

(2001) 10 AHC CK 0014

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4614 of 1984

Firm Mahadeo Prasad Murlidhar and Ors.

APPELLANT

Vs

Prescribed Authority/Munsif Khalilabad,Basti & Ors.

RESPONDENT

Date of Decision : 10-10-2001

Acts Referred:

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3(1)

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 43(2)

Citation : (2001) 10 AHC CK 0014

Hon'ble Judges : J.C.Gupta, J

Final Decision : Dismissed

Judgement

J.C. Gupta, J.—This is tenants" petition.

2.The dispute relates to house No. 185B, 187, 188 Municipal Ward No. 7 Gandhi Nagar, Distt. Basti. The accommodation in question was taken on rent by one Sita Ram in the year 1935. Respondent No. 2 is the landlady of the said accommodation. On 19121966 she filed an application under Section 3 (1) of the U.P. Temporary (Control of Rent and Eviction) Act, 1947, hereinafter referred to as the "old Act", for permission to file suit for ejectment on the ground of her personal need. This application was filed against registered firm M/s Mahadeo Lal Murlidhar through Janki Prasad, a partner of the firm. The Rent Control and Eviction Officer rejected the said application on 1561967. Revision filed by the landlady was allowed by the Commissioner on 2191967 holding that the need of the landlady was genuine and further that the tenants have got a number of properties of their own and they had no need of the premises in question at all. Thus by the order of Commissioner the landlady"s application for filing suit for eviction of the tenants was allowed. Against that order the tenants made representation under Section 7 of the Old Act before the State Government and obtained an order of stay but ultimately the reference was rejected. On the basis of permission granted by the Commissioner the landlady gave notice under Section 196 of the Transfer of Property Act terminating the tenancy and after the

expiry of notice period, Suit No. 335/67 for eviction of the tenants was filed on 8111967. In the said suit an application was moved by tenants alleging that plaintiff was not the sole owner of the property in dispute. That application was rejected on 10111971. The tenants challenged the said order in Civil Revision No. 101/71 in the Court of District Judge and obtained an order of stay whereby proceedings of suit were stayed. The District Judge dismissed the said revision on 1861972. During the pendency of revision Janki Prasad one of the partner of the firm died and his legal heirs were brought on record by way of substitution. Against the order of substitution the tenant then filed Civil Revision No. 924/72 in the High Court and got the records of Court's below summoned with the result that no progress in the proceedings of suit could be made. The revision was then dismissed by the High Court on 18 71973 but the lower Court's record was not sent back for long. On the complaint made by plaintifflandlady the record was transmitted back and the said suit was transferred from the Court of Munsif to Judge Small Causes Court where it was renumbered as J.S.C.C. Case No. 59/74. The tenant again with a view to delay the proceedings moved an application that the suit has abated as all the heirs of Janki Prasad deceased have not been impleaded. By the order dated 261975 Judge Small Causes abate the suit. Landlady filed revision against that order which was allowed and the landlady was directed to file an application for impleadment. Against the order of Revisional Court the tenant filed Revision No. 3510/78 in the High Court but the same was dismissed by the order dated 2821979. The impleadment application moved by landlady was allowed by the trial Court on 1081979 and Ginni Devi was impleaded as heir of Late Janki Prasad. The tenant then again filed Revision No. 142/79 but the same was dismissed by the District Judge. Landlady thereafter filed an application for amendment of plaint for consequential reliefs of damages and subletting during the pendency of proceedings. That amendment application was allowed in part by the order dated 5111979. The said order was challenged in Revision No. 177 of 1979 but this was also dismissed. Finally S.C.C. Suit for ejectment was decreed by the trial Court on 551980. The tenant filed Revision No. 64/80 and the Revisional Court by the judgment dated 2571980 dismissed the suit on the ground of nonservice of termination notice. The landlady filed Writ Petition No. 9473 of 1980 but it was dismissed by High Court by the judgment dated 291983 with the following conclusion :

?It is, therefore, clear that the plaintiff having failed to discharge the burden of having served the notice under Section 106 of the Transfer of Property Act, the tenancy will not be deemed to have been terminated and consequently the suit for ejectment cannot succeed.

In the circumstances the question of service of notice on each heir pales into in significance. In view of the finding given by the Court below the notice sent by the plaintiff was not even served on the defendant, there is no question of the notice being served on each heir of the deceased Sita Ram. In this view of the matter, the contention of the learned Counsel that the Court below had taken a manifestly erroneous view on the question of service of the notice is without any

basis. The finding by the Court below is in accordance with law and in this view of the matter, I do not find any case made out for interference with the order of the Court below dismissing the suit.

In the result, therefore, the writ petition fails and is dismissed with costs.?

3. It may further be seen that the High Court while dismissing writ petition proceeded on the basis that on the death of tenant his heirs became cotenants and thus each heir had the status of tenant in common and, therefore, service of notice of termination on each heir was essential. The landlady filed Special Leave Petition before the apex Court wherein leave was granted.

4. When the proceedings of S.C.C. Suit were pending in the Court of Judge Small Causes, the U.P. Act No. XIII of 1972, hereinafter referred to as the "New Act", came into force with effect from 15/1/1972 and by Amending Act No. 37 of 1972, Section 43 (2) (rr) was inserted with effect from 20/1/1972. On legal advice, the landlady then filed an application on 29/9/1983 under Section 43 (2) (rr) for enforcement of permission granted under Section 3 (1) of the old Act for eviction of tenant. This application was allowed by the Prescribed Authority by the order dated 12/3/1984, quashing of which has been sought in this writ petition and whose copy has been annexed as Annexure VI to the writ petition.

5. This writ petition was dismissed in default on 5/1/1995. Tenants moved an application for restoration of writ petition which was registered as Civil Misc. Application No. 1575 of 1995 but that application was also rejected by this Court by the order dated 19/2/1996. Against that order the tenants filed Civil Appeal No. 801/1997 arising out of SLP (C) No. 5677 of 1996, before the apex Court. The Hon'ble Supreme Court disposed of appeal restoring writ petition to its original number on certain terms and conditions. It may be relevant to mention also that the Special Leave Petition filed against the judgment of this Court dated 29/9/1983 dismissing Writ Petition No. 9473/80 was dismissed on 19/4/1993 in default.

6. The Court has heard Sri K.M. Dayal, Senior Advocate and Sri Atul Dayal for the petitioners and Sri A.K. Gupta for the landlady/respondent on a number of dates.

