

**(1979) 04 AHC CK 0048**

**In the Allahabad High Court**

**Case No :** Sp. A. No. 246 of 1974 in Civil Miscellaneous Writ Petition No. 2656 of 1973

Dr. Shamshuddin

APPELLANT

Vs

Smt. Dr. Zaibunnisan and Others

RESPONDENT

**Date of Decision :** 10-04-1979

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 34(8)  
Constitution of India, 1950 — Article 14  
Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3  
Uttar Pradesh Civil Laws (Amendment) Act, 1972 — Section 8  
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 11, 12, 13, 16, 21  
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 — Rule 10, 11, 11(1), 11(4)  
Civil Procedure Code, 1908 (CPC) — Section 34(8)  
Constitution of India, 1950 — Article 14  
Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3  
Uttar Pradesh Civil Laws (Amendment) Act, 1972 — Section 8  
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 11, 12, 13, 16, 21  
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 — Rule 10, 11, 11(1), 11(4)  
Civil Procedure Code, 1908 (CPC) — Section 34(8)  
Constitution of India, 1950 — Article 14  
Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3  
Uttar Pradesh Civil Laws (Amendment) Act, 1972 — Section 8  
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 11, 12, 13, 16, 21  
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 — Rule 10, 11, 11(1), 11(4)

**Citation :** (1979) AWC 328

**Hon'ble Judges :** K.N. Singh, J;K.N. Seth, J;K.C. Agrawal, J

**Bench :** Full Bench

**Advocate :** K.M. Dayal, for the Appellant; Shambhu Prasad and K.M. Sinha, for the Respondent

**Final Decision :** Disposed Of

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## Judgement

K.C. Agrawal, J.—Doubting the correctness of the decision given in Writ Petition No. 3445 of 1973 *Dr. Shamshuddin v. Smt. Dr. Jaibunnisan* a Division Bench of this Court has referred the following questions for consideration by a Full Bench:

1. Whether the order of preference in Rule 11 is unconstitutional being offensive to Article 14 of the Constitution?

2. Whether Rule 11 is invalid being ultra-vires the provisions of the Act?

3. Whether the allotment of an accommodation for the residence of a Government servant amounts to a public purpose within the meaning of Rule 11 of the Rules?

2. For answering the questions referred to us, it is necessary to refer to the facts briefly.

3. Dr. Shamsuddin, the Petitioner-Appellant was the tenant of a portion on the ground floor of house No. 88/498 Humayun Bagh Chamanganj, Kanpur. He had his Homoeopathic clinic in this premises. Dr. Karsaz Ahmad, Respondent No. 3 was a tenant of a two room shop of the ground floor of a neighbouring house No. 88/493, situated in the same locality. Dr. (Shrimati) Jaibunnisa who is the wife of Dr. Karsaz Ahmad, was the tenant of the residential accommodation on the first floor of the aforesaid house No. 88/493. In 1964 Dr. (Smt.) Jaibunnisa and her sons Sarshad Ahmad and Irshad Ahmad purchased house No. 88/498, a portion of which was in the tenancy of the Petitioner-Appellant. They filed an application u/s 3 of the U.P. (temporary) Control of Rent and Eviction Act, 1947 for permission to bring a suit for eviction against the Petitioner-Appellant. On 3-4-1972, the application was allowed. The Rent Control and Eviction Officer observed that house No. 88/493 which had been offered as an alternative accommodation by the Respondent Dr. (Smt.) Jaibunnisa and her sons could be made available to the Petitioner-Appellant. Dr. Shamsuddin, the Petitioner-Appellant filed a revision before the Commissioner against the order of the Rent Control and Eviction Officer. The revision was also dismissed. Soon after the dismissal of the revision U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "the U.P. Act No. 13 of 1972") came into force. Instead of filing a suit. Dr. (Smt.) Jaibunnisa and her sons filed an application u/s 21 of the U.P. Act No. 13 of 1972 for release on the ground that as they had already obtained permission u/s 3 of U.P. Act No. 3 of 1947, on the ground of their personal requirement they were entitled to the release of the house. The application was resisted by Dr. Shamsuddin, the Petitioner-Appellant. On 4-1-1973, the Prescribed Authority allowed the application made u/s 21 against Dr. Shamsuddin. He, however, observed that the Rent Control and Eviction Officer should allot the tenanted premises in the occupation of Dr. Karsaz Ahmad and his wife in house No. 88/493 to Dr. Shamsuddin, the Petitioner-Appellant.

