
(2007) 08 AHC CK 0034
In the Allahabad High Court

Abdul Jalil

APPELLANT

Vs

Special Judge, E.C. Act/Additional District (Exercising Power of Judge, Small Causes Court) and Others

RESPONDENT

Date of Decision : 22-08-2007

Acts Referred:

Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 — Section 25
Civil Procedure Code, 1908 (CPC) — Section 108, 12, 2, 34
Constitution of India, 1950 — Article 14, 141, 142, 21, 226
Contract Act, 1872 — Section 70, 74
Industrial Disputes Act, 1947 — Section 250
Provincial Small Cause Courts Act, 1887 — Section 15, 25
Stamp Act, 1899 — Section 27, 47A, 75
Transfer of Property Act, 1882 — Section 104, 105, 106, 107, 108

Citation : (2007) 08 AHC CK 0034

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

Backdrop.

2. The question raised by the counsels for the landlords who have filed these petitions is regarding enhancement of rent by interim orders or final decisions.

3. Considering the fact that rental value of the land and building (including residential accommodation as well as the commercial buildings) under the tenancy has increased many folds. This Court by interim order in exercise of its extraordinary power under Article 226 of the Constitution in some writ petitions wherein they had lost from the Court below increased the rent/damages in writ petitions filed by the landlords to do equitable and substantial justice between the parties.

4. Interim orders were passed on the basis of plinth area, nature and material

used in construction average rent prevalent the locality etc. and the class of city. The interim orders were passed in the petitions where the landlords had lost in the Court below, directing the tenant to pay enhanced rent at par with the market rent as the Court felt that whatever may have been the dispute in the Court below the owner/landlord must get the real rental value for his building particularly when the rent freezed at the level of year 1972. Under the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction), Act 1972 (hereinafter referred to as UP. Rent Act) in view of various decisions of the Courts on the subject and there being no analogous provisions to Section 21(8) for enhancement of the aforesaid Rent Act in respect of landlords and owners of buildings otherwise than public buildings etc. covered by the aforesaid Section 21(8) of the Act.

5. Similarly relying upon the decisions of this Court reported in 2004 (2) ARC 268 Vishram v. III Additional District Judge, Aligarh as well as in 2004 (2) ARC 349 : 2005 (2) ARC 726 Gopal Prasad Agrawal v. Mahendra Singh Chaudhary and Ors., directions were given for enhancement of rent or for payment of damages in case the possession of a person is found to be unauthorized occupancy.

6. In some of such of the cases the tenants approached the Apex Court by filing SLPs. While issuing notices the Supreme Court observed that the High Court may hear and decide the writ petition finally and the order passed in one of the S.L.Ps. being Special Leave to Appeal (Civil) No. 18453 of 2006 on 20th November, 2006 is as under:

Issue notice.

Meanwhile, the operation of the impugned order of the High Court dated 7.10.2006 where by it was directed that the petitioner-tenant shall pay enhanced rent @ Rs. 12050/- w.e.f. October, 2006 shall remain stayed. It is made clear that the petitioner shall continue to pay or deposit rent at which he was paying earlier. It is further made clear that this order will not come in the way of the High Court to hear and decide the writ petition expeditiously.

7. By another order dated 2nd February, 2007 the Supreme Court in SLP No. 1401 of 2007 again decided that such petitions may be decided finally. The order dated 2.2.07 as under:

Issue notice.

The operation of the interim order passed by the High Court by which the petitioner is directed to pay rent at the rate of Rs. 4900/- per month is stayed. It is, however, made clear that the petitioner will continue to pay/deposit the rent at the rate of Rs. 80/- per month. This order will not come in the; way of High Court in hearing and deciding the writ petition.

8. In view of the repeated and request mandate of the Apex Court the question of enhancement of rent/damages including ancillary questions of mesne profits and interest thereon as well as related provisions in writ petition filed by the

landlord posed is being considered by this Court in these Connected writ petitions.

9. In other similar writ petition also where rent was enhanced by this Court as interim relief to the landlord (s) who had come up before the High Court against the impugned order of the Courts below, the Apex Court expressed more or less the same desire and requested the High Court to decide such petitions.

Questions for Consideration.

10. The writ petitioners are the landlords who have lost from the Courts below. Although the actual facts in these writ petitions may vary from each but they raise the same common question of law of public importance as to-

(a) Whether High Court in exercise of its powers under Articles 226/227 of the Constitution of India can enhance the standard rent initially determined u/s 9 of U.P. Act No. 13 of 1972 (hereinafter referred to as the Act) or the agreed rent between the parties, in cases where the landlord has lost from courts below in the suit pertaining to arrears of rent and eviction pursuant to termination of tenancy? If so what basis/guidelines are to be followed?

(b) Whether the Court below can enhance rent reasonably at par with market rent prevalent in the area/city/locality on application filed for arrears of rent or eviction and impose damages where tenancy has been terminated by the landlord?

11. These writ petitions are therefore, entwined by common questions of facts and law on enhancement of rent and related practical evils which have been preposterous dimension due to failure of the U.P. Rent Act to achieve its object of social welfare due to legislature wisdom not addressing itself by making safely provisions for the landlords/owners of the buildings which landlords have to provide for allotment under statutory provisions of the Act.

12. On the request of the counsel for the parties these petitions have been heard together for convenience of decision. As many of the questions posed before the Court are incidentally covered by the facts of Writ Petition No. 69351 of 2006 it is being taken as the leading case. The judgment in the leading case Writ Petition No. 69351 of 2006 Abdul Jalil v. Special Judge E.C. Act/ADJ, Allahabad shall govern the other connected writ petitions.

13. The basic arguments of the petitioner landlords is that inspite of the decision against them by the Court below the High Court in exercise of its power under Article 226 can increase the rent at par with market rent on the basis of analogy of the provisions under Act No. XIII of 1972 for balancing the equities and doing, substantial justice in respect of the buildings of the landlords on rent not covered by Section 21(8) of the U.P. Rent Act.

Facts of the Writ Petitions.

14. Before dealing with the judicial pronouncements made by the High Courts and the Apex Court covering the questions raised in these petitions in reference

to the various provisions of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, the brief facts of each case are given hereinafter to provide glimpse of dispute involved in these; petitions for appreciation of the problems prevailing in the State of, Uttar Pradesh in the relationship of tenant and landlords created under the U.P. Rent Act, which this Court will try to address in relation to others Acts and provisions Government orders etc., applicable to the facts and circumstances hereinafter.

1-Writ Petition No. 69351 of 2006:

15. The petitioner is landlord of house No. D-903 G.T.B. Nagar, Kareli, Allahabad. As it was first assessed on 1.4.1984 the provisions of U.P. Act No. 13 of 1972 are not applicable to it. It appears that initially the father of the respondents, late Jail Beg took on rent @ Rs. 400/- per month, which was increased from time to time by mutual consent of the parties and the tenant was paying Rs. 600/- per month as rent when the tenancy was terminated in July, 2007.

16. The landlord is a senior citizen and a practicing lawyer in Civil Court, Allahabad. His son Mohd. Arif is also a practicing lawyer in the High Court, Allahabad. The claim of the petitioner is that he purchased the aforesaid house consisting of 3 bedrooms, drawing, dining room, kitchen, toilet, bathroom and courtyard admeasuring about 246.73 sq. metres i.e. approximately 295 sq. yards for residence and for establishment of chamber therein for himself and his son. After purchasing the accommodation in dispute the petitioner landlord was required to get the registered sale-deed of the aforesaid house executed in his favour. For this purpose "No Dues Certificate" was required from the Avas Vikas Parishad but since the tenants did not deposited the house tax of the said house the petitioner-landlord was compelled to deposit the same from his own sources for execution of the sale-deed in his favour.

17. It is averred in the plaint that the house in question was given to the respondent-tenants for residential purposes but they changed its user and started their business therein in the name and style of "Mirza Tour and Travel". The tenants also sub let the part of the house in dispute to one Syed Ziauddin and Mohd. Zubair without the permission of the petitioner landlord and as such are liable to be evicted on this ground alone. Allegations of having made material alterations by the tenants in the house in dispute of constructing a Tin shed room have also been levelled by which the value of the property is said to have been diminished.

18. According to the petitioner landlord this fact came to his knowledge for the first time on 15.4.2002 when the tenant in his statement himself disclosed this fact before the Rent Control and Eviction Officer.

19. Since 1982 late Jalil Beg the father of the respondent-tenants Nos. 4 to 6 did not pay the rent of the house to the petitioner regularly and after October, 1998 have stopped the payment of rent to the petitioner altogether and was in default of a sum of Rs. 54,894/- towards rent till June, 2002.

20. The petitioner vide notice dated 1.7.2002 (appended as Annexure-1 to the writ petition) terminated the tenancy of the respondents directing them to pay amount of arrears of rent aforesaid amounting to Rs. 54,894/- and to deliver vacant possession of the house in dispute to the landlord within 30 days of the date of receipt of notice.

21. The notice aforesaid was received by Sri Jalil Beg, (since deceased) the original tenant on 4.7.2002 but neither the rent due and demanded in the notice was paid by him to the landlord petitioner nor Sri Jalil Beg vacated the house/ accommodation under his tenancy.

22. The petitioner claims that in the circumstances he was compelled to file SCC suit No. 22 of 2002, Abdul Jalil v. Jalil Beg in the Court of District Judge, Allahabad on 19.8.2002 for eviction of the tenants from the house/ accommodation in dispute and for a decree of Rs. 54,490/- towards arrears of rent due. Further damages at the rate of Rs. 100/- per day were also sought by way of relief for use and occupation of the tenanted property. After the death of Jalil Beg on 22.6.2003 his legal heirs and representatives were brought on record but none of them appeared in the aforesaid suit in spite of registered notice by the Court. They were also informed by publication of summons in the Newspaper "Dainik Jagran" dated 2.3.2004 but they did not put in appearance to contest the case. Pursuant to the order of the Court dated 4.4.2005 notices were published on 9.4.2005 in the Newspaper "Amar Ujala" for the second time. Yet again the legal heirs and representatives of late Jalil Beg did not appear in the aforesaid suit No. 22 of 2002 hence, the Court below vide its order dated 14.10.2005 ordered to proceed exparte and therefore, decreed the suit.

23. The petitioner filed a case for execution of the decree which is said to be still pending.

24. In the mean time, the legal heirs and representatives of deceased Jalil Beg filed application under Order 9 Rule 13 C.P.C. for recall of the exparte order and decree dated 14.10.2005. The Special Judge (E.C. Act) Allahabad, respondent No. 1 vide order dated 10.3.2006 recalled the exparte order and decree fixing 6.4.2006 for filing of written statement by the respondents.

25. Written statement was not filed by the respondents on the date fixed by the Courts below. Thereafter the case was listed on 8.5.2006 when the defendants-respondent filed an application for adjournment without filing the written statement on that date too. The Court allowed the application for adjournment fixing 6.7.2006 for filing written statement yet inspite of the fact that the case was listed on 6.7.2006, 3.8.2006 and 28.9.2006 for final hearing, no written statement was filed by the respondents. In the mean time, Smt. Qudsia Begum respondent No. 3 wife of late Jalil Beg died on 31.7.2006, hence the petitioner filed an application for deleting her name as her legal heirs and representatives were already on record. The case was then adjourned to 22.12.2006 for hearing.

26. The petitioner on 28.9.2006 moved an application for expedite hearing of the

case, which was disposed of by the Court below observing that it is not possible to give any short date in the matter though Order 8 Rule 1 provides that written statement may be filed within 30 days from the date of service but not later than 90 days from the date of service of summons.

27. The following reliefs have been sought by the petitioner in the writ application:

(a) Issue writ, order or direction in the nature of mandamus directing respondent No. 1 to decide SCO Suit No. 22 of 2002, Abdul Jalil v. Jalil Beg (since deceased) and others expeditiously within some stipulated period.

(b) Issue writ, order or direction, which this Court may deem fit and proper in the facts and circumstances of the case.

(c) To award cost of the petition to the petitioner.

(d) To issue writ, or mandamus or direction commanding respondent Nos. 4 to 6 to pay a sum of Rs. 25,000/-per month with effect from termination of tenancy after expiry of one month from the date of notice dated 1.7.2002, terminating ,tenancy along with interest thereon @ Rs. 18% per annum since 1.8.2002, till delivery of possession of property in question to the petitioner and to issue direction of like nature to respondent No. 1, to order for realization of aforementioned amount from respondent Nos. 3 to 6 during the pendency of SCC Suit No. 22 of 2002, and even after the decision of Suit No. 22 of 2002, till the possession of the property in question is handed over to the petitioner.

28. At the time of admission on 22.12.2006 this Court passed the following order in the writ petition.

Heard counsel for the parties and perused the record.

Issue notice to the respondents returnable at an early date.

Apart from normal mode of service by R.P.A.D., the counsel for the petitioner shall take steps to personally serve the respondents by 3.1.2007. The office shall handover Dasti notices etc. to the counsel for the petitioner for personal service on the respondents immediately thereafter. The service shall be effected within one week thereafter. The affidavit of service shall be filed by the next date of listing. The notice shall indicate that the counter affidavit has to be filed by 21.1.2007. Rejoinder affidavit may be filed within one week thereafter.

List on 29.1.2007 along with writ petition Nos. 69300,69745,69935 and 69006 of 2006.

29. Affidavits of service dated 18.1.2007 and 13.2.2007 filed in Court on 28.2.2007 has been filed by the petitioner pursuant to the above orders. It is averred in paragraphs 3 and 4 of the affidavit of service dated 18.1.2007 that pursuant to the directions of this Court, the deponent went to serve the respondents on 3.1.2007 in their tenanted accommodation at house No. D-903

Kareli Allahabad in dispute with witnesses namely, Sri Muhib Ullah, Sri Nasrat Ullah both resident House No. D-905 Kareli Allahabad along with Sri Mohd. Arif and Sri Zafar Ahmad, the tenants after going through the order of the High Court dated 22.12.2006 and other documents respondent Nos. 4 to 6 refused to take the notice in the presence of the aforesaid witnesses. Service is again said to have been refused by the respondents in affidavit of service filed in Court on 28.2.2007.

30. It is further averred that a copy of the writ petition, amendment application and second stay application along with copy of order dated 22.12.2006 passed by the High Court was also given to counsel for respondent Nos. 4 to 6 in the Court below namely Sri Kushwaha, Advocate for service on them who too going through the order dated 22.12.2006 passed by this Court and the document aforesaid appended along with it refused to accept the notices on the ground that he is not authorized to accept any document except otherwise in the court below for which he was engaged. The original notices along with the copies of second stay application No. 278839 of 2006 are stated to have been submitted before the Court, below on 6.1.2007 along with application dated 6.1.2007 by the petitioner.

31. Similar averments have also been made in paragraphs 3 and 4 of the second supplementary affidavit of service.

32. In the 2nd Stay Application filed by the petitioners praying for ad-interim mandamus commanding respondent Nos. 3 to 6 to pay Rs. 25,000/- with effect from termination of tenancy after expiry of one month from the date of notice dated 1.7.2002 till the disposal of suit, thereafter during the pendency of writ petition damages along with interest thereon @ of Rs. 18% per annum. For use and occupation of property in question even after determination of lease with effect from 1.8.2002 as their tenancy had been terminated in pursuance to the notice dated 1.7.2002.

33. The petitioner has also filed an amendment application for amending the relief clause in the writ petition which is as under:

A. To issue writ" or mandamus or direction commanding respondent Nos. 4 to 6 to pay Rs. 25, 000/-with effect from termination of tenancy after expiry of one month from the date of notice dated 1.7.2002 terminating tenancy till the disposal of suit and after it and during the pendency of writ petition alongwith interest thereon @ of Rs. 18% per annum since 1.8.2002 per delivery of possession of property in question to the petitioner) and to issue direction of like nature to respondent No. 1 to order for realization of aforementioned amount from respondent Nos. 3 to 6 during pendency of SCC suit No. 22 of 2002 and even-after the decision of suit No. 22 of 2002, till the possession of the property in question is handed over to the petitioner.

B- That para 32 of writ petition be permitted to be replaced by following para:

32-. That it was a case of contractual tenancy. It is a case of building assessed in year 1984. The provisions of U.P. Act No. 13 of 1972 were not applicable to building on date of suit, having been filed in 2002. The tenancy stood terminated after expiry of notice dated 1.7.2002 served by petitioner upon tenants-respondents the occupation of tenant and his heirs, respondent Nos. 4 to 6 is not under any contract of tenancy which is ceased. The quantum of rent initially settled also stood terminated simultaneously when tenancy was terminated. Because in contract of tenancy the quantum was one of the factors. There is no embargo or bar on termination of tenancy. It is case of unprotected tenancy. Even in cases which are covered by Act No. 13 of 1972 the termination of tenancy is not prohibited only eviction is prohibited if it comes under terms contained u/s 20(2) of the Act. Even in cases covered by the Act the landlord is always entitled to monthly amount payable by occupant being ex-tenant as compensation as against use of the occupation and the formula which was adopted by legislature is contained u/s 21(8) of the Act. There is no other formula. The market value of the property in question today is 30 lacs. The occupant to pay 1/12th of 1/10th of the market value of property, which comes to Rs. 25,000/- per month. The petitioner is entitled for said amount from the occupants-respondent Nos. 4 to 6 from the date of termination of tenancy. The petitioner cannot be made to suffer for procedural delays. The petitioner's right is to be crystallized on date of suit. No written statement has been filed till date. There was no issue either on facts or law. The Court below ought to have pronounced the judgment at once. The petitioner is suffering by non disposal of suit.

C- In prayer any of the following respondents may be added as respondent No. 6.

2-Writ Petition No. 69006 of 2006:

34. The petitioner Ram Das is owner and landlord of the two Motor Garages measuring 22 feet x 36 feet (approximately 11x36 feet each) situated in Mohalla Bazar Kalan, Opposite Dharmshala Town Jalesar, District Etah.

35. It is stated that the aforesaid accommodation was let put to the father of the respondents Sri Mauzi Ram on 11.11.1976 @ Rs. 60/- per month. He committed defaults in payment of rent, as such SCC suit No. 37 of 1986 Ram Das v. Mauzi Ram was filed in the Court of Judge Small Causes Court, Etah for arrears of rent and eviction as well as damages for use and occupation and mense profit.

36. The Trial Court decreed the suit vide order dated 14.9.1993.

37. The respondent-tenants filed SCC Revision No. 19 of 1993 challenging, the validity and correctness of the decree dated 14.9.93 which was also dismissed vide order dated 12.5.2005 by the Revisional Court.

38. The respondents then filed Civil Misc. Writ Petition No. 42829 of 2005, Heera Lal v. Ram Das before this Court which was allowed vide judgment and order dated 22.8.2006 setting aside the judgments of both the Courts below.

39. The landlord thereafter moved Modification Application No. 205793 of 2006 in the aforesaid writ petition No. 42829 of 2005 with a prayer that the arrears of rent, damages and mesne profit deposited by the tenants in the Court below may be directed to be released in favour of the landlord. Prayer for enhancement of the monthly rent of the accommodation to Rs. 1,1,500/- at par with the market value of the property in the area was also sought for by him.

40. According to the petitioner, the actual market value of the property in dispute at present is in fact more than of Rs. 20,000/- per sq.meter. On the basis of the circle issued by the Collector effective from 1.6.2006 the total market value of the two garages in possession of the respondents being about 80 sq.meters is Rs. 10.40 lacs in addition to the value of the total construction existing amounting to Rs. 3 lacs. Thus the total market value of the property, according to the petitioner is Rs. 10.40 lacs + Rs. 3 lacs = Rs. 13.40 lacs. It is stated that if the guideline as provided in Section 21(8) of U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act) for enhancement of rent in respect of public building is applied then rent of accommodation would come to about Rs. 11,200/-per month.