7. The main submissions which the petitioners' Counsel have made before this Court were that Section 43 (2) (rr) of the new Act could not be applied to a case where proceedings by way of suit on the basis of permission granted under the old Act were continued and concluded under Section 43 (2) (r) of the new Act, that permission granted by Commissioner under Section 3 of the old Act for filing suit for eviction was utilized by the landlady and the same stood exhausted with the dismissal of suit by Revisional Court's order dated 25/7/1980 and that order became final on account of dismissal of writ petition No. 9473/80 on 2/9/1983 and of Special Leave Petition in default on 19/4/1993; that in any view of the matter application moved under Section 43 (2) (rr) was barred by time as the time limit is of three years from the date of permission given under the old Act became final. In the present case permission was granted on 2/9/1967 whereas application under Section 43 (2) (rr) was filed on 29/9/1983 long after expiry of

period of limitation prescribed under the Proviso to Section 43 (2) (rr). It was further submitted that proviso to Section 43 (2) (rr) applies only to civil proceedings that is proceedings of the Court of first instance, appeal or revision and not of a writ petition. The petitioners' Counsel further submitted that permission was sought against the firm M/s. Mahadeo Prasad Murlidhar through Janki Prasad and not against the original tenant Sita Ram or his heirs whereas application moved under Section 43 (2) (rr) was against the firm and legal heirs of Sita Ram. Therefore, permission granted against the firm could not be enforced against heirs of Sita Ram and accordingly application under Section 43 (2) (rr) was not maintainable. According to Sri Dayal Legislature never contemplated to make a provision that if remedy has been already availed of by filing suit on the basis of permission for eviction granted under the old Act and suit was continued under the provisions of the new Act, and the same was dismissed, the person in whose favour permission was granted under the old Act could be allowed to have a second inning by moving an application under Section 43 (2) (rr).

8. Sri A.K. Gupta learned Counsel for the landladyrespondent in reply argued that permission granted under Section 3 of the old Act to a tenant does not exhaust until the tenant is evicted. According to him Section 43 (2) (rr) as originally stood before its amendment, made a mention that the said provision would apply only where suit on the basis of permission is not filed but the Legislature in its wisdom substituted the said clause with the words, 'Whether or not a suit for eviction of the tenant has been instituted.' Thus according to him the landlord has been provided with two alternative remedies simultaneously on the basis of permission granted under the old Act, he may file a suit and may also move an application to the Prescribed Authority under Section 43 (2) (rr) for the enforcement of permission granted under the old Act for the eviction of tenant. It was further argued that any findings recorded regarding nonmaintainability of suit filed on the basis of permission granted under the old Act will have no bearing on the out come of application moved under Section 43 (2) (rr) of the new Act.

9. On the basis of rival contentions of the learned Counsel for the parties, the following three points require determination :

(1) Whether application of the landlady moved under Section 43 (2) (rr) was not maintainable on account of the fact that prior to its filing, suit for eviction of tenant filed on the basis of permission granted under Section 3 of the old Act was continued under Section 43 (2) (r) of the new Act and had been dismissed and thus permission stood exhausted with the dismissal of suit?

(2) Whether application moved under Section 43 (2) (rr) was barred by time? and

(3) Whether permission granted under Section 3 of the old Act could not be enforced against the petitioners?

Point No. 1:

10. Undisputedly under the old Act the landlord could file suit for ejectment of the tenant on the basis of permission granted under Section 3, after terminating his tenancy by serving a notice under Section 106 of the Transfer of Property Act. In the present case permission to evict the tenant was granted in favour of the landlady by the order of Commissioner dated 21/9/1967 and there is no dispute that the said permission became final with the dismissal of representation under Section 7F of the old Act and writ petition filed against the said order. Suit No. 335/67 was filed on 8/11/1967 and though the same was decreed by the trial Court on 5/5/1980 but the same was dismissed by Revisional Court by the judgment dated 25/7/1980, on the ground that the suit was barred on account of notice of ejectment having not been served on each heir of deceased Sita Ram. That judgment of the Revisional Court was upheld by this Court in its order dated 2/9/1983 in Writ Petition No. 9473/80. Against the judgment of this Court, Special Leave Petition was filed in apex Court by the landlady wherein leave was granted. During the pendency of the said leave petition, the landlady on 20/9/1972 moved application under Section 43 (2) (rr) of the new Act with the prayer that permission granted under the old Act for the eviction of tenant be enforced. The S.L.P. was dismissed by Supreme Court in default on 19/4/1993 that is much after the impugned order dated 12/3/1984.

11. In order to appreciate the rival contentions of the parties it will be relevant to have a look at the relevant provisions of the Act, both Old and New.

Section 3 of the Old Act was as follows:

73. Restrictions on evictions. (1) Subject to any order passed under subsection (3) no suit shall, without the permission of the District Magistrate, be filed in any Civil Court against a tenant for his eviction from any accommodation, except on one or more of following grounds:

(a) that the tenant is in arrears of rent for more than three months and has failed to pay the same to the landlord within one month of the service upon him of a notice of demand;

(b) that the tenant has wilfully caused or permitted to be caused substantial damage to the accommodation;

(c) that the tenant has, without the permission in writing of the landlord, made or permitted to be made any such construction as, in the opinion of the Court has materially altered the accommodation or is likely substantially to diminish its value;

(d) that the tenant has created a nuisance or has done an act, which is inconsistent with the purpose for which he was admitted to the tenancy of the accommodation, or which is likely to affect adversely and substantially the landlord's interest therein;

(e) that the tenant has on or after the 1st day of October, 1946, sublet the whole or any portion of the accommodation, without the permission of the landlord;

(f) that the tenant has renounced his character as such or denied the title of the landlord and the latter has not waived his right or condoned the conduct of the tenant;

(g) that the tenant was allowed to occupy the accommodation as part of his contract of employment under the landlord and his employment has been determined.

Explanation. For the purposes of sub section (e) lodging a person in a hotel or a lodging house shall not be deemed to be subletting.

(2) Where any application has been made to the District Magistrate for permission to sue a tenant for eviction from any accommodation and the District Magistrate grants or refuses to grant the permission, the party aggrieved by his order may within 30 days from the date on which the order is communicated to him apply to the Commissioner to revise the order.

