ALLAHABAD HIGH COURT

Chandra Kumar Shah

Vs.

District Judge

Civil Misc Writ No. 5283 of 1973

(J.M.L. Sinha, K.C. Agarwal and M.P. Saxena, JJ.)

09.01.1976

JUDGMENT

M.P. Saxena, J.

1. The petitioners are the owners of building No. D-39/119 situate in Hauz Katra, Varanasi, and are carrying on sole selling agency business of Cinni Fans, Tullu and Shiva Water Pumps in the first, second and third floor of it. The respondent No. 3 are tenants of a shop in the ground floor of the same building. As the petitioners require accommodation on the ground floor for a showroom for their products they requested the respondent No. 3 to vacate the shop but in vain. Therefore, on September 7, 1971, the petitioners filed an application under Section 3 of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 (hereinafter referred to as the old Act) for permission to file a suit for ejectment of respondent No. 3. The latter filed objections. During the pendency of the said application the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter called the new Act) came into force. The petitioners got their application amended in order to bring it in conformity with the provisions of the new Act because in view of Section 43(2)(a) it stood transferred to the prescribed authority and was deemed to be an application under Section 21 of the new Act and was to be disposed of in accordance with the provisions of this Act. The respondent No. 3 also got their objections amended. On April 6, 1973, the prescribed authority released the shop in favor of the petitioners under Section 21(1)(a) of the new Act. The respondent No. 3 filed an appeal before the District Judge, Varanasi, which was allowed on May 29, 1973. Therefore, the petitioner filed a petition under Article 226 of the Constitution, *inter alia* on the grounds that sub-rule (2) of Rule framed under the new Act is *ultra vires* the Act. The learned Single Judge who heard the petition agreed with this

contention but considering that the question is of vital importance and likely to arise in a number of cases and also because in the case of *Gorakhnath Yasmik v. State Government,* [1] a Division Bench of the Lucknow Bench of the Allahabad High Court has taken a contrary view, he referred the following question for consideration of the Full Bench :

> "Whether sub-rule (2) of Rule 16 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972,, is invalid being *ultra vires* of the powers of the State Government."

It will be useful before discussing the question to set out the relevant provisions of the Act. Section 21 reads :

> "21. *Proceeding for release of building under occupation of tenant.* - (1) The Prescribed Authority may, on an application of the landlord in that behalf order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely -
> (a) that the building is *bonafide* required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the object of the trust :
> (b) that the building is in dilapidated condition and is required for purposes of demolition and new construction :

Provided that where the building was in the occupation of a tenant since before its purchase by the landlord, such purchase being made after the commencement of this Act, no application shall be entertained on the grounds mentioned in clause (a) unless a period of three months has elapsed since the date of such purchase and the landlord has given a notice in that behalf to the tenant not less than six months before such application, and such notice may be given even before the expiration of the aforesaid period of three years. Provided further that if any application under clause (a) is made in respect of any building in which the tenant is engaged in any profession, trade or calling, the

prescribed authority while making the order of eviction shall, after consideration all relevant facts of the case, award against the landlord to be tenant an amount equal to two years' rent as compensation and may, subject to rules, impose such other conditions as he thinks fit :

Provided also that no application under clause (a) shall be entertained.

(i) .....

(ii) .....

(iii) .....

Explanation - In the case of a residential building -

(i) Where the tenant or any member of his family 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 area, no objection by the tenant against an application under this sub-section shall be entertained;

(ii) Where the landlord was engaged in any profession, trade, calling or employment away from the city, municipality, notified area or town area within which the building is situated and by reason of the cessation of such engagement he needs the building for occupation by himself for residential purposes, such need shall be deemed sufficient for purposes of clause (a);

(iii) Where the landlord is a member of the armed forces of the Union and the prescribed authority under the Indian Soldiers (Litigation) Act, 1925, has issued a certificate in his favor that he is serving under special condition within the meaning of Section 3 of that Act, then his representation that he needed the building for residential purposes for members of his family whose particulars are specified in the application shall be deemed sufficient for purposes of clause (a);

(iv) That fact that the building under tenancy is a part of a building the remaining part whereof is in the occupation of the landlord for residential purposes, shall be conclusive to prove that the building is *bonafide* required by the landlord.