41. The High Court vide order and judgment dated 26.10.2006 disposed of the modification application for enhancement of rent with the direction that the applicant may file either writ petition invoking extraordinary powers of this Court under Article 226 of the Constitution or may file application before the Prescribed Authority for enhancement of the rent on the analogy of proviso to Section 21(8) of the Act. The writ petition has been filed by the landlord as a consequence of judgment dated 26.10.2006 praying that the respondents be directed to pay rent/damages of the garages in question at the market rate i.e. about Rs. 11,200/- per month for the accommodation under the tenancy of the respondents.

42. The notices were directed to be issued by both modes i.e. by RPAD and Dasti for service on respondents vide order-dated 22.12.2006 but neither acknowledgement nor undelivered cover has been received back after service In the circumstances, in view of the office report dated 27.1.2007 the service on the respondents was deemed to be sufficient.

3-Writ Petition No. 69300 of 2006:

43. The petitioners are landlords of the disputed shop situated in Mohalla Alamgirganj Math Ki Chauki, Bareilly. The said property has been by the petitioner Vinod Babu from Smt. Vimla Devi in the year 1989. Misc. Case No. Nil of 1990 was filed by respondent Mahendra Pal Singh impleading Smt. Vimla Devi alleging that he was tenant in the accommodation in dispute @ Rs. 90/- per month. No rent was paid to the petitioner landlord and the tenant started fresh construction making material changes in the building. The petitioner then filed Misc. Case No. 124 of 1993 against respondent in the Court of Civil Judge (Junior Division), Bareilly for permanent injunction restraining the respondent from changing the nature of the disputed property and from raising any construction

of permanent nature. It was decreed vide judgment and order dated 6.5.98.

44. The respondent also filed Suit No. 18 of 2003 Mahendra Pal Singh v. Kailash Nath and Anr. before the Court of Judge Small Causes Court, Bareilly against the landlords alleging that they have caused damage to the shop in dispute by which it is no longer windproof and waterproof and require major repairs for making windproof and waterproof again.

45. The petitioner defendants in the aforesaid suit filed their written statements denying the averments made in the suit.

46. The Court below however, allowed the suit in favour of the respondents vide judgment and order dated 10.11.2006, hence this writ petition by the landlord praying for quashing the impugned order dated 16.11.2006 passed by the prescribed Authority/Judge Small Causes Court, Bareilly and for enhancement of the rent of the shop in dispute.

47. In paragraph 13 of the writ petition it has been alleged that the shop in dispute measuring 10" x 17" is situated at the main market of Bareilly city and at present the rented value of such shop is not less than Rs. 2500/- per month and the respondent has not paid any single penny to the petitioner towards rent of the shop in dispute.

Sri S.K. Tyagi, Advocate has filed his vakalatnama on behalf of the respondents on 21.2.2007 and has filed counter affidavit on 26.2.2007. The counsel for the petitioners does not propose to file any rejoinder affidavit to the counter Affidavit filed by the counsel for the respondents as the writ petition is being decided only on legal points.

4-Writ Petition No. 69745 of 2006:

48. The petitioners filed SCC Suit No. 79 of 2003, Smt. Zakiya Bibi and Anr. V. Sri Ram Chander Tiwari before the Court of Judge Small Causes Court, Varanasi for decree of ejectment against respondent No. 3 from the tenanted accommodation consisting of three rooms, latrine, bath room situated on the ground floor of House No. J. 11/89-3. Mohalla Ishwar Gangi, Nai Basti, varanasi. Respondent No. 3-tenant filed his written statement denying the allegations made in the suit.

49. The Judge Small Causes Court, Varanasi vide order and judgment dated 12.5.2005 dismissed the suit.

50. The petitioners filed SCC Revision No. 16 of 2005 challenging the order dated 12.5.2005 in the suit. The revision too was dismissed vide order dated 6.10.2006 by the Revisional Court. Aggrieved this writ petition has been filed for quashing the judgment and order dated 6.10.2006 and 12.5.1005 passed by respondent Nos. 1 and 2 respectively.

51. The case was heard and the judgment was reserved on 2.3.2007. Sri Ratnesh Kumar Pandey has filed his vakalatnama on behalf of the respondents on 1.2.2007 in the office but no counter affidavit was filed. Thereafter the case

was listed for hearing on 28.2.2007. It appears that after the judgment was reserved counter affidavit has been filed in the Registry by the counsel for the respondents without leave or information to the Court.

52. The common questions of law for consideration in reference to context of enhancement of rent or payment of damages are as under:

(a) Whether in suit between landlord and tenant either of protected tenancy or unprotected tenancy or other suits after their institution of suit, the Court has a duty and right to mould the relief for doing, justice for compensating the parties to suit either for procedural delays or dilatory tactics, for the period during pendency of suit or even thereafter.

(b) In a suit filed after determination of tenancy whether the Court has a pious duty has power to revise rent even in cases where eviction decree is refused by the Court below or to award damages in excess of quantum of rent which was prior to the filing of suit, or not during continuance of suit or even thereafter as mesne profits in case of both protected and unprotected tenancy.

(c) Whether in cases for release of building coming within purview of Rent Act, the Court has power and duty to fix the quantum of the rent/damages for period during continuance of suit or even thereafter as mesne profits/damages.

(d) Whether in absence of any provision under the Rent Act to deal with the situations arising thereunder the Courts are under powers and moral duty for exercising and providing guidelines in consonance of the Rent Act to deal with the situation arising after institution of suit, either for delay or otherwise, Court can pass requisite orders regarding compensatory reliefs to the plaintiff against occupation of defendant.

(e) What is statue effect of compulsory continuance of a tenant on a building against the will of the owner/landlord of the building in which the tenant continues in occupation after the tenant whose tenancy is terminated or against whom a release petition is filed on same terms as before or relief of enhancement of rent can also be granted in the circumstances, can the tenant be ordered to compensate the plaintiff landlord.

53. It is submitted by Sri Ajit Kumar that these questions have cropped up as the legislature in its wisdom while enacting the Act had not envisaged the human nature providing for mechanism to remedy the mischief arising out of practical problems faced by the landlords as stated above.

54. It is urged by him that one of the dominant intents of the legislation in enactment for this law of letting, fixation of rent and eviction of unauthorized occupants was to provide for a speedy mechanism/system for disposal of cases covered by U.P. Act No. 13 of 1972. This was done by making provisions for eviction in proceedings, which would lie before the described Authority. To achieve this purpose jurisdiction of other forums was ousted and a scheme was provided to deal with matters of release of accommodation along with other

matters including reduction multiplicity of judicial proceedings as well as award congestion in civil courts.

54. Similarly for case covered under the scheme of the Act contained in Section 20, under its salient features, the jurisdiction of the regular Courts was ousted and the exclusive jurisdiction was provided to the Judge Small Causes to avoid multiplicity of appeal or and remedy of only one revision was provided. The summary procedure contemplated under Provincial Small Causes Courts Act read with provisions of Bengal, Agra Assam Civil Courts Act read with the cases contemplated u/s 20 of the Act, were provided to on decided by Judge Small Causes excluding provisions applicable for regular suit contained under Order 18 Rule 5 to 12 CPC (hereinafter referred to as the Code). By virtue of Sub-clause (b) of Order 50 C.P.C. The notices/summons in suits cognizable by Small Cause Court, like contemplated u/s 20 of the Act are issued for final disposal under Order V Rule 5 C.P.C.

55. In the circumstances after termination of tenancy the tenant is bound to handover possession to the landlord by virtue of Section 108 of Transfer of Property Act but he remains in occupation by virtue of pendency of suit. To support his submission regarding guidelines for awarding of compensation as mesne profits after institution.

56. Following case laws have been cited by Sri Ajit Kumar in support-of his submissions.

1. Chiranji Lal Vs. Kunwar Prasad and Another,
2. Madan Mohan Garg Vs. Bohra Ram Lal
3. M/s. Marshall Sons and Co. (I) Ltd. Vs. M/s. Sahi Oretans (P) Ltd. and Another,
4. Gopalakrishna Pillai and Others Vs. Meenakshi Ayal and Others,
5. Shyam Charan Vs. Sheoji Bhai and Another,
6. Satya Sindhu Pandey Vs. Mohammad Shual Islam and Others,
7. 2004 (2) ARC-64 Khursheeda (Smt.) and Ors. v. XVIIIth Additional District Judge, and Ors; and
8. 2004 (2) ARC-652, Hari Mohan Kichlu v. VIIIth A.D.J. Muzaffarnagar and Ors.
9. Orissa Textile and Steel Ltd. Vs. State of Orissa and Others,
10. Rameshwar and Others Vs. Jot Ram and Another,
11. 1993, LCD-447, Smt. Shakuntala Kapoor and Anr. v. 7th Additional District Judge, Meerut and Ors.; and
12. Union of India (UOI) and Another Vs. Major Bahadur Singh,

57. In the case of Chiranji Lal v. Kunwar Prasad and Anr., this Court considered

the question of tenancy in context of Order 20 Rule 12. In that case decree for ejectment and arrears of rent was not challenged but the appellant objected to the rate of mesne profits, which had been fixed at the rate of Rs. 60/- per mensem, Learned Counsel pointed out that the controlled rent of the accommodation was Rs. 22/- + 5/- inclusive of taxes and the landlord was not entitled to mesne profits at a rate higher than that which he would have obtained from another tenant. Negating the contention the Court held in paragraph 3 that-

I do not agree. When a tenant refused to vacate the accommodation after his tenancy is terminated, he becomes trespasser and liable to pay the landlord mesne profits. These are to be assessed according to the reasonable market value of the premises. If the rent represents a fair value mesne profits may be assessed at the amount of the rent, but if the real value is higher than the rent, mesne profits must be assessed at a higher value. I cannot accept learned Counsel's agreement that this value should be equal to the controlled rent and no more. The U.P. Control of Rent and Eviction Act was passed for the benefit of tenants and not trespassers. After a tenant has lost his status and become a trespasser, he becomes liable to pay mesne profits at the fair market value of the premises, as if the Control of Rent and Eviction Act had not been passed. The rent fixed or controlled by that Act is for the benefits of the tenants, but does not represent the real value of the accommodation and can not be considered while assessing the rental value of the property for the purpose of assessing the rate of mesne profits which a trespasser has to pay.

58. Madan Mohan Garq (supra) was a case under the Contract Act 1872. Noticing Section 34 of the Act the Court held that the person, occupying at monthly rent certain premises owned by another person and owner serving notice to vacate premises or to give rent at enhanced rate for general rise of rent in neighbourhood, where tenant informing to vacate by certain dates but without any mention about rent but did not vacate and continued for three months as such it was held that the owner was entitled to rent at the enhanced rent out not interest, as it was not covered by Section 74 of the Transfer of Property Act. In view of Sections 34 and 108 of the CPC Section 74 of the Contract Act was not applicable as the tenant did not break a contract and is liability, therefore was not one for damage for breach of contract. As he refused to vacate and remained in possession he must be held to have been agreed by implication to hold over and to accept the proposal to pay rent at the enhanced rent proposed by the landlord in his notice.

59. In the case of M/s Marshall sons & Co. Ltd., the question of mesne profits again cropped up before the Apex Court with regard to market rent. In that case, the decree for eviction in favour of the landlord which was not executed for some or the other reason. The respondent obstructed delivery of possession on ground that he was in possession of property suit filed by respondents against him for declaration of his tenancy. In the circumstances, the Apex Court protecting interest of judgment creditor directed respondents to pay mesne profits/

compensation at the rate of Rs. 10/- per sq.ft. from 1984 till today and at the rate of Rs. 20/- from today till disposal of suit and further directed that the pending suit to be disposed of expeditiously.

60. In the case of Gopalakrishna Pillai (supra) the apex Court has considered the provisions of Order 20 Rule 12 of the CPC and has held that the High Court has discretionary power to pass a decree directing an enquiry into future mesne profits.

61. As regards the case of Shyam Charan v. Sheoji Bhai and Anr. is concerned, the question before the Apex Court was for fixation of mesne profits after eviction of lessee from premises of a theatre. In that case, the Court held that the Madhya Pradesh Rent Control Act, 1955 did not apply to theatres, therefore, the premises in the suit were not governed by the 1955 Act. That being so, the suit filed in accordance with the Transfer of Property Act could not attract any of the provisions of the 1961 as there is nothing in it to make it applicable to a pending suit of that kind. The suit was filed before the commencement of the 1961 Act and hence the appellant's occupation of the accommodation on and from May 22, 1960 was unauthorized and wrongful and a decree for damages or mesne profits was rightly awarded for the period commencing on that day and ending on October 4, 1964 when the appellant gave up vacant possession.

62. The Court has an occasion to consider Order 20 Rule 12 of the CPC read with Section 2(f) of the U.P. (Temporary) Control of Rent and Eviction Act (3 of 1947) in the case of Satya Sindhu Pandey (supra). The question in that case was regarding a person occupying house under illegal allotment order.

The Court held that-

A person who occupies an accommodation under an allotment order which is subsequently cancelled is liable to pay mesne profits in accordance with present rental value of property. Case law reviewed. Even where the relationship of landlord and tenant exists. Under U.P. (Temporary) Control of Rent and Eviction Act, 1947, it is permissible and possible u/s 2-A or 5(4) of the Act: for the landlord to get rent even at the rate prevailing in the locality for similar accommodation which may be much more than "reasonable rent" as defined u/s 2(f). If this is permissible under the Act where the relationship of landlord and tenant exists, there is no reason to confine owner of building to "reasonable rent" as defined u/s 2(f) while claiming mesne profits against an unauthorized or trespasser. Obviously there is no question of any agreement taking place between an owner and a trespasser or an allottee whom the owner does not accept as his tenant and whose allotment order be successfully challenges. The remedies provided under the Act for claiming rent at a higher rate than the reasonable rent prescribed under the Act also cannot be invoked by the owner because these remedies are available only when the relationship of landlord and tenant exists either by virtue of contract or by virtue of statute. To grant an unauthorized occupant an advantage over authorized occupant would be most

unfair to the owner of the property and would also be against public policy and fair play.

63. In the case of Khursheeda (Smt.) and Ors. (supra) the Court considered the question of applicability of Section 21 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 and has held that-

In case u/s 21 tenant has asserted that Rent Control Act is not applicable as such tenant has won from Courts below. Jurisdiction cannot be conferred by consent. Doctrines of approbate and reprobate cannot be applied to the question of jurisdiction particularly when it is based upon pure question of law. In exercise of writ jurisdiction while granting relief to the, petitioner the Court is fully authorized to pass such subsequent order, which is essential for doing justice No provision of enhancement of rent in the Act. Writ Court cannot sit with folded hands. While granting relief to the tenant against ejectment writ Court is fully empowered to enhance the rent to some reasonable rent. Court enhanced the rent from Rs. 27.50 to 1000/- per month w.e.f. May, 2004.

64. Similarly in the case of Hari Mohan Kichlu v. VIIIth A.D.J. Muzaffarnagar and Ors. the Court considered Sections 21(a) and 21(1-A) of the UP. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 and held that-

Two release applications were filed against two tenants. Tenanted accommodations are adjacent to each other and parts of the same kothj. Petitioner stated that he would be retiring on 31.12.1987 and after retirement he intended to settle at Muzaffarnagar. By amendment he added that he was retired on 31.12.1987 and vacated on 14.7.1988 the Government house at Lucknow, Ramesh Chandra the tenant had constructed his own house and had shifted therein. It was also pleaded that after retirement he had started living in a tenanted portion of Lucknow. P.A. allowed the release application. Appeals filed which were allowed. Writ petition filed. Lower Appellate Court accepted the version of tenant and held that landlord was not entitled to the benefit of Section 21(1-A). That application was not u/s 21(1)(b).

65. As regards Orissa Textile's case (supra) that case pertained to amended Section 25(O) of the Industrial Disputes Act, 1947. It has no direct nexus with the controversy in hand.

66. In the case of Rameshwar and Ors. (supra) the Apex Court held in paragraphs 8 and 9 of the judgment that-

8. It is basic to our procedural jurisprudence that the right to relief must be judged to exist as on the date a suit or institutes the legal proceedings. This is an emphatic statement that the right of a party is determined by the facts as they exist on the date the action is instituted. Granting the presence of such facts, then he is-entitled to its enforcement. Later developments cannot defeat his right. The Court procedural delays cannot deprive him of legal justice or rights crystallized in the initial cause of action.

9. Courts can, however, take note of subsequent events and mould the relief accordingly but this can be done only in exceptional circumstances Rights vested by statute cannot be divested by this equitable doctrine.

67. In so far as the case of Smt. Shakuntala Kapoor's case (supra) is concerned, it pertained to the right of relief under Order 7 Rule 7 of the C.P.C. It has been held in that case that subsequent events requiring to be ascertained on evidence cannot be taken into account and right to relief must be judged to exist on the date a suit or legal proceeding is instituted. "Court's procedural delays cannot deprive him of legal justice or rights crystallized in the initial cause of action.

68. The case of Union of India and Anr. v. Major Bahadur Singh (supra) cited by the counsel for the petitioners is on the question of binding and the nature of law declared by the Apex Court under Article 141 of the Constitution and the Apex Court has held that the Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. The Court considered the question of circumstantial flexibility i.e. whether one additional or different fact may make a world of difference between conclusions in two cases, hence blind reliance on a decision is not proper for disposal of cases.

69. It is submitted that the Court has dealt with the exercise of powers under CPC in the following cases wherein it has been held that even in cases, which are not covered u/s 34 of Act No. XIII of 1972 read with Rule 22(c) and (f) framed thereunder and covered by Section 21 or 16 of the aforesaid Act. Reliance has been placed in this regard on the following decisions.

1. 1998 (2) AW 995, Kushi Ram Dedwal v. Additional District Judge, Small Causes Court/Prescribed Authority, Meerut and Ors.;

2. 1999 (1) AWC-43, Jawahar Lal v. Prescribed Authority/1st Additional Civil Judge and Anr.;

3. 1980 ARC-599, Raja Ahmad v. 1st Additional District Judge, Bareilly and Ors.;

4. 1980 ARC 369 Sri Sheo Kishan Dass v. Prescribed Authority, Pilibhit and Ors.;

5. 1998 (2) AWC-1082 Kripal Singh v. Prescribed Authority, Haldwani, Nainital and Anr.; and

6. 1983 (1) ARC-334, Sheikh Ahsan Ali and Ors. v. District Judge, Varanasi and Ors.

Submissions of Sri Manu Saxena in Support of the Petitioner Landlords are:

70. That in cases where there is breach of contract of tenancy by tenant i.e. by conditions mentioned u/s 20(2) of Act No. 13 of 1972 or otherwise for committing breach of any condition, contract of tenancy is terminated, then question of agreed rent is not genuine to the controversy. According to him after termination of contract, reasonable compensation only has to be awarded, which

may be an enhanced amount from that what he was paying, as rent. In these circumstances, Section 9 of U.P. Act No. 13 of 1972 may be enforced or order may be passed on the analogy of Section 9 in cases where it is directly applicable.

71. The legislature has taken care by conferring jurisdiction upon District Magistrate/Rent Control and. Eviction Officer exercising power of District Magistrate to fix standard rent for curative measures for the landlord and for enforcement of the rights of landlord. U.P. Act No. 13 of 1972 has nothing to do, with the procedure adopted by JSCC, which is provided under the CPC and jurisdiction under Bengal, Agra and Assam Civil Court Act, 1887.

72. Non-payment of monthly rent timely is in itself a breach of contract causing cessation of contract indirectly including the agreed rent, however, deposit-under Section 30 U.P. Act No. 13 of 1972, and u/s 20(4) of U.P. Act No. 13 of 1972 before or after suit, may result in refusal of decree of eviction by the Court against the person who has made default, but in no case it will revive the contract of tenancy. Therefore, the remedy to the doors leading u/s 9 of U.P. Act No. 13 of 1972 and requisite order under Order 20 Rule 12 CPC can always be passed.