(3) The Commissioner shall hear the application made under subsection (2), as far as may be, within six weeks from the date of making it, and he may, if he is not satisfied as to the correctness, legality or propriety of the order passed by the District Magistrate or as to the regularity of proceedings held before him, after or reverse his order, or make such other order as may be just and proper.

(4) The order of the Commissioner under subsection (3), shall, subject to any order passed by the State Government under Section 7F, be final.?

Section 7F is also extracted below :

?The State Government may call for the record of any case granting or refusing to grant permission for the filing of a suit for eviction referred to in Section 3 or requiring any accommodation to be let or not to be let to any person under Section 7 or directing a person to vacate any accommodation under Section 7A and may make such order as appears to it necessary for the ends of justice.?

12. The Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. 13 of 1972) to provide, in the interest of the 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, came into force with effect from 15/7/1972.

13. Chapter IV of the new Act deals with Regulation and Eviction. Section 20 creates a bar for filing suit for eviction of tenant excepting on specified grounds mentioned in subsection (2) thereof. A plain reading of Section 20 thus leaves no room of doubt that under the new Act suit for eviction of tenant could be instituted after determination of his tenancy on one or more of the grounds mentioned in subsection (2) of Section 20 and not otherwise. There is yet another provision which deals with the right of the landlord to evict his tenant from the building under his tenancy and that is contained in Section 21. Under this provision the landlord can get his tenant evicted on the ground of bona

fideneed.

14. Section 43 of the new Act deals with repeal and savings. By subsection (1) of this Section, the U.P. Act No. III of 1947 was repealed. Subsection (2) of Section 43 is a saving clause and by enacting this, the Legislature intended to apply the provisions of old Act with necessary amendments and modifications. Though by virtue of subsection (1) old Act has been repealed yet by sub section (2), notwithstanding such repeal, some provisions of the old Act have been adopted and saved with necessary modifications.

15. Section 43 (2) (a) makes a provision for an automatic conversion of application under Section 3 of the old Act into an application under Section 21 of the new Act and if application under Section 3 of the old Act was pending immediately before the commencement of the new Act that shall stand transferred to the Prescribe Authority and shall be deemed to be an application under Section 21 of the new Act to be disposed of in accordance with the provisions of the new Act.

16. It is not necessary to make a mention of other saving clauses as they are not relevant for the purpose of the case before us and a mention is made only to those clauses which have a bearing on the issues involved in the present case.

17. Section 43 (2) (r) was amended twice. After the enforcement of U.P. Civil Laws Amendment Act, 1972 with effect from 2091972 the words "and likewise.....after the commencement of this Act" were deleted and substituted. The U.P. Civil Laws Amendment Act,1973 substituted the words, "the commencement of this Act" with the words "the commencement of the U.P. Civil Laws Amendment Act, 1972". After these amendments, clause (r) of Section 43 (2) existed as under :

"any suit for the eviction of a tenant instituted with the permission referred to in Section 3 of the old Act or any proceeding arising out of such suit, pending immediately before the commencement of the U.P. Civil Laws Amendment Act, 1972 (U.P. Act 37 of 1972) may be continued and concluded as if the said Act had not been passed."

This clause was further amended by U.P. Act No. 28 of 1976. Clause 4 of Section 23 of the Amended Act provided that for the words "as if this Act had not been passed" the words "in accordance with the old Act which shall for that purpose, be deemed to continue to be in force" were substituted and the amended clause (r) as new exists is extracted below :

"any suit for the eviction of a tenant instituted with the permission referred to in Section 3 of the old Act or any proceeding arising out of such suit, pending immediately before the commencement of the U.P. Civil Laws Amendment Act, 1972 (U.P. Act 37 of 1972) may be continued and concluded in accordance with the old Act which shall for that purpose be deemed to continue to be in force."

18. Section 43 (2) (rr) was not contained in U.P. Act No.13 of 1972 as it

originally stood and it was inserted by U.P. Civil Laws Amendment Act, 1972 which came into force with effect from 2091972. The clause which was originally brought on the statute was as follows :

?Where any permission referred to in Section 3 of the old Act has been obtained on any ground specified in subsection (1) or subsection (2) of Section 21, and has become final, either before the commencement of the said Act, or in accordance with the provisions of this subsection, after the commencement of this Act, and a suit for the eviction of the tenant has not been instituted, the landlord may apply to the Prescribed Authority for his eviction under Section 21, and thereupon the Prescribed Authority shall order the eviction of the tenant from the building under tenancy, and it shall not be necessary for the Prescribed Authority to satisfy itself afresh as to the existence of any ground as aforesaid, and such order shall be final and shall not be open to appeal under Section 22.?

(Underlined by Court)

Under this provision as application under clause (rr) could be moved before the Prescribed Authority for eviction of the tenant under Section 21 on the basis of permission obtained under Section 3 of the old Act on any ground specified in subsection (1) or (2) of Section 21 of the new Act only if a suit for eviction had not already been instituted. This clause further did not prescribe any period of limitation for moving the application.

19. The Legislature in its wisdom amended this clause by U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act 28 of 1976 and now the amended clause (rr) runs as under :

?Where any permission referred to in Section 3 of the old Act has been obtained on any ground specified in subsection (1) or subsection (2) of Section 21, and has become final, either before the commencement of the said Act, or in accordance with the provisions of this subsection, after the commencement of this Act, (whether or not a suit for the eviction of the tenant has been instituted), the landlord may apply to the Prescribed Authority for his eviction under Section 21, and thereupon the Prescribed Authority shall order the eviction of the tenant from the building under tenancy, and it shall not be necessary for the Prescribed Authority to satisfy itself afresh as to the existence of any ground as aforesaid, and such order shall be final and shall not be open to appeal under Section 22:?

(Provided that no application under this clause shall be maintainable on the basis of a permission granted under Section 3 of the old Act, where such permission became final more than three years before the commencement of this Act):

(Provided further that in computing the period of three years, the time during which the applicant has been prosecuting with due diligence of any civil proceeding whether in a Court of first instance or appeal or revision shall be excluded).

Clause (s) of Section 43 (2) runs as under :

?any suit for the eviction of a tenant instituted on any ground mentioned in subsection (1) of Section 3 of the old Act, or any proceeding out of such suit (including any proceeding for the execution of a decree passed on the basis of any agreement, compromise or satisfaction), pending immediately before the commencement of this Act, may be continued and concluded (in accordance with the old Act which shall, for that purpose, be deemed to continue to be in force).?