4. Soon after the application filed u/s 21 was allowed, the Rent Control and Eviction Officer started proceedings u/s 16 of the U.P. Act No. 13 of 1972, for the

allotment of house No. 88/493. Having found that the premises in the ground floor of house No. 88/493 as well as the accommodation on the first floor of that house was vacant, the Rent Control and Eviction Officer notified them for allotment. A number of applications, including that of Dr. Shamsuddin, the Petitioner-Appellant and that of Wajid Ali, Respondent No. 5 were received for allotment. On 6-1-1973, the Rent Control and Eviction Officer rejected the application of Dr. Shamsuddin and allotted the residential portion in house No. 88/493 to one Mohammad Ayub and the two room shop on the ground floor of this house to Wajid Ali, Respondent No. 5. It may be noted here that Dr. Shamsuddin, the Petitioner-Appellant and Wajid Ali, Respondent No. 5 had applied for the allotment of both the portions of house No. 88/493 which were in the tenancy of Dr. (Smt.) Jaibunnisa and Dr. Karsaz Ahmad respectively.

5. Feeling aggrieved by the rejection of his application Dr. Shamsuddin, the Petitioner-Appellant filed Rent Control Appeal No. 32 of 1973. Wajid Ali also preferred an appeal against the order of the Rent Control and Eviction Officer rejecting his prayer for the allotment of the first floor. This appeal was numbered as Appeal No. 42 of 1973. On 30-3-1973, Second Additional District Judge, Kanpur, to whom these appeals were transferred, partly allowed the appeal No. 32 of 1973 filed by Dr. Shamsuddin and directed that the shop accommodation in question of house No. 88/493 would stand allotted to Dr. Shamsuddin in place of Wajid AM, Respondent No. 5. He, however, rejected the prayer for the allotment of the first floor made by Dr. Shamsuddin. The appeal No. 42 of 1973 filed by Wajid Ali was allowed and the allotment order made in favour of Mohammad Ayub was set aside. The appellate court ordered that the aforesaid portion would be allotted to Wajid Ali, Respondent No. 5. Being aggrieved by the rejection of the application made for allotment of the first floor, the Petitioner-Appellant filed a writ petition giving rise to the present special appeal.

6. On 31st October, 1973 this writ petition came up for hearing before Hon"ble A. Banerji, J. who referred a question relating to the scope of Rule 11 to the Division Bench. On 19th March, 1974 the Division Bench answered the aforesaid question as follows:

Allotment of residential accommodation to a Government servant can ordinarily be presumed to be for public purpose within the meaning of Rule 11 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972. The presumption is, however, rebuttable and dependent upon the facts and circumstances of each case. Where the allotment of an alternative accommodation in view of the accommodation already in occupation of the Government servant, is not necessary for the efficient and proper discharge of duty by the Government servant, his request for allotment of the alternative accommodation cannot be deemed to be for a public purpose. For determining, whether the need for the accommodation is for a public purpose one must take into consideration all the factors including the status of the Government servant, the nature of the work assigned to him and the environment in which he must

reside to enable him to discharge his duties. Where on the facts and circumstances of the case the need of the Government servant for the residential accommodation is for public purpose, his case would fall in the first category and he would get priority over all other persons falling in the other two categories of Rule 11(1).

The case again came up for hearing before Hon''ble A. Benarji, J. Having found that the writ petition was without force, the learned Judge dismissed the same on 8-7-1974. Against the aforesaid order, Dr. Shamsuddin preferred the special appeal. In the special appeal the argument raised was that Rule 11 of the Rules framed under U.P. Act No. 13 of 1972 was ultravires Article 14 of the Constitution on the ground that the priorities fixed by the aforesaid rule for making an allotment order were unreasonable and arbitrary. The second argument advanced before the Division Bench was that Rule 11 travels beyond the provisions of the Act and, as such, was invalid. The third point was that the need of residence of a Government servant was his own individual and personal requirement and, as such, the same could not amount to a Public Purpose within the meaning of that term used in Rule 11 of the Rules.

7. The claim of Wajid Ali, Respondent No. 5 was that as he was a teacher employed in the Government Leather Working School, his requirement of occupying the house for residential purposes amounted to a public purpose and, as such, he was entitled to be kept in category I. He claimed that as he was a Lecturer in the Institution, he was entitled to a proper accommodation commensurate to his status. He had further alleged that as a teacher he was required to do certain amount of studies at his house but due to the paucity of a suitable accommodation he was handicapped from discharging his duties satisfactorily.

