ALLAHABAD HIGH COURT

Sri Talib Hussain

Vs.

Ist Additional District Judge

Civil Misc. Writ Petition No. 7782 of 1982

(N.D. Ojha, A.N. Verma and A.N. Dikshita, JJ.)

03.10.1985

JUDGMENT

A.N. Verma, J

1. A learned Single Judge finding that there was a conflict of opinion between various decisions of this Court rendered by Division Benches and Single Judges referred the following question for consideration by a larger Bench :

> "Whether a prospective allottee has a right to file an objection and contest the application for release made by the landlord for a building or a part thereof after the deletion of the original Rule 13(4) of the Rules under the U.P. Act No. 13 of 1972 ?"

2. This Bench has been constituted for resolving the above controversy. Since only a specific question has been referred to us we do not consider it necessary to set out the facts of this case in detail. We will, however, mention the relevant facts as briefly as possible with a view to indicating the circumstances in which the question has arisen in the instant case. The dispute relates to the second storey of a building which was in the tenancy of one Mohd. Siddique who vacated the same somewhere in 1979. It is alleged by the landlord that one Mohd. Siddique's vacating the accommodation the petitioner unlawfully and forcibly occupied the same. On July 12, 1979, the father of the present landlords applied the release for this accommodation under Section 16(1)(b) of the U.P Urban Buildings (Regulation of Letting, Rents and Eviction) Act, 1972 (U.P. Act No. XIII of 1972) on the ground that he was an old man suffering from several diseases and on account of want of accommodation he was residing at Kaladhangi, a small village, where proper medical treatment was not possible. Consequently, he wanted to shift to Haldwani to settle his son, the

present respondent No. 4, in some business as well as for his medical treatment. After due enquiry the accommodation was declared vacant under the aforesaid Act on July 9, 1979. It appears that the petitioners applied for allotment of the accommodation and also claimed that they were lawful tenants of the disputed accommodation. They also contested the landlords' application for release. The Rent Control and Eviction Officer by his order dated April 14, 1981 after considering the evidence of both the parties, held that the need of the landlord was genuine and he *bonafide* required the accommodation for his own personal use and occupation. The release application was consequently allowed. The petitioners unsuccessfully challenged that order by way of a revision under Section 18 of the Act which was dismissed by the learned Additional District Judge, Nainital by an order dated July 2, 1972 affirming the findings of the Rent Control and Eviction Officer. Thereafter, the petitioner filed this petition.

3. One of the points raised by the petitioners is that being prospective allottees they have a right to contest the landlord's release application and the opinion of the Courts below that as prospective allottees the petitioners do not have any *locus standi* is not correct.

4. The petition has been contested by the landlords who have controverted the various allegations as well as the legal submission made by the petitioner. The landlords contend, in the alternative, that in any case the objection of the petitioners having been considered on merits and rejected by the Court below, it is unnecessary to go into the legal controversy which the learned Single Judge has referred.

5. Since the entire case has been referred to us, we have no option but to consider the specific legal issue referred by the learned Single Judge even if, as contended by the landlord, the question is of academic importance only in so far as the facts of this case are concerned.

6. In order to appreciate the controversy we will first briefly survey the corresponding provisions of the predecessor enactment of the present Statute. That was U.P. (Temporary) Control of Rent and Eviction Act, 1947. Though described as a temporary enactment its life was extended from time to time till it was repealed and replaced by the U.P. Urban Buildings (Regulation of

Letting, Rent and Eviction) Act, 1972. The 1947 Act replaced on Ordinance bearing the same name and features issued in 1946. The Ordinance and the Act were both necessitated as a result of acute shortage of accommodation arising in the aftermath of the II World War. This shortage led to exploitation by some unscrupulous landlords who tried to take advantage of the situation by extorting rents from the tenants on pain of eviction. Noticing this phenomenon, the Government of India stepped in and it assumed powers under the Defense of India Rules under which ordinance were promulgated for controlling rents, restricting eviction and abolitioning private letting. The Ordinance of 1946 was one such statute. The Ordinance was soon replaced by the 1947 Act.

