
(2008) 04 AHC CK 0228
In the Allahabad High Court

District President, Bhartiya Janta Party	APPELLANT
Vs	
Hari Ram Gupta	RESPONDENT

Date of Decision : 09-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 3 AWC 2613 : (2008) 3 AWC 2513

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—Applications for allotment of the disputed accommodation u/s 16(1) (a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act) were filed before the Rent Control and Eviction Officer on the allegation that the occupant had vacated the premises. An inspection was carried out by the Inspector and ultimately the Rent Control and Eviction Officer declared vacancy u/s 12 of the Act on 23rd July 1996. The landlord then filed an application for release of the disputed accommodation in his favour u/s 16(1)(b) of the Act on 28th January 1997 on the ground that he intended to open a Charitable Hospital and Dispensary in the disputed accommodation. The application filed by the landlord was rejected by the Rent Control and Eviction Officer by the order dated 16th April 1998. Subsequently, the accommodation in dispute was allotted in favour of the petitioner by the order dated 21st April 1998 and an allotment order dated 12th October 1998 was also issued in favour of the petitioner fixing the rent of the accommodation as Rs. 225/- per month.

2. These two orders dated 16th April 1998 and 21st April 1998 led to the filing of two Revisions by the landlord u/s 18 of the Act. While Revision No. 2 of 1998 was filed by the landlord against the order dated 16th April 1998 by which the release application was rejected, Revision No. 4 of 1998 was filed by the landlord against the order dated 21st April 1998 by which the disputed accommodation was

allotted in favour of the petitioner.

3. Revision No. 2 of 1998 was allowed by the Judgment and order dated 8th July 2002 and the order dated 16th April 1998 was set aside. Revision No. 4 of 1998 was also allowed by the Judgment and order dated 14th February 2008 and the order dated 21st April 1998 was set aside. The opposite party therein was also directed to handover vacant possession of the building to the Revisionist within a period of one month.

4. Writ Petition No. 14512 of 2008 has been filed for setting aside the Judgment and order passed in Revision No. 2 of 1998 while Writ Petition No. 14509 of 2008 has been filed for setting aside the Judgment and order passed in Revision No. 4 of 1998.

5. I have heard Sri K.N. Tripathi learned Senior counsel assisted by Sri A.K. Gupta for the petitioner and Sri M.K. Gupta learned Counsel appearing for the respondent.

6. A preliminary objection has been raised by the learned Counsel for the respondent-landlord that the status of the petitioner cannot be said to be better than that of an unauthorized occupant or a prospective allottee and, therefore, the order impugned in Writ Petition No. 14512 of 2008 passed in respect of the release application filed by the landlord cannot be called in question at his instance, particularly when he was not even a respondent in the Revision and in support of his contention, he has placed reliance upon the decision of the Supreme Court in *Vijay Kumar Sonkar v. Incharge District Judge, and Ors.* 1995 (2) ARC 1 and upon a decision of a learned Judge of this Court in *Ved Prakash v. VIIIth Additional District Judge, Ghaziabad and Ors.* 1993 (1) ARC 442. He has also placed reliance upon the decision of a Division Bench of this Court in *Sri Kant Dwivedi v. IIIrd Additional District and Sessions Judge, Hardoi and Ors.* 1981 ARC 49 and upon the decision of the Full Bench of this Court in *Talib Hasan and Ors. v. 1st Additional District Judge, Nainital and Ors.* 1986 (1) ARC 1.

7. Sri K.N. Tripathi learned Senior counsel for the petitioner, however, submitted that the status of the petitioner is not that of a prospective allottee but that of a tenant since the disputed accommodation was allotted in his favour by the order dated 21st April 1998 after the application filed by the landlord for release of the disputed accommodation was rejected and, therefore, he can challenge the order passed by the Revisional Court on the release application filed by the landlord even though he may not have been impleaded as a respondent in the Revision. He further contended that the said order deserves to be set aside only on the ground that the petitioner was not made a party in the Revision filed by the landlord. In support of his contention he has placed reliance upon the decisions of this Court in *Lajpat Rai Bhatia v. Additional District Judge, Dehradun and Ors.* 1983 ARC 796 *Ram Kumar v. VIIth Additional District Judge, Meerut and Anr.* 1993 ARC (1) 309 and *Ravindra Kumar Agarwal v. Rent Control and Eviction Officer, Moradabad and Ors.* 1996 (1) ARC 332.