2. .....

Explanation. - .....

3. No order shall be made under sub-section (1), or sub-section (2), except after giving to the parties concerned a reasonable opportunity of

being heard.
4. .....
5. .....
6. .....

Section 41 confers rule-making power on the State and reads as follows :

> "The State Government may by notification in the Gazette make rules to carry out the purposes of this Act, including any rules prescribing fees in respect of any proceeding under this Act."

Section 42 relates to laying of rules, etc., before the legislature :
Sub-rule (2) of Rule 16 framed under the new Act lays down :

> "While considering an application for release under Section 21(1)(a) in respect of a building let out for purposes of any business, the prescribed authority shall 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 also have regard to such facts as the following :
> (a) .....
> (b) .....
> (c) .....
> (d) .....

2. Sri S.C. Khare, learned counsel for the petitioners has contended that under Section 41 rules can be framed to carry out the purposes of the Act. 'Section 31(1)(a) of the Act entitles a landlord to obtain an order in his favor by establishing that the building is *bonafide* required by him. If he is able to establish that he *bonafide* requires the building his application for release should be allowed and the prescribed authority is not competent to take into account the likely hardships that may be caused to the tenant or to compare his hardships with those of the tenant. According to him, sub-rule (2) of Rule 16 goes beyond it inasmuch as it not only demands consideration of the *bonafide* requirement of the landlord but also requires comparison between the hardships of the landlord and the tenant. Therefore, this rule is beyond the legislative

authority.

3. To begin with, the principles regarding rule-making power may be considered. In *Attorney Journal and Ephraim Hitchings v. The Directors and Co. of the Great Eastern Corporation,* [2] the observation is :

> "The doctrine (*of ultra vires)* ought to be reasonably and not unreasonably, understood and applied and that whatever may fairly be regarded as incident to, or consequential upon, those things which the Legislature has authorised ought not (unless expressly prohibited) to be held, by judicial construction, to be *ultra vires*."

Again in *Carbines v. Powell,* [3] it is held that :

> "It is not open to the grantee of the power actually bestowed to add to its efficacy, as it is called, by some further means outside the limits of the power conferred for the purpose of more effectively coping with the evils intended to be met.... The authority must be taken as it created, taken to the full, but not exceeded. In other words, in the absence of express statement to the contrary, you may complement but you may not supplement, a granted power."

4. The principle was summed up by SC in the case of *State of Kerala v. K.M.C. Abdulla and Co.,* [4] in the following words :

> "Power to frame rules is conferred by the Act upon the State Government and that power may be exercised within the strict limits of the authority conferred. If in making a rule, the State transcend its authority, the rule will be invalid, for statutory rules made in exercise of delegated authority are valid and binding only if made within the limits of authority conferred. Validity of a rule whether it is declared to have effect as if enacted in the Act or otherwise is always open to challenge on the ground that it is unauthorized."

It is thus clear that where power to frame rules is bestowed on the State Government that power has to be exercised within strict limits of that power.

Broadly speaking, a rule may be declared *ultra vires* if it transcends the Parent Act. A rule may be *ultra vires* if it has overstepped the scope of the Parent Act or if it has been promulgated in breach of some mandatory statutory provision prescribing the procedure of rule-making. Rule is also *ultra vires* if it fraudulently seeks to accomplish a purpose which is not envisaged by the Act.

5. In the new Act rule making power is contained in Section 41. It obviously enables the State Government to make rule 'to carry out the purposes of this Act. It certainly does not give *carteblache* to enact independent legislation. The expression 'to carry out the purposes of the Act', means to enable its provisions to be effectively administered. They connote that the rules are to be confined to the same field of operation as that marked out by the Act itself. Carbines v. Powell (supra). *The State v. Murtza Ali,* [5] and *R.S. Singh v. R.C. and E.O.,* [6] This power will authorise the Provision of subsidiary means of carrying into effect what is incidental to the execution of its specific provisions. But such a power will not support attempts to widen the purposes of the Act, to add new and different means of carrying them out or to depart from or vary the plan which the legislature has adopted to attain its ends *Shanhan v. Scott,.]*[7] In other words a subordinate law cannot substantially modify the scheme or policy of the Act.