From a reading of the above provisions it is thus clear that under the scheme of subsection (2) of Section 43, clause (r) and clause (s) deal with the pending suits for eviction. Clause (r) applies to pending suits filed on the basis of permission obtained under Section 3 of the old Act while clause (s) applies to pending suits for eviction instituted on any ground specified in clauses (a) to (g) of Section 3 of the old Act. Such suits under both the clauses were to be continued and concluded under the old Act notwithstanding its repeal by the new Act.

20. A beneficial legislation in favour of landlord was then enacted in the form of clause (rr) which empowers a landlord to move an application for the enforcement of order granting permission for eviction of tenant under Section 3 of the old Act in a specified situation, that is, where permission was obtained on any of the grounds mentioned in subsection (1) or subsection (2) of Section 21 of the new Act. Thus, it is clear that in cases where landlord obtained permission for eviction of the tenant under Section 3 of the old Act two separate remedies are made available to the landlord, one in relation to permission granted on any ground specified in subsection (1) or subsection (2) of Section 21 and the other in respect of permission obtained on any other ground not covered by Section 21 (1) or Section 21 (2) of the new Act. To the former class of permission clause (rr) will apply whereas to other class of permission the remedy lies in taking recourse to clause (r) of Section 43 (2) of the new Act and to such permission clause (rr) will have no application.

21. A perusal of the record shows that an application under Section 3 of the old Act was moved by Smt. Sona Devi against the firm M/s. Mahadeo Prasad Murlidhar through Janki Prasad, Proprietor and Karta of Hindu joint family, Mahadeo Prasad and Murlidhar alleging therein that she was the owner of the houses in question wherein opposite party was tenant at the rate of Rs. 44/per month; that she has no property of her own for her residence and for carrying on business and she was any how passing her time with her parents as she was not on corcial relations with her husband; and that the opposite party has extensive properties of their own to which the Rent Control Act did not apply. In short her case was that she has obtained the property in dispute as her sole dwelling and source of livelihood and she desires to live therein and to establish her business by which she could support herself. The said application was dismissed but in revision the same was allowed by Commissioner, Gorakhpur by the order dated 21/9/1967. The operative portion of the said order runs as under :

?In these circumstance the applicant does have genuine need of this house and the opposite party being in possession of numerous extensive properties of his

own, has no need of these premises at all. I, therefore, consider that the rent control officer erred in refusing permission under Section 3 of the Act. I set aside his order and grant to the applicant permission to proceed in accordance with law for the ejectment of the opposite party from the premises in question.

Application allowed.?

22. From the above it is clear that in the present case permission to evict tenant under Section 3 of the old Act was obtained on the grounds of bona fide need for residential and nonresidential purpose. These grounds are specified in clause (a) of subsection (1) of the Section 21 of the new Act.

23. In the present case, suit was instituted by the landlady in Civil Court on 8/11/1967 on the basis of permission granted by Commissioner under Section 3 of the old Act. The Civil Laws Amendment Act, 1972 came into force with effect from 20/9/1972. On this date the said suit was still pending in the trial Court as the same was decreed on 5/5/1980. It may be mentioned for repetition sake that the said suit though was decreed by trial Court but was dismissed by Revisional Court's order dated 25/7/1980 and writ petition 9473/80 filed by the landlady was also dismissed on 29/1/1983 on the ground that on the death of Sitaram, his each heir was entitled to a notice under Section 106 of the Transfer of Property Act. Against the judgment of the High Court, the landlady preferred Special Leave Petition before the apex Court wherein leave was granted. Thereafter on 29/9/1983 the landlady under legal advice filed application under Section 43 (2) (rr) of the new Act for the enforcement of eviction order passed under Section 3 of the old Act by the Commissioner, which has been allowed by the impugned order.

24. Challenging the validity of this order it was argued by learned Counsel for the petitioners that once permission granted by the Commissioner for filing suit for eviction had been utilized and exhausted with the dismissal of suit by orders of Revisional Court and of this Court in writ petition, thereafter recourse to Section 43 (2) (rr) was not legally permissible.

25. A Full Bench of this Court in *Bansi Lal Sahuv. The Prescribed Authority, Allahabad and another*, 1980 ARC 169, considered the scope of Section 43 (2) (rr). The question referred to Full Bench was :

?Whether the Prescribed Authority, while exercising jurisdiction under clause (rr) of Section 43 (2) of 1972 Act, has jurisdiction to take subsequent events into consideration or to modify the permission granted under Section 3 of the 1947 Act and to evict a tenant from a portion of the building even though permission may have been granted in respect of the entire building.?

26. It was held by the Full Bench that the conditions for the application of clause (rr) are :

(a) permission under Section 3 of the old Act, namely Act of 1947, has been granted and has become final;

(b) the permission has been granted on any ground specified in subsection (1) or subsection (2) of Section 21 of this Act.

Then, if the landlord applies for the eviction of the tenant under Section 21, the Prescribed Authority shall order his eviction from the building under tenancy.

It was also held :

?The opening clause of this provision entitles the Prescribed Authority to find that the permission under Section 3 of the old Act, has been obtained on any ground specified in sub section (1) or subsection (2) of Section 21 of the present Act and that the same has become final. This is the beginning as well as the end of his jurisdiction to record findings. If the conclusion is in the affirmative it has no discretion but to order the eviction of the tenant from the building under tenancy.?

27. Taking note of last part of clause (rr) ?and it shall not be necessary for the Prescribed Authority to satisfy afresh as to the existence of any ground as aforesaid? it was held that the Prescribed Authority has no jurisdiction to reopen the question and satisfy itself afresh that the grounds on which permission for eviction was granted do exist. The order granting permission under Section 3 of the old Act for the purpose of Section 43 (2) (rr) is final and conclusive. The jurisdiction of Prescribed Authority is only to see that the grounds on which permission was obtained answer the discription of the grounds specified under subsection (1) or subsection (2) of Section 21 of the new Act. If the Prescribed Authority is so satisfied then it has no option but to order eviction of the tenant from the building under tenancy.

28. In the case of K.L. Dhingra and another^{v.} The Prescribed Authority, Meerut and others, 1979 ARC 146, it was held that the proceedings before the Prescribed Authority under Section 43 (2) (rr) of the U.P. Act No. XIII of 1972 are in the nature of execution proceedings.