73. While comparing the bonafide and comparative hardships in matters of release the Courts have moral and legal duty to do justice to the parties but also have ample jurisdiction to balance them by enhancement of the rent/damages/mesne profits on its own in the facts and circumstances reasonably and at par with market rent in the interest of justice equity and fair-play which may be read in every application for revision of rent, eviction, release etc. under the Act even if not specifically-asked for in the relief.

74. Non payment of rent on basis of market value virtually on one hand deprives the landlord from the yield which his property may fetch and this unlawfully, irrationally discriminate such landlord from the other landlords of public buildings and charitable trusts and is violative of Article 14 of the Constitution of India and in certain cases/also is violative of Article 21 of the Constitution, hence equities are to be balanced so that the yield of property may come to hands of landlord when property is used and accepted by the tenant.

75. Sri Manu Saxena, counsel for the petitioner has cited following rulings in support of his above submissions

1. AIR (29) 1942 Oudh-332 Mt. Sarwar Sultan Begam and Ors. v. Sheikh Abdul Halim;
2. Karnani Properties Ltd. Vs. Augustin,
3. Fateh Chand Vs. Balkishan Das,
4. Mahant Narayana Dasjee Varu and Others Vs. Board of Trustees, The Tirumalai Tirupathi, Devasthanam,
5. 1966 A.L.J. (SC) Bhagwati Prasad v. Chandramaul page-799;

6. Rattan Arya and Others Vs. State of Tamil Nadu and Another,
 7. Nathuni Prasad Singh and Others Vs. Bishwanath Singh Sharma and Others,
 8. Bhawanji Lakhamshi and Others Vs. Himatlal Jamnadas Dani and Others,
 9. Badrilal Vs. Municipal Corporation of Indore,
 10. 2005 (3) ARC-579 Krishan Chandra v. VIIIth A.D.J. Kanpur and Ors.;
 11. (2005) (1) ARC-526, Rajeshwari (Smt.) v. Prema Agarwal;
 12. 2005 (3) ARC 491 Rais Uddin v. IIIrd Additional District Judge, Moradabad and Ors.;
 13. R.S. Madanappa and Others Vs. Chandramma and Another,
 14. S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another,
76. The case of Mt. Sarwar Sultan Begum (supra) was a case in respect of renewal of promissory note by another creditor. The Court held that there was no presumption that the creditor has kept the original promissory in his possession in order to prove the consideration of the later promissory note, hence even if a person did not claim interest on the amount of rent it does not debar him from claiming interest pendente lite.
77. Karnani Properties Ltd. v. Miss Augusine and Ors. was a case under the West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950). Considering the intention of legislature and the word of rent the Apex Court has held that where the premises providing electric installations and rent was paid inclusive of electric energy and other services. There was increase in electric charges and hence the Government was duty bound to increase the refit. It was observed that the Rent Controller in the circumstances has to consider increase when determining fair rent.
78. The case of Fateh Chand (supra) deals with mesne profits. The Court held that assessments are based not on the value of the user but on an estimated return on the value of the property was not sustainable. The question before the Court for determination related to the amount of mesne profits which the plaintiff is entitled to receive from the defendant who kept the plaintiff out of the property after the bargain had fallen through. The Court held that-
- the normal measure of mesne profits is the value of the user of land to the person in wrongful possession. The assessment of compensation based, not on the value of the user but on an estimated return on the value of the property, can not be sustained.
- Normally a person in wrongful possession of immovable property has to pay compensation computed on the basis of profits he actually received or with ordinary diligence might have received.

Besides the mesne profits, the plaintiff is also entitled to interest on such mesne profits vide Section 2(12). In this case where property in dispute was in the occupation of a tenant for a long time, mesne profits computed at the monthly rent together with interest at the rate of 6% on the amount accruing due month after month were awarded.

79. In the case of Mohan Narayana Dasjee Varu and Ors., the Apex Court had occasion to consider Sect on 34 of the Act. Relying upon paragraphs 10, 14 and 16 of the judgment the counsel submits that mesne profits interest has to be allowed in computation of refit. In that case, Mahant was in possession of the Tirumalai Tirupalathi, Devasththam property. He was removed under the provisions of the Act. Dispute over the title of property continued for a number of years, the Court considering Section 34 read with Section 12(2) of the C.P.C. held that Mahant was liable to pay interest at mesne profits interest at the normal rate. Paragraphs 10, 14 and 16 are as under:

10. u/s 2(12) of the CPC which contains the definition of "mesne profits". Interest is an integral part of mesne profits and has, therefore, to be allowed in the computation of mesne profits itself. That proceeds on the theory that the person in wrongful possession appropriating income from the property himself gets the benefit, of the interest on such income.

14. The rate of interest to be allowed in regard to mesne profits or u/s 34 is discretionary, as; there is no question of any contractual rate or any particular rate fixed by statute. The only limitation which is prescribed by Section 34 as it stands now, is that the rate shall not exceed 6 percent per annum a limitation which did not figure in the section before its amendment by Act 06 of 1956 though Courts as a general rule seldom awarded any rate in excess of 6 per cent.

16. The view that the former Mahant was a trustee who had been removed from office under the provisions of the Tirumalai Tirupathi Devasthanam act and therefore stood in a position different from that of a trespasser in respect of awarding mesne profits, is not well founded. Where the title of the Devasthanam committee in the property was disputed and suits had to be filed for the recovery of their possession, and litigation conducted which took 12 years to finish, and if during this period the former Mahant appropriated to himself the income from the property, there is no justification for his not being made liable for interest on the amount of mesne profits at the normal rate. In any event, if the trial Court in its discretion awarded interest at 6 per cent and that is admittedly not per se an unreasonable rate, there is no compelling equity in the Mahant to justify interference with that discretion.

80. In the case of Bhaqwati Prasad (supra) the Court considered the formal requirement of pleadings when an be relaxed. In the circumstances, the Court held that-

There can be no doubt that if a party asks for a relief on a clear and specific ground, and in the issues or at the trial, no other ground is covered either

directly or by necessary implication, it would not be open to the said party to attempt to sustain the same claim on a ground which is entirely new but in considering the application of this doctrine to the facts of a case, it is necessary to bear in mind the other principle that considerations of form cannot over-ride the legitimate considerations of substance. If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was involved in the trial then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence....

Where a substantial matter relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case.

81. The Court further held that-

Once it is held that the plaintiff is entitled to eject the defendant, it follows that from the date of the decree granting the relief of ejectment to the plaintiff, the defendant who remains in possession of the property despite the decree, must pay mesne profits or damages to use and occupation of the said property until it is delivered to the plaintiff. A decree for ejectment in such a case must be accompanied by a direction for payment of the future mesne profits or damages.

82. In the case of Rattan Arya etc. v. State of Tamil Nadu and Anr. the Apex Court has laid down the law that the Court can take judicial notice of enormous manifold increase of rents throughout the country, particularly in urban area. In paragraph 4 of the judgment the Court while considering the distinction between residential and non residential buildings in the matter of affording the protection of the provisions of the Act held that-

Further the distinction suggested in the counter appears to be quite antipathic to the actual provision because as we pointed out earlier there is 10 such ceiling in the case of tenants of non residential, buildings and therefore a tenant of a non residential building who is in a position to pay a rent of Rs. 5,000/- per month is afforded full protection by the Act, whereas, inconsistently enough, the tenant of a residential building who pays a rent of Rs. 500/- is left high and dry. It certainly cannot be pretended that the provision is intended to benefit the weaker section of the people only. We must also observe here that whatever justification there may have been in 1973 when Section 30(ii) was amended by imposing a ceiling of Rs. 400/- on rent payable by tenants of residential buildings to entitle them to seek the protection of the Act, the passage of time has made the ceiling utterly unreal. We are entitled to take judicial notice of the enormous multifold increase of rents, throughout the country, particularly in urban areas. It is common knowledge today that the accommodation which one could have

possibly get for Rs. 4007- per month in 1973 will today cost at least five times more. In these days of universal day today escalation of rentals any ceiling such as that imposed by Section 30(ii) in 1973 can only be considered to be totally artificial and irrelevant today. As held by this Court in Motor General Traders and Another Vs. State of Andhra Pradesh and Others, a provision which was perfectly valid at the commencement of the Act could be challenged later on the ground of unconstitutionality and struck down on that basis. What was once a perfectly valid legislation may, in course of time, become-discriminatory and liable to challenge on the ground of its being violative of Article 14. After referring to some of the earlier cases Venkataramiah. J. observed:

...The garb of constitutionality which may have possessed earlier has become worn out and its unconstitutionality is now brought out to a successful challenge.

83. Nathuni Prasad Singh (supra) was a case of Bihar Tenancy Act (8 of 1985) in which the landlord filed suit, for possession and mesne profits. Defendant became unlawful from a certain date and therefore, plaintiffs became entitled to possession. The Court held that-

It must therefore, follow that the appellants would be entitled to recover mesne profits from the defendants for a period of three years before the institution of the suit until the date on which the spit property vested in the State Government by reason of the Bihar Land Reforms Act.

84. The case of Bhawanji Lakhamshi (supra) was a case u/s 116 of the Transfer of Property Act where the question before the Court was with regard to holding over what constitutes after determination of lease tenancy. The Court held that-

The act of holding over after the expiration of the term does not create a tenancy of any kind, if a tenant remains in possession ,after the determination of the lease, the common law rule is that he is a tenant on sufferance. There is a distinction between a tenant continuing in possession after the determination of the term with the consent of the landlord and a tenant doing so without his consent. Th6 former is a tenant at sufferance in English Law and the latter a tenant holding over or a tenant at will. The assent of the landlord to the continuance of possession will create a. new tenancy. What the section contemplates is that on one side there should be an offer of taking a new lease evidenced by the lossee or sub-lessee remaining in possession of the property after his term was over and on the other side there must be a definite consent to the continuance of possession by the landlord expressed by acceptance of rent or otherwise.

Mere acceptance of amounts equivalent to rent by a landlord from a tenant in possession after a lease had been determined, either by efflux of time or by notice to quit, and who enjoys statutory immunity from eviction except on will defined grounds as in the Act, (Bombay Rents Hotel and Lodging House Rates (Control) Act, 1947) cannot be regarded as evidence of a new agreement of tenancy, if the tenant asserts that the, landlord accepted the rent not as

statutory tenant but only as legal rent indicating his assent to the tenant's continuing in possession, it is for the tenant to establish it. Where he fails to so establish it cannot be said that there was holding over by him.

85. In the case of *Badri Lal v. Municipal Corporation of Indore* the Court considered Section 116 of the Transfer of; Property Act and held that a person who is lawfully in occupation of the premises does not become trespasser and if, he does not become a tenant holding over he would be a tenant by sufferance.

86. *Krishan Chandra v. VIIIth A.D.J. Kanpur and Ors.* was a case in which the Court held that the prospective allottee has got no right to be heard and oppose the release application. It further held that if any other landlord bonafidely requires the accommodation in dispute he may initiate proceedings u/s 21 of the Act. Rent from Rs. 56/- per month was enhanced to Rs. 1500/- per month in exercise of power under Article 226 of the Constitution of India relying upon the case of *Khursheeda v. A.D.J. 2004 (2) ARC-64*.

87. To the same effect is the case reported in (2005) (1) ARC-526, *Rajeshwari (Smt.) v. Prema Agarwal*. Reference may also be made in this regard to the case of *Rafiq uddin v. IIIrd Additional District Judge, Moradabad and Ors. 2005 (3) ARC 491* wherein it has been held that the High Court has power to enhance the rent under Article 226 of the Constitution.

88. In so far as the case of *R.S. Maddanappa (supra)* is concerned, it was held that-

Mesne profits prior to the suit cannot be awarded to a successful party to a suit for possession unless a claim was made in respect of them but as regards mesne profits subsequent to the date of the institution of the suit, that is future mesne profits the position is governed by Order XX Rule 12 C.P.C.

89. In *I.S.A.L. Narayan Rao and Anr. v. Ishwari Lal Bhagwandas and Anr.* it has been held that-

By a petition or a writ under Article 226 of the Constitution extraordinary jurisdiction of the High Court to issue high prerogative writs granting relief in special cases to person aggrieved by the exercise of authority-statutory or otherwise by public officers or authorities is invoked. This jurisdiction is undoubtedly special and exclusive, but on that account the nature of the proceeding to which it is exercised is not altered.

90. It is urged by the counsel for the petitioners that the respondents have either not filed their written statements before the Court below in spite of service of notice by registered post or even by publication. Some of them have not put in appearance even before this Court. The averments made in the affidavits have also been quoted in the body of the judgment. In a large number of cases it appears that as the rent is very low the tenants do not want to pay the market rent to the landlord and to achieve this purpose the landlord is made to run from pillar to post. The *modus operandi* appears to be that the tenants do not appear

in the cases on the date fixed and when the case is decided *ex parte* the application for recall is moved and thereafter the matter goes in appeal or in revision and thereafter High Court is moved. In some cases where the parties are affluent even the Apex Court is moved against interlocutory orders. All this is done to pass as much time as the tenant can for he is enjoying the tenement on rent ranging from Rs. 1.20 to Rs. 200/- inclusive of water tax consisting of big bungalows and number of rooms under his tenancy.

91. Since the writ petitions raise questions of public importance hence Members of bar were invited to make submissions on the questions involved in the writ petition....

92. It is submitted at Bar that the standard rent fixed under the Act for payment by the allottee to the landlord is determined by the authorities is far below the market rent which is freezed to the level of rent prior to 15.7.72. Once rent is so fixed there is no provision for revision of rent in the Act, in future.

93. It is submitted at the Bar that one of the aspects of allotment on low rent, which lurks in the shadow in almost every case under the Act, requires a fresh look. The tenant who is allotted or takes the tenement on very low rent, with the passage of time tries to dorn on the robes of the landlord. He does not want to vacate it as he will not get an\\ other accommodation which is not at par with rate of rent prevalent in the market, for he is paying no rent or also most negligible rent which has been freezed at the level prior to 1972 at the time of enforcement of the Act i.e. for last more than 35 years.

94. The release application filed by the landlord or his personal need is resisted for years together even in cases where the family of the landlord has increased or even n case the tenant has built his own residential house or set up his business in other shops, which have been acquired by him. This is resorted to in order to extract premium from the landlord for vacating the premises under tenancy. Therefore, the tenant stretches the litigation for decades and the authorities without a second thought to the provisions of the Act and R lies or mindful to the difficulties faced by the litigants, grant adjournment after adjournment on superfluous grounds. So isalso the case in respect of termination. of tenancy by the landlord after due notice as the Rent Act despite termination of tenancy restricts the eviction of tenants until the case falls with categories specified under Sub-section (2) of Section 20 of the Act.

95. The litigations, which have brewed in the recent past like storm in the cup was not envisaged by the legislature. The situation has arisen, as there is no provision of revision of rent under the Act. Similar to provisions u/s 21(8) in respect of public building. Much less revision of rent to bring it at par with market rent regularly and periodically of the buildings covered under the provisions; of the Act after standard rent has been fixed u/s 9 of the Act. Section 21(8) of the Act is the only provision for enhancement of rent, providing for enhancement of rent Only in respect of public building and charitable trust etc.

and that top not at regular interval automatically to the exclusion of other tenements or buildings covered under-the Act from its ambit.

96. Various amendments". Were made from time to time to make the Act and the Rules framed therein workable. This happened as the Act and the Rules framed therein, failed to meet the object for which it was enacted. Many of the provisions of the Act namely, Sections 3(8), 4(2), 5, 6, 8, and" 9 of the Act relating to rent were declared ultra-vires in the case of *Milap Chandra Jain v. State of U.P.* 2001 (2) ARC-88.

97. It is further submitted that till date, the State Government has not come up with any guidelines for fixation of standard rent, though, more than 5 years have passed since the decision of this Court in *Milap Charidra Jain's* case (Supra) and as on date the landlords of buildings acquired under the Act for allotment to private persons are unable to get reasonable rent for their property which amounts to unreasonable restrictions within the meaning of Article 14 of the Constitution of India. This has effected their guarantee under Article 21 of the Constitution of reasonable return for their livelihood also, which may render the whole of the Act itself as ultravires of the Constitution, hence, in such circumstances, this Court has ample power to enhance rent to a reasonable limit so that the landlords are adequately compensated so that the object of the Act is achieve d as well as the landlords get reasonable return for their property or may get the property released in case of personal need.

98. It has been argued that under freezing of rent as immediately before the date of commencement of the Act i.e. 15 July, 1972 or to the letting value on the date building was let out has been provided for. However, since thereafter there has been manifold increase in price index without any provisions for revision of rent, though, common law right under Transfer of Property Act, 1882 has been drastically curtailed by the Act. The freezing rent at the level of 1975 may be done away with to make the Act workable and beneficial to the parties i.e. the tenant and the landlord.

99. It is stated that the present Act is a permanent law in comparison to the earlier one i.e. U.P. Act No. 3 of 1947 which was a temporary measure. In these circumstances, the standard rent which under the Act stood freezed to the level of 1972 or to the date of commencement of tenancy, is a mere pittance if compared to the present day valuation of the property and rental value fixed on allotment hence, the High Court has ample power to intervene in the matter and to fill up the lacunae in the provisions by harmonious consideration by directing payment of, reasonable rent taking into consideration the present market value of the demised property.

100. In support of the above submissions following cases have been cited.

1. 2001 (2) ARC-488, *Milap Chandra Jain and Ors. v. State of U.P.*;
2. *K. Veeraswami Vs. Union of India (UOI) and Others*,

3. Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another,
4. 2003 (2) ARC-545, Bal Kishan v. Ivth Additional District Judge Etawah;
5. 1985 Supp. SCC-476 L.I.C. Ltd. v. State of Karnataka; and
6. P. Ramachandra Rao Vs. State of Karnataka,

101. In K. Veeraswami Vs. Union of India (UOI) and Others, the Apex Court recognized its expanding role as the lawmaker and problem solver. It was held that the court can supply or supplement the deficiency in the statute. In L.I.C. Ltd. v. State of Karnatka 1985 Supp. SCC 476 the Apex Court held as under:

The court can mould its directions in order to give relief in a particular situation. Courts of today cannot and it should not any longer remain passive with negative attitude, merely striking down a law or preventing something being done. The new attitude is towards positive affirmative action, directing people or authorities concerned that "thoushall do"t" in this manner. While it is true that if a law is bad, the court must strike it down. But if the law by and large and its true perspective of a social purpose if implemented in a particular manner could be valid, then the court can and should ensure that implementation should be done in such particular manner and give directions to that effect.

102. In Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another, the Apex Court held as under:

It is well settled that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party prior, before invoking the jurisdiction of the High. Court, the Court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief.

103. At the Bar the counsels also addressed that the provisions for determination of standard rent as defined u/s 3(2) and corresponding provisions u/s 4(2), 5, 6, 8 and 9 of the Act have been declared ultravires of the Constitution of India by this Court in the judgment reported in 2001 (2) ARC 488, Milap Chandra Jain v. State of U.P. and Ors. The State Government did not challenge the said judgment before the Apex Court, which has become final. It, is submitted that in fact consequent to the aforesaid judgment the State Government itself issued a notification dated 3 August, 2003 whereby the authorities under the Act were directed to ensure compliance of the Judgment by not entertaining any application under the provisions of the Act declared ultravires.

104. This vicious/circle of challenging every order at every stage starting from

service of notice and validity of notice issued by the landlord terminating the tenancy for deposit of rent on the first date of hearing continues on and on. The parties to the litigation keep popping off their heirs substituted and even sometimes the dispute does not come to an end in their life time. The landlord pay more taxes for the building than the rent received by him and apart from the rent which he may luckily get he is forced to spend more from his pocket in the litigation throughout his life time.

105. It is further urged that the fact of delay in justice ant that law under the U.P. Act No. 13 of 1972 being read with lopsided in favour of the tenant without any equitable remedy to landlord one serious development that has taken place in recent times is that due to distress the landlords have started selling, their properties to land Mafia who purchase it a throw away prices. The tenant who was litigating for year is thrown out by these mafias and he vacates the house without a whimper. Thus not only he loses a roof over his house, but by his act loses his house to the benefit of Land Mafia, which has grown in number. Neither the Authorities have any guts to deal with this situation nor they do anything in this regard but they side with the mafias and keep quite.