7. Section 7 of this Act provided that every landlord shall within a week of an accommodation becoming vacant by his ceasing to occupy to or by the tenant vacating it, give notice of vacancy to the District Magistrate and the District Magistrate may, by general or special order, require a landlord to let or not to let any person any accommodation which is or has fallen vacant. Under this provision, therefore, the landlord was barred from letting out any accommodation falling vacant to a person of his choice. The allotment had to be made by the District Magistrate except when the District Magistrate asked the landlord or landlords by a general or special order, not to let the accommodation which has fallen vacant. Section 17 of the 1947 Act conferred on the Government the power to make rules to give effect to the purpose of the Act. Exercising powers under Section 17, the State Government framed rules. Rule 6 read as follows :

> "Occupation by landlord - 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."

8. Rule 6 became the subject of interpretation in numerous decisions of this Court. The decisions were unanimous as regards the true scope and purpose of this rule. The view expressed was that the 1947 Act and the Rules framed there under were not intended to wipe out the entire rights to the landlords. All that was aimed at by these statutes was to regulate the letting and eviction. Subject to this the rights of the landlords were fully preserved. It was held in these cases

that where a landlord applied for the release of an accommodation on its falling vacant, the District Magistrate merely had to satisfy himself that the need of the landlord being *mala fide.* It was further ruled by this Court in a series of decisions including a Full Bench of this Court in the case of *Parmeshwar Dayal v. Additional Commissioner, Lucknow and another,* [1] that the need of the landlord is not to be balance against the other claimants and is not to be refused on the ground that the need of the prospective claimants, that is prospective allottees was greater. It was further held that the provisions of Rule 6 were mandatory, that is, the District Magistrate could not refuse to grant release in favor of the landlord once he found that he *bonafide* required the accommodation. The view expressed by this Full Bench was endorsed by another Full Bench of this Court in the case of *Ram Surat Singh v. Rent Control and Eviction Officer, Allahabad,* [2]

9. We will presently demonstrate that the scheme underlying the 1972 Act and the Rules framed thereunder in regard to the disposal of an application for release by the landlord and the right of the prospective allottees to object thereto is much the same as under the old Act, i.e., application for release under Section 16(1)(b) of U.P Act to XIII of 1972 is a matter between the District Magistrate and the landlord in which the outgoing tenant or the prospective allottee does not have any right to object.

10. U.P. Act No. XIII of 1972 was also enacted to serve the same purpose and to achieve the same object as formed the basis for the 1947 Act, through the 1972 Act is more elaborate being, unlike the 1947 Act a permanent Act. Thus, the 1972 Act was also enacted to provide in the interest of general public for the regulation of letting, rent and eviction of tenants from certain classes of buildings situate in urban areas and for matters connected therewith. Section 11 of the present Act provides :-

> "11. Prohibition of letting without allotment order - Save as hereinafter provided, no person shall let any buildings except in pursuance of an allotment order issued under Section 16."

Section 12 lays down the circumstances in which a landlord or a tenant of a building shall be deemed to occupy a building or part thereof. Sub-section (4) of

Section 12 provides that any building which a landlord or a tenant has ceased to occupy within the meaning of sub-section (1) or sub-section (2) of sub-section (3) shall, for purposes of this Chapter, be deemed to be vacant.
Then we have Section 13 which states :

> "13. Restrictions on occupation of building without allotment or release - Where a landlord or tenant ceases to occupy a building or part thereof, no person shall occupy it in any capacity on his behalf, or otherwise than under an order of allotment or release under Section 16 and if a person so purports to occupy it, he shall, without prejudice to the provisions of Sections 31, be deemed to be an unauthorised occupant of such building or part."

Section 14 provides for regularization of occupation of certain existing tenants occupying a building without an order of allotment issued in their favour under Section 7 of the 1947 Act if they are in occupation with the consent of the landlord since before a certain date. Section 15 obliges the landlord to give notice of a building falling vacant by his ceasing to occupy or by a tenant vacating it to the District Magistrate.