6. In the light of the foregoing discussion the vires of Rule 16(2) may now be examined. The rule has been enacted to give effect to Section 21(1)(a). Accordingly, it should be tested on the touch-stone of Section 21. The opening words of Section 21(1) of the new Act are.

> "The prescribed authority may ..... order the eviction of a tenant from the building under tenancy ..... If it is satisfied that any of the following grounds exist".

The relevant portion of one of the grounds incorporated in clause (a) reads :
"that the building is *bonafide* required..... by the landlord ....."

7. A plain reading of the aforesaid provision makes it clear that the only inquiry contemplated by it is regarding the *bonafide* requirement of the landlord. The burden of proving that the landlord *bonafide* requires a building or part thereof lies on him (the landlord). The tenant can also join an issue in this inquiry to

show that the landlord has no *bonafide* requirement but is prompted by an oblique motive to have the building released. The word *bonafide* means genuinely or in good faith, without fraud or deceipt, sincere, not spurious or counterfeit. The word 'required' signifies an element of need for some end or purpose. It must be backed by extreme want or destitution. The word 'required' means that the premises are needed by the landlord, that is to say, the landlord is in fact in need of the premises and his desire for the same is not merely fanciful or unjustified by some other reason. The need of the landlord is the sole justification of the requirement of the premises by him. The need is to be judged as an objective fact by the Rent Control Authorities and is based on hard reality. It is not a question of sentiment or desire not based on reality. The need has to be assessed on a consideration of facts of each case and according to a reasonable appreciation. The standard of need would vary according to the circumstances of each case and of the need of the landlord in a particular case *Lalit Kumar Vijay v. Saroj Kumari,*[8] . In *Panjumal v. S.L. Keshwani,* 9 it has been held that for purpose of finding the *bonafide* need of the landlord all relevant facts and circumstances including his status, position, social obligations, etc., have to be taken into account as reasonably influencing the landlord's requirement. It is neither feasible nor desirable to exhaustively enumerate such facts and circumstances as may apply to all cases serving as a strait jacket because each individual landlord has his own problems. His *bonafides* seem to be the crucial test and this must be a question of fact in each case. The hardship to the tenant does not seem to be one of the statutory considerations as envisaged by the Delhi Rent Control Act.

8. The word *bonafide* was again interpreted in the case of *Om Parkash Singhal v. Roshan Lal Khanna,* [10] and was construed to mean genuinely or in good faith and it conveys an idea of absence of any intendant to deceive. If the landlord is not seeking evidence on false pretext of acquiring additional accommodation with an oblique purpose and his requirement cannot be considered to be inspite by a pure fanciful which the plea of *bonafide* requirement put forward by him deserves ordinarily to be upheld.

9. In *Harbhagwan v. Pritam Singh,* [11] it has been held the only case where the Court would decline to accede to the landlord's request for eviction would be when the Court is satisfied that the landlord's allegations are not *bonafide* and

are merely an excuse to serve some ulterior purpose or fanciful whim.

10. In *Parsuramaiah v. Pokuni Lakshmanna,*[12] the words 'required *bonafide*' used in A.P. Building (Lease, Rent and Eviction Control) Act were to mean that the landlord requires the premises for his reasonable needs and that he is not seeking eviction on the pretence of requiring additional accommodation with any oblique motive. The words '*bonafide* requirement of landlord' came up for interpretation in the case of *Nathu Lal v. Radhey Lal,* [13] and their Lordships of the SC observed :

> "..... mere assertion on the part of the landlord that he requires the non-residential accommodation in the occupation of the tenant for the purpose of starting or continuing his own business is not decisive. It is for the Court to determine the truth of the assertion and also whether it is *bonafide*. The test which has to be applied is an objective test and not a subjective one.... The word 'required' signifies that mere desire on the part of the landlord is not enough but there should be an element of need and the landlord must show - the burden being upon him that he genuinely requires the non-residential accommodation for the purpose of starting or continuing his own business."

The aforesaid discussion makes it clear that the *bonafide* requirement' means the genuine or reasonable need of the landlord.

