of its earlier authorities[1] held that in rent control matters if tenant through compromise admitted the case of the landlord (bonafide deed of the landlord and default in payment of the rent in the said case) decree for eviction on the basis of compromise could very well be passed by the court and the same could not be questioned in execution on the ground of being nullity. The relevant portion is quoted below:-

> *"If there is an admission of the tenant it will not be open to him to challenge its correctness as the admissions made in judicial proceedings are absolutely binding on the parties. At any rate decree cannot be called a nullity to enable the executing court to go behind it." (para 22)*

In *Nagindass v. Dalpat Ram, AIR 1974 SC 471 (3 judges)* relied upon in *Heeralal,* Supra, eviction suit had been filed under Bombay Rent Control Act on the ground of arrears of rent and bonafide requirement of the landlord, absolutely no evidence was led by any of the parties. "*As regards the ground of bonafide personal requirement of the landlords, it is urged that there was not even a scintilla of material from which the satisfaction of the court as to the existence of a ground under Section 13 could be spelled out. The decree, concludes the counsel, being based solely on the consent of the parties was a nullity*".The suit was compromised on 23.09.1964. Relevant term of the compromise as mentioned in para 3 of the judgment was that "*the defendant too handover possession of the suit compromise by 30.9.1968 without any objection*". It was held that the compromise was sufficient evidence to support the decree of eviction. In para 26 of the said judgment (which is also quoted in para 19 of Heera Lal (Supra)) is quoted below:-

Para 26:

"The aforesaid terms of the compromise were also incorporated in the order. After distinguishing the former three cases viz. Bahadur Singh's case, Kaushalya Devi's case and Ferozi Lal Jain's case, Vaidialingam, J., speaking for himself and Dua, J., (comprising majority) enunciated the law on the point, thus: (p. 774)

> *"The true position appears to be that an order of eviction based on consent of the parties is not necessarily void if the jurisdictional fact viz. , the existence of one or more of the conditions mentioned in Section 10 were shown to have existed when the Court made the order. Satisfaction of the Court, which is no doubt a pre–requisite for the order of eviction, need not be by the manifestation born out by a judicial finding. If at some stage the Court was called upon to apply its mind to the question and there was sufficient material before it, before the parties invited it to pass an order in terms of their agreement, it is possible to postulate that the Court was satisfied about the grounds on which the order of eviction was based ..... If the tenant in fact admits that the landlord is entitled to possession on one or other of the statutory grounds mentioned in the Act, it is open to the Court to act on that admission and make an order for possession in favour of the landlord without further enquiry."*

Accordingly even if, apart from compromise, there is no evidence on record and even if in the compromise nothing has been said regarding bonanfide need of the landlord still if under compromise sometime to vacate is granted to the tenant and thereupon the tenant agrees that the release application may be allowed, it is sufficient and such decree cannot be said to be nullity.

At this juncture it is necessary to refer to a subsequent authority of the Supreme Court also which is reported in *Ram Chandra Verma v. Shri Jagat Singh Singhi, AIR 1996 SC 1809* (3 judges)

The second sentence of para 4 of the said authority is quoted below:-

> *"It is settled law that unless the conditions for eviction are proved the decree for eviction are proved the decree for eviction on compromise is a nullity."*

The above observation has firstly to be read in the light of the earlier authorities (supra) particularly *Nagindass*, suprawhich was also by three Hon'ble Judges. Compromise by the tenant is admission regarding grounds of eviction and admission is the best evidence. The above observation has also to be read in the light of the facts of the said case. In the said case, instead of initiating evection proceedings against the real tenant, landlord had put forward as tenant someone else who was his confidant and he entered into compromise with the landlord. Thereafter, the real tenant objected to the execution of the decree under Order 21 to 97 C.P.C. The Supreme Court finding the objector, real tenant who was not even party in the eviction suit held that he could not be evicted under the compromise decree.

In **SomDutt v. Govind Ram, AIR 2000 SC 1638**, it has been held that if in the proceedings, initiated by the landlord, against the tenant for eviction, on the ground of bonafide need compromise takes place between the landlord and the tenant and under the compromise tenant's son is permitted to reside in the accommodation in dispute for 10 years, then after 10 years, the son may be evicted in the execution proceedings and said compromise does not amount to creation of a new tenancy.