Finally, we have Section 16 which is, for the purposes of the present controversy, the most important provision. The same, in so far as it is relevant of our purposes, read as follows :-

> "16. Allotment and release of vacant building -
> (1) Subject to the provisions of the Act, the District Magistrate may by order -
> (a) require the landlord to let any building which is or has fallen vacant or is about to fall vacant or a part of such building but not appurtenant land alone, to any person specified in the order (to be called an allotment order); or
> (b) release the whole or any part of such building, or any land appurtenant thereto, in favour of the landlord (to be called release order) :
> Provided that in the case of a vacancy referred to in sub-section (4) of Section 12, the District Magistrate shall give an opportunity to the

landlord or the tenant, as the case may be of showing that the said section is not attracted to his case before making an order under clause (a).

(2) No release order under clause (b) of sub-section (1) shall be made unless the District Magistrate is satisfied that the building or any part thereof or any land appurtenant thereto 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 purposes of any profession trade, calling or where the landlord is the trustee of a public charitable trust, for the objects of the trust, or that the building or any part thereof is in a dilapidated condition and is required for purposes of demolition, and new construction, or that any land appurtenant to it is required by him for constructing one, or more new buildings or for dividing it into several plots with a view to the sale thereof for purposes of construction of new buildings :

Provided that no application under this sub-section shall be entertained for the purposes of a charitable trust the objects of which provide for discrimination in respect of its beneficiaries on the ground of religion, caste or place of birth."

Sub-section (4) of Section 16 provides that where the allottee or the landlord is not able to obtain possession of the building allotted to him or released in his favour the District Magistrate may, on an application of the allottee or the landlord, order the eviction of any person named in the order. Sub-section (5)(a) of Section 16 lays down that where the landlord or any person claiming to be lawful occupant of the building comprised in the allotment of release order satisfies the District Magistrate that such an order was not made in accordance with clause (a) or (b) the district Magistrate may review the order. Sub-section (8) of Section 16 provides that the allottee shall, subject to the provisions of sub-section (5) and sub-section (9) of Section 16 and Section 18 be deemed to become tenant of the building from the date of allotment. Besides the right to apply for release of an accommodation which is vacant under Section 16(1)(b), the landlord have also to be conferred under Section 21 of the Act the right to apply for release of buildings under occupation of their tenants, if the accommodation is *bonafide* required by them for occupation by themselves or any member of their family or an person for whose benefit it is held by them.

This right of the landlords is however, subject to the condition that the hardship likely to be suffered by the tenant from the grant of the landlord's application for release would not be greater than that likely to be suffered by the landlord from the refusal of the application.

We have then Section 41 which confers rule making power on the State Government. It enables the State Government to make rules to carry out the purpose of this Act. It is in the exercise of this power that the State Government framed Rule 13 which originally read as fellows :-

> "13. Application for release of vacant buildings.
>
> (1) Every application for release under clause (b) sub-section (1) of Section 16 shall specify the ground or grounds on which the building or part thereof any land appurtenant thereto is sought to be released.
> (b) The application or any objection thereto shall be signed and certified in the manner prescribed under Rules 14 and 15 of Order 6 of the First Schedule to the Code of Civil Procedure, 1908. If there are more than one landlords or alleged tenants, as the case may be, the application may be signed by any one of them, but in any such case the co-landlords shall be arrayed as performa opposite parties.
> (3) Where the application referred to in sub-rule (1) is made on the ground that the building is required for demolition and new construction the procedure laid down in Rule 17 shall *mutatis mutandis* be followed.
> (4) Every application under Section 16(1)(b) shall be a matter between the District Magistrate and the landlord, and the out-going tenant or the prospective allottee, if any, shall have no right to file any objection against it.
> (5) Every application under this rule shall, as far as possible, be decided within one months from the date of its presentation, and no allotment in respect of a building covered by an application under this rule shall be made unless such application is ejected,"

By means of notification published in the Gazette on May 25, 1977 the above rule was substituted as follows :

"Sub-rule (4) was dropped and sub-rule (1), (2) (3) and (5) were retained verbatim and renumbered, respectively, as sub-rules (1), (2), (3) and (4). While Rule 10 of the Rules provides for the procedure for allotment. Rule 16 lays down the procedure for disposal of an application for release filed under clause (b) of sub-section (1) of Section 16."

