

(2004) 12 UK CK 0040
In the Uttarakhand High Court
Case No : Writ Petition No. 951 of 2004

Mohan Singh Negi

APPELLANT

Vs

Ramesh Chandra Tiwari

RESPONDENT

Date of Decision : 23-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 11, 12, 13, 15, 16

Citation : (2005) 1 ARC 471 : (2005) 3 UC 1649 : (2005) 1 UD 670

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : Anil Dabral, for the Appellant; Rajesh Joshi, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Tandon, J.—Heard Sri Anil Dabral, Counsel for the petitioner and Sri Rajesh Joshi, Counsel for the respondent.

2. By the present writ petition, the petitioner has prayed for quashing of the order dated 9th October, 2003 passed by the Rent Control and Eviction Officer as well as the orders dated 27th September, 2004 and 28th September, 2004 passed by the District Judge, Nainital.

3. Briefly stated, the proceedings for vacancy were initiated in respect of the property situate at 265 Jai Lal Shah Bazar, Mallital, Nainital. Petitioner alleges himself to be the tenant and is running a shop in one room of accommodation on the rent of Rs. 600/- annually since 1979. The father of the petitioner was the tenant of Mr. M.L. Shah and he was running a shop.

4. On 16th March 1990, the shop was declared to be vacant and the same was allotted to one Sri Subodh Kumar Upadhyay. Aggrieved by the said order, a revision was preferred by Smt. Laxmi Devi prospective allottee before the District Judge, Nainital being Revision No. 32 of 1992. The Special Judge, Nainital on

29th August, 1995 rejected the revision in absence of parties. It has been further submitted by the landlord that Sri Subodh Kumar Upadhyay had never been the tenant of the shop in question as he never occupied the shop. Apart from this, the period, which was fixed, for taking the possession of the shop has also expired.

5. Respondent-landlord Sri Ramesh Chandra Tiwari has submitted that he has purchased the shop by virtue of Sale Deed dated 6th January, 1994 and has filed the application on 9th June, 1997 of the release of the shop in his favour.

6. The landlord/respondent has stated in his release application that he is an employee (Clerk) of the Academy and his wife is employed in B.D. Pandey Hospital and he has got a son, who is studying in 7th Standard and there is no separate room for his study, due to which his study is getting badly affected. He has only four small rooms, out of which one room is being caused as kitchen and remaining three are used as bedrooms.

7. According to the case of the landlord, time-to-time guests or relatives used to visit his house, but there is no separate place for their stay. He is suffering from paucity of the accommodation and therefore, he requires the premises for his use and occupation.

8. On the aforesaid application of the landlord for release of the accommodation, the Rent Control and Eviction Officer has deputed the Inspector concerned.

9. A report was submitted on 16th June, 1997 on the basis of the aforesaid inquiry done by the Rent Control Officer. The written, statements of Om Pal Singh, Sri Mohan Singh son of Sri Ram Singh Negi, Sunil Kumar Verma, Madan Mohan Pandey and Sri Ramesh Chandra Tiwari were enclosed with the Inspection Report dated 16.6.1997. The same are quoted below:-