8. In order to answer the question referred to us, it is necessary to mention, briefly, some of the relevant provisions. The U.P. Act No. 13 of 1972 had been passed as shown from its long title "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". Chapter III of the Act deals with "Regulation of Letting". Section 11 provides that no person shall let any building except in pursuance of an allotment order issued u/s 16. Section 12, inter-alia, deals with cases when a landlord or a tenant of a building shall be deemed to have ceased to occupy the building or part thereof if he has allowed it to be occupied by a person other than the member of his family. Section 13 provides that no person shall occupy a building or part thereof which a landlord or tenant has ceased to occupy except under an order of allotment to be made u/s 16 of the Act, and if a person contravenes this provision, he shall be deemed to be an unauthorised occupant. Section 34 requires the District Magistrate, the Prescribed Authority or any (appellate or revising authority) to follow for the purposes of holding an inquiry the procedure provided under the Code of Civil Procedure. Sub-section (8) of Section 34 says

that for the purposes of any proceedings under this Act and for purposes connected" therewith the said authorities shall have such other powers and (follow such procedure, principles of proof, rules of limitation and guiding principles as may be prescribed). Section 41 confers rule making power on the State Government. It authorises the State Government to make rules to carry out the purposes of the Act.

9. Pursuant to Sections 34(8) and 41 of the Act, the State Government framed rules. Amongst these rules, important for our purposes are Rules 10 and 11. Rule 10 deals with "allotment procedure" which has to be followed in filing an application for allotment and in making the allotment order. Rule 11 fixes order of priorities in allotment of residential buildings. Sub-rule (1) of Rule 11 states as under:-

In making allotment of a residential building, the following order of priorities shall be observed :

Firstly, for public purposes; Secondly, for accommodating a person against whom an order has been passed for eviction u/s 21 not being a tenant referred to in Explanation (1) in Section 21(1) or a decree has been passed in a suit filed with the permission Of the District Magistrate u/s 3 of the old Act (or such suit or application is pending and who are members of whose family do not own or hold as tenants any other residential building in the same city, municipality, town area or notified area; Thirdly, for accommodation of others; and in each of the above categories subject to the provisions of Rule (2) the principle "first come, first served" shall be followed.

10. Instead of answering the questions at serial at which they have been referred, as it would be convenient, we propose to answer the three questions in the following serial: 2-3-1.

11. Under question No. 2, the controversy referred is whether Rule 11 is invalid being ultra-vires the provisions of the Act. We have already referred to Sections 16 and 34(8) under which this rule has been framed. Section 34(8), as stood originally, was amended by Section 8(iii) of the U.P. Civil Laws Amendment Act, 1972. The said amendment came into force on September 20, 1972 but this amendment was given retrospective effect. Section 16 which empowers a District Magistrate to make an allotment is subject to the other provisions of this Act. For finding out the authority under which Rule 11 had been framed, reference has to be made to Sections 16, 34(8) and 41. Reading these provisions, it would be found that for the purposes of giving effect to the object and the principles of this Act, the State Govt. has been empowered to frame rules. There is sufficient indication in the various provisions of the Act laying down the principle or the policy to give effect to which the rules could be framed by the State Government. u/s 16 the District Magistrate may require the landlord to let any building which has fallen vacant. This has to be done by an order to be called the allotment order.

12. The long title of the Act and the Statement of Objects and Reasons appended to the Bill show that the main object of enacting the U.P. Act No. 13 of 1972 was to control letting so that the most needy out of several could be selected and the vacant premises could be made available to him. In order to give effect to the object of the Act, the State Government had to make the rules.

13. Before the enactment of U.P. Act No. 13 of 1972, the U.P. (Temporary) Control of Rent and Eviction Act was in force. There was nothing either in the Act or in the rules laying down the guidelines in accordance with which an allotment order had to be made under the old Act. Although there was ample guidance given to the authorities in the Act itself as to how to choose a tenant, the criticism against the aforesaid Act was that as the power of allotment was capable of being used discriminately, Section 7 was invalid. Although this argument had been repelled, but in order to create more confidence in public, the legislature this time thought it better to empower the State Government to make rules laying down guidance in accordance with which an authority is required to choose a tenant. The choice is to be made from amongst the applicants and that choice has to depend upon an examination of the comparative merits of their claims. It is for this purpose that Rule 11 laid down the priorities which have to be followed in the matter of allotment. By laying down the priorities, the State Government had given effect to the policy of the Act, which is, to choose the best. It has categorised the applicants into three classes.