11. A glance at Section 16 will indicate that on a building falling vacant the District Magistrate has been empowered to pass two type of orders, (i) an order of allotment and (ii) and order of release in favor of the landlord. The scheme of the Act and the rules framed there under clearly suggest that the Legislature has recognized and conferred on the landlord a preferential right in a case where the building has fallen vacant.

12. Thus, unlike Section 21 which confers on the landlord a right to apply for release an accommodation which is in occupation of a tenant subject to a comparison of relative hardship likely to be suffered by the landlord an the tenant, significantly neither Section 16 nor the rule framed under the Act envisage any comparison between the landlord's need and that of the prospective allottees in a case where the landlord applies for release under Section 16(1)(b).

13. Further, whereas elaborate guidelines have been set out for assessing and comparing the need of the landlord and the tenant in the shape of Rule 16 for the disposal of an application filed by the landlord under Section 21 by contract there is a conspicuous absence of any such rule laying down guidelines or standard of proof for the disposal of an application for release filed under Section 16(1)(b). These features indicate the difference in approach which has to be adopted under Section 16(1)(b) where under the only precondition imposed is that the District Magistrate should be satisfied that the building is *bonafide* required by the landlord for occupation by himself. In determining this question, the District Magistrate is not required by the statute to take into account the needs set up by the prospective allottees, It does not specifically or by necessary implication require any comparison of the need of the landlord with those set up by the prospective allottees. The reason for absence of such a provision seems obvious as there will always be some prospective allottee or allottees whose need would be greater than that of the landlord and

consequently the right conferred on the landlord to apply for release of his building under Section 16(1)(b) would be rendered completely illusory. It is this aspect which had weighed with this Court while construing Rule 6 of the Rules framed under the 1947 Act in taking the view that having regards to the nature of the landlord's claim for release of a vacant building, the prospective allottees have no place or *locus standi* in an adjudication of a landlord's application for the release of an accommodation where he *bonafide* required the same. The ratio was where the building is vacant, the landlord's claim supersedes every other provided he *bonafide* requires the accommodation.

14. Now Section 16 talks of both allotment and release. The term "release" has been defined in various Judicial Dictionaries as meaning 'giving up or abandoning of a claim or right to the person against whom the claim exists or the right is to be enforced or exercised'. Thus in 'Words and Phrases" (Permanent Edition), the term 'release' has been defined variously, but in the present context the aptest definition is as follows :

A release is the giving up or abandoning of a claim or right to the person against whom the claim exists or the right is to be enforced or exercised..... A release is setting free, a deliverance, a liberation, a relinquishment, a discharge, and is a word whose operative effect is from the present on, and without retroactive intent. In Black's Law Dictionary, Fifth Edition, the term, 'release' has been defined thus :

> "The relinquishment, concession, or giving up of a right, claim or privilege, by the person in whom it exists or to whom it accrues to the person against whom it might have been demanded or enforce Abandonment of claim to party against whom its exists, and he is a surrender of a cause of action and may be gratuitous or for consideration..... Giving up or abandoning of claim or right to person against whom claim exists or against whom right is to be exercised."

15. Having regard to the meaning assigned to the term 'release' in various Judicial Dictionaries, it seems to us that the true import of the words 'release, the whole or any part of such building in favor of the landlord under Section 16(1)(b) is that the building is being taken out of the purview of allotment under

clause (a) of Section 16(1). In our opinion, the term clearly implies that when the Rent Control authorities decide to release the accommodation in favor of the landlord against whom the right of allotment was enforceable it shall no longer be available for allotment.