10. On 13th June, 1997, the Inspector has submitted his report. The same is quoted below:-

mDr nqdku ua? 265 ds ?e esa voxr djuk gS fd dk;kZy; vfHkys[kksa ds vuqlkj mDr nqdku uEcj 265 ftlds rRdkuhu Hkou Lokeh Jh ,y?e? lkg efUnj uSuhrky Fks o ftlesa Jh jke flag vukf/k?r fdjk;snkj gSa] dks bl dk;kZy; ds i=kad 387@jS?d? @fnukad 17-3-1999 }kjk m?iz? "kgjh Hkou ?fdjk;s ij nsus fdjk;k rFkk csn[kyh dk fofu;eu? vf/kfue; la[k 13] 1972 dh /kkjk 12 (b) ?2? ds vUrxZr fjdR ?kksf"kr fd;k x;k gS o U;k;ky; ftyk iwfrZ izkf/k?r vf/k? ?jS? daV?ksy? uSuhrky ds vkcaVu vkns"k la? 6 fnukad 30 uoEcj 90 }kjk Jh lqcks/k dqekj mik;/k; dks mDr nqdku vkcaVr dh x;h gSA ijUrq mDr vkcaVu vkns"k ds fo:) Jherh y{eh nsoh frokjh IEHkkfor vkcaVh }kjk ekuuh; ftyk tt uSuhrky ds U;k;ky; esa fuxjkuh la[k 32 of1992 Jherh y{eh nsoh frokjh cuke lqcks/k dqekj mik;/k; rFkk vU; nk;j dh x;hA mDr ds i"pkr U;k;ky; Lis"ky tt uSuhrky ds U;k;ky; ds vkns"k fnukad 28-8-95 }kjk vge iSjoh ij mDr fjfotu [kkfjt dj fn;k x;k rFkk i=koyh bl U;k;ky; dks okil izsf"kr dj nh x;hA

vc Jh jes"k pUnz frokjh }kjk mDr nqdku la[k 265 dks vius i{k esa fueqZDr fd;s

tkus gsrq vkosnu fd;k gS D;ksafd mDr nqdku ds Hkou Lokheh os Lo;a gks x;s gSa] ftldh iqf"B esa muds }kjk mi fucU/ku uSuhrky esa dh x;h jftLV?h fnukad 6-1-94 dh Nk;k izfr izLrqr dh gS] voyksdukFkZ i=kad ^^[k**

mDr nqdku ds lEcU/k esa ekSds ij igq?pdj tkap dh x;hA tkap esa ;g ik;k x;k fd mDr nqdku ds i`"B Hkkx esa vFkkZr 283@1 esa Jh jke pUnz frokjh lifjokj fuokl djrs ik;s x;sA bl Hkkx esa pkj NksVs dejs] ,d fdpu] ,d ckFk:e] ,d ySfV?u o NksVk cjenk gS rFkk nqdku uEcj 265 o mDr Hkou ds e/; ydM+h dk ikVhZ"ku gSA mDr nqdku uEcj 265 dks Jh jke flag usxh o Jh jke flag usxh ds iq= Jh eksgu flag usxh pykrs ik;s x;sA muds c;ku fy;s x;s] mlds }kjk voxr dj;k;k x;k fd mDr nqdku muds firk }kjk yxHkx 15 o"kksZa ls pyk;h tk jgh gS orZeku esa muds firkth 4 ekpZ 97 ls ykirk gS mudks dksbZ irk ugha py jgk gS rFkk nqdku dk fdjk;k ftyk tt dk;kZy; usSuh esa tek fd;k tkrk gSA mDr nqdku ds ,d NksVs yxHkx 5*?4* Hkkxr ij LekVZ isUVj dh nqdku Jh vkseiky iq= Jh uRFkq yky pykrs ik;s x;sA Jh vkseiky ds c;ku fy;s x;s] muds }kjk voxr dj;k;k x;k fd os 2 ;k 2 1@2 o"kksZ ls mDr Hkkx ij nqdku dj jgsa gSa nqdku dk ;g Hkkx muds }kjk Jh jke flag usxh ls ?; fd;k x;k gSA**

11. Two witnesses have also supported the inquiry and the statements of Sri Ramesh Chandra Tiwari, Mohan Singh son of Sri Ram Singh Negi and the statements of Sri Sunil Kumar were recorded. It reads as under:-