From the side of landlady reliance was also placed on a Division Bench decision of this Court in Abdul Moeed and others^{v.} Prescribed Authority, Lucknow and another, 1980 ARC 586. In that case landlords' application moved under Section 43 (2) (rr) was dismissed by the Prescribed Authority on two grounds, firstly, that the landlords had earlier filed an ejectment suit unsuccessfully on account of which the permission granted in their favour under Section 3 of the old Act had exhausted itself; and secondly that it was not shown that the permission had been granted on any of the grounds mentioned in Section 21 (1) (a) or (b) of the new Act.

29. Agreeing with the view expressed by this Court in Pahlad Das^{v.} Ganga Saran and another, AIR 1958 Allahabad 774 and Mohammad Swalleh^{v.} IIIrd Additional District Judge and others, 1978 ARC 507, the Court rejected the first ground that on account of landlords having filed an ejectment suit unsuccessfully on the basis of permission granted in their favour under Section 3 of the old Act, the

permission stood exhausted and on that account application under Section 43 (2) (rr) was not maintainable. However the writ petition was allowed on the second ground, that is, the permission granted under Section 3 of the Act was not covered by any of the grounds mentioned in Section 21 (1) of the Act.

30. In the case of Mohammad Swalleh(supra), the landlady filed an application under Section 3 of the old Act which was allowed by the Commissioner. Revision filed before the State Government was also rejected and thus permission became final. In pursuance of the said permission landlady filed suit for eviction of the tenants. Landlady then filed an application for withdrawal of suit on the ground that as new Act of 1972 has been amended, she would file an application for the enforcement of the order granting permission to her under Section 3 of the old Act. The trial Court dismissed the suit on 24/9/1973 holding that as the cause of action on which suit was filed was rendered infructuous, the suit was liable to be dismissed. After the dismissal of suit, the landlady filed an application under Section 43 (2) (rr) for eviction of tenants from the tenanted accommodation. That application was resisted by the tenants on the ground that as the suit filed by the landlady on the basis of permission granted under Section 3 of the old Act had been dismissed the application filed under Section 43 (2) (rr) was not maintainable. The tenants objection was upheld by the Prescribed Authority and the application moved under Section 43 (2) (rr) by the landlady was rejected. Against that order, appeal filed by the landlady was allowed. Against this order the tenants approached this Court in writ jurisdiction. The main controversy that arose before this Court was whether application filed by landlady under Section 43 (2) (rr) was not maintainable on the ground that the permission had been utilized already by filing suit for ejection and therefore another proceeding under clause (rr) on the basis of the same permission could not be largely initiated. Taking note of the amendment brought in Section 43 (2) (rr) of the new Act whereby the words 'whether or not a suit for the eviction of the tenant has been instituted?' were inserted, this Court held that the said amendment was retrospective and rejected the tenant's contention that once on the basis of permission obtained under Section 3 of the old Act, suit has been filed and dismissed, the permission could not form a subjectmatter of second proceeding.

31. In the case of Rameshwar Dayalv. Smt. Mohania, 1963 ALJ 1998, a Division Bench of this Court dealt with the same aspect and held:

'Normally, therefore, if permission is once obtained it should enure till the purpose for which the permission had been obtained is achieved.'

32. In another case of D.K. Soniv. P.K. Mukerji and others, 1983 ARC 506, it was held that unlike an application under Section 21 (1) (a) of the new Act, an application under Section 43 (2) (rr) read with Section 21 (1) is in the nature of an application for execution of the permission granted under Section 3 of the old Act, which has been made final by sub section (4) thereof. In D.K. Soni's case reliance was also placed on the decision in Chhotey Lalv. Sheo Shankar, 1950 ALJ 455. In Chhotey Lal's case, after obtaining permission for filing suit for

ejectment, the landlord gave a notice to the tenant terminating his tenancy and then filed suit for ejectment. But after he had given notice of termination of tenancy the landlord accepted rent from the tenant and on the view that this acceptance of rent could be a bar to his success in the suit, he made an application for withdrawal of the suit with permission to file a fresh suit which was granted and the suit was withdrawn. Thereafter the landlord gave a fresh notice of termination of tenancy and filed another suit on the basis of the same permission. It was urged on behalf of the tenant that the second suit was not maintainable because the earlier suit filed on the basis of the same permission had not fructified, having been withdrawn. This plea was repelled and it was held that the mere fact that a second notice to quit was given when the first notice was found defective did not affect the permission which had been granted by the District Magistrate, unless the permission was conditional and that condition was broken. On the finding that in that case permission was unconditional, it was held that the permission, notwithstanding the fact that the earlier suit had not been fructified was in full force and had not exhausted itself. (In the present case also no condition whatsoever was attached to the permission granted to the landlady under Section 3 of the old Act).

33. Case of D.K. Soni was taken to the apex Court in appeal against the judgment of Allahabad High Court but appeal was dismissed as is clear from the decision reported in 1987 (2) ARC 477.

34. There is yet another decision for consideration. In Jagjit Prakash v. Prescribed Authority, Bulandshahar and others, 1981 ARC 541, a Division Bench of this Court had the occasion to examine the import of provisions of Clause 43 (2) (rr). In that case plaintiff filed suit for eviction of the tenants in the year 1972. Suit was decreed on 8/4/1976. Defendant-tenant filed revision but the same was dismissed on 11/2/1977. They came in revision before the High Court which was allowed and case was remanded back to the trial Court by the order dated 29/7/1978. In August, 1978, the landlord applied for an order of eviction of tenants under clause (rr) of Section 43 (2) of the new Act. The application was dismissed by the Prescribed Authority on the ground that since the suit for ejectment was pending in the regular Civil Court, an application under clause (rr) of Section 43 (2) was not maintainable. Against this order the landlord filed writ petition in this Court. The Division Bench held as under :

?The intention of the legislature, while enacting clause (rr) as it stood prior to its substitution by U.P. Act No. 28 of 1976 was that an application under clause (rr) will not be maintainable if a suit for the eviction of the tenant had been instituted. It was the institution of the suit which was the material thing. Its pendency or disposal may also be material or relevant. By the Amending Act of 1976 the condition was repealed. Now, an application under clause (rr) would be maintainable whether or not a suit has been instituted. If the institution of the suit is irrelevant for the maintainability of the application under clause (rr), it does not stand to reason that pendency of the suit for eviction would have any

effect. The Legislature intent in this respect is clear. It has taken a clear departure from the original intention. Now, the intention seems clear that institution of a civil suit for the eviction of the tenant is immaterial and in spite of a civil suit having been instituted an application under clause (rr) will be maintainable. The Legislature has now provided an alternative relief or remedy to a landlord who has obtained permission under Section 3 of the old Act. It is wellknown that a suit takes a long time and a decree that had been passed would be subject to appeal and second appeal. The Legislature wanted to short circuit the delay which is caused in the disposal of suits. We are hence satisfied that the pendency of the civil suit was no bar to the maintainability of the application. The Prescribed Authority was, in law not justified in holding that the pendency of the suit in regular Civil Court would operate as bar to the maintainability of the application under Section 43 (2) (rr) of the Act.?