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1. (i) K.K. Chari v. R.M. Seshadhri, AIR 1973 SC 1311 (3Judges)
   (ii) Nagin Dass v. Dalpat Ram, AIR1974 SC 471 (3 Judges)
   (iii) Roshan Lal v. Madan Lal, AIR 1975 SC 2130 (3 judges)
   (iv) SulemanNoormohammad v.UmarbhaiJanubhai, AIR 1978 SC 952 (2 judges)

NOTICE

InAbdul Jalil v. Haji Abdul Jalil, AIR 1974 Allahabad 402 (DB) six types of notices have been considered and it has been held that a notice under Section 106 of T.P. Act using the words ' your tenancy is terminated' and granting 30 days time to vacate is valid, however, a notice terminating the tenancy w.e.f. today even though granting 30 days time to vacate is invalid.

By virtue of amendment of 2003 made in Section 106 of Transfer of Property Act even if through notice less than required time to vacate is given to the tenant still the suit instituted on the basis of the said notice would not be defective if it is instituted after the expiry of requisite period, vide Shree Ram Urban Infrastructure Ltd. v. Court Receiver, AIR 2014 SC 2286.

In Shanti Devi Nigam v. Madan Lal Gupta, AIR 2005 SC 1513, following seven judges authority reported in V.D. Chettiar v. Y. Ammal, AIR 1979 SC 1745 it has been held that in U.P. also it is not necessary to terminate the tenancy before filing suit for eviction under 20 of U.P. Rent Control Act.

In Vithalbhai Pvt. Ltd. V. Union Bank of India, AIR 2005 SC 1891 it has been held that if the suit was instituted before expiry of the period of fixed term lease but the period expired during the pendency of the suit (when written statement was filed) then the suit cannot be dismissed as premature.

In Sarup Singh Gupta v. S. Jagdish Singh and others, AIR 2006 SC 1734 it has been held that mere, acceptance of rent after termination of tenancy through notice does not amount to waiver of notice and creation of fresh tenancy in terms of Section 113 and 116 of T.P. Act on the ground that in any event if the rent was neither tendered nor accepted, the landlord in the event of success in the suit would be entitled to the arrears of rent.

Asking for payment of more rent than ultimately found due does not invalidate the notice of demand of rent to be given under Section 20(2) (a)

of U.P. Rent Control Act vide Gokaran Singh v. I A.D.J., 2000(1) ARC 653 (F.B.)

In Anil Kumar v. Nanak Chandra Verma, AIR 1990 SC 1215, overruling Allahabad and Delhi High Courts authorities it was held that if notice is returned with the endorsement of refusal made by the postman then the presumption would be that notice had been served through refusal and bare statement of tenant on oath denying tender and refusal to accept delivery is not sufficient to rebut presumption.

If notice is sent through registered post, and it is not served upon the tenant due to the reason that he was out of station or had left the premises and the postman returns registered notice with the endorsement 'left' or 'not met' it amounts to service. Vide M/S Madan & Co. v. Wazir Jaivir Chand AIR 1989 SC 630.

DENIAL OF TITLE

In *Jogender Singh v. Smt. Jogindero& others, AIR 1996 SC 1654*, after placing reliance upon AIR 1915 P.C. 96 & AIR 1966 SC 629 it has been held that in view of Section 116 of the Evidence Act tenant or person claiming through him shall not be permitted to deny the title of the landlord during the continuance of the tenancy.

Under Section 20 (2)(f) of U.P. Rent Control Act (U.P. Urban Building Regulation of Letting Rent and Eviction Act 1972) (U.P. Act No.13 of 1972) denial of title of landlord is a ground of eviction of the tenant.

If title of the landlord is denied by the defendant / tenant in the written statement then in that very suit it may be taken as ground of eviction by getting the plaint amended. Even if plaint is not amended but an issue to that effect is framed, evidence by both the parties is led and the point is argued before the trial Court and decided by it without any objection by the tenant, regarding absence of pleading, then failure to get the plaint amended is not fatal,vide *MajatiSubbrarao v. P.V.K. Krishna Rao, AIR 1989 SC 2187*. However, in *J.J. Lal Pvt. Ltd. v. M.R. Murali AIR 2002 SC 1061* (para 19) it has been held that in case neither there is any pleading nor decision on this point by the trial court then lower appellate court cannot, for the first time, decide this question.