8. I have carefully considered the submissions advanced by learned Counsel for the parties.

9. I shall first deal with the submissions advanced in Writ Petition No. 14512 of 2008 and thereafter with those advanced in Writ Petition No. 14509 of 2008.

10. It is said that the earlier occupant of the accommodation in dispute Smt. Sharad Kumari shifted to some other accommodation as a result of which vacancy arose. The petitioner, who is the District President, Bhartiya Janta Party, filed an application for allotment of the accommodation in dispute u/s 16(1)(a) of the Act. Several other applications including that of the District President, Samajwadi Party were also filed u/s 16(1)(a) of the Act, for allotment of the disputed accommodation. Vacancy was declared by the Rent Control and Eviction Officer by the order dated 23rd July 1996. A review petition was filed by the landlord alleging that as the owner of the building was a Public Charitable Trust, the building was exempted from the operation of the Act by virtue of Section 2 (bb) of the Act. This application was rejected by the Rent Control and Eviction Officer by the order dated 27th August 1996.

11. The landlord then filed an application u/s 16(1)(b) of the Act for release of the building without prejudice to his contention that the accommodation in dispute was exempted from the operation of the Act. It was asserted that the applicant was the Manager/Managing trustee of Sri Khiyali Ram Charitable Trust and as the applicant was earlier associated with other missionary at Aligarh, he had decided to run a Charitable Hospital/Dispensary in the accommodation in dispute so that the poor, destitutes and the needy persons who cannot afford treatment in Nursing Homes may be able to get treatment free of cost in the Charitable Hospital/Dispensary. It was further asserted that this action of the applicant would be in consonance with the aims and objects of the Trust. It was further asserted that the applicant has the means and the resources to run such a Charitable Hospital/Dispensary and the need of the applicant for the accommodation was genuine and bona fide.

12. The application filed by the landlord was rejected by the Rent Control and Eviction Officer by the order dated 16th April 1998 holding that there was insufficient material to hold that the building was owned by a Public Charitable Trust and that the need of the applicant was not bona fide. The Rent Control and Eviction Officer, then fixed 21st April 1998 for hearing of the applications filed for allotment and as noticed hereinabove, the building was allotted to the petitioner by the order dated 21st April 1998.

13. Feeling aggrieved by the order dated 16th April 1998, the landlord filed Revision No. 2 of 1998 u/s 18 of the Act. This Revision was allowed by the Judgment and order dated 8th July 2002. It is this order that has been impugned in Writ Petition 14512 of 2008. The Revisional Court has recorded a finding that the building belonged to a Public Charitable Trust and was, therefore, exempted from the operation of the Act in view of the provisions of Section 2 (bb) of the

Act. It accordingly set aside the order declaring vacancy as well as the order dated 16th April 1998 by which the release application filed by the landlord was rejected.

14. The preliminary objection raised by the learned Counsel for the respondent-landlord is that a prospective allottee has no right to object to any order passed on the release application filed by the landlord u/s 16(1) (b) of the Act and merely because an allotment order was passed in favour of the petitioner after rejection of the release application of the landlord, no better rights will accrue to the petitioner for being heard in the Revision filed by the landlord u/s 18 of the Act because the lis between the District Magistrate representing the State and the landlord becomes pending when the Revision is entertained. He, therefore, contended that the petitioner cannot challenge the impugned order.