^^eSa jesa"k pUnz frokjh iq= LoxhZ; xksiky nRr frokjh fuoklh e?ua? 283@1 t;yky "kkg cktkj rYhrky] uSuhrky vki fdjk;k fu;a=.k fujh{kd uSuhrky dks ;g c;ku nsrk gw? fd Hkou la[;k 283@1 rFkk nqdku ua? 265 t;yky "kkg cktkj dks esjs }kjk fnukad 6-2-1994 dks Jherh ft;k "kkg iRuh Jh egsUnz yky "kkg fuoklh gky fnYyh okyksa ls ?; fd;k FkkAnqdku ua? 265 esa Jh jke flag usxh fcuk fdlh vkcaVu ds nqdku pyk jgs gSa] buls esjs }kjk dksbZ fdjk;k ugha fy;k x;k tkrk gS D;ksafd ;s dkuwuu fdjk;snkj ugha gSaA

nqdku ua? 265 dks eSus vius vkoklh; iz;kstu gsrq ?; fd;k Fkka

jesa"k pUnz frokjh

13-6-1997**

^^eSa eksgu flag usxh iq=h Jh jke flag usxh fuoklh jktegy dEikmaM rYhrky ekSds ij vki fdjk;k fu;U=.k fujh{kd uSuhrky dks ;g c;ku nsrk gwa fd mDr nqdku ua? 265 dks esjs firk jke flag usxh 4 ekpZ 97 ls ykirk gSa] mudk dksbZ irk ugha py ik jgk gS] mDr nqdku dk fdjk;k ftyk tt dk;kZy; esa tek fd;k tkrk gSA nqdku ij 3?4 fQV ds Hkkx ij LekVZ isUVj uked nqdku orZeku esa 1 lky ls gekjs }kjk fdjk;s ij nh x;h gSA

eksgu flag usxh

13-6-1997

eSa lquhy dqekj oekZ iq= Jh LoxhZ; jk/ks";ke oekZ e?ua? 245 tbZ yky lkg cktkj eYhrky uSuhrky vki fdjk;k fujh{kd uSuhrky dks ;g c;ku nsrk gw? fd Jh jes"k frokjh }kjk ;g edku la? 283 o"kZ 1994 esa [kjhnk gS o blds lkFk gh nq?ua? 265 Hkh [kjnhn gS ftlesa Jh jke flag usxh dh iRuh jsLVksjsaV pykrh gS o djhc ,d lky ls

mDr nqdku ls ,d Hkkx ij vkse iky uked dksbZ O;fDr nqdku pyk jgk gSA mDr c;ku esa fdLh ncko ds ns jgk gw?A

lquhy oekZ

13-6-1997**

12. Sri Subodh Kumar, the earlier allottee has filed an application on 18th June, 1997 praying for the issue of Form-D, and for handing-over the possession of the shop in question. On the basis of the inspection report of Rent Control Inspector and application of Sri Subodh Kumar Upadhyay, a notice dated 21.6.1997 was issued being notice No. 719@js0 d0@ for hearing and producing evidence/objection with regard to the shop in question to Sri Ramesh Chandra Tiwari, landlord, Sri Ram Singh Negi, licensee tenant and Sri Subodh Kumar.

13. In reply of the notice issued by the Court, Smt. Kamla Negi wife of Sri Ram Singh Negi has also filed an application on 1st July, 1997 stating therein that she is continuing as tenant of the accommodation.

14. The landlord has also filed his objection on 13th August, 1997 on the application of Sri Subodh Kumar Upadhyay stating therein that on 25th October, 1990, the Rent Control and Eviction Officer has allotted the shop in favour of Sri Subodh Kumar Upadhyay. A revision petition was preferred on 6th February, 1991 before the District Judge, Nainital on behalf of Smt. Laxmi Devi, however, no steps were taken on behalf of Sri Subodh Kumar Upadhyay in getting the Form-D. Ultimately the Special Judge Nainital on 29th August, 1995 dismissed the revision No. 32 of 1992 against the said allotment order dated 25th October, 1995. After the revision petition has been dismissed, Sri Subodh Kumar, has not taken any interest and ultimately on 18th June, 1997 after a lapse of 7 years, he filed an application for execution of the allotment order and ultimately Subodh Kumar has not filed any rebuttal against the objection filed by the landlord.