14. Counsel argued that the making of provision for determination of comparative merits of the applicants for allotment is legislative function and as the Legislature by conferring power upon the State Government did not lay down policy, principle or standard for guidance of the State Government, the Legislature has abdicated its legislative function. Rule 11 was consequently stated to be invalid because of excessive delegation of legislative functions. The contention, in our opinion, is not well founded. As already stated above, the number of applicants for allotment generally far exceeds the number of vacancies. The State Government has laid down the guideline in accordance with which the allotment had to be made. The validity of the guideline depends upon the object of the Act and as already stated above the object of the Act was to choose the best out of the applicants for allotment.

15. Apart from Section 16, Sub-section (8) of Section 34 clearly empowers the State Government to lay down the principles and the guidance in the Rules. Rule 11 is directly covered by Section 34(8) of the Act. It is in pursuance of the power conferred by this provision that the principles and guidelines had been made therein.

16. Apart from Section 34(8), Section 41 also justifies the making of the rules. It provides that the State Government could make rules "to carry out the purposes of this Act". The expression "carry out the purposes of the Act" means to enable its provisions to be effectively administered. They connote that the rules are to

be confined to the same field of operation as that marked. out by the Act itself (See; *Carbines v. Powell* 36 Commonwealth Law Reports page 88 at page 92), In this case, the law laid down further has been that:

The authority must be taken as it is created, taken to the full but not exhausted. In other words, in the absence of express statement to the contrary, you may complement but you may not supplement the granted power.

To the same effect is the law laid down by the Supreme Court in *State of Kerala v. K.M.C. Abdullah and Company* AIR. 1965 SC 1585. In this case, the Supreme Court observed:

Power to make rule is conferred by the Act upon the State Government and that power may be exercised within the strict limits of the authority conferred. If in making a rule the State transcends its authority, the rule will be invalid. For statutory rules made in exercise of the delegated authority are valid and binding only if made within the limits of the authority conferred.

It is, therefore, clear that if rule made is in breach of a provision of the Act or exceeds the authority conferred on the rule making authority, the rule would be invalid.

17. In the instant case, we have already noticed above that the power to frame rules had been given by Sections 41 and 34(8). Section 41 is a general provision laying down that the State Government will have power to make rules "to carry out the purposes of this Act." Section 34(8) is special provision authorising authorities to make out the procedure and principles of proof which may be followed for purposes of any proceeding under this Act. The general rule making power conferred by Section 41 is not controlled by the specific enumerations mentioned in Section 34(8). It is well settled that if power is conferred to make rules in general terms the enumeration of topics is construed merely as illustration and does not limit the scope of the general Rule (See : AIR 1945 156 (Privy Council) ; and *Afzal Ullah Vs. The State of Uttar Pradesh*, .

18. The general power to make rules for carrying out the purpose of the Act, however, cannot be used to widen the scope or the purpose of the Act and to add new and different means for carrying out or to depart from and vary its term. (See: *Shanahan v. Spot* 96 Commonwealth Law Reports 245 at page 246). This case has been approved by the Privy Council in *Utah Constructions v. Pataky* 1965 (3) All ER 650 pp. 653. Subject to the above limitation the power to make rule is liberally construed and the opinion of the rule making authority that a rule made by it is to carry out the purpose of the Act is generally accepted. A rule made by an authority in exercise of its powers for carrying out the purposes of the Act can be declared invalid only on the following grounds:

(1) Bad faith, i.e. that powers entrusted for one purpose has been deliberately used with the design of achieving another;

(2) That it shows on its face a misconstruction of the enabling Act or a failure to

comply with the conditions which that Act has prescribed for the exercise of the powers.

(3) That it is not capable of being related to any of the purposes mentioned in the Act.

This proposition can be culled out from the principles laid down in *Attorney General for Canada v. Hellet and Carry Ltd.* 1952 AC 427 pp. 444 and 445, *Ross clunis v. Papado Poullos* 1958 (2) AER 23, and *Meeldoney v. Forde* 1969 (2) AER 1039 (HL).

19. After having examined Rule 11 of the Rules framed from the points of view stated above, we find that the rules were framed for effectuating the purpose of the Act and that they do not transgress the limits of the authority conferred on the State Government. These rules help in carrying out the policy and the object with which Act was made. We, therefore, hold that the State Legislature can not be said to have indulged in self efacement when it empowered the State Government to make the rules. The Legislature gave ample guideline to the State Government as to how the rules had to be made. In this view of the matter; we answer the second question in the negative and hold that Rule 11 is intravires the provisions of the Act.