16. The right of a prospective allottee is not an absolute right. It is contingent upon, firstly, the accommodation being vacant and, secondly, the building being available for allotment. Rule 13(4), as it stands at present reinforces his conclusion. It provides that no allotment in respect of a building covered by an application under Section 16(1)(b) shall be made unless such application is rejected. The right of a prospective allottee to have his application considered hence arise only after the rejection of the landlord's application under Section 16(1)(b). A fortiori the prospective allottee comes into the picture only after the disposal of the landlord, application for release under Section 16(1)(b), and only if the same is rejected.

17. So far, therefore, as the scheme of the Act and the rules framed there under is concerned, the same, in our opinion, clearly points to the conclusion that a prospective allottee has no right of objection against the release application filed under Section 16(1)(b). As mentioned above, this right to have this application considered for allotment accrues only after the rejection of the release application. Indeed the consideration of the applications for allotment is taken up only after the rejection of the applications under Section 16(1)(b). Neither the Act nor the rules framed there under thus postulate any right in a prospective allottee to file objections against the release application.

18. The prospective allottee has also no right or interest in the property or claim against the landlord so as to be entitled to any hearing in the disposal of the release application on general principles or doctrine of *audi alteram partem.*

19. We have reached the above conclusion on a schematic analysis of the statute even without the aid of the old Rule 13(4). The old Rule 13(4), in our opinion, which was dropped in 1977, merely recognized the long settled legal position as spelled out by series of decisions rendered on the construction and scope of Rule 6 framed under the 1947 Act. It was purely declaratory in nature and appears to have been inserted by way of reiteration of the existing legal

position. Its deletion hence did not, in our considered view, bring about any change in the legal position, namely, that prospective allottees have *no locus standi* in the disposal of an application for release under Section 16(1)(b).

20. While it may be, legitimate to refer to the provisions of a previous statute repealed an replaced by another statute in *pari materia* with the former in construing the provisions of the subsequent legislation if the same is ambiguous, mere omission of a provision which existed in the previous statute from the subsequent statute does not necessarily and by itself imply any substantive change in the legislative intent. We are fortified in this opinion by a decision of the Privy Counsel in the case of Union Steamships Company of *New Zealand Ltd. v. Mary Robin,*[3] . An almost identical issue as to the interpretation of statute was involved there. Under Worker's Compensation Act of 1908 (of New Zealand) there was a proviso containing a negative provision which exempted from the limitation an action brought in respect of dead servant. This enactment was amended by the Worker's Compensation Act, 1911. In the amendment provision the aforesaid proviso was dropped. This gave rise to a submission to the effect that the express proviso in the original section which exempted from the limitation an action brought in respect of a dead servant having been dropped and not repeated in the amending statute, it must be assumed to have bad some definite purpose and that as the proviso had been omitted it must follow that the limitation it was designed to avoid had once more been reemployed.

21. Their Lordships of the Privy Council repelled the above argument and observed as follows :-

> "with this opinion their Lordships are unable to agree. The mere omission in a later statute of a negative provision contained in an earlier one cannot by itself have the result of effecting a substantive affirmation. It is necessary to see how the law would have stood without the original proviso, and the terms in which the repeated sections are subsequently re-enacted. The real question is whether, with the statute as it now stands, the limitation imposed on the servant is extended to his dependants and successors".

22. This has precisely been our approach in resolving the controversy. We have examined the scheme of the Act as the statute now stands as well as it stood prior to 1977 and have reached the conclusion that even without the aid of the old Rule 13(4) of the Act did not postulate that the prospective allottee shall have any right of objection in the matter of release of an accommodation.

23. Further, the consistent and unanimous opinion expressed by this Court on the interpretation of Rule 6 being that the allottee had no *locus standi,* the framers of the rule would not have been content merely with the deletion of clause (4) from Rule 13 if their intention was to confer on the prospective allottee the right of objection. To make a departure from the existing and accepted legal position, one should have expected a positive provision specifically conferring the right of objection on the allottees rather than a mere dropping of sub-rule (4) from Rule 13. He stressed the words "the application or any objection thereto." It was argued that any objection" implies that anyone including prospective allottees could file an objection against such an application.