15. This precise controversy had arisen before this Court in Ved Prakash. After rejection of the release application of the landlord, the Rent Control and Eviction Officer passed an order on 11th April 1998 allotting the premises to the petitioner-Ved Prakash. The landlord filed a Revision u/s 18 of the Act for setting aside the order rejecting the release application. The Revision was allowed and the premises were released in favour of the landlord. Ved prakash then filed a Writ Petition in this Court. This Court, in view of the decision of the Full Bench in Talib Hasan, observed that there was no justification to interfere in the matter at the instance of the petitioner whose status was not above that of an authorized occupant or a prospective allottee in so far as the release application was concerned. The relevant observations are:

A Full Bench of this Court in its decision in the case of Talib Hasan and Anr. v. 1st Additional District Judge and Ors. 1986 (1) ARC 1 (FB) had, after carefully considering the various provisions of the U.P. Act No. 13 of 1972 and the rules framed thereunder had observed that an application for release u/s 16(1)(b) of U.P. Act No. 13 of 1972 is a matter between the District Magistrate and the landlord in which the out-going tenant or the prospective allottee does not have any right to object. It had further been observed that the prospective allottee comes into the picture only after the disposal of the landlord's application for release u/s 16(1)(b) and only if the same is rejected. The Full Bench went on to observe that the prospective allottee has no right or interest in the property or claim against the landlord so as to be entitled to any hearing in the disposal of the release application and has no right to be heard in opposition to such an application.

...

It may, further be noticed that in its decision in the case of Radhey Lal v. District Judge, Jhansi and Ors. 1990 (2) ARC 540 this Court had upheld the rejection of a revision u/s 18 of the U.P. Act No. 13 of 1972 at the instance of a prospective allottee holding it to be not maintainable as he had no right or interest in the subject-matter of the lis between the District Magistrate and the landlord in the

matter of release contemplated u/s 16 of the Act. Again in its decision in the case of Smt. Krishna Rani 1990 (1) ARC 442 it was held that a prospective allottee has no locus standi to be heard in the matter of release contemplated under the aforesaid provision.

In the circumstances, therefore, it is obvious that the mere fact that subsequent to the rejection of an application for release the Rent Control and Eviction Officer passed an order of allotment in favour of a prospective allottee such an order of allotment can be of no avail so as to vest the prospective allottee with a right of being heard in the matter of release of an accommodation contemplated u/s 16 of the Act which is taken up in revision u/s 18 of the said Act. The lis between the District Magistrate representing the State and the landlord so far as the matter of release of the accommodation declared to be vacant is concerned becomes pending when the revising authority entertains the revision against the order rejecting the application for release and in this matter the prospective allottee cannot be deemed to be entitled to have any right of being heard and his position remains the same as it was prior to the passing of the order of allotment. The Full Bench was quite emphatic when it pointed out that the application for release u/s 16(1)(b) of the Act is a matter between the District Magistrate and the landlord in which the out-going tenant or the prospective allottee does not have any right to object. Since the order of allotment has to fall with the reversal of the order rejecting the application for release, it is obvious that the position of a prospective allottee cannot improve simply because proceeding on the basis of an erroneous order rejecting the release application, the Rent Control and Eviction Officer has passed an order of allotment in favour of such a prospective allottee.

Having regard to the Full Bench decision of this Court and the other decisions to which a reference has been made above. I do not find any justifiable ground to interfere in the impugned order in the exercise of the extraordinary jurisdiction envisaged under Article 226 of the Constitution of India at the instance of the petitioner whose status so far as the proceedings for release in question arising u/s 16 of the U.P. Act No. 13 of 1972 cannot be above that of an unauthorized occupant and a prospective allottee.

16. As noticed above, this Court observed that once the Revision against the order rejecting the release application is entertained, the lis between the District Magistrate representing the State and the landlord in respect of the release application revives and even the allottee would have no right to be heard in the Revision in view of the Full Bench decision of this Court in Talib Hasan. The aforesaid decision, therefore, concludes the controversy against the petitioner and the contention of the learned Senior Counsel for the petitioner cannot be accepted.