20. Next, we will take up the third question, which is whether the allotment if an accommodation for the residence of a Government servant amounts to a public purpose.

21. In order to decide the aforesaid question, it is necessary to consider the amplitude and the scope of the expression "public purpose". The phrase "public purpose" as pointed out by Mahajan, J. in *the State of Bihar v. Kameshwar Singh* AIR 1952 SC 311, is incapable of a precise definition. It does not have a rigid meaning. It can only be defined by a process of judicial exclusion and inclusion.

22. The leading decision on "public purpose" is *Hamabai Framjee Petit v. Secretary of State for India* AIR 1914 PC 1. In this case, the Privy Council considered whether the purpose of the acquisition involved in that case was a public purpose in which the general interest of the community was concerned. It was also held that it was not possible to make attempt to define precisely the phrase "public purpose". In this case it was said:

Prima facie the Government are good judges of that. They are not absolute judges. They cannot say: *Sic volo sic jubeo*", but at least a Court would not easily hold them to be wrong. But here, so far from holding them to be wrong the whole of the learned Judges, who are thoroughly conversant with the conditions of Indian life, say that they are satisfied that the scheme is one which will redound to public benefit by helping the Government to maintain the efficiency of its servants. From such a conclusion their Lordships would be slow to differ and upon its own statement it commends itself to their judgment.

*Hamabai Petit*'s case (supra) has been followed in a number of cases and has

been approved by the Supreme Court, In the State of Bihar v. Kameshwar Singh (supra), Das, J. quoted the aforesaid passage with approval. This passage was again approved in The State of Bombay Vs. R.S. Nanji, .

23. "Public purpose" is whatever fulfils the general interest of the community as opposed to the particular interest of the individuals. The underlying idea for which any action is taken in the name of "public purpose" must be the good of the general public or the general interest of the community. Black, in his legal dictionary, has stated that:

A public purpose or public business has for its objective the promotion of public health, safety, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political division, as for example State of sovereign powers of which are exercised to promote such public purpose or public business. An action taken for achieving public purpose must therefore benefit the public as opposed to an individual.

In State of Bihar v. Kameshwer Singh (supra), Mahajan, J. has observed that "public purpose" is not capable of a precise definition and has not a rigid weaning. It can only be defined by a process of a judicial inclusion and exclusion. The Further observation made by him were "whatever furthers the general interest of the community as opposed to the particular interest of the individual must be regarded as a public purpose."

In Nanji's case (supra), the Supreme Court observed:

We must regard Hamabai's case as a decision to the effect that the general interest of the community was directly and vitally concerned with the efficiency of the Government servants because it would be to its benefit to have such servants and, therefore providing living accommodation for them was a public purpose. The decision in Bhanji Munji's case must be read as one in which the general interest of the community was directly and vitally concerned with prevention of lawlessness and disease and to house the homeless in order to avoid such a contingency was a public purpose. In Ali Gulshan's case a State purpose was served because the State Government was interested in its own trade or commerce and in the efficient discharge of his duties by a foreign Consul who would be concerned with such trade or commerce.

To the same effect is the law laid down by the Supreme Court in State of Karnataka v. Ranganatha Reddy AIR 1978 SC 238. The relevant observations of the Supreme Court are quoted below:

If the purpose is for servicing the public, as Governmental purposes ordinarily are, then everything desiderated for subserving such a public purpose falls under the broad and expanding rubric. The nexus between the taking of property and the public purpose springs necessarily into existence if the former is capable of answering the latter. On the other hand, if the purpose is a private or non-public one, the mere fact that the hand that acquires or requires is Government or a

Public corporation, does not make the purpose automatically a public purpose. Let us illustrate. If a fleet of cars is desired for conveyance of public officers, the purpose is a public one. If the same fleet of cars is sought for fulfilling the tourist appetite of friends and relations of the same public officers, it is a private purpose.

24. From what we have said above, it follows that where the purpose is mainly and predominantly in public interest and for the good of the community and not for some of the specified individuals, the purpose would be a public purpose. Each case has to be decided on its own facts to find out whether the purpose is a public purpose or not. In *State of Bombay v. Nanjee* (supra), the Supreme Court itself observed "in each case the facts and circumstances will require to be closely examined in order to determine a public purpose".