11. It is clear that if the claim of the landlord is not dishonest and he has no oblique motive or is not for any designed purpose of evicting the tenant, his need should be held to be *bonafide*. There is nothing in the provisions of the Act to suggest that a landlord even though *bonafide* requiring an accommodation for his own occupation may not be allowed to occupy it himself, it is not one of the aims and objects of the Act to prevent a landlord's occupying an accommodation himself even though he wants to occupy it himself and does not want to profilter or to take unconscionable advantage of the shortage of accommodation.

12. The question which now falls, for determinateon is whether Section 21(1)(a) is mandatory or recommendatory. In *Julius v. Bishop of Oxford,* [14] and *Province*

of Bombay v. Khushal Das, [15] it is held that in public statutes the words only directory, promissory, or enabling may have a compulsory force and the thing to be done is for public benefit, i.e., to effectuate a legal right or for advancement of public justice.
In *King v. Mitchell,* [16] Bridly, J. said :

> "If a right is conferred upon person and another person is empowered by the word 'may' to recognise that right that person is not only enabled but obliged to recognise the right, not because the empowering words oblige him but because it is his duty to recognise the right.
> In that sense it is true to say that 'may' is equivalent to 'must' ....."

In the same case Lord Coleridge at page 568 said :

> "Regard must be had to the surrounding circumstances to discover whether the word 'may' is to have permissive or a compulsory meaning."

In *State of U.P. v. Jogendra Singh*, Gajendragadkar, J. pointed out;

> "Where discretion is conferred upon a public authority occupied with an obligation the word 'may' which denotes discretion should be construed to mean a command and that it is the context which is decisive."

Again in *Hirdaya Narain v. Income Tax Officer, Bareilly,* [17] while interpreting Section 35 of the Indian Income Tax Act, which indicates that the Commissioner or Appellate Assistant Commissioner or the Income Tax Office 'may' rectify any mistake apparent from the record, Shah, J. held :

> "If a statute invests a public officer with authority to do an act in a specified set of circumstances it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of that authority are shown to exist. Even if the words in the statute are *prima facie* enabling the Courts will readily infer a duty to exercise power which is invested in aid or enforcement of a right-public or private-of a citizen."

This only means that 'may' in itself does not mean 'must' but it, coupled with certain circumstances, has the effect of 'must'. If the authority must act and has no alternative to the act that it 'may' do, then it must do the act. In R.S. Singh v. R.C. and E.O. (6) Section 7(2) of the old Act the following Rule 6 framed there under came up for consideration before the Full Bench of this Court.

> "When the District Magistrate is satisfied that an accommodation which has fallen vacant or is likely to fall vacant is *bonafide* needed by the landlord for his own personal occupation, the District Magistrate may permit the landlord to occupy it himself."

DESAI, C.J. held that though the word used in Rule 6 is 'may' it has the force of 'shall' because the whole purpose behind it is to make it obligatory upon a District Magistrate to allow a landlord to occupy the accommodation required for his own occupation; otherwise there would, have been no necessity for the rule. We find ourselves in respectful agreement with the observations cited above. As will be evident from clause (a) of Section 21 of the new Act, the only requirement for release of a building under this clause is that it is *bonafide* required by the landlord for occupation by himself or any member of his family or any person for whose benefit it is held by him either for residential purposes or for purposes of any profession, trade or calling. Clause (a), therefore, provides for a special situation and directs the prescribed authority to exercise his discretion in a particular manner when the situation contemplated by this clause is found to exist to his satisfaction. As it cannot be said to be repugnant to or inconsistent with any of the provisions of the Act, the prescribed authority is bound to give effect to it and in that sense the word 'may' which denotes discretion has the force of command. It is, therefore, not possible to accept the submission of the learned Advocate General that as power conferred by Section 21(1)(a) is discretionary, accordingly Rule 16(2) having provided guidance foe exercise of the discretion consistent with the aforesaid section. Rule 16(2) clearly travels beyond the limits of the authority.