106. It is stated that in these circumstances that some time the Court has to interfere and direct for action by the police to throw out the Mafia or the unscrupulous tenant who has taken blessings of such mafias or politicians. Big Bungalows have 4-8 acres of land are being captured by political parties for their officers-and by Mafias at rent varying from Rs. 1.20 to 200/- per month and cases by the landlords for their eviction are not being allowed to be brought to their logical conclusion within time provided u/s 22 of the Act. This has been dealt with by this Court in the case of Smt. Manju Devi v. Additional District Judge, VIII Allahabad and Ors. by judgment and order dated 17.7.2007 in Civil Misc. Writ Petition No. 31642 of 2007 wherein the Court has taken very strict view to meet such types of challenges by directing the District Judge to give entries in ACR to the Officer concerned in such cases.

107. The question as to what relief is provided to the landlord for non-disposal of the case by the Prescribed Authority or appeal or revision as stipulated to be decided under the scheme of U.P. Act No. 37 of 1972 and why the tenant should be" unduly made to be benefited particularly when any such undue benefit was not contemplated on him under the scheme of Neither of the Acts or any other law has been dealt by this Court in Smt. Manju Devi's case (supra) where the Court has directed for strict compliance of time limit and consequents to follow as under:

The time has come now for the authorities appointed under UP. Act No. XIII of 1972 to be dealt with iron hand for they do not honour legislative wisdom and became an instrument in the hands of the litigants by not adhering to the time limit provided under the Act and Rules framed thereunder for deciding the cases. They thus commit, serious violation of law and abuse of process of their own Court. This act of their has resulted in the failure of justice and an achievement

of the object which the legislature has in its wisdom provided in the enactment of this welfare legislation.

Justice delayed is justice denied is coveted jewel of legal principles.

It is noted that though time frame is provided in the Act and the Rules framed thereunder, the cases are not decided for years together and sometime even for 15 to 20 years elapse because the authorities are not strict but liberal in granting adjournments. If the authorities are so liberal so as to reflect their insufficiency in deciding the case before them within the time prescribed by the legislature and law pronounced by the High Court as well as by the Apex Court, they are not fit to remain in service.

The matters of tenancy between landlord and (sic) has serious consequences and also reflects upon the judiciary. The question of delay is a primary responsibility of the Court and they must strive to decide the cases in time prescribed under the statute pertaining under the Uttar Pradesh (Regulation of Letting, Rent and Eviction) Act, 1972 with Rules framed thereunder. If the authorities appointed under the aforesaid Act and Rules failed in their duties cast upon them by deciding cases first beyond the time prescribed under the Act, then it is to be treated as serious misconduct calling for action against the said officer.

It is to be brought to his Annual Confidential Report. All District Judges are therefore, directed to maintain a record of cases under U.P. Act No. 13 of 1972 which are not decided within time prescribed and give an adverse entry.

Let a copy of this order be communicated by the Registrar General to all the District Judges concerned for compliance henceforth.

The writ petition is disposed of with the direction to the Appellate Authority to decide, the R.C.A. No. 59 of 2002 filed by respondent Nos. 2 to 8 within a period of two months from the date of production of a certified copy of this order.

No order as to costs.

108 It is submitted that the Court cannot remain a by stand watching the object of the Act being defeated by unscrupulous persons for their personal gain, where the State machinery has failed to provide safety of property of its habitants rather has joined hands with land Mafia for their safety and plunder the loot along with them. As the State legislature has done nothing to amend the Act as two pillars i.e. the executive and legislative have fallen the duty falls upon the Courts, the only pillar remaining under the Constitution to make the Act workable by plugging the loophole and providing relief to the public by harmonious consideration of the provisions of the Act, providing analogy from the provision on the statute, in exercise of its powers under Article 226 of the Constitution.

109. It is vehemently urged that these are not stray incident in the State of U.P., the law and order situation in this field has out grown the beneficial object of the Act. No allotment application is ever filed for allotment of a building purchased by

the Mafias. The Musclemen are having a flourishing business in land/house deals with State a mute spectator. Reference may be made to "Some persons" in Allahabad who are said to have purchased a number of bungalows in and around Civil Lines and land in the city for no house can be sold within their Ashirwad.

110. There are instances in U.P. where cases under the Rent Control Act have not been decided for even more than 10 to 20 years. This delay has been caused either due to alleged paucity of time by the authority whether of first instance or appellate or for delaying tactics of the tenant who is enjoying the tenanted accommodation on very low rent as there is no provision for periodical enhancement of rent at par to the market rent on the analogy to Section 21(8) of the Act making the landlord continuously suffer for letting out his building or part thereof which he might have rented out in compelling circumstances and may be generally requiring it for his use and occupation in changed circumstances due to subsequent events.

111. It is lastly urged at the Bar that in the circumstances that every person may not be able to seek relief before the High Court or before the Supreme Court for financial constraints or other difficulties, hence the Court below at the first instance must consider enhancement of rent as soon as suit for arrears of rent/damages or eviction/release is filed before it. It is emphasized that the Court may also reflect upon the misuse of legal procedure by the parties such as filing of frivolous writ petitions or challenging interlocutory orders in mollification applications, application for expedite hearing under Order 8 Rule 1, application for permanent injunction for restraining the respondents from evicting the tenant etc. and revision at the interlocutory stage in suit for rent and eviction in cases of arrears of rent and eviction and on the release application etc. as ancillary questions which are required to be taken into account for deciding the main questions of enhancement of rent by the Courts or for payment of damages during the pendency of proceedings for eviction of the tenant or his occupation of the tenement during pendency of release application.

112. On the other hand, counsels representing the tenants contended that the present Act is a social beneficial legislation, which was enacted for protecting the tenants from unscrupulous landlords. The wisdom of the legislature regarding the manner in which protection has been granted to particular section of the society cannot be questioned! The classification may be done on basis of rent, the age of building or the section of society to which it has been let out or to which it belongs. The court can only consider whether, the classification has reasonable nexus to the object sought to be achieved. Even in case some provisions of the Act has been struck down and there is any lacuna, the court can not fill the same and should await change in law by the legislature instead of legislating itself by active interpretation of law and not make law.

113. In rebuttal to the arguments of the counsel for opposite parties Sri Ajit Kumar submits that the judgments should be read in the context it was given in facts of that case and not in isolation of facts involved in that case. He has

further relied upon the following cases.

1. Sukhwant Singh Vs. State of Punjab,
2. : (2004)5SCC222 , Common Cause v. Union of India and Ors.;
3. Ambalal Manibhai Patel Vs. State of Gujarat,
4. Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others,

Sri Ajit Kumar in rebuttal further submits that Bal Kishan's case the writ petition was filed by the tenant. The controversy which was subject matter of the writ petition before this Court was tenant's claim to quash the release order. The consideration of subject matter of writ petition. The judgment given in Bal Kishna's case from paras, 9 to 13 was obiter-dicta from this Court. It was required to decide controversy involved in; the writ petition which was decided in paras 1 to 8 of the judgment, in support of this submission he has relied upon the decision reported in Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, and submits that paras 9 to 13 of the judgment in that case being obiter dicta has no binding force, it can not be treated to be law declare d by the Court. Moreover, these observations in no case helps the tenant. That case does not deal with the provisions of C.P.C. and is not in context regarding the provisions of mense profit. Rule 22(c) and (f) of Act No. 13 of 1972 and scope of cases under Sections 21 and 16 etc. of the Act were also not under consideration It does not take notice of various provisions of the Act and C.P.C. hence it has no binding precedence in deciding the controversy involved here.

114. It is urged that Bal Kishan's case (supra) the judgment is on the question of dominant factor, i.e. legislation should enact provisions in the Act setting guidelines for periodical enhancement of rent. Bal Krishna's case itself holds that "tenant is not entitled to be heard if he is enjoying the tenancy rights on highly inadequate rent". "If the landlord comes to collect rent on rickshaw he will be refused to, be paid more as fare than rent realized by him.

115. As regards the decision rendered in Milap Chandra Jain's case (supra) deals with the legislation of Section 4(2), 5, 6 & 8 of the U.P. Act No. 13 of 1972 relating to fixation of model rent. It does not deal with the power of courts, irrespective of said section. Fixation of standard rent has nothing to do with the power of the Court otherwise in case before it and the powers conferred u/s 34 of the Act read with Rule 22(c) and (f) framed under the Act, read with relevant provision of CPC. There is no question of freezing rent. There is no legislative policy in freezing rent and situation is resulting to undue advantage to tenant and undue disadvantage to the landlord, it mounts inequality. It deals with fixation of standard rent and relating to set provisions. This is not on any other context. If Section 9 of the Act does not exists in statute, the Court is empowered to pass the order in light of Section 34 of the Act, read with Rule 22 framed there under and in light of other submissions made earlier.

116. He further urged that no party can gain advantage of litigation. The right of parties is to be crystallized on date of initiation of cause either u/s 21 of the Act before Judge Small Causes Court and procedural delay subsequent developments is to be considered and the Court can mould relief. The Court can balance equity and can pass orders to do justice.

117. He also submits that the case of P. Ramchandra Rao (supra) relates to criminal law, which has different parameters and deals with judicial activism. This ruling is not in the context of the controversy involved in the present case and it is on a different context. The case of K. Veeraswami (supra) was a case of Prevention of Corruption Act, hence it is not applicable to the facts of the present case.

118. With regard to the case of L.I.C. Ltd. (supra) he submits that it relates to regulating marketing fee and is a matter arising out of Karnataka Agriculture Produce Marketing Regulation Act. The law relating to enhancement and regulation of Marketing Fee has a different parameter and considerations.

119. He also submits that in the case of Shanqirila Food Products Ltd. (supra) the Court has found that the Courts are making party shed its advantage before granting relief, hence this case law does not help the case to the other side.

120. The Courts in its endeavours to answer the question raised in these petitions scrutinized the provisions of the Act and the Rules as well as the provisions of Provincial Judge Small Causes Courts Act and other related laws applicable to the questions of tenancy and procedure such as Transfer of Property Act and Civil Procedure Code.

121. Though the Court is only addressing itself to the questions raised by the landlords regarding enhancement of rent, it cannot ignore to consider various related facts canvassed by the counsel for the parties in the backdrop of the facts of each case regarding the provisions of letting, rent and eviction. These questions broadly speaking are the question of rent, whether it is inclusive of deposit of taxes and non-deposit thereof, change of user of the buildings for the purpose it has been let out, sub-letting by the tenant without permissions of the landlord, material alterations made by the tenant forcibly without permission of the landlords, non-payment of rent regularly and the effect of non-payment of rent at all, termination of tenancy by notice and its effect and the effect of non-compliance of notice by the tenant after termination of his tenancy and its consequences. Therefore legal and related question of arrears of rent, eviction, mesne profits and damage which have been urged by the counsels are also being noted.

122. From the facts canvassed by the counsel in these writ petitions the ancillary questions having direct nexus and effect on the rights of the parties may only be referred while deciding the main question of enhancement of rent of the building.

123. The questions canvassed before the Court pertain to delay in proceedings of

enhancement of rent by the Court covering the various aspects such as intention to delay the proceedings by the tenant who is enjoying the property allotment/letting of tenement on very low rent, occupation of buildings by trespasser or unauthorized occupant hurdles created by the tenants or their legal representatives and heirs with mala fide intention for ulterior motives in not getting the proceedings concluded within the statutory time limit fixed under the Act, because they are paying negligible or no rent at all, proceedings, consequences and remedy particularly, where the suits are allowed to proceed *ex parte* by the tenants by non-acceptance of summons etc., delay in execution proceedings attributable to tenants, the effect of recall application, non-filing of Written statement, and lastly contribution of Courts delay adjudication of cases.

124. The U.P. Act No. 13 of 1972 is silent in so far as enhancement of rent of a private building is concerned. In spite of directions of this Court in *Milap Chand Jain* and in the case of *Bal Krishan* referred and discussed in the body of the judgment no provision has been made by the legislature in this regard. The High Court as well as Apex Court stepped in directing the tenant for payment of damages on initiation, of proceedings for arrears of rent and eviction after termination of tenancy by the landlords of buildings given for allotment to tenants under statutory compulsion of the provisions of the Act. It is stated that in the circumstances that there is no remedy provided under the enactment for enhancement of the rent hence the only silver lining for some reliefs to the landlords which can be provided is only by the High Court in exercise of its extraordinary power under Article 226 of the Constitution as Section 21(8) of the Act provided relief of enhancement of rent only in respect of public building and charitable trust.

125. The Act was legislated in the interest of general public for the regulation of letting, rent and eviction of tenants from certain classes of buildings situated in urban areas and for matters connected therewith. It replaces the United Provinces (Temporary) Control of Rent and Eviction Act, 1947 (hereinafter referred to as the Act of 1947) which was enacted as a temporary measure, relating to control of letting and rent of accommodation temporarily in anticipation/expectation for tidying over the shortage of accommodation for a short period.

126. The Act of 1947 had been in fact enacted with an object to provide accommodation to the needy person to be made available by the landlord and for certain buildings or part thereof which come under the regulatory provisions of Act for allotment. It was expected from the tenant that as soon as he has an alternative accommodation available to him he would vacate the tenanted house or commercial accommodation under his occupation for others in time and if he does not do so, he may be directed to vacate the same in certain conditions as provided under the various provisions of the Act so that the accommodation so vacated may be given to other needy person on standard rent as determined by the authority u/s 9 of the Act from time to time or may be released to the

landlord on his application for his personal need.

Analysis Of Arguments:

127. Before advertng to various arguments of the parties and by the members of the Bar, It would be in my opinion be prudent to notice the scheme, object and the relevant provisions of the Act.

128. As stated earlier, the first comprehensive legislation regulating rent and eviction bill was published in the Gazette dated 13th January, 1972 by way of United Provinces (Temporary) Control of Rent and Eviction Act, 1947 (U.P. Act 3 of 1947). In the statement of object and reasons it is stated that it was a temporary measure enacted for a limited period with a view mainly to continue in force provisions relating to control or letting and rent of accommodation similar to the earlier orders issued under the Defence of India Rules, 1939 It was expected that with the enactment of U.P. Act No 3 of 1947, the problem of shortage of accommodation would be tided over after a short period

129. By enforcement of UP. Act No. 3 of 1947, the common law right of landlords to the seek eviction after determination of (sic) provided u/s 111 of the Transfer of Property Act, 1882 were considerably curtailed. Section-5 of U.P. Act. No. 3 of 1947 is as under:

Section 5(2) - Where the rent for any accommodation has not been agreed upon or where, in the case of tenancies continuing from before October 1,1946, the landlord wishes to enhance the rent agreed upon, he may, by notice in writing, fix the annual rent at, or enhance it to, an amount not exceeding the reasonable annual rent.

130. The phrase "reasonable annual rent" was defined in Section 2(f) of Act No. 3 of 1947 as follows

2(f)"Reasonable annual rent" in the case of accommodation constructed before July 1, 1946 means,

(1) If it is separately assessed to municipal assessment, its municipal assessment plus 25 percent thereon;

(2) If it is a part only of the accommoda on so assessed, the proportionate amount of the municipal assessment of such accommodation plus 25 percent thereon;

(3) If it is not assessed to municipal assessment-

(i) but was held by a tenant on rent between April 1, 1942 and June 30, 1946 fifteen times the rent for the one month nearest to and after April 1,1942, and

(ii) if it was not so held on rent, the amount determined under Section, 3-A and in the case of accommodation, constructed on or after July 1, 1946 means the rent determined in accordance with Section 3A.

131. The municipal assessment has been defined in Clause (e) of Section 2 of the Act, as under:

Section 2(e) "Municipal assessment" means, the annual rental value assessed by the municipal board or notified area, as the case maybe in on April 1, 1942, in respect of accommodation which was assessed on or before such date and the first assessment made after April 1, 1942, in respect of accommodation which was assessed for the first time after such date.

132. The District Magistrate was given power to determine the annual reasonable rent by virtue of Section 3-A of the Act Which reads as follows:

3-A. Determination of annual reasonable rent by the District Magistrate:

(1) The District Magistrate may, on the application of a person who has been allotted any accommodation to which Sub-clause (1) of Clause (f) of Section 2 applies declare the annual reasonable rent payable therefor. The District Magistrate may likewise on the application of a person who has been allotted any accommodation or of the landlord determine the reasonable annual rent of the accommodation to which any of the remaining provisions of the said clause may be applicable.

(2) In determining the reasonable annual rent the District Magistrate shall take into account-

(a) if the accommodation was constructed on or after July 1, 1946, the cost of land the cost of construction maintenance, and repairs thereof its situation and any other matter, which in the opinion of the District Magistrate is material, and

(b) if it is accommodation falling under Sub-clause or para (1) of Sub-clause (3) of Clause (f) of Section 2, the principles therein set forth, and

(c) if it is accommodation falling under para (ii) of Sub-clause (3) of Clause (f) aforesaid, the principles set forth in Clause (a) of Sub-section (1) of Section 6.

(3) Subject to the result of any suit filed under Sub-section (4) of Section 6, the rent declared or determined by the District Magistrate under this section shall be the annual reasonable rent of the accommodation.

133. Thus, the rent for an accommodation covered by U.P. Act No. 3 of 1947 was freezed to a level prevailing in 1940's or in case of a building let out subsequently to the amount determined u/s 3-A. There was no provision under the said Act for any revision in rent.

134. As UP. Act No. 3 of 1947 failed to meet the aspirations of the people in its principle and object of overcoming shortage of accommodation, therefore, it was replaced by the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. It was enforced with effect from 15 July, 1972. The statement of objects and reasons of Act No. XIII of 1972 mentioned that the new law i.e. the present Act is a permanent one instead of the earlier Act which was a

temporary measure; that there will be a ten years holiday for new buildings in order to give incentive for construction of new building. Thus, the legislature while enacting the present Act was conscious of the fact that by regulating letting, rent and eviction, the construction activity has been adversely affected. Such regulations deter construction activity and thus the main and principal object of the earlier Act i.e. to give impetus to construction activity was defeated.

135. One of the objects of the new Act was to regulate rent and, therefore, a landlord whose building is covered by provisions of the Act can only claim standard rent as defined u/s 3(k) of the Act which is as follows:

3(k) "Standard rent", subject to the provisions of Section 6,8 and 10, means-

(i) in the case of building governed by the old Act and let out at the time of the commencement of this Act--(a) where there is both an agreed rent payable therefore at such commencement as well as

a reasonable annual rent [which in this Act has the same meaning as in Section 2(f) of the old Act, reproduced in the Schedule] the agreed rent or the reasonable annual rent plus 25 per cent thereon, whichever is greater;

(b) where there is no agreed rent, but there is a reasonable annual rent, the reasonable rent plus 25 percent thereon;

(c) where there is neither agreed rent nor reasonable annual rent, the rent as determined u/s 9 ;

(ii) in any other case, the assessed letting value, for the time being in force, and in the absence of assessment, the rent determined u/s 9.

136. The reasonable annual rent has the same meaning as in Section 2(f) of UP. Act No. 3 of 1947.

2(f) "assessment", in relation to a building, means the assessment or proportionate assessment, as the case may be, of the letting value thereof by the local authority having jurisdiction and "assessed" shall be construed accordingly.

137. Section 4(2) provides that 4(2) Except as provided in Sections 5,6,7,8 (9-A) and 10, the rent payable for any building shall be such as may be agreed upon between the landlord and the tenant, and in the absence of any agreement; the standard rent. Sections 5,6,7 8 (9-A) and 10 are as under:

(5) Rent payable in case of old building in the case of a tenancy continuing from before line commencement of this Act, in respect of a building to which the old Act was applicable, the landlord may, by notice in writing given within three months from the commencement of this Act, enhance the rent payable therefore to an amount not exceeding the standard rent, and the rent so enhanced shall be payable from the commencement of this Act.