17. It needs to be mentioned that the Full Bench of this Court in Talib Hasan was called upon examine whether a prospective allottee has a right to file an objection and contest the application for release made by the landlord even after

the deletion of Rule 13(4) of the U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Rules, 1972 (hereinafter referred to as the Rules). The Full Bench observed that no allotment in respect of a building covered by an application u/s 16(1)(b) of the Act can be made unless such an application is rejected and the right of a prospective allottee to have his application considered can, therefore, arise only after the rejection of the application of the landlord. The Full Bench also observed that neither the Act nor the Rules postulate any right in the prospective allottee to file an objection against the release application and nor does the prospective allottee have any right or interest in the property or claim against the landlord so as to enable him to any hearing in the disposal of the release application. The Full Bench further observed that even after deletion of the old Rule 13(4) there is no change in the legal position of a prospective allottee to have any locus standi in the disposal of the release application. The Full Bench made it clear that a prospective has only a contingent right which can be exercised only if the accommodation is not released in favour of the landlord. The relevant observations are:

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

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

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

We have reached the above conclusion on a systematic analysis of the statute even without the aid of the old Rule 13(4). The old Rule 13(4), in our opinion, which was dropped in 1977, merely recognized the long settled legal position as spelled out by series of decisions rendered on the construction and scope of Rule 5 framed under the 1947 Act. It was purely declaratory in nature and appears to have been inserted by way of reiteration of the existing legal position. Its

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

...

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

The third submission of the learned Counsel as that the rejection of the allottee's application entails civil consequences and consequently on the principle of audi alteram partem the prospective allottee is entitled to be heard even in an application u/s 16(1)(b).

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

The view taken by the Full Bench of this Court was found to be correct by the Supreme Court in Vijay Kumar Sonkar:

The distinction between the two orders envisaged in Sub-section (1) is well marked. In the case of an allotment order the result is brought about by a dialogue between the prospective tenant and the District Magistrate, thereafter, under whose orders the landlord is required to let any building to the prospective tenant. On the other hand, in the case of a release order the dialogue takes place between the District Magistrates and the landlord and the prospective tenant does not figure in it at all. The allotment order and the release order, as the case may be, being mutually exclusive, have separate areas of operation permitting no encroachment of one over the other. The mere fact that the focal point is the District Magistrate from whom flow the respective orders is of no consequence. It is on this understanding of the law that the High Court relying on its Full Bench

decision in the case of Talib Husain v. 1st Additional District Judge 1986 (1) ARC 1 rejected the prayer of the prospective tenant that he had a right to be heard in a release application of the landlord based as it was on the provisions of Sub-section (2) of Section 16 on ground of bona fide requirement. On the allowing of the release application the premises in question ceased to be allotable and since the District Magistrate, thereafter would have no jurisdiction to make an allotment thereof and the prospective tenant consequently has no right to resist the landlord in release proceedings. The view of the High Court seems to us to be correct in the circumstances of the case as also in law because as of today no allotment order subsists in favour of the appellant and yet he continues to be in possession.

In Aditya Shukla v. Smt. Shanti Devi Srivastava 2006 (2) ARC 261 a learned Judge of this Court also observed that even if the petitioner was in occupation of the premises on the basis of an allotment order, still he would not possess any right of being heard in the Revision filed by the landlord against the rejection of his release application and once the order rejecting the release application is set aside, the consequential order of allotment cannot survive. The observations are as follows:

In view of the ratio of Talib Hasan (supra), petitioner's contentions, that the order was ex parte and that the petitioner was not a party to the revision and that he was not heard and ultimately since the petitioner is going to be affected by the order of release, cannot be accepted. The petitioner is in occupation by virtue of a consequential order of allotment which has been passed after the release application of the landlord was rejected. Thus, in my opinion, once the order rejecting the release application is set aside the consequential order of allotment automatically goes and no further right flows in favour of the petitioner.