25. We are unable to agree. Sub-rule (2) of Rule 13 does not indicate or deal with the question as to who would be competent to file an objection against an application under Section 16(1)(b). It merely lays down that such an application or an objection thereto shall be signed and verified in a particular manner. It merely lays down the procedure. Whether, therefore, prospective allottees have a right of objection or not shall have to be determined with reference to the provisions of the Act or the rules and the scheme of the enactment underlying the same. We have already demonstrated that the scheme of the Act clearly does not postulate that prospective allottees shall have any right of objection against an application under Section 16(1)(b).

26. Further, the latter part of sub-rule (2) of Rule 13 contains an indication as to the class of persons who may be entitled to file an objection against such an application. It speaks of "alleged tenants". The alleged tenants are those who claim a right or interest in the accommodation. The framers of the rules may have, therefore, visualized that there might be objections by alleged tenants. Under the proviso to Section 16(1), the District Magistrate is enjoined to give

an opportunity to the tenant of showing that the accommodation is not vacant and hence not liable to be allotted. In response to this notice an alleged tenant may file an objection against Section 16(1)(b), but even he has been conferred only a limited right of objection namely, of showing that the accommodation is not vacant. This is clear from the proviso to Section 16(1). Sub-rule (2) of Rule 13 hence does not advance the case of prospective allottees.

27. Learned counsel for the petitioner next placed reliance on Section 16(1) and submitted that the right of a prospective allottee to file an objection under Section 16(1)(b) is implicit in that provision. We cannot accept the contention. The only right which the allottee has under Section 16(1) is to apply for allotment of an accommodation if the same is vacant. There is nothing in Section 16(1)(b) which may indicate directly or by implication that the prospective allottee has a right of objection under that provision. As discussed above, the prospective allottee has only a contingent right exercisable only in case the accommodation is vacant and only if the same is not released in favour of the landlord.

28. The third submission of the learned counsel was that the rejection of the allottee's application entails civil consequences and consequently, on the principle of *audi alteram partem* the prospective allottee is entitled to be heard even in an application under Section 16(1)(b).

29. The submission is devoid of any merit. The principle of *audi alteram partem* presupposes existence of some right or interest in the subject-matter of the lis. We have demonstrated above that the prospective allottee has no right or claim against the landlord nor any interest in the accommodation in dispute. He has, therefore, no right to be heard in opposition to an application for release filed by the landlord even on the above principle. Further the allottee's application is rejected on the accommodation being released in favour of the landlord not on the merits of his claim some so as to justify giving of any hearing to the applicant but on the ground that the same is not entertainable because the accommodation is not available for allotment. If the District Magistrate is satisfied that the accommodation is *bonafide* required by the landlord, it goes out of the pool of allotment.

30. The conclusion we have reached is also reinforced by another principle of statutory construction. It is settled rule of interpretation that when a statute is repealed and re-enacted and words in the repealed statute are reproduced in the new statute they should be interpreted in the sense which has been judicially put on them under the replead Act, because the legislature is presumed to be aware of the construction which the Courts have put upon those words. In the present case we find that Section 7 of the 1947 Act and the rules framed there under have been substantially adopted in the present enactment. Sections 16(1)(a) and (b) as well as Section 16(2) of the present Act is a combination of Section 7 of the present Act is a combination of Section 7 of the 1947 Act and Rule 6 with a slight formal change in the language of Section 16 from that employed in Rule 6. Rule 6 uses the words "the District Magistrate may permit the landlord to occupy it himself". Section 16(1)(b), on the other hand, states that the District Magistrate may release the building in favour of the landlord. In substance, however, both the provisions, viz., Rule 6 and Section 16(1)(b) and Section 16(2) mean the same thing, namely, that the District Magistrate may allow the landlord to occupy the accommodation on its falling vacant if he *bonafide* requires the same for his own occupation. That being so, it may be taken that the two statutes are substantially in *pari materia.*