(6) Effect of improvements on rent-Notwithstanding anything contained in

Section 4 or Section 5, but subject to the provisions of Section 8, where the landlord has, after the commencement" of this Act, either with the consent of the tenant or in pursuance of any requirement of law, made any improvement in a building, he may, by notice in writing to the tenant, given within three months from the date of completion of the improvement, enhance the monthly rent of the building by an amount not exceeding one per cent, of the actual cost of such improvement, with effect from the said date, and thereupon the standard rent of that building shall stand enhanced accordingly.

(7) Disputes regarding amount of standard rent, etc.-(1) Where a dispute arises with regard to the amount of the standard rent or to the amount of enhancement in rent permissible u/s 5 or Section 6 or to the date with effect from which such enhancement shall take effect, or to the amount of taxes payable by the tenant u/s 7, or to the amount of proportionate rent payable by the tenant after a part of the building or any land appurtenant thereto is released u/s 16 or Section 21, or to the amount of rent payable by the original tenant for the new building allotted to him under Sub-section (2) of Section 24; the District Magistrate shall on an application being made in that behalf, by order determine such dispute.

(2) Where the assessment of a building occupied by a tenant is lower than the agreed rent payable therefore, the District Magistrate on an application of the tenant or of his own motion, may, after giving to the landlord an opportunity of being heard direct the local authority concerned to enhance the assessment in accordance with the agreed rent with effect from the date from which the agreed rent has been payable or the date of commencement of this Act, whichever is later, and thereupon notwithstanding anything contained in the law relating to that local authority, the assessment shall be corrected accordingly.

138. Every order under Sub-section (1) or Sub-section (2) shall, subject to the result of any appeal preferred u/s 10, be final.

139. Section 9 of the Act provides for the manner in which standard rent is to be determined which is as follows:

9. Determination of standard rent-

(1) in the case of a building to which the old Act was applicable and which is let out at the time of the commencement of this Act in respect of which there is neither any reasonably annual rent nor any agreed rent or in any other case where there is neither any agreed rent nor any assessment in force, the District Magistrate shall, on an application being made in that behalf, determine the standard rent.

(2) In determining the standard rent the District Magistrate may consider

(a) the respective market-value of the building and of its site immediately before the date of commencement of this Act or the date of letting, whichever is later (hereinafter in this section referred to as the said date);

- (b) the cost of construction, maintenance and repairs of the building;
- (c) the prevailing rents for similar buildings in the locality immediately before the said date;
- (d) the amenities provided in the building
- (e) the latest assessment, if any, of the building;
- (f) any other relevant fact which appears in the circumstances of the case to be material.

[(2-A) Subject to provisions of Sub-section (2), the District Magistrate shall ordinarily consider ten percent per annum on the market value of the building (including its site) on the said date to be the annual standard rent thereof, and the monthly standard rent shall be equal to one-twelfth of the annual standard rent so calculated.]

140. A bare perusal of these provisions will show that under the Temporary Rent Control Act No. 3 of 1947 the rent was freezed at the level of 1940 and that in the present U.P. Rent Act No. 13 of 1972 has freezed the rent to those prevailing immediately before the date of commencement of the Act. i.e. 15th July, 1972 or in case of a building let out subsequently, the rental value of the building on the date of letting.

141. There is virtually no provision for revision of rent as a result of inflation and rise in price of immovable properties except on account of improvement as defined u/s 3(n), or as a result of increase in taxes (Section-?); or in case of commercial buildings let out by public religious institutions (Section 9-A).

142. It would also be useful to take note of the provisions of other Acts which are applicable to the proceedings under the Act such as the Transfer of Property Act, Small Causes Courts Act, CPC and the provisions of Bengal Assam Act. A pre-view of the nature and kinds of tenancies, status of tenant after termination of tenancy, its consequence and whether enhancement of rent is the need of time or not is being given hereinafter before the conclusions.

143. It appears that the scheme of UP. Act No. 13 of 1972 was not to delay the proceedings but was for resolving the dispute between the landlord and the tenant under various provisions of the Act within the time frame so that speedy remedy and justice is available, its owned object to provide roof to the needy persons due to paucity of buildings, hence to achieve this object certain buildings were brought under the purview of Act.

A. Nature of Tenancy:

Protected Tenancy-

144. Protected tenancy is one, which is protected u/s 20(2) of U.P. Act No. 13 of 1972. in this type of tenancy the protection is only against eviction as per provisions of Section 20(2) of U.P. Act No. 13 of 1972 and not against

termination of tenancy.

Unprotected Tenancy-

145. Unprotected tenants are those whose tenanted building is outside the purview of Act No. 13 of 1972 and their contract of tenancy is governed by General Law of Contract and dealt with under provisions of Transfer of Property Act.

Allottees and Contractual Tenancy.

146. There are other kinds of tenants also such as allottees u/s 16 of U.P. Act No. 13 of 1972 whose rent is either agreed between landlord and tenant or the rent is fixed by the District Magistrate under Sub-Section 9 of U.P. Act No. 13 of 1972.

147. Contractual tenancy is a creation of contract vide explanation contained under Sub-clause 9 of Section 19 of the Act, Section 16 of the Act deals with presumptive rent which is with regard to provisions of Sub-section 2 of Sub-Section 2-/ of Section 9 of the Act.

148. Rule 15(3) was also framed under the Act providing for disposal of release application within two months from date of presentation. Similarly Rule 7(7) was also framed under the Act, for the same purpose of speedy disposal of revision u/s 18 of the Act and appeal u/s 10 of the Act within two months and appeal u/s 22 of the Act within six months. In entire State of U.P. there may hardly be any case filed u/s 21 of the Act, which has been, decided within the aforesaid "limitation as provided in the Rules but the aforesaid provisions and the Rules have not been able to achieve the objects for which has led to the failure of the Act in U.P. and has given rise to multiplicity of proceedings.

149. Pecuniary jurisdiction:- u/s 25 of Begal, Agra, Assam Civil Court Act, applicable in UP. read with Provincial Small Causes Courts Act, two sets of courts are contemplated for the purpose i.e. one dealing with pecuniary jurisdiction of only Rs. 5000/- of the level of Civil Judge, exercising the jurisdiction of Judge Small Causes Court and other of District Judge with unlimited pecuniary jurisdiction.

150. The CPC read with Section 20 of the Act is applicable and covers the cases between landlord and tenant Subject to Order 50 C.P.C. though the entire C.P.C. is not made applicable by virtue of Section 34 of U.P. Act No. 13 of 1972. but only those provisions of C.P.C. are not made applicable for which provision is enacted in the Act itself. Section 20 of the Act contemplates rent, ejection and damages while dealing with case u/s 21 of U.P. Act No. 13 of 1972 There appears to be no provision specifically enacted in the Act like as contained u/s 2(12) and Order 20 Rule 12 C.P.C. hence C.P.C. to that extent will be applicable.

151. It may be noticed that Section 34 of the Act No. 13 of 1972 does not ouster of the applicability of CPC even in cases, which are either u/s 21 or 16 to 22 or the Act. It only makes the C.P.C, in applicable if a different provision is enacted

in the Act or in the rules framed there under which is inconsistent with the provisions of C.P.C hence in order to meet the ends of justice the landlord is required to be compensated for either inaction of the Court or not granting relief in time as per the statutory time limit framed under the Act or for dilatory tactics adopted by party. The Court can therefore, pass order akin to provision of Section 2(12) of C.P.C. read with Order 20 Rule 12 of the Code of Civil Procedure.

152. Rule 22 Sub Clause "C" framed under the Act empowers the Court to award cost and special cost. If the cost is ascertained it will be with application of the provision of Section 21(12) read with Order 20 Rule 12 C.P.C. Moreover, provision of Rule 20(7) framed under the Act, further empowers the Court to make any order for ends of justice and/or to prevent the abuse of the process of authority concerned which covers all types of orders which can be passed in a suit, contemplated u/s 20 of the Act and is proceeded under the provisions of CPC.

153. Section 5 of Rent Act deals with only situation as on 15.7.1972 when Rent Act was enforced but not otherwise.

154. Section 5 of the Act deals with the enhancement of rent only for those buildings, which were governed by the old Act No. 3 of 1947, which has been repealed now, and of no other building.

155. Section 9 of the Act is virtually pari-materia with the provisions of the proviso to Section 21(8) proviso of the Act, which says that the monthly rent in the cases covered by Section 21(8) of the Act will be 1/2th of the 10% of the Market Value of the property under tenancy."

156. Section 9-A deals with revision of rent of commercial building of which the landlord is public charitable or public religious institution and same formula has been adopted as contained u/s 9(2-A) and Section 21(8) proviso thereto. There is no other provision relating to enhancement of rent or control of buildings which are not commercial buildings or of which the landlord is not public charitable and religious. institution.

157. Section 9(2-A) also provides that the monthly standard rent will be 1/12th of the annual standard rent. The annual standard rent will be 10% on the market value of the building, so there is nothing new to each of the clauses either Section 9(2-A) or Section 21(8) proviso of the same Act or Section 9-A of the Act.

B. Analysis of Quantum of Rent, Standard Rent And Procedure For Enhancement of Rent as provided under U.P. Act No. 13 of 1972,

158. Section 4 of U.P. Act No. 13 of 1972 imposes a bar upon the landlord to receive or take any premium or additional payment at the time of induction of tenant though it does, not deal with quantum of rent as Section 4(2) of Act provides that rent payable shall be the agreed rent between the landlord and tenant in absence the standard rent fixed as per the guidelines laid in Section 9 of the Act.

C- Status of Tenant by the Landlord After Determination Of Tenancy/Lease under the Transfer of Property Act.

159. The status of tenant, in a monthly tenancy is, contemplated u/s 105, 106 & 107 of the Transfer of Property of Act wherein it is provided that monthly tenancy starts from first day of month and shall come to an end on the last day of same month, thus monthly tenancy dies its own death by end of each month. By consent/ acceptance of rent by the landlord a fresh tenancy starts every month till end of the month So long this consent and acceptance of rent by landlord continues the tenancy continues month to month.

160. Tenancy is creation of contract and termination of the contract of tenancy is permissible under-Section 106 and 111 of the Transfer of Property Act.

161. There is no provision u/s Act No. 13 of 1972 or termination of a control over termination of tenancy. The tenancy of tenant is terminated u/s 106 of the Transfer of Property Act. The U.P. Act No. 13 of 1972 does not put any restriction upon termination of tenancy by landlord. It only imposes a bar on eviction in specified conditions i.e., if the matter after determination of the tenancy is not covered u/s 20(2) of the Act.

162. Even in matters of release the tenancy comes to an end after 30 days from date of passing of order Dy operation of law u/s 21(1)&(2) for release read with Section 21(6) of the Act.

163. The natural question in such cases then arise would that after determination of tenancy by landlord or otherwise and matter covered u/s 111 of Transfer of Property Act including Sub-Section (h) dealing with determination of tenancy read with Section 106 of Transfer of Property Act.

164. The answer is that status of person whose tenancy has expired or terminated shall not be that of tenant. He may be an occupant only whose possession may be protected under any Act after termination of tenancy but the status of a tenant cannot be conferred upon him after determination of tenancy.

D-Consequence After Termination of Tenancy by Landlord Damages/ Compensation For Use of Occupation After Termination of Tenancy By Landlord.

165. That in view of Section 108 of the Transfer of Property Act, after ceassation and determination of tenancy by landlord, the tenant is bound to handover peaceful possession of premises to landlord.

166. In case of either protected or unprotected tenancy. the landlord may file suit for relief of eviction together with the mense profits. In event of determination or after ceassation of tenancy the mense profits are sought as against continuance of occupation of the premises by tenant.

167. In such a suit even when a decree of eviction is passed or refused, the tenancy stands determined, as there is no case of any agreed rent between the landlord and person whose tenancy has been determined thereafter. The

question of agreed rent can only arise in case of continuance of tenancy and not on or after its determination as on date of suit there subsists no contract of tenancy. Hence there is no question of any agreed rent. The only relief available to the landlord after determination of tenancy provided is, the compensation or damages as against occupation after determination of tenancy.

168. In the Court of first instance i.e. JSCC:- therefore, the CPC applicable by virtue of Section 4 of the Code. The Court of JSCC is bound to act in conformity of the provisions of Section 2(12) C.P.C. defining "mesne profits" and Order 20 Rule 12 CPC for granting mesne profits." Mesne profits as per Section 2(12) CPC are those profits which the person in wrong full possession of such property received or might have received therefrom with ordinary diligence together with interest of such profits."

169. Since the Rent Control Act does not contain any alike provision for fixing of quantum of rent in absence of agreed rent. It becomes the duty of the Court to grant mesne profits even though they are not asked for in order to meet the ends of justice provided enquiry is made under Order 20 Rule 12 C.P.C. before passing the decree. Covering the period prior institution of suit till the delivery of possession for ascertaining the mesne profits. This power and duty is imposed by CPC by Order 20 Rule 12 dealing with mesne profits. The provision of Section 9(2-A) read with pari materia provision of Section 21(8) and Section 9 (A) of U.P. Act No. 13 of 1972 are to be given effect to which appears to be logical and equitable.

170. Coming to question of enhancement of the amount payable by the tenant it may be noticed that in so far as it continues u/s 104 of Transfer of Property Act, it remains a transferable right of the tenant except in certain exceptions under the Rent Control Act by which certain persons have been excluded from the definition of family to enjoy the property for a certain time, on consideration of price paid or promised to be paid in terms of money or in any other form, to be rendered periodically. After cession of tenancy neither there exists right of tenant to enjoyment over the property, nor there is any question of agreed rent, than in such a situation the amount payable under such a situation has to be determined by the Court of first instance and at later stage, following the same formula as contained u/s 9 of U.P. Act No. 13 of 1972 which in conformity with equity, equal protection of laws, good conscience and public policy.

171. On the date of suit except for purpose of eviction, the tenant loses his contract and identity/status as tenant though he happens to be occupying the premises on account of procedural delay, The rights of the landlord are therefore crystallized on the date of suit. Procedural delay in disposal of suit cannot adversely affect his rights.

172. The statute provides the modus of fixation of standard rent of tenant u/s 9 of the Act but in those cases where there is total absence of any agreed rent on the date of suit cognizable by JSCC, or its continuance, therefore, there is no

question of any agreed rent as provided in Section 9 read with Section 9(2-A) of the Act.

173. The Court, therefore, has to mould the relief on account of delay and development i.e. provide for the losses of the landlord by passage of time in accordance with law for continuance of such a person whose status of tenant has ceased.

174. Apart from statutes the High Court is empowered and duty bound by statutory laws and has occasion to exercise jurisdiction to pass order in accordance with statutory laws and the situation aforementioned. Moreover, Article 226 of Constitution of India empowers and confers jurisdiction upon High Court and imposes a duty upon the High Court to do substantial justice. This power is alike, if not equivalent to Article 142/ 327 of Court of India. The power to enhance rent by the High Court to provide equitable and substantial justice has been dealt with by the Apex Court in a catena of cases. Reference may be made to the decisions rendered in *Rajeshwari (Smt.) v. Smt. Prema Agarwal* 2005(1) ARC-526, *Hari Mohan Kichlu v. VIIIth A.D.J. Muzaffarnagar and Ors.* 2004 (2) ARC-652, *Khurshida v. A.D.J.* 2004(2) ARC 64 : 2004(54) ALR 177 2006(63) ALR 643 *Smt. Zohra v. IVth A.D.J. Jhansi.*

175. In this context of exercise of powers under Article 226 of the Constitution of India following the decisions regarding the payment of enhanced amount by such person may also be noticed.

176. Dealing with such a situation regarding enhancement of rent, the matter came up for consideration before this Court in *Milap Chand Jain (supra)*, wherein this Court after pointing out the drawbacks and flaws in Act No. 13 of 1972 requested and expected the State of U.P. for taking necessary steps regarding enhancement of rent keeping in view the provisions of such 21(8) of the Act. Though that decision does not take note of provision of Section of (2-A), Section 9A of Act and Section 2(12), Order 20 Rule 12 of C.P.C., but the fact remains that State of UP. did not take any steps for remedial measures pursuant to the judgment and the anomaly continued to be detrimental to one party i.e. the landlords where buildings were occupied on very low rents with impunity by the tenants in absence of any provision for payment of rent at par with market rent or enhancement of rent to reasonable extent periodically as provided u/s 21(8) of the Act in respect of public building and charitable trust etc.

177. Challenge to provisions of standard rent as defined u/s 3(k) of the present Act met with success in *Milap Chandra Jain's* case (*supra*) wherein this High court struck down the definition of standard rent u/s 3(k) of the Act and the corresponding provisions u/s 4(2), 5, 6, 8 and 9 of the Act. This court observed as follows:

54. Considering the entire arguments in the circumstances, I am of the view that the control of ejectment and not permitting to enhance the rent with the price index is highly unreasonable. The control of eviction is the matter of policy of the

Government due to the shortage of accommodation but the control of rent at the level of 1972 in some classes of tenants can not be the policy of the State, and it being unreasonable unfair and unequal is liable to be struck off.

55. Accordingly, the definition of the "standard rent" u/s 2(k) of the Act and the corresponding provisions u/s 4(2), 5, 6, 8 and 9 of the Act are declared ultra virus of the Constitution of India. The respondent No. 1 is directed to consider the matter in the light of observations and to redefine the "standard rent" or "fair rent" in accordance with the model rent control legislation published by the Government of India in July, 1992 atleast in respect of the buildings which were in the possession of the tenants at the commencement of U.P. Act No. XIII of 1972 to remove injustice done to a class of landlords. The proper legislation in this respect is expected to be enacted at the earliest.

56. Now coming to the other relief Nos. 2 and 3 claimed in the petition, it may be mentioned that the rent payable for the disputed building can not be declared by this Court and will have to be decided in accordance with the legislation enacted by the legislature in pursuance of the above order. Before the law in this regard is enacted the District Magistrate can also not be directed to fix the rent of the disputed shop. The guidelines for fixation of rent has to be issued by the legislature. It can be decided by the District Magistrate in accordance with the amended legislation and guidelines. Therefore, relief No. 2 and 3 mentioned in the petition can not be granted at this stage and the fixation of the rent of the disputed building shall be done by the authority concerned after the new legislation is enacted by the legislature in accordance with the directions given above.

178. While invoking the jurisdiction under Article 226 of the Constitution of India, both landlord and tenant are in equitable jurisdiction and both the sets of parties have to be adjudicated equitably, fairly and with good conscience for doing substantial justice between the parties by exercise of extraordinary powers which may be according to statute but is not subject to concerned statute by which they are bound.

179. It may also be noticed that by virtue of release of the accommodation in question the contract of tenancy stands terminated in its entirety by operation of law in view of Section 21(6) of U.P. Act No. 13 of 1972 but in garb of non-allowing of the release application the landlord cannot be made to suffer which is against the object of law.

180. The conferment of jurisdiction upon the JSCC appears to be beyond the scope of Act of 13 of 1972 and the domain of C.P.C. even it is within the scope of provisions of Bengal, Agra, Assam Civil Courts Act 1887. The reason is that the jurisdiction was conferred upon JSCC for the first time relating to matters between landlord and tenants by Act No. 13 of 1972. The conferment of jurisdiction is to settle the amount of damages as against occupation of premises by the tenants whose tenancy has been terminated. This was done by amending

Section 25 of Bengal, Agra Assam Civil Court Act, 1887 in which by subsequent amendments the pecuniary jurisdiction of JSCC was also changed.

181. It may be stated here that the District Magistrate u/s 9 of Act no. 13 of 1972 read with Sub-section 2-A is also conferred with jurisdiction to fix standard rent. Section 9 will also cover cases wherein the landlord is deprived of the possession of tenanted accommodation by refusing the relief of release u/s 21 of the Act of determination of lease. It will directly apply in cases regarding termination of tenancy by the landlord and proceedings either for eviction or for release of the accommodation may be taken by him under Act No 13 of 1972.