In Sri Kant Dwivedi, an allotment order was passed in favour of the petitioner. The landlord filed an appeal under the provisions of Section 18 of the Act as they then stood. The Appeal was allowed and the order of allotment was set aside. The case was remanded to the Rent Control and Eviction Officer. The landlord then moved an application for release of the accommodation in his favour but it was rejected. The landlord again filed an appeal impleading the District Magistrate but the petitioner was not impleaded. This Appeal was allowed and the accommodation was released in favour of the landlord and it was also held that the allotment order was, therefore, rendered infructuous. The Division Bench observed:

The validity of Rule 13(4) was upheld by a learned single Judge (S.D. Agarwal, J.) in Raghunandan Lal v. District Judge 1978 ARC 347. He observed as follows in para-6 of the report:

Rule 13, Sub-clause (4) does not lay down anything contrary to Section 16 of the Act. Once the tenant vacates the property, then the property reverts to the landlord and thereafter the question as to whether the property should be

released or not is a question between the District Magistrate and the landlord. Even if this was not there, then too, in my opinion, the out-going tenant or the prospective allottee cannot have a right to object to the release of the accommodation in favour of the landlord.

The view expressed by Agarwal, J. appears to us to be reasonable, and no serious argument was advanced before us to contest its correctness. Indeed the said view appears to be consistent with the Full Bench authority of *Ram Surat Singh Vs. Rent Control and Eviction Officer and Another*, wherein Desai, C.J. observed as follows in para-6 of the report:

I see nothing anomalous or improper in the State Government's directing that whenever a landlord bona fide needs an accommodation for his own occupation the District Magistrate regardless of all circumstances should not order him to let it to any one. After all he is the owner of the accommodation and when he genuinely need it for own occupation there is no reason why another's need, however pressing they may be, should have a prior claim. However, pressing the others needs may be, he has no claim against this accommodation or against the landlord and the State Government could very wisely refuse to consider them as against the landlord's needs. No landlord is under an obligation to meet needs of others however pressing they may be his right as the owner of the accommodation is not subject to the pressing needs of another and it makes no difference whether the pressing needs are of an individual or of a public authority or institution.

This view was expressed in the context of the provisions of Rule 6 of the Rules made under the old Act (U.P. Act 3 of 1947) but the ratio is equally applicable to the instant case. Of course, the ruling does not strictly tally with the question as to whether a prospective allottee should be heard or not. But it does imply that he should have no right of hearing because his needs are irrelevant so far as the application of the landlord for release is concerned. Another learned Single Judge (Hon'ble K.S. Varma, J.) has also taken the same view in *A.K. Sharma v. Smt. Shyam Rani* 1979 LLJ 199. We agree with Hon'ble S.D. Agarwal, J. and Hon'ble R.S. Varma, J. in their view that the deletion of Rule 13(4) does not improve the position of a prospective allottee and does not give him a locus standi to challenge the landlord's application for release.

The mere fact that the said rule was deleted does not necessarily imply that the rule-making authority intended to confer a locus standi on the prospective allottee. The deletion may have been made on the ground that the sub-rule was considered redundant. No provision was, however, made to provide a locus standi to prospective allottees to contest a landlord's application for release.

The contention of the learned Counsel for the petitioner is that the fact that the petitioner had been put in possession gave him a locus standi to contest the release application.

...

The allotment order being void the fact that the petitioner was put into possession in pursuance thereof cannot confer on him a higher right than he would have had otherwise.

...

18. The observations made by the Division Bench of this Court in Sri Kant Dwivedi on the basis of the observations made by the Full Bench of this Court in Ram Surat Singh leave no manner of doubt that even if an order of allotment is made in favour of a prospective allottee and he is put in possession of the premises then too he would not have any higher right than what was possessed by him as a prospective allottee.

19. Learned Counsel for the petitioner, however, placed reliance upon the decision of this Court in Lajpat Rai Bhatia in support of his contention that once an allotment order is passed in favour of a prospective allottee, he becomes a tenant and, therefore, is entitled to contest the matter before the Revisional Authority as well as before this Court and the relevant observations of the Court are:

Reliance is placed on Ashok Kumar v. District Judge 1979 A R C 439 by learned Counsel for opposite party and it is urged that even after deletion of sub-rule prospective allottee does not get any right of impleadment in release proceedings. This case is of no assistance for two reasons first the Hon"ble Judge having allowed the writ petition of prospective allottee and permitted him to be impleaded as party in revision the discussion on Rule 4 was obiter dicta, second even accepting the observation, ""in spite of deletion of Sub-clause (4) of Rule 13 of the rules, the prospective allottee has no right to object to the release of the accommodation" as ratio decidendi the case is distinguishable. Because a tenant or a person in occupation as an allottee cannot be put on same footing as prospective allottee. Former class of persons by virtue of possession or order in their favour which confers a right on them to remain in occupation so long the order is not set aside have a right to contest the claim of landlord. They can satisfy the District Magistrate that the building was not bona fide required by the landlord. To deny this right specially after deletion of Sub-rule (4) would be negating basic concept of passing an order effecting a party after hearing him. Same may not be said about perspective allottee. So long no order is passed in this favour he does not become entitled to participation in release proceedings.

It has been seen that petitioner is not only an allottee but has entered into possession. True it is dependent on release proceedings but he cannot be said to be person not interested. His non-impleadment before Rent Control Officer was also not material. He was till then only a prospective allottee. But once allotment order was made in his favour he has a right to contest the appeal arising out of release proceeding.

20. This decision was rendered prior to the Full Bench decision of this Court in Talib Hasan, which as noticed above, held that deletion of the earlier Rule 13(4)

of the Rules did not bring about any change in the legal position. A learned Judge of this Court in *Ved Prakash*, after taking into consideration the observations made by the Full Bench in *Talib Hasan*, held that no such right accrues to the prospective allottee even if an order of allotment is passed in his favour. The view taken by the Full Bench of this Court in *Talib Hasan* was found to be correct by the Supreme Court in *Vijay Kumar Sonkar*. It also needs to be mentioned that a Division Bench of this Court in *Sri Kant Dwivedi* observed that even if the petitioner had been put in possession on the basis of an allotment order, no higher right would accrue to the petitioner so as to enable him to contest the release application. Thus, the decision in *Lajpat Rai Bhatia* does not help the petitioner.

21. Learned Senior Counsel for the petitioner has also placed reliance upon a decision of this Court in *Ram Kumar v. VIIth Additional District Judge, Meerut and Anr.* 1993 (1) ARC 309, wherein it was observed:

I have considered the rival contentions advanced by the learned Counsel for the parties and, in my opinion, there is no dispute about the legal position of prospective allottee that he could not be allowed to contest the application for release in the sense and in the manner the contest is usually taken before the Court. To be more clear, he could not be allowed to file an objection and could not be allowed to adduce evidence in support of the same but the question remains as to whether any material which has been brought by him on record by means of affidavit or otherwise showing that the application moved by landlord was mala fide and it could not be allowed should that be ignored on the ground that prospective allottee has no right to contest the release application. In my opinion, the Rent Control and Eviction Officer while being more cautious and vigilant and testing the version of the landlord, was entitled even to go through the affidavits filed by the petitioner and they could not be ignored altogether. While satisfying himself about the bona fide and genuine need of the accommodation in dispute claimed by the landlord, the Rent Control and Eviction Officer may even invite affidavits from the parties to the proceedings. It will not be, in my opinion, in violation of any provisions of the Act or Rules. The Full Bench of this Court in *Talib Husain's* case, while interpreting Section 16(1)(b) of the Act and Rule 13(4) of the Rules framed thereunder, has said that as the right of the prospective allottee for consideration of his application for allotment commences after the rejection of the release application of the landlord, he has no right or interest or locus standi to contest the release application. The contest referred to and contemplated by the Full Bench appears to be the contest in the sense of a litigation as mentioned above the filing objection and adducing evidence and then entering into elaborate arguments which may necessarily result in delay in deciding the release application. However, neither the Act nor the Rules created any fetter against the power of Rent Control and Eviction Officer to gather information for satisfying itself about the bona fide need set up by the landlord.

22. This decision is of no help to the petitioner inasmuch as even this decision reiterates that a prospective allottee cannot contest the application for release. It only holds that the Rent Control and Eviction Officer has to be cautious and vigilant in testing the version of the landlord and for that purpose may consider the various affidavits filed before him.