13. The learned Advocate General has strenuously argued that an inquiry into *bonafide* requirement of the landlord implies an inquiry about the need of the tenant and a comparison between the needs of the two is necessary. This

argument is not tenable because Section 21(1)(a) of the new Act does not at all contemplate an inquiry into the need of the tenant or its comparison with that of the landlord. Therefore, the words '*bonafide* required' by the landlord cannot be construed to include an inquiry into the need or hardship of the tenant. This question came up for consideration in the case of *Vasudeo Dhawan v. Triloknath,* [18] in which it has been held that the words '*bonafide* required' call upon the Controller to step into the shoes of the landlord and decide from his point of view and not from the stand point of the tenant. In *Jagannath Karunari v. Syed Abdul Wahid,* [19] the Assam High Court held that if the landlord *bonafide* requires the house for his own use no amount of inconvenience to the tenant will take away his right to evict him.

14. The learned Advocate General has placed considerable reliance on the case of *Bhagwan Dass v. Prannath,* [20] in which their Lordships of the SC have held that while considering the application of the landlord under Section 3 of the U.P. (Temporary) Control of Rent and Eviction Act (the old Act) the D.M. has to give consideration to the needs of both the landlord and the tenant and to compare them. Another authority relied upon in support of this contention in *Sardar Prem Singh v. B.D. Sanval,* [21] in which the Full Bench of this Court held that the District Magistrate is bound to make a fair comparison between the needs of the landlord and the tenant and permission to sue should be accorded only if the need of the landlord is greater than that of the tenant. We have given our anxious consideration to both these cases and in our judgment they cannot be applied to a case falling under Section 21(1)(a) of the new Act. They were cases under Section 3 of the old Act which was differently worded. That section was interpreted by the SC as one which required the District Magistrate to exercise power under Section 3 of the Act in a quasi judicial manner. As the section was silent about the grounds on which the permission to file a suit for eviction could be granted to the landlord the SC found as a necessary corollary to the quasi judicial power 'that the District Magistrate has to weigh the pros and cons of the matter and come to a certain conclusion before he made the order. The rule naturally imports the requirement that the party should be allowed to put their versions before him. The District Magistrate cannot reasonably weigh the pros and cons unless both the landlords and the tenants are given an opportunity to place their versions before him.' As against it there is clear provision in Section 21(1)(a) of the new Act requiring consideration of

the *bonafide* requirement of the landlord only when eviction of a sitting tenant is desired. The relative needs of the landlords and the tenants were already balanced by the legislature when it curtained the right of landlords to have their buildings released and confined them to the solitary ground of '*bonafide* requirement'. Therefore, the principle laid down in the aforesaid cases cannot be applied to the present case.

15. Reliance has also been placed on the cases of Gorakhnath Yagnik v. State of U.P. (supra) decided by a Division Bench of the Lucknow Bench of Allahabad High Court, *Roshan Lal and another v. Smt. Ramadevi and another,* [22] and *Channu Lal v. Additional District Judge, Allahabad, Rent Control Reporter 500* to show that even though the need of the landlord is *bonafide,* [23] permission for eviction under Section 21 cannot be granted without comparing the needs of the landlord and the tenant. In case the tenant's need is found to be greater than the landlord's need, the tenant cannot be ordered to be evicted. The Division Bench laid down this principle following the case of Sri Bhagwan v. Prannath (supra). With great respect we are unable to subscribe to this view. In Section 21(1)(a) the only inquiry which the prescribed authority is required to make is about the *bonafide* requirement of the landlord. There is not a word to suggest that he is also to inquire into the need of the tenant or to compare it with that of the landlord. It is true that no order under sub-section (1) shall be made unless reasonable opportunity of being heard had been afforded to the landlord and the tenant. But this sub-section simply means that a tenant can also participate in the inquiry and show that the landlord has no *bonafide* requirement for the building. He cannot be permitted to travel beyond this domain. If clause (a) contemplates an inquiry only into the *bonafide* requirement of the landlord it will be going too far if on the basis of sub-section (3) the scope of the inquiry is enlarged and the tenant is permitted to substantiate his need and to have it compared with that of the landlord. On the basis of the doctrine of harmonious construction clause (a) of Section 21(1) and sub-section (3) will be construed to mean that the inquiry is to remain limited only to the *bonafide* requirement of the landlord. The golden rule is that the words of a statute must *prima facie* be given their ordinary meaning. It should be departed from if a strict adherence would result in absurdity. We find no absurdity in this construction and see no reason to depart, from the plain meaning of the words used in this clause. We are, therefore, in judgment that the use of these words '*bonafide* required' do not

justify the consideration of the need of or hardship to the tenant. In this view of the matter rule 16(2) does not complement but it supplements the power granted in the Act.