182. While dealing these questions under Article 226 of Constitution of India the High Court can examine Section 21 under its equity jurisdiction read with Rule 4 of chapter VIII of the Allahabad High Court Rules, 1952 which is as under:

Extraordinary original civil jurisdiction of the Court-. The Court may remove and try and determine as Court of extraordinary original jurisdiction any suit being or falling within the jurisdiction of any Court subject to its superintendence when it shall think proper to do so either on the agreement of the parties to that effect or for the purposes of justice, the reasons for so doing being recorded on the proceedings of the Court.

183. Undoubtedly, rent stands frozen at the amount paid on the date immediately before the commencement of the Act or on the date of first letting without there being any provision for revision in rent. The present Act when enacted could have been justified on considerations of necessity and expediency but with the passage of time, its provisions have been rendered arbitrary and unconstitutional due to various factors such as there being constant escalation in price due to inflation and corresponding fall in the value of the Rupee but the ceiling on rental by the present U.P. Act, No. XIII of 1972 is causing grave inequitable and irreparable injury to the landlords making provision of the Act illegal, arbitrary and unrealistic.

184. It appears that even the legislature was alive of the consequence of freezing of rent i.e. decline in building activity in the Cities even where there was maximum increase in the population in post independence era. It had to intervene in the circumstances by amending the present Act by way of U.P. Act No. 17 of 1985 whereby the period of holiday to new building was raised from ten years to twenty years with effect from 26.4.85 and again by U.P. Act No. 11 of 1988 whereby it was further increasing the holiday period to forty years. Thus, as on date a building constructed after 26 April, 1985 will continue to remain exempt from the provisions of the Act for a period of forty years.

185. Judicial notice in the circumstances is taken of the fact that in last two decades there has been considerable rise in building activities. In the present decade with the Bank and other financial institutions extending soft loan for construction of houses there has been a tremendous growth in this sector. A portion of M.I.G. flat in any of the CAVAL towns in the State easily fetches a

minimal rent of Rs. 2000/- per month which is also the outer limit u/s 2(g) for any building being covered by provisions of the present Act.

186. In these circumstances, it is the landlords of buildings which were on rent before the date of commencement of the present Act or who have let out before 29.9.94 when Section 2(g) was enforced by U.P. Act No. 5 of 1995; or the landlords whose buildings, are constructed and let out before 26.4.85 (before enforcement of U.P. Act No. 17 of 1985) who are the greatest sufferers in the present scenario.

187. This can be demonstrated by taking a hypothetical case of a building situate in the main city let out in August, 1972 may be fetching a rent of Rs. 100/- per month (market value on that day) will continue to fetch the same rent even as on date. Though, during these 35 years, the inflation has gone up several times especially during the last decade when there has been a steep rise in the value of real estate. However, landlord of such building cannot claim any revision in rent. On the other hand, his right to seek eviction under General Law has been eclipsed by provisions of the present Act. He can seek ejectment only on the ground mentioned u/s 20 or on ground of his bonafide need u/s 21 of the Act.

188. The rider of proving the bonafide need on the landlord u/s 21(a) of the UP. Rent Act has provided the unscrupulous tenants with a fatal nail by which he can seal the fate of the landlord burrying his personal need in the coffin, eventhough the tenant or any member of his family might have acquired a vacant accommodation or constructed one of his own.

189. One of the grounds contemplated u/s 20(2) of the Act, which entitles the landlord to determine tenancy was default in payment of rent for a period of more than four months. This is the usual ground seeking eviction in most of the cases coming before this court with respect to building covered by the provisions of the Act. It is, however to be noticed that even such cases where tenancy is terminated on ground of default in payment of rent for a period of more than four months, the suit for eviction in such cases is ultimately dismissed as tenant avails the benefit of provisions of Section 20(4) of the Act relating to deposit of entire arrears along with the interest and costs of the suit on the first date of hearing even though he may have defaulted in payment of rent for years together.

190. In some cases benefit of deposit u/s 30 of the Act is sought, to defeat the claim for ejectment on the ground of default contemplated by Section 20(2) of the Act and a full round of litigation in revision/appeal thereafter in writ petition and sometimes even up to Apex Court in SLP ensues on the interim orders passed by the Court such as whether the amount of rent alleged to be in default has been deposited in full before the Court u/s 30 of the Act and whether it has been deposited on the first date of hearing for availing the benefit of Section 20(4) of the UP. Rent Act No. XIII of 1972.

191. In the aforesaid judgment of Milap Chand Jain, the Court placed reliance

mainly on the judgment of the Apex Court in the case of Malpe Vishwanath Acharya and Others Vs. State of Maharashtra and Another, , wherein it was held in para 15 that

15. The aforesaid decisions clearly recognize that a statute which when enacted was justified may with the passage of time, become arbitrary and unreasonable. It is, therefore, to be seen whether the aforesaid principle is applicable in the instant case. Can it be said that even though the provisions relating to the fixation of standard rent were valid when the Bombay Rent Act was passed in 1917 the said provision, as amended can still be regarded as valid now?

192. In the said judgment the Apex Court held that a statute may be rendered ultra-vires with the passage of time and the consequent change in circumstances. Reference may also be made to the judgment rendered in the case of Narottam Kishore Dev Verma and Others Vs. Union of India (UOI) and Another, H.H. Shri Swamiji of Shri Amar Mutt and Others Vs. Commissioner, Hindu Religious and Charitable Endowments Department and Others, Motor General Traders and Ors. v. State of Andhra Pradesh and Ors.; 1983(2) R.C.R. 579; Ratan Arya and Ors. v. State of Tamilnadu; 1986 (2) R.C.R. 328 and Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others, wherein it was observed that "restriction valid under one circumstance may become invalid in change circumstances.

26. It is true that whenever special provision, like the Rent Control Act is made for a section of the society it may be at the cost of another section but the making of such a provision of enactment may be necessary in the larger interest of the society as a whole but the benefit which is given initially if continued results in increasing injustice to one section of the society and an unwarranted largess or windfall to another, without appropriate corresponding relief, then the continuation of such a law which necessarily , or most likely, leads to increase in lawlessness and undermines the authority of the law can no longer be regarded as being reasonable. Its continuance becomes arbitrary.

27. The legislature itself, as already noticed herein above, has taken notice of the fact that puggive system has become prevalent in Mumbai because of the rent restriction Act. This Court was also asked to take judicial notice of the fact that in view of the unreasonably low rents, which are being received by the landlords, recourse is being taken to other methods to seek redress. These methods which are adopted are outside the four corners of the law and are slowly giving rise to a state of lawlessness where, it is feared the Courts may become irrelevant in deciding disputes between the landlords and tenants. This should be a cause of serious concern because if this extra judicial backlash gathers momentum the main suffers will be tenants for whose benefit the Rent Control Acts are framed.

28. Insofar social legislation, like the Rent Control Act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give disproportionate benefit and protection to

another section of the society. When there is shortage of accommodation it is desirable, may, necessary that some protection should be given to the tenants in order to ensure that they are not exploited. At the same time such a law has to be revised periodically so as to ensure that a disproportionately larger benefit than the one which was intended is not given to the tenants. It is not as if the Government does not take remedial measure to try and off set the effects of inflation. In order to provide fair wage to the salaried employees the Government provides for payment of dearness and other allowances from time to time. Surprisingly this principle is lost sight of while providing for increase in the standard rent the increases made even in 1987 are not adequate, fair or just and the provisions continue to be arbitrary in today context.

29. When enacting socially progressive legislation the need is greater to approach the problem from a holistic perspective and not to have a narrow or short sighted parochial approach. Giving a greater than due emphasis to a vocal section of society results not merely in the miscarriage of justice but in the abdication of responsibilities of the legislative authority. Social legislation is treated with deference by the Courts not merely because the legislature represents the people but also because in representing them the entire spectrum of views is expected to be taken into account. The legislature is not shackled by the same constraints as the Courts of law. But its power is coupled with a responsibility. It is also the responsibility of the Courts to look at legislation from the altar of Article 14 of the Constitution. This Article is intended, as is obvious from its words, to check this tendency, giving under preference to some over others.

30. Taking all the facts and circumstances into consideration we have no doubt that the existing provisions of the Bombay Rent Act relating to the determination and fixation of the standard rent can no longer be considered to be reasonable.

193. The Apex Court after taking judicial notice of steep rise in whole sale price index and fall in the value of Rupee cited the following:

4. Meanwhile all this is further accentuated by the fall in the value of the rupee and rise in the wholesale price index which has totally eroded the amount receivable as rent in the hands of the landlord:

(A) taking base in 1940 at Rs. 100 the value of the rupee in 1996 was only Rs. 1.5 in 1996;

(B) in 1940 the wholesale price index was 13.2. This has risen to 876 by 1996; 66 times;

(C) value of one rupee silver coin of 1940, as on the 5th December 1992 was Rs. 44;

(D) Price of silver on 31.12.1939 was Rs. 52 per Kg. It rose to Rs. 6945 per Kg. On 31.12.1996 that is, by 133 times.

194. However, refraining itself from striking down the provisions of the Bombay Act as it was going to lapse on 31.3.98., the Apex Court concluded the judgment in the following words:

We however, refrain from striking down the said provisions at the existing Act elapses on 31.3.1998 and we hope that a new Rent Control Act will enacted with effect from 1st April, 1998 keeping in view the observations made in this judgment insofar as fixation of standard rent is concerned. It is, however, made clear that any further extension of the existing provisions without bringing them in line with the view expressed in this judgment would be invalid as being arbitrary and violative of Article 14 of the Constitution and therefore of no consequence. The respondent will pay the costs.

195. This Court need not delve on the questions regarding validity of the provisions relating to fixation of standard rent in the present Act, as they have already been declared ultravires by this Court in Milap Chandra Jain's case (supra). It has not been disputed at the Bar that the said judgment still holds the field and the State Government in compliance thereof, even issued a notification dated 23.8.03 intimating the authorities thereunder to ensure compliance of the said judgment by not entertaining any application for determination of standard rent, the said notification is reproduced below:

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196. Though the U.P. Act No. 13 of 1972 may be a beneficial legislation, it does not mean that it has to be read only in favour of the tenant. Once the legislature has legislated the Act it is to be presumed that the Act is balanced one and that legislature in its wisdom has removed all the social evils prevalent to (sic) the object of the Act. Enactment of beneficial legislation is totally different. From" the provisions of the Act, which are supposed to be balanced by the legislature, hence U.P. Act No. 13 of 1972 can not be read either in favour of the landlord or in favour of the tenant as it provides rights, liability and obligation upon both the tenant and the landlord. The law has to be interpreted according to the intention of the legislature and inconsonance with the needs of the time. As stated earlier 50% would not be reasonable rent in the present circumstances as it would not be even sufficient to meet the maintenance or cost of the building under the tenancy of the tenant or even for payment of taxes etc. as the landlord invests heavy amount in constructions of the building or purchase thereof. His family circumstances may change and he may need the accommodation for his own. It does not mean once the tenant has been inducted he can only be evicted through court of law or he can be evicted by giving premium. The purpose of the Act is to restrain the landlord from increasing the rent of the accommodation in dispute arbitrarily and eviction of the tenant in emergency though the legislature has taken care of it and provide grounds for eviction also under the Act. Therefore, the Courts have to strike the balance between the need of the landlord and tenant.

197. Since there is no provision for enhancement of the rent in the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 in respect of a private building. Section 21(8) of the Act applies to enhancement of rent of a public building or any other remedy available to the landlord to mitigate his grievance his only remedy appears to be under extraordinary jurisdiction under Article 226/227 of one Constitution. This Court in the cases of Milap Chand Jain (supra) as well as in Ganga Prasad (supra) had expected from the legislature to fill up this lacunae but nothing has been done so far. This has led to anomaly regarding fixation of rent of private and public building. For example if a building is giving on rent of Rs.507- per month in 1955-56 there being no provision for enhancement of the rent even in the year 2006-07 whereas the rate of rent of the building has increased many folds A tenant of a private accommodation who has taken the building on a very low rent does not want to leave it (sic) though he has built his house as in the present case nor want to pay the enhanced rent as the law is silent in U.P. Act No. 13 of 1972 The result is that the litigation under the U.P. Act No. 13 of 1972 has increased many folds and there is (sic) litigations.

198. As rent has not been defined in the U.P. Act No. 13 of 1972. Therefore, it must be taken to have been used in its ordinary dictionary meaning as has been

held in paragraph 5 of the judgment in Karnani Properties Ltd. (supra) as we as in paragraph 5 of the judgment rendered in Abdul Kader Vs. G.D. Govindaraj (D) by Lrs.,

199. Regard may be made to paragraph 6 of the judgment rendered in Dr. H.S. Rikhy and Others Vs. The New Delhi Municipal Committee, it has been observed by the Apex Court that Rent may be used in the legal sense of recompense paid by the tenant to the landlord."

200. Webster's Comprehensive Dictionary defines rent as compensation made in any form by a tenant to a (sic) or owner for the use of land, buildings etc, especially such compensation is paid in money at regular or specified intervals.

201. Osborn's Concise Law Dictionary (8th Edition) states, "rent; "The periodical payment due from a tenant to his landlord as compensation for the right to possession of the property let and which constitutes the legal acknowledgement of the landlord's title"

202. Milap Chand Jain's case (supra) was followed by another judgment by this Court in the case of Bal Kishan v. IVth Additional District Judge, Etawah 2003(2) ARC (sic) in which the attention of the State legislature was again (sic) for incorporating a provision for periodical enhancement of rent regarding tenancies governed by the U.P. Rent Act No. XIII of 1972.

203. The Government of India has also requested all the State Governments and Union Territories for removing the provisions (sic) Control from their Rent Control Acts vide D.O. No 1-11-11/2/2002-H II dated July 17, 2002 of the Ministry of Urban Development and Poverty Alleviation, Department of Urban Employment & Poverty Alleviation, New Delhi in order stimulate construction of rental housing which has come to a grinding halt as a result of Rent Control Acts.

204. The G.O. dated 17th July, 2002 issued by the Ministry of Urban Development and Poverty Alleviation, New Delhi is as under:

Government of India Ministry of Urban Development & Poverty Alleviation
Department of Urban Employment & Poverty Alleviation Nirman Bhawan, New Delhi-110011 Do. No. 11011/2/2002 h.II Dated the 17th July, 2002.

Dear,

1. As you are aware, in his Budget Speech 2002-03, the Union Finance has announced the creation of an Urban Reforms Incentive Fund with an outlay of Rs. 500 crore for the year. During finalization of the size of Annual Plan of your State", the Planning Commission has indicated the amount out of this Fund, as part of State's share of resources (vide Annexure-I). However, actual release is to be based on action on the reform front, for which a Memorandum of Agreement is to be signed between the State Government and Government of India. I enclose the draft of the MoA (Annexure No. II).

2-The Planning Commission has decided that in the initial phase the urban

reforms will address the following areas. Other urban reforms can be considered after progress in these areas:

I Repeal of the Urban Land Ceiling and Regulation Act of the State level by Resolution.

II. Rationalization of Stamp duty in phases to bring it down to no more than 5% by the end of the Tenth Plan period.

III. Reform of Rent Control Laws to remove rent control so as to stimulate private investment in rental housing.

IV. Introduction of computerize process of registration;

V. Reform of Property Tax so that it may become a major source revenue of urban local bodies and arrangements for its effective implementation so that collection efficiency reaches at least 85% by the end of 10th Plan period;

VI. Levy of reasonable user charges by Urban Local Bodies with the objective that full cost of C & M (Operation & Maintenance) is collected by end of the Tenth Plan period ;

VII. Introduction of double entry states of accounting in Urban Local Bodies.

3. The specific action to be taken by the States are indicated in the separate note of Annexure III. The first instalment, equal to 1/3rd of the eligible amount, will be released on the State signing the MoA to be followed by two further instalments for the financial year which will be based on the progress in implementing the agreed reform calendar, as indicated in annexure III. We will also provide Guidelines for the reform items, for which an Expert Committee is at work. It may please be noted that "for purposes of release of funds the total package is to be taken into account and not any individual component".

4. You will agree that the reforms which have been mentioned in the Budget Speech and in this letter are long overdue in the Urban sector. The Incentive Fund only highlights them and encourages their adoption. The over all intention is to encourage construction of housing including rental housing, to reduce transaction costs and delays in property transactions, to provide for easier availability of land for construction and improve municipal finances with a view to developing infrastructure and civic services in our cities. 5. You are requested kindly to intimate the State Government's willingness to enter into the Memorandum of /Agreement in order that further steps to implement the scheme and release funds can be taken.

With regards

Yours sincerely (S.S. Chattopadhyay)

205. Perhaps for this reason, Government of Uttar Pradesh decided not to challenge the said decision given in "Milap Chandra Jain v. State of U.P. 2001(2) ARC 488, and directed all the District Magistrates & all other concerned

authorities not to take any action under the said sections of the Act declared ultravires vide G.O. No. 1630/29 khadya 2003-29/writ dated August 23, 2003 of the Food & Civil Supplies Department and is not incorporating any provision regarding rent in the Act by amending it.

206. It has been admitted that till date the State Government has not made any further amendment in the Act to re-define standard rent. Counsels representing the landlords have therefore submitted that in the absence of any provision for determination of standard rent, the entire scheme under the act has become unworkable; the Act itself has been rendered unconstitutional and is liable to be struck down as a whole. In support of their argument attention of this Court has been drawn to provisions of Section 11 and 13 of the Act which prescribed letting out of any building except in pursuance of an allotment order issued u/s 18 of the Act, The Kistrict Magistrate while issuing an allotment order is required to fix presumptive rent" which is subject to any subsequent agreement in writing between the parties or to any subsequent determination of standard rent after formal enquiry u/s 9. Relevant clause of Section 16 are reproduced below:

16(9) The District Magistrate shall, while making an order under Clause (a) of Sub-section (1), also require the allottee to pay to the landlord an advance, equivalent to,

(a) Where the building is situated in (sic) municipality, one-half of the yearly presumptive rent; and

(b) in any other case, one month's presumotive rent, and on his failure to make or (sic) the payment within a week thereof, rescind the allotment order.

Explanation --in this sub-section the expression "presumptive rent" means an amount of rent which the District Magistrate prima facie cons ders reasonable having regard to the provisions of Sub-sections (2) and (2-A) of Section 9, provided that such amount shall not be less than the amount of rent which was payable by the last tenant, if an.

(10) Nothing in Sub-section (9) shall be constructed the District Magistrate to take any evidence or hold any formal inquiry before fixing the presumptive rent of the bullding allotted, and the amount mentioned it the allotment order as presumptive rent shall be subject to any agreement in writing between the parties or to any subsequent determination of standard rent after formal inquiry u/s 9:

Provided that until the presumptive rent is so received by agreement or by an order u/s 9, the tenant shall continue to be liable to pay rent according to the presumptive rent specified in the allotment order, so however, that any subsequent order u/s 9 shall relate back to the date of commencement of the tenancy.

207. As a consequence of the notification issued by the State Government there can not be any determination of standard rent and even the presumptive rent

being fixed by District Magistrate has no legal basis, thus, the entire Act should be struck down as illegal, arbitrary and unconstitutional. It has now been settled by various judgments of the Apex Court and this Court that the court should made endeavour to uphold the validity of the Act unless it becomes impossible to do so. In making such effort certain provisions of the Act can be read down, while a lacuna which may be there could be filled up by taking resort to other provisions of the Act which may reflect its legislative intent.

208. The Apex Court in the case of *Delhi Transport Corporation v. D.T.C. Majdoor Congress* held that while interpreting the statutes judges can make articulate the inarticulate premise, without departing from the material of which law is woven. It was further held that effort should be made to read down statute in order to give a construction, which may make the law constitutional. While doing so, Court can add new heads of public policy taking into consideration the constitutional mandate.