35. The other case relied on by learned Counsel for the landlady respondent is Panna Lal Sonkarv. The Prescribed Authority (Munsif West), Allahabad and another, 1984 (2)ARC 457. In this case the same holding was reiterated that an application under Section 43 (2) (rr) in a sense is an application for execution of the permission granted under Section 3 of the old Act.

36. In Tara Chandv. Prescribed Authority, Meerut and others, 1984 (2) ARC 288, a Division Bench of this Court held that Section 43 (2) (rr) confers power on the Prescribed Authority to summarily evict a tenant if the conditions prescribed therein are satisfied. According to the said provision, a tenant can be evicted summarily if the permission under Section 3 of the old Act had been obtained on any of the grounds specified in subsection (1) or subsection (2) of Section 21 of the new Act and the order had become final before the commencement of the new Act.

37. The apex Court in a recent decision in Kush Saigal and othersv. M.C. Mitter and others, 2000 (1) ARC 593, brought out a distinction between clause (r) and clause (rr). It was held that both these clauses operate in two different fields. Clause (r) applies to a situation where ground on which permission was obtained under the old Act under Section 3 is not covered by any ground specified in Section 21 (1) or Section 21 (2) of the new Act and in that situation suit, if filed on the basis of that permission has to be continued and concluded under the old Act which has been fictionally kept alive in spite of its repeal. Such a permission is not executable under clause (rr). On the contrary if the ground on which permission was granted under the old Act is covered by any of the grounds mentioned in Section 21 (1) or Section 21 (2), it is executable under clause (rr). The apex Court after examining various provisions of the old Act and the new Act held that the requirements for the applicability of Section 43 (2) (rr) would be :

- (a) There should have been a permission obtained under Section 3 of the old Act;
- (b) The permission should have been obtained on any ground specified in subsection (1) or subsection (2) of Section 21 of the new Act;

- (c) The permission should have become final
- (i) either before the commencement of the new Act, or
- (i) after the commencement of the new Act, under this subsection,

It was further held :

?If the above conditions are satisfied, then the landlord, may even though a suit on the basis of the permission was filed or not filed, apply to the Prescribed Authority for the eviction of the tenant and the Prescribed Authority shall order eviction of the tenant from the accommodation in his tenancy. In this process, it will not be necessary for the Prescribed Authority to satisfy itself afresh as to the existence of `any ground aforesaid". The words, namely, ?any ground aforesaid? refer to the grounds mentioned in the earlier part of this clause which in its turn refers to the grounds specified in subsection (1) and subsection (2) of Section 21. That is to say, if the permission granted under the old Act can be correlated or is referable to any ground specified in subsection (1) or sub section (2) of Section 21, it will not be necessary for the Prescribed Authority to be satisfied afresh of the existence of those grounds. In this situation, therefore, what is to be seen is whether the ground on which permission was granted to landlord under Section 3 of the old Act is a ground specified in Section 21 (1) or Section 21 (2) of the new Act.?

38. A perusal of the apex Court decision makes it clear that both the clauses (r) and (rr) of Section 43 (2) of the new Act are distinctive and operate in two separate and different fields. Clause (r) applies only to a situation where the ground on which permission was granted under Section 3 of the old Act is not covered by any ground specified in subsection (1) or (2) of Section 21 of the new Act. Such a permission will not be executable under clause (rr) and the only remedy in relation to such a permission was to file a suit before the commencement of the new Act and if such a suit was filed, it was to be continued and concluded under the old Act despite its repeal by the new Act. On the other hand if the ground on which permission was obtained under Section 3 of the old Act is covered by any one of the grounds specified in subsection (1) or subsection (2) of Section 21 of the new Act, that permission will be executable under clause (rr) irrespective of the fact whether or not a suit had been instituted prior to the commencement of the new Act. Both these clauses thus exclude each other. It is thus apparent that where permission was granted under Section 3 of the old Act, if covered by any of the grounds mentioned in subsection (1) or subsection (2) of Section 21 of the new Act it will be executable under clause (rr) and in relation to such a permission clause (r) will have no application. Thus where even a suit had been instituted prior to the coming into force of the new Act on the basis of permission granted on any ground covered by sub section (1) or subsection (2) of the new Act, it was immaterial and perhaps for that reason the Legislature in its wisdom, in clause (rr) substituted the words, ?whether or not a suit for the eviction of the tenant has been

instituted? by the Amending Act No. 28 of 1976 in place of the words ?and a suit for the eviction of the tenant has not been instituted? as they existed in the original enactment brought on the statute by the U.P. Civil Laws Amendment Act, 1972.

39. From the various judicial pronouncements there could be no doubt that the amendment brought into effect by the Amending Act of 1976 is retrospective. It could be not disputed by either of the parties that in the present case the ground on which permission was obtained by the landlord under Section 3 of the old Act was covered by the grounds specified in subsection (1) of Section 21 of the new Act. In this view of the matter Section 43 (2) (rr) squarely applied to the present case. The suit on the basis of permission granted under Section 3 of the old Act, was filed in Civil Court on 8/11/1967, that is much before the commencement of the new Act which came into force from 15/7/1972 or the Amending Act of 1972 which came into force with effect from 20/9/1972 and the Amending Act, 1976 which came into force from 15/7/1976. The said suit was pending on the date of commencement of all these Acts. As the permission granted under Section 3 of the old Act in the present case was covered by the grounds specified in subsection (1) of Section 21 of the new Act, clause (r) had no application to such a permission as per the holding of the apex Court in *Kush Saigal's case* (supra) that clause (r) would apply only to a situation where grounds on which the permission was granted is not covered by Section 21 (1) or 21 (2) of the new Act. As clause (r) had no application in relation to the permission granted in the present case, filing of suit for ejectment of tenants or its result was of no consequence. The resultant effect is that since in the present case permission under Section 3 of the old Act was obtained on a ground covered by the grounds specified under sub section (1) of Section 21 of the new Act, clause (r) had no application, therefore, filing of suit for ejectment on the basis of that kind of permission and its subsequent dismissal on a technical ground of want of service of notice on all cotenants was of no consequence, undisputedly merits of the case pertaining to permission were not examined in that suit. It was not found therein that the permission obtained by the landlady under Section 3 of the old Act on the ground of her bona fide personal need was defective, invalid or illegal. Consequently, the landlady's right to move an application under clause (rr) for the enforcement of order of permission made under Section 3 of the old Act could not be taken away merely on the basis that she had filed suit which was continued and concluded against her as the permission was of a kind envisaged under clause (rr) of Section 43 (2) of the new Act and clause (r) had no application to such a permission.