However, the assertion by the tenant that the plaintiff / alleged landlord is only co-owner/co-landlord does not amount to denial of title,Vide *Smt. Bela Das v. S.N. Bos, AIR 1975 SC 398*(para 6) and *C. Chandra Mohan v. Sengottaiyan, AIR 2000 SC 568*.

The tenant can assert that after inducting him as tenant, the landlord has lost the title (by transfer etc.) and he can also question the derivative title of the transferee landlord unless he has attorned in his favour. Such assertions will not amount to denial of title as held in the above case of J.J. Lal,(para 18).

If X inducts a tenant and thereafter Y starts asserting that he is the landlord as he has purchased the property from X then the tenant may say that no sale-deed has been executed or the sale-deed is not valid. Such assertion would not amount to denial of title. Tenant may also ask the alleged purchaser landlord to furnish to him copy of sale-deed etc. This will also not amount to denial of title, vide *Sheela v. Firm Prahalad Rai Prem Prakash, AIR 2002 SC 1264*,paras 16 to 18 and *Subhash Chandra v. Mohd. Sharif, AIR 1990 SC 636* (Paras 6 to 11) and AVGP *Chettiar& Sons v. T.P. Gounder, AIR 2002 SC 2171*, para 39.

In *Ram Rati v. Shri Niwas, AIR 1995 SC 321* (under old U.P. Rent Control Act), after induction of the tenant, the tenanted property had been sold in execution of a decree against the landlord. Afterwards, the auction sale was set aside in a suit of which the tenant was not aware. He continued to pay rent to the auction purchaser under a decree containing the said directions passed in a suit filed by auction purchaser against the tenant. The Supreme Court held that as original landlord did not intimate the tenant about setting aside of the auction sale and no mention of this fact was made in the notice given by him to the tenant, hence, the tenant was not defaulter as he was not obliged to pay rent to the original landlord. It is also clear from this authority that in such situation unless clear, precise intimation, containing details of change of ownership is given to the tenant, his refusal to admit the transferee to be his landlord, will not amount to denial of title warranting eviction.

CO-LANDLORDS AND JOINT-TENANTS

CO-LANDLORDS:-

If there are several landlords it is not necessary that they all must file eviction suit under Section 20 or Release Application on the ground of bonafide need under Section 21 of U.P. Rent Control Act.

Rule 15 (2) of the Rules framed under U.P. Rent Control Act, (dealing with applications under Section 21) provided at the end that "if there are more than one landlords, the application shall be signed by all the co-landlords".

A Full Bench authority of Allahabad High Court reported in Gopal Das v. ADJ, 1987 (1) ARC 281 held the said portion of the sub-rule to be ultra vires. Accordingly, release application may be filed by only one or some of the landlords.

As far as suit for eviction is concerned, the Supreme Court in the following authorities has held that even one of the co-owners/ landlords can institute the suit for eviction:-

1. *DhannalalV. Kalawatibai, AIR 2001 SC 2572* (para 24). Either all the landlords may institute eviction proceedings or one or some of the co-owners/ landlords may do so and they may or may not implead other co-owners / landlords as non-applicants or proforma defendants.
2. M/S Indian Umbrella Manufacturing Company v. B. Agarwal, AIR 2004 SC 1321. (It can be done on the doctrine of agency and consent of other co-owners is assumed unless it is shown that they were not agreeable and suit was filed in spite of their disagreement. It was further held that if two co-owners file suit for eviction, one co-owner cannot withdraw his consent midway to the prejudice of the other co-owner. Both the co-owners had filed suit for eviction of tenants. Thereafter one of the co-owners sold her share to some of the tenants who thereafter filed application for dismissal of suit/appeal on the ground that

they were not interested in evicting the tenants. It was held that it could not be done and order of eviction was maintained.)

See also under 'Tenant Purchasing share of co-owner' op.cit.