15. From the evidence on the record, it is evident that the vacancy was declared on 16th March, 1990, the same has become final after the allotment in favour of Sri Subodh Kumar Upadhyay on 25.10.1990. Revision No. 32 of 1992, was failed. The landlord, therefore, has a right to file an application for release, as the building is lying vacant after the declaration of the vacancy on 16.3.1990. The allottee having not obtained the possession, the matter, therefore, is confined between the landlord and the District Magistrate. The petitioner has not challenged the order of vacancy at any point of time.

16. In Dr. Smt. Keshav Devi v. Addl. District Magistrate (Civil Supplies), Lucknow and Anr. reported in 1988 (1) A.R.C. 297, it has been held as under:-

"13. I may now examine the right of the landlord-opposite party. Opposite party is the owner of the house. An owner of a house is always entitled to remain in possession of his house. In respect of a house governed by the Act his right to occupy his own house is taken away the same is allotted to someone u/s 16 (1) (a). It is true that u/s 16 (1) (a) read with Section 13 of the owner of a house is

also required to obtain an order of release in order to enable him to occupy his own house, but this provision has to be reasonably interpreted. Once a house has fallen vacant its occupation of possession cannot remain in vacuum. The possession and occupation of the house will have to vest in someone. In the absence of allotment order the only person in whom the right of possession and occupation can vest is the owner of the house. Section 15 obliges the landlord to intimate vacancy to the District Magistrate. Once he has done this, he has discharged his obligation under the Act. If he wants release of the house in his favour he has to make an application in that behalf. Till an order of allotment or release is passed he remains in possession and occupation by virtue of his ownership. If an order of release is passed his possession and occupation is perfected. If his application for release is rejected and an order of allotment is made, his right to remain in occupation is lost and therefore, he must yield occupation to the lessee. In taking this view I have the support several decisions of this Court. In *Smt. Saraswati v. IVth Addl. District Judge* 1979 RCC 266, it was observed as follows:-

".....Wherever a tenant vacates a building and if other tenants does not occupy the same immediately thereafter, the landlord is entitled to look the premises although he may not occupy physically and use the building for his own purposes. The landlord as owner of the building is entitled to the possession of the house subject to any allotment order which may be passed under the Act, although landlord is not entitled to use or occupy the building unless he obtains a release order in his favour but the fact remains that no other person is entitled to physically occupy the building merely because there is no order of release in favour of the landlord....."

13-A. To the same effect is the decision of Hon'ble N.D. Ojha, in *Triloki Nath Trivedi v. Rent Control and Eviction Officer, Bolla and Anr.* 1983 (1) ARC 857. In Paragraph 6 it has been observed as follows:-

"It is settled law that on an accommodation being vacated by its tenant the landlord, as owner of the building is entitled to remain in possession over the said accommodation subject to any order of allotment being passed under the Act in favour of some other person. This would be so even if no order of release had been passed in favour of the landlord, inasmuch as on an accommodation being vacated by a tenant the said accommodation cannot be permitted to remain in the position of a no man's land till either an order of allotment or release is passed by the Rent Control and Eviction Officer. There is no provision in the Act reliance on which could be placed for creating such an anomalous situation."

16. Aggrieved by the said order, a revision was preferred. The learned District Judge has rightly held that the status of the petitioner is unauthorized and they has no right to occupy the building after the vacancy is declared and the premises was allotted. The learned District Judge has also pointed out that by virtue of Section 13 of Act No. 13 of 1972, the status of the petitioner being

unauthorized, there is no need to declare fresh vacancy regarding the shop in dispute.

17. So far as the status of the petitioner is concerned, it has been held in *Sukamal Chand Jain v. Additional District Magistrate, Meerut and Ors.* 2000 (2) ARC 652 that the out going tenant after the declaration of the vacancy becomes unauthorized occupant, the observations are quoted below:-

"The status of the petitioner, according to the finding recorded by the authorities below, is that of an unauthorized occupant inasmuch as he has got no order of allotment in his favour and in view of the provisions of Section 11 and 13 of the Act, he has no right to occupy the building in question. The writ petition, therefore, has got no merit and is liable to be dismissed."