31. The above rule of construction with regard to interpretation of statutes which are in *pari materia* have been extended to cases where the words used in the two statutes may not be identical but substantially the same. (See Craies on Statute Law Seventh Edition, P. 134). Thus in the American case of *United Society v. Eagle Bank,* [4] observed thus :-

> "Statutes are in *pari materia* which relate to the same person or thing, or to the same class of persons or things. The word per must not be confounded with the word simile. It is used in opposition to it, as in the expression magis pures sunt guam simile, intimating to likeness merely, but identity. It is a phrase applicable to the public statute or general laws made at different times and in reference to the same subject."

It has also been held in some cases that alteration in language in a latter statute could be the result of many factors. For instance, words may be omitted in a

later statute when they were mere surplusages (see *Mandanlal Fakir Chand Dudhediva v. Change Sugar* [5] The change may also be caused because of the anxiety of the statute to make things clearer (See *Chandrika Prasad Tripathi v. Shiv Prasad Charpuria,* [6]

32. In our opinion, therefore, if the two statutes are in *pari materia* dealing with the same subject and having the same object and scheme, the legislature should be assigned to the later statute as was given to the provisions statute. In the instant case the two statutes are undoubtedly in *pari materia.* The only difference is, that the present statute being a permanent enactment is more elaborate and exhaustive, the basic content of the two remaining the same.

33. That being so, we are clearly of the opinion that prospective allottees have no right to file an objection and contest the application for release made by a landlord even after the deletion of Rule 13(4). In our opinion, Rule 13(4) was deleted because it was unnecessary and was in the nature of surplusage.

34. We will now deal with the decision which have taken a contrary view first is the case of *Dr. Gopi Mohan Saxena v. State of Uttar Pradesh and others,* [7] In this case, a Division Bench observed that the deletion of sub-rule (4) of Rule 13 there was no bar to the outgoing tenant or the prospective allottee to file an objection against an application for release. The same view was expressed by another Division Bench in the case of *Smt. Kanta Devi Jain v. Addl. District Judge and others,* [8] This view was also followed by some learned Single Judge, See *Shyam Kishore Malviya and others v. Rent Control and Eviction officer, Kanpur and others,* [9]

35. In all these decisions the sole basis for holding that prospective allottees have a right to participate and contest the landlord's application for release is that after the deletion of Rule 13(4) there is no bar. We have examined these cases but are unable to agree with the opinion expressed therein. In none of these cases was the question considered in depth. The scheme of the Act and the true nature of the prospective allottee was not examined. On the single circumstance of deletion of sub-rule (4) from Rule 13 it was presumed that the prospective allottees had a right of participation in the proceedings for release. These decisions do not, in our opinion, lay down the law correctly and are

hence disapproved. We have shown above that even without the aid of Rule 13(4) the correct legal position was that the prospective allottee had no right of objection against the landlord's application for release. It is not necessary to repeat our reasoning.

36. On the contrary, we think that the decision in the case of *Sri Kanta Dwivedi v. III Additional District Judge, Hardoi and others,* [9] rightly held that the prospective allottees have no right of objection. In Shri Kant Dwivedi's case (supra), the Division Bench considered the question at some length and after referring to the Full Bench decision of this Court in the case of *Ram Surat Singh v. Rent Control and Eviction Officer,* [10] on the interpretation of Rule 6 of the Division Bench observed as follows at P.51.

> "This view was expressed in the context of the provisions of Rule 6 of the Rule made under the old Act (U.P Act 3 of 1947) but the ratio is equally applicable to the instant case. Of course, the ruling does not strictly tally with the question as to whether a prospective allottee should be heard or not. But it does imply that he should have no right of hearing because his needs are irrelevant so far as the application of the landlord for release is concerned. Another learned Single Judge (Hon'ble K.S. Verma, J.), has also taken the view in *A.K. Sharma v. Smt. Shyam Rani* [11] We agree with Hon'ble S.D. Agarwal, J. and Hon'ble R.S. Verma, J. in their view that the deletion of Rule 13(4) does not improve the position of a prospective allottee and does not give him a *locus standi* to challenge the landlord's application for release. The mere fact that the said rule was deleted does not necessarily imply that the rule-making authority intended to confer a *locus standi* on the prospective allottee. The decision may have been made on the ground that the sub-rule was considered redundant. No provision was, however, made to provide a *locus standi* to prospective allottees to contest a landlord's application for release".