16. Another test for deciding whether a Rule is inconsistent with a provision of the Act is to read the two together and see if a conflict between them becomes apparent. Section 21(1)(a) of the new Act clearly provides that the need of the landlord alone is to be inquired into. Sub-rule (2) of Rule 16 on the other hand lays down several considerations to weigh with the prescribed authority, and they include hardships to the tenants and its comparison with the hardships to the landlords. If these factors are taken into consideration in a case of Section 21(1)(a), it cannot be denied that in certain cases the applications made by the landlord, may result in their dismissal despite the fact that the landlords in those cases *bonafide* require the building to them. We are, therefore, of the view that Rule 16(2) runs contrary to the provisions of Section 21(1)(a) of the new Act. No rule can survive if it is in direct conflict with the provisions of the Act.

17. The contention of the learned Advocate General that by virtue of Section 42 of the new Act the rule has got statutory sanction and sufficient value should be attached to it carries no force because a statutory rule cannot enlarge the meaning of the section. If it goes beyond what the section contemplates the rule must yield to the statute, *Central Bank of India v. Their Workmen,*[24] . A compliance with the laying requirements, however, does not confer any validity to the subordinate legislation if it is in excess of the power conferred by the enabling Act *Hukam Chand etc. v. Union of India*[25]

18. Even on the basis of the objects and preamble of the Act validity of Rule 16(2) cannot be sustained. It is needless to say that the statement of Objects and Reasons is irrelevance where the language of a statute is perfectly clear and unambiguous. It can be referred to for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent of urgency which he sought to remedy, *State of West Bengal v. Sobodh Gopal Bose,* [26] However, the following statement of Objects and Reasons was given in the U.P. Buildings (Regulation of Letting, Rent and Eviction) Bill, 1970 :

"The United Provinces (Temporary) Control of Rent and Eviction Act, 1947, was passed as a temporary Act with a view mainly to continuing in force provisions relating to control of letting and rent of accommodation similar to those contained in orders which had been issued under the Defense of India Rules, 1939. It was expected that the situation of shortage of accommodation would tided over after a short period and accordingly an Ordinance was promulgated in 1946, and it was replaced by a temporary Act in 1947. In view, however, of the continuing increases in Urban population and the relatively slow pace of house-building activity due, mainly to shortage of materials the problem of shortage of accommodation has become chronic, and the life of the Act, has had to be extended from time to time. Various amendments were also made in its provisions as and when problems arose. Some of the provisions attracted criticism on various grounds in Courts of law and also criticism by informed public opinion, Government gave an assurance to the legislature that they would soon replace the Act by a new comprehensive legislation, and accordingly, this Bill has been prepared."

One of the salient features of the Bill was :

"1. .....
2. .....
3. Under Section 3 of the old Act the powers of the District Magistrate in the matter of grant of permission for institution of a suit for eviction of a tenant were not defined and he had an unfettered discretion to allow eviction on any ground whatsoever. The grounds on which such eviction of a sitting tenant may be permitted or release of a vacant building allowed have not been restricted. Further in order to reduce multiplicity of proceedings and also to reduce the congestion in civil courts it has been provided that proceedings for eviction shall lie before the prescribed authority instead of in the civil Court."

19. The Statement of Objects and Reasons reproduced above makes it clear that the necessity for placing this permanent Act on the Statute Book arose because the problems of shortage of accommodation had become chronic. There can be no manner of doubt that it intended to protect the interests of tenants and in that

connection this new comprehensive legislation was passed.

20. As regards the salient feature reproduced above it is important to state that under Section 2 of the old Act the District Magistrate possessed unbridled powers to grant permission to the landlords to file suits for eviction against their tenants. By means of the new Act the solitary ground on which eviction of a sitting tenant can be ordered is *bonafide* need of the landlord. In this manner power of eviction has been very much restricted or curtailed.