40. The apex Court in the case of *Kush Saigal and others v. M.C. Mitter and others*, 2000 (1) ARC 593, held as under :

?If the above conditions are satisfied, then the landlord, may even though a suit on the basis of the permission was filed, apply to the Prescribed Authority for the eviction of the tenant and the Prescribed Authority shall order eviction of the

tenant from the accommodation in his tenancy. In this process, it will not be necessary for the Prescribed Authority to satisfy itself afresh as to the existence of 'any ground aforesaid'. The words, namely, 'any ground aforesaid' refer to the grounds mentioned in the earlier part of this clause which in its turn refers to the grounds specified in subsection (1) and subsection (2) of Section 21. That is to say, if the permission granted under the old Act can be correlated or is referable to any ground specified in subsection (1) or subsection (2) of Section 21, it will not be necessary for the Prescribed Authority to be satisfied afresh of the existence of those grounds. What is to be seen is whether the ground on which permission was granted to landlord under Section 3 of the old Act is a ground specified in Section 21 (1) or Section 21 (2) of the new Act.?

It therefore, follows that where the ground on which permission was granted to landlord under Section 3 of the old Act can be correlated or is referable to any ground specified in subsection (1) or subsection (2) of Section 21. The Legislature conferred a right on the landlord, to get the permission order executed in a summary way by moving an application under Section 43 (2) (rr) of the new Act and in such a situation clause (r) had no application. This provision, to me, appears to be a beneficial enactment in favour of the landlord.

41. There is no dispute that the permission obtained by the landlady under Section 3 of the old Act was covered by the grounds specified in subsection (1) of Section 21 of the new Act and the same had become final much before the commencement of the new Act. Thus all the three requirements for the applicability of clause (rr) as mentioned above were satisfied in the present case. Accordingly landlady had a right to apply to the Prescribed Authority under clause (rr) of Section 43 (2) of the new Act for the enforcement of the permission order and the Prescribed Authority was bound to order eviction of the tenant from the accommodation in question.

42. For the reasons stated above the argument of the learned Counsel for the petitioner that Section 43 (2) (rr) of the new Act could not be applied to the present case where proceedings by way of suit on the basis of permission granted under the old Act were continued and concluded under Section 43 (2) (r) and with the dismissal of suit the permission granted under Section 3 of the old Act for filing suit for eviction stood exhausted and could not be put to execution under Section 43 (2) (rr), must be rejected, as I have already held above that to the instant permission Clause 43 (2) (r) had no applicability.

43. Point No. 1 is answered accordingly.

Point No. 2:

44. Now coming to the next submission of the learned Counsel for the petitioner that application moved under Section 43 (2) (rr) was barred by time. It was pointed out by the learned Counsel that the permission was granted by the Commissioner on 21/9/67 whereas application under Section 43 (2) (rr) was moved before the Prescribed Authority on 19/9/83 i.e., long after the expiry

period of limitation prescribed under the proviso, which is three years.

45. The two provisos attached to Section 43 (2) (rr) are extracted below :

?Provided that no application under this clause shall be maintainable on the basis of a permission granted under Section 3 of the old Act, where such permission became final more than three years before the commencement of the said Act:?

?Provided further that in computing the period of three years, the time during which the applicant has been prosecuting with due diligence any civil proceeding whether in a Court of first instance or appeal or revision shall be excluded.?

46. In the present case permission was granted under Section 3 of the old Act in favour of the landlady by the order of Commissioner dated 21/9/1967. On the basis of that permission suit for eviction was filed on 8/11/1967 which was dismissed on 25/7/1980 and thereafter writ petition was filed and the same was dismissed on 29/1/1983. Against the judgment of the High Court Special Leave Petition was filed before the apex Court wherein leave had been granted. The application under Section 43 (2) (rr) was moved on 29/9/1983 before the Prescribed Authority. On this date when application under Section 43 (2) (rr) was moved S.L.P. in the apex Court was pending.

47. The first proviso prescribes a period of three years by laying down that no application under this clause shall be maintainable where such permission became final more than three years from the date of commencement of the Act. In other words where permission had become final more than three years before the date of commencement of the Act, the landlord cannot avail of the right to get permission order enforced under clause (rr). It has not been disputed by the learned Counsel for the landlady that permission granted in favour of the landlady under Section 3 of the old Act had become final much before three years from the date of commencement of the new Act. However from her side reliance has been placed on the second proviso which lays down that in computing the period of three years, the time during which the landlord has been prosecuting with due diligence any civil proceeding whether in a Court of first instance or appeal or revision shall be excluded.

48. It was submitted by Sri A.K. Gupta, learned Counsel for the landlady/respondent, that the landlady has been prosecuting civil proceeding diligently from 1967 to 29/1/1983 when writ petition filed by her was dismissed by this Court upholding the judgment of the Revisional Court. There is no dispute that against the judgment of the High Court Special Leave Petition was filed before the apex Court and therein leave had been granted and the same was pending when application under Section 43 (2) (rr) was moved before the Prescribed Authority on 29/9/1983. Before the Prescribed Authority also this plea of limitation was raised and it has been held by the Prescribed Authority that the landlady had been prosecuting civil proceeding with due diligence in the Court of first instance, revision and writ jurisdiction of this Court. There is no averment in the writ petition that the landlady was not pursuing civil proceedings with due

diligence. In the counteraffidavit it was specifically averred in paragraphs 11 and 22 that the landlady had been prosecuting civil proceedings with all due diligence. These averments have not been specifically denied in the rejoinder affidavit filed on behalf of the tenant petitioner.