25. In the instant case, the controversy was whether the need of a Government servant to live in the house could be considered to be a public purpose. The main submission in this connection was that the need of a Government servant to live in a house does not serve any public purpose. It is the personal need of a Government servant or the members of his family. Availing a house by a Government servant would be his personal gain and the public benefit resulting from the allotment of such a house to a Government servant is too remote to be called a public purpose. It is this controversy which is required to be determined in the present case.

26. For appreciating the controversy, we may briefly refer to the rules. Rule 10 provides the form of the application. The form of an application for allotment shall be in form "A". The District Magistrate is directed under this rule to maintain three Registers. The first Register would contain applications for public purposes. The second Register shall contain the applications from persons ejected on the basis of permission granted by the District Magistrate or those who have been evicted u/s 21 of the Act. The third Register would be for all other categories that is called as a general Register. The applications are required to be chronologically entered i.e. in the order of their receipt.

27. At this place we may briefly again mention Rule 11, which deals with the priorities in allotment, in the case of residential buildings. Rule 11 provides for the following order of priority:

(A) Allotment for public purpose.

(B) Allotment for accommodating a person-

(i) other than a person referred to in Explanation 1 to Section 21(1) against whom the eviction order has been made under that section.

(ii) Against whom a suit had been filed u/s 3 of the Act.

(C) Allotment for accommodating other persons who do not fall under the first two categories.

28. In all these three categories mentioned above, the principle of "first come, first served" shall be followed. This is, however, subject to the following conditions:

- (1) A building vacated by a Government servant should preferably be allotted to his successor in office ;
- (2) That the relative period of stay of the Government servant without suitable accommodation should be also a factor for consideration for the purposes of allotment.
- (3) In case of two or more government servants the priority shall be determined by the Departmental head.

However, as provided by Sub-rule (4) of Rule 11, notwithstanding anything contained in Sub-rules (1), (2) and (3), the District Magistrate may, for adequate and exceptional reasons, to be recorded in writing, depart from the principle "first come, first served" and make allotment of any building out of turn to any person. Sub-rule (5) lays down that the building carrying lesser rent should be allotted to persons with lower income and vice-versa.

29. The main ground now to be considered is as to the connotation of the words "public purpose" used in Rule 11. We have already stated above that this expression is not a word of Article Since it has also not been defined in the Act, we have to give it a meaning which will be in consonance with the fixed provisions of the Act and its objects. The Supreme Court had stated in Nanjee's case (supra) that the meaning and import of the expression "public purpose" is likely to differ from case to case.

30. Rule 11, however, deals with the priorities. The giving of priority only means to a precedence or a legal preference. It does not mean a claim to get an allotment order. When two persons have similar rights in respect of the same subject matter but one is entitled to exercise his right to the exclusion of the other, he is said to have priority. Making a provision for priority in Rule 11 does not dispense with the condition of considering the bonafide requirement of occupying a building. In fact, the bonafide need to occupy a building is the soul of the present Act, as evident from observation of different parts of the Act. The object of the Act being the regulation of letting, a person in order to be entitled to get an allotment order made in his favour, must establish that his need to occupy the premises is genuine. This requirement of establishing the bonafide requirement or need of the premises runs through the veins of the Act and that has to be observed in making the allotment. A government servant has, therefore first to establish that his need is genuine and not spurious or spruous. The factual situation has to be assessed and weighed in its real perspective and a finding is required to be given thereon about the genuineness of the need. In a case where his need is not bonafide, the house will not be allotted to him although he may be in the first category inasmuch as the purpose of the Act is to make available the house to the person who is most needy. This object cannot be

sacrificed. In fact, when Rule 11 talks of priority, it presumes that the need of the person applying for the premises is bonafide. It is, therefore, not correct that a Government servant can get an allotment order made in his favour under Rule 11 on the mere basis that he is a Government servant without establishing and proving that he requires the premises for fulfilment of his bonafide need. We are not in agreement with the submission of the Respondent's Learned Counsel that a presumption is required to be drawn in favour of a Government servant about his need the moment he files an application for allotment. To ask an authority to draw a presumption would mean that the authority would not be required to examine whether the application for allotment had been founded on the genuine need. Such a presumption, if drawn, is likely to defeat the purpose of the Act. It should be contrary to the plan and policy behind it.

31. We, however, do not mean to lay down that in all the cases an applicant for allotment must positively prove his requirement before a building can be allotted to him. There can be cases where on the facts, of their own, it may be possible for an authority to hold that the need of occupying a house by those government servants are bonafide. Investigation about the bonafide requirement in such cases may not be undertaken like other case and from the facts stated by the officer concerned or by the Departmental head in the application itself, a conclusion about the need of the premises may be found.