209. However, most of these cases are in reference to the power of the Hon'ble Supreme Court, which has its source from Article 142 of the Constitution of India. Similar power is not conferred on the High Courts. The question, therefore, is whether the High Court while exercising power under Article 226 of the Constitution of India can also fill up the lacunas to iron out the creases in the Act in an effort to uphold its constitutionality

210. In the case of *L.I.C. Ltd. (supra)* the Hon'ble Supreme Court had had upheld certain directions given by the High Court in exercise of its power under Article 226 of the Constitution of India in order to ensure proper implementation of the statute and in an effort to render it constitutional.

211. In *Nilabati Behara v. State of Orissa* (1993) 2 SCC Court had recognized the power of the High Court under Article 226 to give relief of monetary compensation in case relating to infringement of rights guaranteed under Article 21 of the Constitution of India. There are various instances where the Apex Court had enhanced rent taking judicial notice of the fact that rent being paid is very low on which the whole livelihood of the family of the landlord depends. In such cases Article 21 is directly attracted including cases where the landlord plea is personal need for himself or for members of his family as every member of landlords family require space due to growth in family which and better and for tail living. Reference in this regard may be made to the judgment of the Apex Court in *Jagan Nath v. Chandra Bhan* 1988(1) RCR 629(SC); *Ratan Arya v. State of Tamilnadu* 1986 (2) RCR 328 (SC); *Punjab National Bank Vs. Arjun Dev Arora and Others, Mohit Lal Das v. Lala Ram Salra* 1995 SCFBRC 161.

212. In *Joginder Pal Vs. Naval Kishore Behal*, it has been held that the Rent Control legislations has to be interpreted on assumption that legislature is fair to tenant as well as landlord. The UP. Act No. 13 of 1972 was enacted with an object to provide in the interest of general public, for the regulation of letting and rent of, and the eviction of tenants from, certain classes of buildings situated in

urban areas and for matters connected therewith A perusal of the scheme of the Act provides that where the tenant or any member of his family has built his house or has acquired alternative accommodation, he cannot challenge the bonafide need and comparative hardship of the landlord.

213. The question of rent/damages was also considered by this Court in the case of Ganga Prasad v. Hanif Optician and Ors. by judgment and order dated 24.9.2005 in Civil Misc. Writ Petition No. 63114 of 2005. It was observed that the tenants enjoying the tenanted property on highly inadequate rent tend to prolong the disposal of the appeal or revision for continuing their possession without payment of proper rent/damages for use and occupation. If the stay against eviction is granted on the conditions of monthly payment of reasonable amount, this practice can sufficiently be checked. It was, therefore, directed trial in revisions u/s 25 Provincial Small Causes Courts Act or appeals u/s 22 of U.P. Act No. 13 of 1972 District Judge or Addl. District Judge while granting stay order shall impose condition of payment of reasonable amount which may be about 50%, of the current rent (i.e. rent on which building in dispute may (sic) out at the time of granting of stay order and no detailed inquiry required to be made in this regard and that mere guesswork based on common sense may do the needful.

214. In cases of monthly tenancy, the life of tenancy is only one month It starts from a particular day of the month and end after thirty-days/one month. Thereafter in next month a fresh tenancy is created. The suit is filed after determination of tenancy hence there exists no relationship of landlord and tenant on date of suit. There is no prohibition under Rent Act against termination of tenancy. The only prohibition is against eviction if the suit does not fall in either of categories enumerated u/s 20(2) of the Rent Act. The occupation of a person whose tenancy is terminated is not with the consent of landlord rather it is against the will of landlord hence landlord is entitled for the amount assessable at market rate, as compensation against occupation of the person whose tenancy is terminated.

215. Perusal of the Act shows that after fixation of initial standard rent there are two such provisions for revision of rent These are provided u/s 21(8) of the Act where the landlord of a building let out to State Government or to a local authority can seek enhancement of rent, which is a sum equivalent to one-twelfth of 10% of the market value of the building under tenancy. Further enhancement of rent is also contemplated after 5 years on application made by the landlord.

216. Another provision is contemplated u/s 24(2) of the Act where a new building is constructed in place of old one and the tenant is permitted to occupy such new building on account of his right of re-entry u/s 24 of the Act. in such cases, the rent for such building is equivalent to 1% per month of the costs of the construction thereof, but notwithstanding such revision in rent the building will continue to be governed by the provisions of the Act.

217. Even guidelines/factors contemplated by Section 9(2) of the Act provided for fixation of standard rent can also be taken basic criteria for determining the rent provided it is with reference to the present rate of market rent date and not with the date of initial letting of the building as contemplated by Section 9(2) of the Act,

218. The U.P. Government also has framed the U.P. Stamp. (Valuation of Property) Rules, 1997 in exercise of powers u/s 27, 47A are 75 of the Indian Stamp Act, 1899. Under these rules, a detailed procedure is prescribed for fixing minimum rate for residential and commercial building in a locality. These can also provide valuable guidelines "or determining the revised rent payable by such tenants.

219. Therefore, this court is of the view that analogy can be drawn and applied from the above provisions for enhancement of rent to present market rate of rent in case of buildings let out immediately before the date of commencement of this Act or in case where the date of letting is before 26 April, 1985 (after which date new buildings have been exempted for a period of 40 years) The tenants of such buildings should pay revised rent equivalent to 1/12th of 10% of the market value under their tenancy or the rental value as arrived upon b applying the rates fixed by the Collector under the provisions of U.P. Stamp (Valuation of Property) Rule, 1997, which ever is lesser.

220. The inordinate delay caused in innumerable cases where they have not been decided has caused irreparable sufferance to landlord.

221. No case has been made out by the tenants for donial of similar relief in respect of building not covered u/s 21(8) of Rent Act but falling purview of Rent Act. Thus proceedings both types of landlords under the purview of Section 21(8) in so far as applicability of procedure for enhancement of rent is concerned but keeping then apart as a separate class of public and charitable buildings for benefits of other provisions of the Act. The consideration therefore is as to what should be the criteria provided under the Act which could provide basis and guidelines for payment of revised rent to a landlord till the legislature comes up with any amendment in the present Act as repeated in paragraph 56 of Milap Chand Jain case (supra)

222. Accordingly, in the writ petitions at the instance of landlords of such buildings challenging the judgment of the prescribed authority or the courts in suit for ejectment but in which they could not succeed because of various protections extended to tenants of such buildings, the tenants should be directed to pay revised rent as per the criteria laid above. This will meet the ends of justice and will also prevent the Act as a whole being rendered illegal and unconstitutional.

223. Taking into consideration the entire facts and circumstances, this Court is of the view that instead of striking down the entire Act as unconstitutional as inspite of considerable time the legislature has not made any provision for

fixation of rent or for its revision, though, Sections 4(2) 5,6,8 and 9 of the Act were struck down more than 5 years back should make an effort to make the Act workable by reading down and issuing appropriate directions for enhancement of rent at par with prevalent market value on the analogy of the guidelines in various provisions of the Act which may provide reasonable basis for enhancement fixation and revision of rent till the legislature comes with appropriate legislation. It is for the reason that a heavy duty rests on this Court to balance equities between the parties, so that it may not be onerous to the tenants on one hand and at the same time provide adequate and reasonable compensation to the landlords for the building let out by them.

224. The Apex Court in *Malpe Vishwanath Acharya and Ors. (supra)* while considering Sections 7 and 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 57 of 1947 which is similar to the provisions of U.P. Act No. 13 of 1972 has held that provisions pegging it down to rent paid on 1.9.1990 or first rent paid for premises let out after 1.9.1940 could not no longer remain reasonable in the circumstances and the provisions were struck down holding that periodical revision was necessary to see that disproportionately larger benefit is not given to tenants. It was held that

In so far as social legislation, like the Rent Control Act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. When there is shortage of accommodation it is desirable, may necessary that some protection should be given to the tenants in order to ensure that they are not exploited. At the same time such a law has to be revised periodically so as to ensure that a disproportionately larger benefit than the one which was intended is not given to the tenants.

The Court has further held that-

It is not as if the government does not take remedial measures to try and offset the effects of inflation. In order to provide fair wage to the salaried employees the government provides for payment of dearness and other allowances from time to time. Surprisingly this principle is lost right off while providing for increase in the standard rent. The increases made even in 1987 by the amendment are not adequate, fair or just and the provisions continue to be arbitrary in today's context."

225. In that epoch making decision given the Apex Court while striking down the frozen rent at the level of 1940 in the Bombay Rent Act has taken note of effect of inflation on rent and what may be considered as reasonable rent at a given point of time. The Court observed that a benefit which is given initially if continued beyond reasonable period may result in injustice to one section of the society and unwarranted largess to another without appropriate corresponding relief becomes arbitrary, hence balance must be struck in social welfare legislation like the Rent Act.

The inflation/fall in purchasing value of the rupee which was about 66 times between 1940 and 1996 and the value of Rs. 100 in 1940 has come down to Rs. 1.50 in 1990. (Page 614 para 20).... That the tenants are, by and large, now getting an unwarranted benefit on windfall (page 615 para 22). What was reasonable on 1st September 1940 or in 1950 or in 1960s cannot longer be regarded as reasonable at this point of time (page 614 para-21 end) For Rs. 100 p.m. of gross rent, which he was getting in 1940, he now in 1997 gets a gross rent of about Rs. 170 which in real money terms, after taking the inflation into account, will be only about Rs 2/- p.m. of 1940 value Had the Rent Control act not in force the landlord today may have been able to get to-days equivalent of Rs. 100 of 1940 as rent i.e. about Rs. 6,600/- p.m. (page 615 para 23 end) But the benefit which is given initially if continued results in increasing injustice to one section of the society and an unwarranted largess or windfall to another without appropriate corresponding relief, then the continuance becomes arbitrary (page 616 para 26 end).... In so far as the social legislation, like the Rent Control Act is concerned, the law must strike a balance between rival interests and it should try to be just to all The law ought not to be unjust to one and give disproportionate benefit and protection to another section of the society (page 616 para 28 start).... Taking all the facts and circumstances into consideration, we have no doubt that the existing provisions of the Bombay Rent Act relating to the determination and fixation of the standard rent can no longer be considered to be reasonable. (page 616 para 30 start)

226. In *Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another*, the Apex Court while dealing with the powers of the High Court under Article 226 of the Constitution of India has remanded the matter directing re-determination of question of damages alone with question whether sub-tenant was (sic) sub-tenant The Apex Court has held that the order passed by the High Court is improper and if there be any unfair advantage gained by any party before invoking jurisdiction of High Court, Court can make that party to shed it before granting relief

227. Once the provisions of the Act are declared ultra vires it is deemed that such provisions or the provision were never in existence on the statute as has been held in *Lilly Thomas v. Union of India* AIR 2000 SC. 1650) hence any vacuum created had to be filled up by the judiciary.

228. In a catena of decisions it has been held that injustice has been done to the landlord by the Rent Control Act in respect of buildings by freezing of rent which were in occupation of the tenants at the time of commencement. Reference may also be made in this regard to the decisions. In (i) *Kripa Shankar v. V A.D.J.* 2005(1) ARC 243, (ii) *Bitola Devi (Smt.) v. D.J. Mirzapur* 2005(2) ARC 873, (iii) *Panna Lal v. Civil Judge, Gorakhpur* 2006(1) ARC 63, (iv) *Om Prakash v. X.A.D J. Kanpur* 2006(1) ARC 67, (v) *Sved Ahmed v. VIIIth A.D.J. Kanpur* 2001 (1) ARC 100, (vi) *Rajendra Kumar Sharma v. IInd A.D.J., Moradabad* 2006 (1) ARC 130, (vii) *Noor Johan (Smt.) v. Prescribed Authority* 2006(1) ARC 137, (viii) *Abdul*

Hameed v. Xth ADJ, Meerut 2006(1) ARC 290, (ix) Mohd. Firoz v. D.J. Aligarh 2006(1) ARC 317, (x) Babu Lal v. IVth ADJ, Saharanpur 2006(1) ARC 382.

229. It has been observed in the aforesaid cases that the amount of freixed rent which is being paid by the tenants is virtually no rent. As stated earlier the Apex Court itself has enhanced rent up to 50 times to bring at par to the market rent at that time Now the multiplier would be many times more.

230. The U.P. Rent Control Act appears to be not in consonance with Section 105 of the Transfer of Property Act within the meaning of Section 38 of the Act The term rent in the Act will mean rent as contemplated u/s 105 of the T.P. Act i.e. compensation payable by a tenant to his landlord for the use and occupation of his land or building for a term. Compensation means a just equivalent what the owner has been deprived of as held in N.B. Jeejeebhoy Vs. Assistant Collector, Thana Prant, Thana, Therefore, prevailing market rent of similar buildings in the same or nearby locality is the true criterion for assessing the amount of compensation.

231. In the judgment rendered in AIR 2000 SCW 4592 "Vannattan Kandy Ibrayl v. Kundabdulla Hazee in paragraph 22 it has been observed that "where a building is governed by the State Rent Act the landlord is not free to let out the building to a tenant of his own choice or on rent which he may dictate to the tenant and the tenancy that comes into existence is not a contractual tenancy." It is a statutory tenancy.

232. It has been held in Ishwar Swaroop v. Jag Mohan Lal AIR 2001 SC 370 at page 372 para 10,"... after rent is fixed u/s 4 of the Act (Haryana Urban (Control of Rent & Eviction) Act, 1973), the rent payable is not agreed rent. In Ganga Putt v. Kartik Chandra Das 1961 SC.1087 it has again been held that mere acceptance of rent by a landord from a statutory tenant does not result in a contractual tenancy.

233. After the commencement of Rent Control Act, the rights of the landlord to the rent has been drastically curtailed as had been held in V. Dhanpal Chettar v. Yeshoda Ainmal 1979 SC 1748 para 11), Power (D.C. Bhatia v. Union of India 1994 SCFBRC 421 para22) and Liberty Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai and Another, of landlords to penhance rent but after the aforesaid decision in Milap Chandra Jain (supra) declaring Section 3(k) 4(2), 5,6,8 and 9 of the Act ultra vire there remained no provisions in the U.P. Rent Control Acts curtailing the landlords" right, power and liberty for enhancement of the rent stood revived and now they enjoy the same powers, rights and liberty which they were enjoying prior to the enforcement of U.P. Act No. 13 of 1972.

234. The decision tendered in Milap Chandra Jain (supra) for this reason was not challenged by the State of U.P. in the circumstances rather a direction was issued to all the District Magistrates and all other concerned authorities in U.P. by the State Government vide G.O. No. 1630/29 Khadya 2003-29/writ dated August 23, 2003 for not taking any action under the aforesaid Section of the Act which had

been declared ultra vires by the High Court

235. The Apex Court in decision rendered in *Malpe Vishwanath Acharya and Others Vs. State of Maharashtra and Another*, and *Anr.* issued cautioned that.

It is, however, made clear that any further extension of the existing provisions without bringing them in line with the views expressed in this judgment would be invalid as being arbitrary and violative of Article 14 of the Constitution of India and therefore, of no consequence.

236. As stated earlier, the Government of India as well as this Court, had suggested for amending the Rent Control Act by removing the provisions for incorporating some provisions in U.P. Act XIII of 1972 in respect of standard rent and regulating its enhancement. It would have been a boon and would have provided an impetus to the Rent Control Act. Had the State Government acted upon the aforesaid advice of the Government of India as well as the Court and considered to confer jurisdiction to Small Cause Court to entertain and decide suits for enhancement of rent by deleting Article 7 from the Second Schedule and amending Section 15 of the Provincial Small Cause Courts Act, 1887 and Section 25 of the Begal, Agra and Assam Civil Courts Act, 1887

237. It is now accepted that no party should suffer on account of delay in decision by the Court. This view has been expressed by a Division Bench of this Court in *Dr. H.S. Rai and Ors. v. State of U.P. and Ors.* 2001 AII. C.J. 993 that where the delay is caused in disposal of the case in Courts for any reason including the leniency and adjournments by the Courts the principle of *Actus curiae neminem gravabit* should be applied by the High Court. *Vide Broom's Legal Maxims* has been applied with approval by the Supreme Court in *Jang Singh Vs. Brijlal and Others*, and has been applied by their Lordships in several other decisions.

238. The principle of *Actus curiae neminem gravabit* has been applied by the Supreme Court in several other decisions also e.g. in *Jagat Dhish Bhargava Vs. Jawahar Lal Bhargava and Others*, *A.R. Antulay v. R.S. Navak* 1988 (2) SCC 603, *Johri Singh Vs. Sukh Pal Singh and Others*, *Suresh Chand v. Gulam Chisti* 1990 (1) SCC-593 : 1990 AII.C.J. 253, *Mithilesh Kumar and Another Vs. Prem Behari Khare*, and *Raj Kumar Dey and Others Vs. Tarapada Dey and Others*,

239. It is the duty of the Court to apply Doctrine of equity for moulding relief where the relief sought originally became obsolete. Though the Doctrine of equality would be applied where the right is vested by virtue of statute.

240. The High Court has full power to do equitable justice and can also fill up the lacunae in the legislation. This power has been referred in *L.I.C. Ltd. v. State of Karnataka* 1985 Su SCC 476 in which it has been held that-

The primary function of the judiciary is to interpret the law. It may lay down principles, guidelines and exhibit creativity in the field left open and unoccupied by legislation. Courts can declare the law, they can interpret the law, they can

remove obvious lacunae and fill the gaps but they cannot entrench upon the field of legislation properly meant for the legislature. Binding directions can be issued for enforcing the law and appropriate directions may issue, including laying down of time limits or chalking out a calendar for proceedings to follow, to redeem the injustice done or for taking care of rights violated, in a given case or set of cases, depending on facts brought to the notice of the Court. This is permissible for the judiciary to do. But it may not, like the legislature, enact a provision akin to or on the line of Chapter XXXVI of the Code of Civil Procedure, 1973.

it is not only difficult but impossible to foresee and enumerate all possible situations arising, to provide in advance solutions with any hard-and-fast rules of universal application for all times to come. It is well known that where there is right, there should be a remedy. In what exceptional cases, not normally visualized or anticipated by law, what type of an extraordinary remedy must be devised or design to solve the issue arising would invariably depend upon the gravity of the situation, nature of violation and efficacy as well as utility of the existing machinery and the imperative need or necessity to find a solution even outside the ordinary framework or avenue of remedies to avert any resultant damage beyond repair or redemption to any person.

241. Filling up the lacunae in the legislation by the Court to make it harmonious and workable in my opinion, is essential so that the public faith is not eroded in the judiciary which is 3rd pillar of the Constitution having a pious duty to apply the existing law in a form more conducive to independence of judiciary. As per decision reported in *K. Veeraswami v. Union of India* (supra), the Court can supply or supplement the deficiency in the statute but it cannot introduce into it an entirely new provision.

242. Similar view has also been taken by the Apex Court in *LIC Ltd. v. State of Karnataka* 1985 Su SCC 476 which it has been held that-

The Court can mould its directions in order to give relief in a particular situation. Courts, of today cannot and do not any longer remain passive with the negative attitude, merely striking down a law or preventing something being done. The new attitude is towards positive affirmative actions, directing people or authorities concerned that "thou shall do" in this manner. While it is true that if a law is bad, the Court must strike it down. But if the law by and large and in its true perspective of a social purpose if implemented in a particular manner could be valid, then the Court can and should ensure that implementation should be done in such particular manner and give directions to that effect.

243. The object of striking down the law from UP. Rent Control Act has already been dealt with in *Milap Chand Jain's* case in which certain provisions of the Act have been in fact struck down, hence the only course open for this Court is to provide for a harmonious construction from the existing law or the statute and mould the relief at interim stage or even by a final judgment to do equitable and substantial justice.

244. In the case of Purificacao Fernandes and Another Vs. Hugo Vicente de Perpetuo Socorro Andrade Menezes and Others, after termination of tenancy the question of mesne profits became very important. The Panai Bench at Goa of the Bombay High Court held that-

Mesne profits are defined in Section 2(12) C.P.C. as meaning those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest or such profits but shall not include profits due to improvements made by the person in wrongful possession under the Rent Control Act.