3. Mahendra Prasad Jain v. Manohar Lal Jain, AIR 2006 SC 1471 (It was held that eviction suit could be filed by one co-owner on the ground of bonafide personal need and he need not show consent given by other co-owners. However, in the event a co-owner objects to such proceedings then the same might be a relevant fact, (para 11)

JOINT TENANTS:

1. In Mohd. Azeem v. D.J. Aligarh, AIR 1985 SC 1118 (under U.P. Rent Control Act) after the death of the tenant one of his sons had constructed his own house and shifted there. The landlord pleaded that by virtue of Section 12(1) (c) of U.P. Rent Control Act vacancy occurred. However, Supreme Court held that after the death of the tenant his heirs inherited the tenancy as co-tenants hence action of one does not bind the others. However, this authority was overruled in Harish Tandon v. ADM Allahabad, AIR 1995 SC 676 (3 judges) and it was held that after the death of the tenant his legal representatives inherit the tenancy jointly. The Supreme Court explained the position by giving the illustration that in case such heirs are held to be co-tenants then one of them may severely damage the building still the other co-tenants may say that they must not be evicted as they have not damaged the building. In the said case, after the death of the tenant several of his heirs had inherited the tenancy which was in respect of a shop. One of the sons created a partnership making his son-in-law as partner in the business which was carried out by him in part of the shop. Son-in-law is not included in the definition of family under U.P. Rent Control Act. Accordingly the Supreme Court held that it

amounted to vacancy of entire premises under Section 12(2) of U.P. Rent Control Act.

2. In Ashok ChintamanJuker v. Kishore PandurangMantri, AIR 2001 SC 2251(para 11) it was held that in case of joint tenancy *"notice on any one of the tenants is valid and a suit impleading one of them as a defendant is maintainable. A decree passed in such a suit is binding on all the tenants. Determination of the question depends on the facts and circumstances of the case. No inflexible rule or straightjacket can be laid down for the purpose."* In para 15 a three judge bench authority reported in Textile Association (India) Bombay Unit v. Balmohan Gopal Kurup, AIR 1990 SC 2053, which had taken a contrary view was noticed. In Textile Association case ex-parte decree against the widow and one of the two sons of the deceased tenant was set aside through decree passed in the suit instituted by the other son for cancellation of ex party decree holding that he was residing in the house in dispute all along hence he should have been impleaded in the eviction suit. (The entire ex-parte decree was set aside and eviction suit was restored. Possession was also directed to be redelivered to all the tenants.) However in A.C. Juker compromise eviction decree against widow of one of the two sons of deceased tenant was refused to be set aside on the objection of the non-impleaded other son on the ground that even though in 1958 when tenant died, he was residing in the tenanted house along with his brother but in 1962 he shifted to another house and suit was filed thirty years thereafter i.e. in 1992, hence, he was not necessary party in the suit.

TENANT PURCHASING SHARE OF CO-OWNER:

Overruling one of its earlier authoritiesreported in Abdul Alim v. Shaikh Jamaluddin Ansari 1998 (9) SCC 683 the Supreme Court in P.K. Jaiswal v. Bibi HusnBano, AIR 2005 SC 2857 (3 judges) has unanimously held that even if tenant purchases the share of a co-owner in the tenanted premises still he remains tenant and liable to eviction in the suit filed by other co-owners, unless, he purchases the shares of all the co-owners. Referring to Section 111 (d) of T.P. Act, the Supreme Court held that merger of tenancy with ownership brings an end to the tenancy only if merger is complete and not partial. The authorities reported in T. Lakshamipathi v. P.N. Reddy AIR 2003 SC 2427 and India Umbrella Manufacturing Co. v. B. Agarwal AIR 2004 SC 1321, supra, were approved.

Sub Tenant purchasing the Tenanted property:-

In the aforesaid authority of P.K. Jaiswal, by majority judgment, it has also been held that if sub tenant purchases the entire tenanted property then sub tenancy also comes to an end in accordance with section 109 and 111 (d) of T.P. Act, as it completely merges with ownership. In this regard the authority reported in N. Sainuddin v/s K Sulaiman AIR 2002 SC 2562 has been approved and the authority reported in Indra Perfumery v/s Motilal 1969 (2) SCW 967 has been over ruled,. (Paras 1 to 9).