49. It was argued from petitioners' side that second proviso to Section 43 (2) (rr) refers to exclusion of time spent in prosecuting with due diligence any civil proceeding in the Court of first instance or appeal or revision. It makes no reference to time spent in writ jurisdiction and according to the learned Counsel for the petitioners though appeal or revision could be said to be continuation of suit but not the writ petition. From the side of respondent landlady reliance was placed on a Division Bench decision of this Court in *Salamat Ullah v. Prescribed Authority* and another, 1980 AWC 318 (DB), and it was submitted that while computing period of limitation of three years as provided in the proviso to Section 43 (2) (rr), time spent in prosecuting writ petition is also liable to be excluded. In the case of *Salamat Ullah* (supra) landlord obtained permission under Section 3 of the old Act on 17/2/1967. The permission was obtained on the ground that the landlord needed two shops for his personal occupation. *Salamat Ullah*'s tenant went up in revision before the Commissioner who by his order dated 30/12/1967 held that the need of the landlord could be satisfied if the tenant surrendered one of the two shops to him. He accordingly directed the tenant to surrender at least one shop to the landlord within a period of 15 days failing which permission granted by the Rent Control and Eviction Officer would become fully effective. The tenant approached the State Government unsuccessfully. He then filed writ petition before the High Court which too was dismissed on 27/11/1969. Special appeal filed against the judgment of Single Judge was also eventually dismissed on 12/10/1976. Thereafter the landlord moved an application under Section 43 (2) (rr) of the new Act for execution of the permission granted under Section 3 of the old Act for tenant's ejection. The application was resisted by the tenant on the ground that permission to file suit for his eviction had become final by 16/9/1968 when the State Government rejected his representation under Section 7F of the Act, therefore, the application made under Section 43 (2) (rr) on 6/1/1967 was barred by time. This objection of tenant was rejected by the Prescribed Authority. Against that order, the tenant filed writ petition before the High Court which came up for decision before a Division Bench of this Court. It was contended on behalf of the tenant that since permission granted by the Rent Control and Eviction Officer had become final on 16/9/1968, application made under Section 43 (2) (rr) was barred by time. This Court repelled the said contention. Placing reliance on the decisions of the apex Court in the case of *Ramesh v. Genda Lal Moti Lal Patni*, AIR 1966 SC 1445, and *Arbind Kumar Singh v. Nand Kishore Prasad*, 1968 SC 1227, it was held that it could not be doubted that in between the year 1967 to 1976 the landlord had been with due diligence prosecuting civil proceedings in the High Court in writ petition and Special Appeal. The proceedings of the writ petition and of special appeal were civil proceedings in the Court of first instance and in appeal. The

High Court excluded the period during which writ petition and the special appeal filed by Salamatullah tenant remained pending in the High Court and the application moved under Section 43 (2) (rr) was held to be within time.

50. From petitioners' side reliance was placed on a learned Single Judge decision in Lt. Col. Kripal Singh Kherav. Additional District Judge (Special Judge), Bareilly and others, 1985 (2) ARC 127. This case is hardly of any help to the petitioner as the Court in that case was considering the provisions of Sections 39 and 40 of the new Act and it was held that Section 39 applies to suits whereas Section 40 applies to an appeal or revision arising out of a suit for ejectment of a tenant from any building to which the old Act did not apply and which was pending on the date of commencement of the new Act. There was no mention of "writ petition" in either Section 39 or Section 40 of the Act and thus it was not possible to apply Section 39 or Section 40 to a writ.

51. In view of the above said Division Bench decision in Salamat Ullah's case, the submission of the learned Counsel for the petitioners that the application moved under Section 43 (2) (rr) was beyond time and is liable to be rejected.

52. Point No. 2 is also answered against the petitioners.

Point No. 3:

53. Lastly, it was submitted by learned Counsel for the petitioners that in the present case permission for eviction was sought under Section 3 of the old Act against the firm M/s. Mahadeo Prasad Murlidhar through Janki Prasad and not against the tenant Sita Ram or his heirs whereas the application moved under Section 43 (2) (rr) was sought to be enforced against the firm and legal heirs of Sita Ram and according to his submission the permission granted against the firm could not be enforced against the heirs of Sita Ram and on that ground application under Section 43 (2) (rr) was not maintainable. A perusal of record shows that landlady's application under Section 3 of the old Act was against the firm M/s Mahadeo Prasad Murlidhar through Sri Janki Lal, Sri Mahadeo Prasad son of Late Sita Ram and Murlidhar son of Janki Lal. In the revision filed before the Commissioner again they were made opposite parties and permission was granted in favour of the landlady for eviction of all the opposite parties. On the basis of the permission suit No. 335/67 was filed by the landlady against the firm Mahadeo Prasad Murlidhar through Janki Prasad Proprietor and Karta of Hindu Joint Family, Janki Prasad son of Bansidhar, Mahadeo son of Sita Ram, Murlidhar, Vishwanath and Sri Ram all sons of Janki Prasad. After the suit was decreed all these defendants filed revision before the District Judge which was decided in their favour. The landlady then filed Writ Petition No. 9473/83 in the High Court impleading all those persons and since Janki Prasad had expired by then Dukhharan and Smt. Ginni Devi were also impleaded. The present petition has been filed by firm M/s Mahadeo Prasad Murlidhar through Sri Mahadeo Prasad and Mahadeo Prasad S/o Late Sita Ram, Murlidhar, Vishwanath and Sri Ram. Thus it cannot be said that permission granted in favour of the landlady under

Section 3 of the old Act was only against the firm M/s Mahadeo Prasad Murlidhar and not against other petitioners. As already pointed out above in an application moved under Section 43 (2) (rr) of the new Act it was not open for the Prescribed Authority to go behind the order granting permission under Section 3 of the old Act for the eviction of the tenants. Since permission was also granted against other petitioners or their predecessors, in addition to petitioner No. 1 the firm M/s Mahadeo Prasad Murlidhar, the Prescribed Authority was bound to enforce the permission order passed under Section 3 of the old Act against all the petitioners. This submission thus also carries no weight.

54. Point No. 3 is answered accordingly.

55. For the reasons assigned above, this writ petition fails and is hereby dismissed. In peculiar circumstances of the case, however, no order as to costs is made.