18. According to the case of the petitioner, he is residing in the premises since 1979 i.e. after the enforcement of UP. Act No. 13 of 1972 and further, even after 1976 without any allotment order and therefore, the occupation of Sri Ram Singh Negi as well as of the petitioner ipso facto becomes unauthorized. Further the vacancy having not been challenged at any point of time, the allotment having been made, thereafter, the same remained unchallenged, present petitioner, therefore, have no right to challenge the order of release passed in favour of the respondent/landlord as he is unauthorized occupant having continued to occupy the premises without any order of allotment in his favour and further the vacancy proceedings having become final and even allotment order was never challenged, it is not open for the petitioner to approbate and reprobate at the same time after the release order having been passed in favour of the landlord.

19. Relying upon the Full Bench of the Allahabad High Court, it has been held by the Apex Court in the case of *Vijay Kumar Sonkar v. Incharge District Judge and Ors.*, reported in 1995 (2) A.R.C.1, that the prospective tenant has no right to be heard in proceedings under Sub Section 2 of Section 16 of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 while considering the bona fide requirements of the landlord. The observations of the Apex Court are quoted below:

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

Nainital and Others, , rejected the prayer of the prospective tenant that he had a right to be heard in a release application of the landlord based as it was on the provisions of sub Section (2) of Section 16 on ground of bonafide requirement. On the allowing of the release application the premises in question ceased to be allottable and since the District Magistrate, thereafter would have no jurisdiction to make an allotment thereof and the prospective tenant consequently has no right to resist the landlord in release proceedings. In view of the High Court seems to us to be correct in the circumstances of the case as also in law because as of today no allotment order subsists in favour of the appellant and yet he continues to be in possession. The appeal is, therefore, dismissed. The appellant is directed to vacate the premises within one month. It is made clear that he is not debarred from seeking another allotment order of any other premises if he has any such right in accordance with law. The appellant shall pay costs to the respondents throughout which we quantify at Rs. 5,000/-"

20. As will appear from the observations of the Apex Court that the dialogue between the prospective tenant and the District Magistrate can not be made in the present proceedings as the vacancy order has achieved finality in the year, 1990.

21. In *Khursheed Khan v. Special Judge* reported in 1996 (1) A.R.C. 505, it has been held as under:-

"The third submission of the learned Counsel for the petitioner is that he should be given an opportunity to lead evidence that the landlord-respondents do not require the disputed accommodation. The petitioner has been found to be in unauthorised occupation by the Rent Control and Eviction Officer. He has no right to contest the release application filed by the landlord u/s 16 (1) (b) of the Act. A Full Bench of this Court in *Talib Hasan and Anr. v. 1st Additional District Judge, Nainital and Ors.* 1986 (1) ARC 1, held that a prospective allottee has no right to contest the release application filed by the landlord u/s 16 (1) (b) of the Act. This view of the Full Bench has been affirmed by the Supreme Court recently in *Vijay Kumar Sonkar v. Incharge District Judge and Ors.* 1995 (2) ARC 1 (SC).

In fact the petitioner has no right to challenge the order of release passed in favour of the landlords u/s 16 (1) (b) of the Act. In *Ved Prakash v. XIIIth Additional District Judge, Ghaziabad and Ors.* 1993 (1) ARC 442, it was held that a prospective allottee has no locus standi to challenge the order releasing the accommodation in favour of the landlord passed in revision."

22. I have also perused the application for release filed by the landlord and it has been stated by the landlord as under:-

"That the applicant-landlord vehemently requires the building in question for his and his family member's use. The applicant is serving as a clerk at office of Director, Uttar Pradesh Administrative Academy, Mallital, Nainital and nature of his job is non-transferable and his wife has been serving in medical department at B.D. Pande Hospital, Mallital, Nainital.

That the applicant purchased the entire building for his own use and at present there are only four very small rooms measuring about 7" X 8", 7" X 9", 8.5 X 8.3", and 8.5 X 8.3" respectively. They are of these rooms is very small and by no stretch of imagination can fulfil the requirement of applicant. Out of these four rooms one is being used as a kitchen and three each as the sleeping rooms of applicant, his wife and son.