37. We fully approve of the line of reasoning adopted by the Division Bench in Sri Kant Dwivedi's case. We also approve of the decision of the learned Single Judge in the case of *Raghunandan Lal v. District Judge,* [12]

38. Counsel for the petitioner also invited our attention to a decision of the

learned Single Judge in the case of *Lajpat Rai Bhatia v. Addl. District Judge, Dehradun and others,* [13] In which a learned Single Judge held that an allottee who has got into possession in pursuance of an order of allotment after the rejection of the release application has a right to be impleaded in a revision filed by the landlord. However, even in this case it was held that the prospective allottee has no right to contest a release application but if he enters into possession in pursuance of an order of allotment he acquires some kind of right to contest the appeal or revision arising out of release proceedings. In the case of Sri Kant Dwivedi (supra) the Division Bench observed that the mere fact that an allottee has got into possession in pursuance of an order of allotment does not give him any *locus standi* to contest the release application. The Division Bench for this purpose relied on Section 18(3). We think the division Bench was right in taking that view.

39. The case of Smt. Kanti Devi Jain reported in 1979 U.P. Rent Control Cases 577 mentioned in the referring order and relied on by petitioner's counsel is of no assistance. It was not directly concerned with the issue before us. The Division Bench was concerned solely with the scope and purpose of Explanation (1) to Section 21 and the question was whether in a case covered by that Explanation the landlord is absolved from the duty to establish that he *bonafide* required the accommodation. The observations made therein at page 582" in proceeding under Section 16, a person who has applied for allotment is entitled to participate and contest the release application", were entirely unnecessary and obterous.

40. The decision *Smt. Kanti Khare v. III Additional District Judge, Allahabad and others,*[14] relied on by the petitioner is equally unhelpful as the same was not concerned at all with the controversy engaging us. There the issue was whether a prospective allottee has a right to file objection against the inspector's report on the question of vacancy under Rule 8(3). The problem before us is wholly different and it is whether a prospective allottee has a right of objection against the release application. This decision hence lends no support to the petitioner.

41. Lastly, learned counsel for the petitioner submitted that if the prospective allottee does not get a right to context the release application, the landlord may collude with the Rent Control authorities and obtain on order in his favor on

false allegations. We are not impressed by this argument. We cannot assume that the Rent Control authorities will act dishonestly. Nor can a statute be interpreted on such assumptions. Further, a complete answer to this submission is provided by Section 19 of the Act which lays down that an accommodation can be reallotted in the event of landlord's abusing the release order.

42. In the premise, we answer the question referred to us in the negative and hold that the prospective allottee has no right to file an objection and contest the application for release made by the landlord for a building or a part thereof even after the deletion of the original Rule 13(4) of the Rules framed under the U.P. Act No. XIII of 1972.

43. As only a question was referred to us, let the case be listed for hearing before the appropriate learned Single Judge in the light of our answer within a week.

Order accordingly.

Cases Referred.

1. 1963 All Weekly Notes 220
2. 1964 All Weekly Reports 177
3. AIR 1920 Privy Council 140
4. (1829)7 Cond. 457
5. AIR 1962 SC 1543
6. AIR 1959 SC 827
7. 1979 All Weekly Cases 255
8. 1979 U.P. Rent Control Cases 577
9. 1981 All Rent Cases 49
10. AIR 1965 All 49
11. (1979 Lucknow Law Journal 199)
12. 1978 All Rent Cases 347
13. 1983 All Rent Cases 796
14. 1982 All Rent Cases 594