21. So far as the preamble of the Act is concerned, it says 'An Act to provide in the interest of the general public for the regulation of letting and rent of land the eviction of tenants from, certain classes of buildings....' While it is permissive to look at the preamble for understanding the import of various clauses contained in Bill. Full effect should be given to the express provisions of the Bill even though they appear to go beyond the terms of the preamble. Where the language of an Act is clear the preamble must be disregarded. Where the object or meaning of an enactment is not clear the preamble may be restored to explain it *M/s. Burrakur Coal Co. Ltd. v. M/s. West India Coal Ltd.,* [27] In the instant case Section 21(1)(a) is absolutely clear. However, the preamble also does not advance the contention of the learned Advocate General much further. The 'general public' includes both the landlords and the tenants. The Act has been promulgated in the interest of both. The landlords' rights to have the buildings released have been appreciably curtailed. The solitary grounds on which they can obtain release order under Section 21(1)(a) is that they *bonafide* require the buildings. It would be inconsistent with the preamble if this right is further curtailed on the basis of Rule 16(2).

22. Another contention advanced by the learned Advocate General is that under Section 3 of the old Act the tenants had acquired a vested right not to be evicted on the basis of District Magistrate's permission till the landlord was able to establish that his need was greater than that of the tenant. In *Qudratullah v. Municipal Board, Bareilly,* [28] it has been held that certain propositions are clear regarding the consequence of repeal of statute. The general principle is that the enactment which is repealed is to be treated except as to transactions passed and closed, as if had never existed. The operation of this principle is subject to any savings which may be made expressly or by or by implication by the repealing

enactment. Where a repeal is followed by a fresh legislation on the subject, the Court has to look to the provisions of the new Act to see whether they indicate a different intention. Upon a careful analysis of the provisions of the Act we have no doubt in our minds that Section 21 does not contemplate consideration of the need of the tenant or its comparison with that of the landlord.

23. The learned Advocate General has referred to other provisions of the Act to support his contention that Section 21(1) contemplates an inquiry into needs of the tenant also. It is urged that, under second proviso to this sub-section, if any application under clause (a) is made in respect of any building in which the tenant is engaged in any profession, trade or calling the prescribed authority while making the order for eviction shall, after considering all relevant facts of the case, award against the landlord to the tenant amount equal to two years' rent as compensation and may subject to rules, impose such other conditions as he thinks fit. Reliance is placed on the case of *Inder Jeet Singh v. Prescribed Authority, Moradabad,* [29] in which the word 'shall' used in this proviso has been held to be directory and not mandatory. Obviously the purpose of this proviso is to compensate a tenant who may be uprooted from his profession, trade or calling as a result of eviction from a building. For this purpose the prescribed authority can take into consideration all relevant facts of the case and may fix the amount of compensation. Beside it, if language of the main enactment is clear and unambiguous a proviso can have no repercussion on the interpretation of the main enactment so as to exclude from it by implication what falls within its express terms. Even the explanations appended to this sub-section do not go to show that the section is discretionary.

24. Reference has also been made to sub-section (3) which says that no order shall be passed under sub-section (1) or sub-section (2) except after giving to the parties concerned a reasonable opportunity of being heard. Under Section 22 right of appeal is also given to the landlord and the tenant. It is urged that sub-section (2) confers an unqualified right on the tenant to assail the landlord's application for release on any ground, including that of hardship to himself. According to him it does not grant a truncated right nor it could be the intention of the Legislature. We are unable to subscribe to this view because clause (a) contemplates an enquiry only into the *bonafide* requirement of the landlord. Therefore, objections under sub-section (2) and appeal by the tenant under

Section 22 will have to be confined to the same scope. The application will have to be confided to the same scope. The application will be rejected if the tenant is able to show that the landlord has no *bonafide* requirement.