32. Another thing which is to be borne in mind is whether to provide a house to a Government servant is actuated by a genuine consideration that the cause of administration generally suffers and efficiency deteriorates, if employees are without any accommodation befitting their status. Since in such a case providing of an accommodation is linked with the toning of an otherwise impoverished administration, it may constitute a public purpose. In order to confer the benefit of first category, the Rent Control and Eviction Officer is required to bear in mind that the efficiency of a Government servant would be impaired if a premises was not allotted to him for his residence. In the absence of a house, the public servant may not be able to efficiently and properly discharge his duties. Accordingly, in each case Rent Control and Eviction Officer is required to find out that the interest of the public requires conferring upon him the benefit of the first category. In such a case the primary and paramount consideration is the welfare of the public and the predominant object would not be defeated by the fact that incidentally a private benefit would result. The incidental and private advantages that are bound to accrue to an individual government servant from an allotment order would merely be inconsequential. Without finding that the need is to benefit the Government or public, an allotment order made on the basis of the first category may not be valid. In that event, the allottee \* Government servant would get a house not for public welfare but for his private advantages. The primary purpose served would be the comfortable living of the Government servant. The incidental benefit accruing to the public would not be sufficient to make the purpose a public one, such a case will not be a case of allotment made on the basis of a bonafide need.

33. Relying on the decisions of the Supreme Court in *The State of Bombay Vs. Bhanji Munji and Another*, and *Raghubar Mandal Harihar Mandal Vs. The State of Bihar*, counsel for the allottee-Respondent contended that on the principles laid down in those cases the need of a government servant to live in a house is a public purpose and, as such, similar interpretation should be placed in the instant case as well. It would be seen that providing residential accommodation by the Government to its employees in exercise of its powers of eminent domain differs vastly in its content and character from providing it by way of allotment under the rent control laws. In the case of requisition, the Government initiates the proceedings after being satisfied that the house is required for accommodating the Government servant. The decision is arrived at on the conclusion or on the view that the cause of section of administration suffers and efficiency is affected, if the Government employee is not given a house for his residence befitting to his status. On being satisfied about the requirement of Government that the notification is issued to that effect. In this way, there is an active application of the mind as to the need and urgency of providing accommodation. The principles laid down in those cases are not of much help for deciding the scope of Rule 11 of the Act. If we were to hold that the need of every Government servant to occupy a house is for a public purpose, the consequential result would be that a Government servant would get an allotment order made in his favour without the application of any mind that the same was likely to subserve the purpose of the public. In such an event, a Government servant may get an accommodation to live in a house without establishing that he even requires it.

34. Furthermore, the purpose of a requisition made under an Act is different than the purpose of an allotment to be made under an Act dealing with the regulation of letting and control of rents. In the first case, the Act is passed only for the sole object of requisitioning a house for a public purpose. The authority is required to consider whether the need of residence of an individual Government servant was a public purpose. In the case under an Act dealing with the regulation of letting and controlling evictions no such eventuality arises. Therefore, it appears necessary that the need of a Govt. servant to occupy a house is required to be considered in the manner we have attempted to suggest. It is neither practicable nor possible to lay down the imagination of the case where benefit of first category can be given. This is a question of fact to be decided in each case on its own fact. No rigid formula can be applied in such matter. In determining the question whether the need for accommodation is for a public purpose, the Rent Control and Eviction Officer should take into account all the factors enumerated above. We however, respectfully find ourselves unable to share the view of the Division Bench in Writ No. 3445 of 73 that the allotment of house to a Government servant can ordinarily be presumed to be for a public purpose. As the decision given in *J.F.F. Corporation v. Ramesh Chandra* 1978 AWC 772 is distinguishable on facts, we need not consider it.

35. The first question may now be taken up. The same is whether the order of

preference laid down in Rule 11 is unconstitutional, being offensive of Article 14 of the Constitution. The ground of invalidation urged is that there was no justification for the public purpose or the need of the employees being given top priority over the need of others, the reason being that the need of a Government servant to live in a house is an irrelevant consideration and the need of the general public could not be sacrificed at the altar of the Government servants. It is contended that the provision made to the above effect is an example of flagrant partiality shown by the subordinate legislation and transgresses the limits of equal treatment implicit in Section 16 of the Act. On the basis, the submission was that the classification made was unjustified, un-intelligible and purposeless.