I am fortified in this opinion by the decision of Paranjpe, J. in Keshardeo's case. In the said case, the learned Judge, relying on the decision of the Supreme Court in Fateh Chand Vs. Balkishan Das, observed that the mesne profits are to be calculated that the mesne profits are to be calculated on basis of the profits that a person in wrongful possession has received or might have received with due diligence it has been observed in the said case as follows:

The Rent Control Order was, no doubt, for the benefit and protection of tenants, but it will be going too far to say that the protection WAS to continue even to erstwhile tenants despite the fact that their possession was as trespasses on the termination of the relationship of landlord and tenant. The moment a person ceased to be a tenant, he disentitled himself from the privileges he could have got under the Rent Control Order. Accepting this submission of Mr. Bobde in this connection would virtually amount to giving & legal status of a tenant to a person who has been held by the competent Courts to be a rank trespasser after the termination of the tenancy. No authority was shown in support of this impossible position. The defendant, who was no longer a tenant, could not still insist on saying that the rent which the plaintiff could have got under the Rent, Control Order should be treated as the measure of damages. The claim of the defendant that the mesne profits must be limited to the rent recoverable by the plaintiff under the provisions of the Rent Control Order would virtually mean that the quantum of mesne profits was not what the defendant had actually received or might with ordinary diligence have received but what the plaintiff as a landlord had lost or had not been able to get. That would mitigate against the definition of mesne profits in Section 2(12) of C.P.C.

245. In the circumstances, the enhancement of rent has become a fundamental right of the landlord. This view also finds support from the judgment rendered in Aboo Baker v. Vasu 2003 (2) RCR 713 (Kerala) (DB) that enhancement of rent is a fundamental right of a landlord. Relevant paragraph 11 of the judgment is as under:

Right to file a suit for assessment of rent was recognized as early as in 1918 in Dhananjay Manjhi v. Upendranath Deb Carbhadiary 1918 Indian cases 428 Privy Council in Ramarayananingar v. Maharaja of Venkitaqiri XXV Law Weekly 631 (PC), held that the rent of the building is liable to be enhanced on the application of

the landlord. Calcutta High Court in *Bhabani Charan Banikya v. Suchitra Maisnabi* AIR 1930 Cal 210 , held that the landlord can seek enhancement of rent in *Gour Sundar Majumdar Vs. Krishna Kamini Chaudhurani*, . it was held that the right to have fair rent assessed continues so long as relationship of landlord and tenant continues.

246. It has been observed in *Raval and Co. Vs. K.G. Ramachandran and Others*, relevant at page 326 para 25 (end) that it was most realistic to peg fair rent to the level of rents prevailing during the previous 12 months. It has been, held in *Rattan Arya and Others Vs. State of Tamil Nadu and Another*, *Jagarnath v. Chandra Bhan* 1988 (1) RCR 629 (SC) & *D.C. Oswal Vs. V.K. Subbiah and other*, that judicial notice of the fact that rental has tremendously escalated everywhere can be taken. It has been observed in *Gyan Devi v. Jeevan Kumar* AIR 1998 SC 786 (5J) that rents of commercial premises are usually very high....

Section 70, Contract Act, 1872 runs as under:

Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect thereof, or to restore, the thing so done or delivered.

247. These provisions fully apply to a statutory tenant.

248. The landlord gives the possession of his building or part thereof lawfully in compliance with the allotment order to the allottee tenants. It is not given to him gratuitously. The order fixing standard rent initially u/s 9 of Act No 13 of 1972 is passed and the tenant starts paying reasonable/standard rent and enjoys its benefits by using and occupying it. As such the statutory tenant is bound to make compensation to the landlord for using and occupying his building or to restore it. Doctrine of forbidding unjust enrichment therefore, also applies and the statutory tenant cannot retain undue benefits hence notice may be served upon a statutory tenant asking him to enhance and pay rent/compensation at the prevailing market rent per month from 12.9.2001 i.e. the date of the said decision in *Milap Chand Jain's* case within one month of the receipt of the notice, deducting the amount already paid, failing which the tenancy may be determined and he may not be allowed to continue in possession and occupation of the building as a tenant as his tenancy stands terminated on the expiry of one month plus 30 days, i.e. total one month & thirty days, from the receipt of the notice and he has to deliver actual and physical possession of the said building on the expiry of the aforesaid period (one month plus thirty days). On his failure to do so, suit for the recovery of arrears of rent and compensation at the said enhanced rent per month and ejectment may successfully be filed.

249. The provisions as contained under Order 20 Rule 12 C.P.C. or akin to it will be applicable to both kind of litigations either for release or for ejectment on after termination of tenancy by virtue of Section 34 of Rent Act, Rule 22 framed thereunder and inherent powers of the Court. Mesne property has been defined

in Section 2(12) of the C.P.C.

250. The value of the land and building has increased many folds in the last two decades. The rent paid by the tenant to the landlord having been freezed to level of prior to 1972 in the instant cases is too low and in-adequate. Sometimes the rent fixed or being paid by the tenant is low which he has to pay from his pocket even to meet the payment of taxes by the landlord. The landlord is entitled for payment of rent at loast at the prevalent current market rate in the area. After termination of tenancy the landlord is also entitled to damages for use and occupation by the tenant. If any proceedings are initiated by the landlord against the tenant either for arrears of rent or for default of rent or tor his eviction under the provisions of the Act and it is contested by the tenant in the JSCC Court or the Prescribed Authority by taking recourse of Section 34 and 20(4) of the Act from eviction curing the pendency of the case, in my opinion, protection must also be granted to the landlord for directing for payment of rent at the market rate and not at the rate 50% of the market rate as has been held in Ganga Prasad (*supra*) but at the market rate prevalent in the area at the relevant point of time which would be revisable by the landlord periodically annually.

251. The status of person whose tenancy has expired or terminated would be of a tenant. He may be an occupant whose possession may only be protected under any Act after termination of tenancy but the status of a tenant cannot be conferred upon him after determination of tenancy. In view of Section 108 of the Transfer of Property Act, after ceassation and determination of tenancy by landlord, the tenant is bound to handover peaceful possession of premises to landlord.

252. In case of either protected or unprotected tenancy, the landlord may file suit for relief of eviction together with the mense profits. In event of determination or after ceassation of tenancy the mense profits are sought as against continuance of occupation of the premises by tenant.

253. In such a suit even when a decree of eviction is passed or refused, the tenancy stands determined, as there is no case of any agreed rent between the landlord and person whose tenancy has been determined thereafter. The question of agreed rent can only arise in case of continuance of tenancy and not on or after it determination as on date of suit there subsists no contract of tenancy. Hence there is no question of any agreed rent.

254. In State of U.P. almost in all the districts only two Small Cause Cases Courts are provided and these Small Cause Cases Courts are overburdened with work and in entire State of U.P. there may not be even a single contested case which can bo said to have been decided on first hearing though every date in Small Causes Courts is date of first hearing.

255. Another evil, which is creation of law of rent for the benefit of the tenant is that after allotment in most of the cases the tenants are not only sub letting the tenement or part thereof at high rate but are making material alternation the

building and changes its user with impunity. The landlord is unable to take any effective action due to insufferable delay in proceedings and the social circumstances in the State where Mafia rules the roof and police is ineffective as law enforcement machinery.

256. It is settled law that the High Court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. The jurisdiction under Article 226 in the writ petition exercised by the High Court is extraordinary jurisdiction, which is normally exercised by keeping in mind the principles of equity. The Court cannot be oblivious to the fact that occupation of the tenement is a factor in continuation of the liability to pay for the use and occupation thereof, be it in the form of rent or damages or mesne profits with interest etc. The cause of justice, when viewed by the High Court, clearly warrants that both these questions be viewed inter-dependently.

257. After considering the various aspects of the law on this point and the relevant provisions of the Act as discussed in the body of the judgment I am of the view that it is not only the Apex court in *Malpe Vishwanath* has found that the freezing of rent under the Bombay Rent Act but the High Court has also found the freezing of rent at the level of 1972 under the U.P. Act No. 13 of 1972 as irrational. The Act has become unworkable and after the decision of *Milap Chand Jain's* case (supra) there is no restriction upon the landlord in enhancement of rent by the landlord by the High Court under Article 226 of the Constitution.

258. The rights of landlord/suitor are therefore to be crystallized on the date when he initiated the case, he cannot be made to suffer for procedural or then delay. The Court is duty bound to do justice by moulding the reliefs and compensating the plaintiff.

259. In building within purview of Rent Act, the landlord is forced to give occupation of his building against his wil to the statutory tenant. This is nothing short of compulsory acquisition/requisition, Under the acquisition/requisition laws the person whose property is taken against his will is o be compensated at market rate. In rent laws a different treatment cannot be given.

260. In matters of release of buildings covered under the Rent Act, statutory right has been conferred upon landlord to have eviction of tenant on certain grounds for landlord in use of the premises even without termination of tenancy and in event of release the tenancy u/s 21 of Rent Act shall be deemed to come to an end. Hence, so far eviction of the defendant is concerned and his continuance in occupation against will of landlord even is no difference in the nature of his suits. u/s 9 as existed in the Rent Act the rent is to be fixed at market rate in absence of an agreed rent

261. Rent Act is silent so far the Courts duty and powers are concerned

regarding situations of occupation of defendant during pendency of suit and after determination of lease but by virtue of Section 34 of the Rent Act and Rule 22 framed thereunder the provision of C.P.C. are made applicable where Rent Act has no contrary provision and inherent power of the Courts/Prescribed Authority are also saved.

262. Power to compensate in given situations is with the Prescribed Authority, the trial Court and Appellate Forums and also under Article 226 of the Constitution of India. It is the duty of the Courts below and this Court to do justice by compensating in appropriate cases.

263. Since there is no provision in the Act and the Rules apart from Section 21(8) applicable for enhancement of rent of buildings in Occupation of either Government or Corporation. The landlord is crushed in the proceeding in the Courts below and there is no remedy provided under the enactment or enhancement of the rent hence only the High Court in the present circumstances can provide some relief in exercise of its powers under Article 226 of the Constitution as remedy before the Apex Court may not available to every person due to financial or other constraints which he might be facing.

264. Thus the object, contemplated by the legislature either under the U.P. Act No. 13 of 1972 or U.P. Act No. 37 of 1972 has not been achieved, as the legislature in its wisdom had not envisaged practical problems which have arisen under the U.P. Rent Act which has made it wholly unworkable particularly in, view of its law and order situation and lethargy of the Authority its timely decide the cases much less revision of rent to bring it at par with market rent regularly and periodically with the buildings covered under the provisions of Section 21(8) of the Act. After standard rent has been fixed u/s 9 of the Act, Section 21(8) of the Act is the only provision for enhancement of rent providing for enhancement of rent and that too only in respect of public building and charitable trust etc. not at regular interval automatically and to the exclusion of other tenements or buildings covered under the Act from its ambit.

265. This Court is of the considered view that in case where the landlord comes in the writ petition after having lost from the Court below on technical ground the rent can be increased by this Court under Article 226 of the Constitution to provide equitable justice as the value of land and building has increased many folds and rent cannot be kept frozen at the level of year 1972 for benefit of one party only as it would be not only violative of Article 14 but also of Article 21 of the Constitution as in many cases rent is the only source of livelihood of many landlords.

266. Therefore question (a) whether the High Court in exercise of its powers under Articles 226/227 of the Constitution of India can enhance the standard rent initially determined u/s 9 of U.P. Act No. 13 of 1972 or the agreed between the parties in cases where the landlord has lost from Courts below in the suit pertaining to arrears of rent and eviction pursuant to termination of tenancy is

decided in affirmative and in favour of the landlord.

267. As regards question no. (b) whether the Court below can enhance rent reasonably at par with market rent prevalent in the area/city/locality on application filed for arrears of rent or eviction of the tenant to my mind, in the circumstances prevalent and in view of the need of time, it should be a pious obligation upon the Court below to fix the rent at par with the market rent as interim measure on application of landlord during the pendency of suit so that the cases which are kept pending yyears together are decided at the earliest. The would help in expeditious decision of case, which is the requirement as the landlord gets reasonable return for his building in the shape of rent/damages/ mesne profits with interest etc. and the tenant also has many optimism for having a building on rent as he is paying market rent. In suit between landlord and tenant either of protected tenancy or unprotected tenancy or other suits after their institution, the Court has a moral duty and on it to do away with injustice under the Act and right to mould the relief for doing justice by compensating the parties to suit either for procedural delays or dilatory tactics, for the period during pendency of suit or even thereafter for suitable direction for payment of interest.

268. In case of both protected and unprotected tenancy in a suit filed after determination of tenancy whether the Court has power to revise rent even in cases where decree of eviction is refused by the Court below or it refuses to award damages in excess of quantum of rent during continuance of suit or even thereafter as mesne profits.

269. In cases for release of building coming within purview of Rent Act, the Court has power and duty to fix the quantum of the rent/damages for period during continuous of suit or even thereafter as mesne profits/damages. In absence of any provision under the Rent Act to deal with the situations arising thereunder. The Courts can take analogy from the provisions of he Act for exercising power whether the guidelines in consonance of the Rent Act to deal with the situation arising after institution of suit, either for delay or otherwise, Court below can pass requisite orders regarding compensatory reliefs to the plaintiff against occupation of defendant. What is status and effect of compulsory continuance of a tenant on a building against the will of the owner/ landlord of the building in which the tenant continues in occupation after the tenant whose tenancy is terminated or against whom a release petition is filed on same terms as before or relief of enhancement of rent can be determined and granted in the circumstances, within the four corner of relevant law and the C.P.C. hence question No. (b) is also decided in affirmative and in favour of the landlord.

270. It may also be noticed that in the case of Milap Chand Jain's case (supra) the Court was confident that the legislature would fill up lacunae in the Act by framing new legislation to be enacted by legislature but refrained itself on from striking down the provisions of the U.P. Rent Control Act but the confident expectation met its Waterloo and died its own death due to non action of the

legislature.

271. Since the law and order situation in State of (sic) Pradesh are not good. Indication has already been given in this judgment in this regard, therefore, to meet the situation not only the High Court can issue orders exercise of its extraordinary powers under Article 226 of the Constitution to enforce the equitable justice where the legislature and the Executive are found lacking but also the Civil Courts within the limits of law for the people cannot be left remediless because the Act does not provide for a remedy for them but only provides liability and a continuous one at that.

272. This Court in certain cases has also passed orders enhancing the rent that in case the tenants do not pay the enhanced rent as directed by the High Court which was a term and condition of stay the tenants can be evicted by the police force. Conditional order was passed for the very reason that not only law and order situation in the State of U.P. but provision of Act No. 13 of 1972 is also different from the other States. Though in Milap Chand Jain's case certain provisions relating to U.P. Rent Act had been declared ultra-vires but law cannot act in a vacuum. The right of contract of tenancy created on either allotment by the authority or by the landlord and tenant himself would remain subject to the provisions of the CPC and other Acts applicable to the proceedings, therefore, the Courts below have power to award rent/damages/mesne profits with interest. This would balance the things as the tenant who has to pay market rent may take another suitable building in case rent and location etc. of the tenement does not suit him.

273. Experience has shown that inspite of direction given in the case of Milap Chand Jain and Bal Krishna's case the legislature did not come to the rescue of the landlord who is a legal victim of a limp and unworkable legislation. The legisla ure did not show any intention to amend the Act or bring a new legislation in accordance with the direction given in Milap Chand Jain's case.

274. The Court cannot wait ad-indefinitum to give justice to the petitioners who come before it merely because the legislature has failed in its duty and is not complying with the directions of this Court for removing the lacunae in the Act. In any case, the Court has ample power to take corrective measure for setting right a wrong being committed to a class of citizen.

275. Looking to the failure of the legislature and delay in deciding the cases by the Court below which are not deciding the cases within the time framed fixed by the legislature u/s 22 of the U.P. Rent Act as it is the duty of this Court to correct the things by reading down the provisions and giving harmonious construction and issue directions on the analogy of the existing Act to provide solution.

276. For the reasons stated above, the writ petitions are allowed and the impugned orders are quashed. It is directed that in view of the prayers made in the writ petitions for enhancement of the rent the Court is of the view that the rent having been frozen in 1975, and there being no provision under the Act, the

High Court as well as the Court below can enhance rent at par with the market rent on the analogy of the provisions of Section 21(8) of the Act on the basis of exemplars in the neighborhood of the shops/residential accommodations. The rent of the disputed accommodation (s) is increased in all the writ petitions separately as under:

Writ Petition No. 69351 of 2006:

277. In the this writ petition the accommodation in dispute was given to the tenants for residential purposes but they changed its user to commercial purposes, they made material alterations and no rent has been paid since 1982 and their tenancy was terminated w.e.f. 1982. After the death of real tenant Jalil Beg on 22.6.2003 his heirs were brought on record and prolonged the dispute. They put in appearance and notices were published. In their absence the application allowed to proceed exparte and they did not file their written statements inspite of several adjournments. The petitioner has in his prayer clause (B) stated that the respondents nos. 4 to 6 be directed to pay Rs. 25,000/- as rent/damages of the accommodation in dispute from the date of termination of tenancy after expiry of one month from the date of notice dated 1.7.2002 till the delivery of possession of the property in question.

278. They also did not receive notice inspite of the order of this Court. In the circumstances, looking into the extent of the accommodation in dispute the rent/damages is increased in the following manner apart from house tax and water tax etc.

3 bedrooms @ Rs. 1200/- per month = Rs. 1200x3 = Rs.3600/ Drawing room @ Rs.1000/- per month = Rs.1000/- Dining room @ Rs.1000/--per month = Rs. 800/- Kitchen @ Rs. 600/- per month = Rs. 600/- Toilet @ Rs. 300/- per month = Rs. 300/- Bath room @ Rs. 300/- per month = Rs. 300/- Courtyard @ Rs.500/- per month = Rs. 500/- ----- Total Rs. 6100/- per month -----

Writ Petition No. 69006 of 2006:

279. Since the accommodation in dispute under the tenancy of the petitioner is commercial and according to the guidelines as provided in Section 21(8) of the Act the petitioner has estimated the rent of the accommodation in dispute to about Rs.11,200/-per month, it is directed that the tenant shall pay rent/damages of the accommodation in dispute at the rate of Rs. 8,000/- per month apart from house tax and water taxes etc. for use and occupation.

Writ Petition No. 69300 of 2006:

280. Since the shop in dispute under the tenancy of the tenant is commercial and according to the guidelines as provided in Section 21(8) of the Act the petitioner has estimated the rent of the shop in dispute to about Rs. 2500/- per month in 2006, now it is 2007 hence it is directed that the tenant shall pay rent/damages of the shop in dispute at the rate of Rs. 2500/-per month apart from

house tax and water taxes etc. for use and occupation to the landlord.

Writ Petition No. 69745 of 2006:

281. In this case the accommodation in dispute consisting of three rooms, latrine and bathroom situated on the ground floor of House No. J.11/89-1, Mohalla Ishwar Gang, Nai Basti Varanasi is under the tenancy of respondent tenant. The rent/ damages of the aforesaid accommodation vn dispute is increased in the following manner apart from house tax and water taxes etc.

3 rooms @ Rs. 1200/- per month,	Rs. 1200x3 = Rs. 3600/-	Latrine @ Rs. 300/-	per month = Rs. 300/-	Bath room@ Rs.300/- per month = Rs. 300/-
-----				Total = Rs. 4200/- per month

282. The rent/damages of the month of August, 2007 shall be paid by 30th September, 2007.

283. It is accordingly directed that the tenant in each of the aforesaid writ petitions shall pay rent/damages as ordered aforesaid to the landlords till further orders which shall be payable to the landlord thereafter by 7th day. of each succeeding month.

284. In case of default in payment of current rent as well as arrears of rent as directed by this Court the landlords may move an application for recovery of arrears of rent treating this order as certificate of recovery" and may also move the SSP concerned for eviction of the tenants by the police force as this stay order is being passed on condition of enhancement of payment of rent by the tenants.