25. Lastly, relying on the case of Sri Bhagwan and another v. Ram Chand and another (supra) it is urged that under the Act tenants enjoy statutory protection against eviction and this right cannot be taken away without appreciating their view point. There can be no manner of doubt that tenants enjoy statutory protection against eviction to a certain extent but the principle enunciated in Sri Bhagwan's case (supra) cannot be applied to the cases under the new Act. That was a case on Section 3 of the old Act under which the District Magistrate enjoyed unbridled powers to grant permission to the landlord to file suits for eviction of their tenants. As no guidelines were prescribed for the exercise for those powers it was held that principles of natural justice would apply and *pros* and *cons* of both sides should be considered. it necessitated consideration of the needs of both the landlord and the tenant. The new Act on the other hand lays down guidelines in the section itself for the exercise of that power and the applications will have to be disposed of in its light. According to it an application for release will be allowed if *bonafide* requirement of the landlord is made out. This has been done to the manifest advantage of the tenants inasmuch as under the old Act permission to sue could be granted on varied grounds but under the new Act release cannot be ordered unless the landlord established his *bonafide* requirement for the building. The two provisos provide other safeguards also to such tenants against whom an application for or order of release has been granted to them in certain circumstances. Under Rule 10(3) a tenant against whom an application under Section 21 is pending may immediately apply for allotment of alternative accommodation and need not wait till the decision of that application. Such application shall be without prejudice to the result of the said proceeding. Under Rule 11 priority in making allotment of residential building shall be given to a tenant against whom an order has been passed for eviction under Section 21, not being a tenant referred to in Explanation (1) of Section 21(1). Therefore, there is no scope for argument that the interpretation which we are inclined to give to Section 21(1)(a) will deprive the tenants of the statutory protection granted under the Act.
The aforesaid discussion makes it clear that the expression 'for purposes of the Act, in Section 41 connotes that the rule which is made under its canopy should

be restricted to the same field of operation as that marked out by the Act. The rule-making authority cannot enlarge legislatively that field. As Rule 16(2) contemplates a comparison between the needs of the landlord and the tenant which is not intention of Section 21 it clearly does not carry out the purposes of this Act and is beyond the rule-making power conferred by Section 41. The learned Advocate General has also contended that the validity of this rule can be sustained at least under Section 34(3) which read as follows :-

> "For the purposes of any proceedings under the Act and for purposes connected therewith, the said authority shall have such other powers and shall follow such procedure, principle or proof, rules of limitation and guiding principles as may be prescribed."

The word 'Prescribed' has been defined in Section 3(d) as prescribed by rules made under this Act. Obviously it refers to the rules made under Section 41. Section 34(3) confers no independent power to frame rules. It refers to powers of various authorities and procedure to be followed by them. Rule 16(2) cannot be said to have been framed there under. Upon a careful consideration of the entire matter we are in judgment that Rule 16(2) is clearly contrary to Section 21(1)(a) and its validity cannot be sustained. It is, therefore, invalid being *ultra vires* of the powers of the State Government.
For the reasons given above our answer to the question is in the affirmative.

Cases Referred.

1.1975 ALR 222: 1975 Rent Control Reporter 376
2. 1880(V) Appeal Cases 473
3. 36 Commonwealth Law Reports 88
4. AIR 1965 SC 1525
5. 1961 ALJ 287
6. 1964 ALJ 412 (FB)
7. 96 common wealth Law Reports 245
8. 1969 Rent Control Reporter 555: 1969 RCJ 545
9. 1969 Rent Control Reporter 204: 1969 RCJ 214
10. 1969 Rent Control Reporter 431 1969 RCJ 645
11. 1971 Rent Control Reporter 1971 RCJ 488

12. AIR 1965 And Pra 220
13. AIR 1974 SC 1596
14. 1880(V) A.C. 214 at page 244; U.S.V. Otto Thoman, 165 U.S. 353
15. AIR 1950 SC 222
16. 1913(1) K.R. 661
17. AIR 1971 SC 33
18. 1969 Punjab Law Reporter 260
19. AIR 1962 Ass148
20. 1965 ALJ 353
21. 1968 AWR 672
22. 1975 ALR 13
23. 1975 ALR 362: 1975
24. AIR 1960 SC 12
25. AIR 1972 SC 2427
26. AIR 1953 SC 921
27. AIR 1961 SC 954
28. AIR 1974 SC 395
29. AIR 1971 All 120