23. In *Ravindra Kumar Agarwal v. Rent Control and Eviction Officer, Moradabad and Ors.* 1996 (1) ARC 332 which has also been relied upon by learned Senior Counsel for the petitioner, a learned Judge of this Court, observed:

It is true that once an allotment order has been passed it can be set-aside only after affording an opportunity of hearing on the ground that it has been obtained fraudulently, or some other justifiable reason which may be permissible under law. The petitioner was not given an opportunity of hearing and the Rent Control and Eviction Officer should have given an opportunity of hearing to the parties and, therefore, should have set aside the allotment order.

24. This decision is also of no help to the petitioner. After declaration of vacancy an allotment order was passed in favour of the petitioner but subsequently, on an application moved by respondent No. 5 therein the allotment order was cancelled. It is in this context that the Court observed that the allotment order could have been set-aside only after giving an opportunity of hearing to the petitioner.

25. Thus, in view of the discussions made above, the inevitable conclusion that follows is that a prospective allottee has no right to contest the release application and even if an allotment order is passed in his favour after the rejection of the release application filed by the landlord, he would still have no right to be heard or impleaded in the Revision filed by the landlord against the rejection of the release application. He cannot, therefore, be permitted to assail the order passed by the Revisional Authority by way of a Writ Petition. These conclusions have been arrived at on the basis of the observations made by the Full Bench of this Court in *Talib Hasan*, which observations were found to be correct by the Supreme Court in *Vijay Kumar Sonkar*. In fact, the controversy involved in this petition is squarely covered by the decision of this Court in *Ved Prakash* with which I have no reason to disagree.

26. The preliminary objection raised by the learned Counsel for the respondent-landlord, therefore, deserves to be accepted. The order impugned cannot be called in question by the petitioner. The writ petition is, therefore, liable to be dismissed.

27. This petition is directed against the order passed by the Revisional Court by which the allotment order dated 21st April 1998 in favour of the petitioner was set aside and the petitioner was directed to handover possession of the accommodation within a period of one month from the date of the order.

28. It is the submission of learned Senior Counsel for the petitioner that the

order dated 8th July 2002 passed in Revision No. 2 of 1998 that has been impugned in Writ Petition No. 14512 of 2008 is not binding upon the petitioner since the petitioner was not made a party in the said Revision. He, therefore, submits that the allotment order passed in his favour cannot be set aside.

29. While deciding Writ Petition No. 14512 of 2008, it has been found that the petitioner was not entitled to be heard in the Revision filed by the landlord against the order rejecting the release application because in the matter of release of an accommodation in favour of a landlord, the lis is between the District Magistrate and the landlord and a prospective allottee has no right to object to the release application of the landlord. The Full Bench of this Court in Talib Hasan observed that a right of a prospective allottee to have his application considered arises only after the rejection of the application filed by the landlord for release of the accommodation and his right is only a contingent right. This Court in Aditya Shukla observed that once an order rejecting the release application is set aside, the consequential order of allotment does not survive.

30. In view of the aforesaid discussion, this petition is also liable to be dismissed.

31. For all the reasons stated above, Writ Petition No. 14512 of 2008 and the Writ Petition No. 14509 of 2008 are dismissed. There shall be no order as to costs.

32. After the judgment was delivered, Sri A.K. Gupta, learned Counsel for the petitioner states that some time may be given to the petitioner to vacate the premises in dispute.

33. In view of the aforesaid, the petitioner shall not be compelled to vacate the premises for a period of three months from today subject to the petitioner submitting an undertaking within a period of three weeks from today to the following effect:

1. That the petitioner shall pay damages at the rate of Rs. 1000/- per month beginning from the month of April, 2008 up to the date he hands-over the possession of the premises to the landlord.

2. That the petitioner shall not induct any other person in the premises.

3. That the petitioner shall handover peaceful possession of the premises to the landlord on or before the expiry of three months months.

34. It is made clear that in the event the petitioner fails to give the undertaking within the aforesaid period or fails to comply with any of the terms of the undertaking, then in that case, it will be open to the landlord to get the order executed.