36. Article 14 of the Constitution has two phrases. These two phrases in this Article are similar, but not identical. The first portion of this Article is a declaration of the equality of the civil rights of all persons and the second enjoins that the equal protection shall be secured to all such persons in the enjoyment of their rights without discrimination or favour. The principles underlying Article 14 have been summarised by the Supreme Court in *Budhan Choudhry and Others Vs. The State of Bihar*, as under:

It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for purposes of legislation. In order however to pass the test of permissible classification, two conditions must be satisfied, namely :

(i) that the classification must be based on an intelligible differentia which distinguished persons or things which are grouped together from others left out of the group;

(ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. What is necessary is that there must be a nexus between the basis of classification and the objects of the Act under consideration.

37. A large number of authorities of the Supreme Court and the other High Courts have dealt with the scope and amplitude of Article 14 of the Constitution of India, as said by the Supreme Court in *The State of Gujarat and Another Vs. Shri Ambica Mills Ltd., Ahmedabad and Another*, . Mathew, J. observed:

It would be an idle parade of familiar learning to review the multitudinous cases in which the constitutional assurance of equality before the law has been applied.

It is, however, settled that the principle underlying Article 14 of the Constitution is not that the same rules should be applied to all persons irrespective of different circumstances. It only means that similarly situated persons are to be dealt with equally. If there are two persons of the same class, the law cannot be applied differently to them. The classification, however, must not be arbitrary and should be rational. In other words, it should be based on distinct and separate

characteristics, factors " or qualities. Same characteristics and qualities are to be found in all the persons grouped together and not in others who are not kept in that category. This classification must be based on an intelligible differentia and must have a rational nexus with the object sought to be achieved by the Act.

38. In the instant case, the public purpose was kept in the first category. As we have already stated that the need of a Government servant to live in a house, on certain contingencies may amount to public purpose, the special status for such a Government servant in a State is obvious, the need of such a Government servant is ultimately to affect his efficiency which may affect the general interest of the public. Such Government servants stand on a footing of their own and cannot be compared or put in the company of private individuals who do not discharge any public duty. The classification, therefore, is founded on an intelligible differentia which distinguishes them from others who are kept in that category. Three categories of Rule 11 do not overlap. The categorisation is distinct and separate and is based on a clear-cut demarcation. These categories are not based on arbitrary but on a rational ground which keeps each one of them separate from the other. In *In Re: The Special Courts Bill, 1978*, , the Supreme Court said :

If the administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the legislature, its action can be annulled as offending against the equal protection clause. On the other hand, if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the face of it to be discriminatory, irrespective of the way in which it is applied.

The purpose of classification was to give effect to the Act which was to make available the house to the best suited for allotment. This object is to be found incorporated in the long title of the Act and the various provisions contained therein. In fact, the power of allotment itself envisages that the need of the applicant has to be considered before allotment. If an authority has more than one applicant before him, and they are rival applicants, the order if made in favour of an applicant without considering others is likely to result in inequality and unfairness. It is in order to avoid inequality and unfairness that Rule 11 of the Rules had been framed. By providing guideline, the choice of the most needy has to be made in accordance with the manner laid down therein. As the classification of the three categories is reasonable and the object sought to be achieved is also attained, Rule 11 of the Rules cannot be said to be ultra-vires of Article 14 of the Constitution. For deciding this question another thing which is worthy of being noted is that in the case of allotment under a rent statute, the thing that has to stand scrutiny is the individual need. In fact, the soul of the Act is the need as is evident from observation of the various provisions of the Act. Rule 11 only determines the priority. Giving up priority only means claim of precedent or earlier consideration and not a right to get an allotment order. Like the case of any individual, if on consideration of various aspects of the matter,

the Rent Control and Eviction Officer comes to a conclusion that the need of a Government servant is not genuine, the matter ends and the Government servant is not entitled to an allotment order of a house. The rule does not create any fetter on the exercise of discretion by an authority who is to be guided by the sole factor of bonafide need. This has to be applied fully to all the cases. Since Rule 11, category I only authorises priority in the matter of allotment and does not create any conclusive or irrebuttable presumption about the requirements of a Government servant this cannot be said to be an arbitrary. Accordingly, Rule 11 is not liable to be struck down on the ground stated above.

39. Our answer, therefore, to the third question is in the negative by saying that Rule 11 is not ultra-vires Article 14 of the Constitution.

40. Let the Special Appeal be listed before the Bench concerned for its disposal.