That the son of the applicant is studying in 7th standard in Sanwal School at Mallital, Nainital and he has no separate study room, adversely affecting his studies. As he is the only son of applicant he is very much worried about his studies and career and the tutor who uses to teach him cannot teach him comfortably.

That besides, the guests, relatives and visitors also use to come to visit their home time and again making the condition worse to words and miserable. The applicant do not have accommodation for their setting or staying arrangements. Both the applicant and his wife being in service, colleagues from their respective department occasionally visit them and both feel mentally distressed for want of proper accommodation."

23. Both the Courts below have recorded a finding in favour of the landlord that the need of the landlord is genuine. I find no infirmity so as to interfere with Article 226/227 of the Constitution of India.

24. One more factor is very relevant that Sri Subodh Kumar Upadhyay has never occupied the premises and hence the relationship of the landlord and tenant never existed and therefore, there was no occasion to declare the vacancy again and further no such point was ever argued in the present writ petition.

25. Section 13 of the U.P. Act No. 13 of 1972 reads as under:-

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

26. By virtue of the provisions of Section 13 of the Act, if the occupation of the petitioner is without any allotment order by virtue of the deeming provision, the possession shall be deemed to be unauthorized.

27. In *Sudha Rani Garg v. Jagdish Kumar* reported in (2004) 8 SCC 332 : 2004 (2) ARC 648, the word deemed has been defined as under: -

"The word "deemed" is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular that might otherwise be uncertain. Sometimes it is uses to

give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible."

(Per Lord Redcliffe in *St. Aubyn (L.M.) v. Attorney General* (No. 2) P. 498 F-G.)

10 "Deemed", as used in statutory definitions

"to extent the denotation of the defined term to things it would not in ordinary parlance denote, is often a convenient device for reducing the verbiage of an enactment, but that does not mean that wherever it is used it has that effect; to deem means simply to judge or reach a conclusion about something, and the word "deem" and "deemed" when used in a statute thus simply state the effect or meaning which some matter or thing has--the way in which it is to be adjudged; this need not import artificially or fiction; it may simply be the statement of an undisputable conclusion" (per Windener, J. in *Hunter Douglas Australia Pty. v. Verma Blinds*).

11. When a thing is to be "deemed" something else, it is to be treated as that something else with the attendant consequences, but it is not that something else (per Cave, J. in *R. v. Norfolk Country Court*)

12. "When a statute gives a definition and then adds that certain thing shall be "deemed" to be covered by the definition, it matters not whether without that addition the definition would have covered them or not." (Per Lord President Cooper in *Ferguson v. McMillon*)

13. Whether the word "deemed" when used in a statute established a conclusive or a rebuttable presumption depended upon the context. (See *St. Leon Village Consolidated School Distt. v. Ronceray*)

14. "Iregard its primary function as to bring in something which would otherwise be excluded." (Per Viscount Simonds in *Barclays Bank v. IRC*)

15. "Deems" means "is of opinion" or "considers" or "decides" "and there is no implication of steps to be taken before the opinion is formed or the decision is taken". (See *R. v. Brixton Prison (Governor)*, ex p Soblen, All ER P. 669, C) (See *Ali M.K. v. State of Kerala*.)"

28. According to the well known maxim *Vigilantibus non dormientibus jura subveniunt*, Equity comes to the aid of the vigilant and not the slumbering. The vigilant; and not the sleepy. In all actions, suits, and other proceedings at law and in equity, the diligent and careful plaintiff is favoured to the prejudice of him who is careless. The laws give help to those who are watchful and not to those who got to sleep. Admittedly the petitioner having failed to challenge the order of vacancy, it is not open for the petitioner to agitate at subsequent stage.

29. It is well established that Section 12 pre-supposes fiction by virtue of deeming provision and vacancy having been declared and the allotment order is made, it exhausts only when the premises is occupied and then relationship of landlord and tenant comes into existence. In the present case the relationship of

landlord and tenant has never come in existence at any point of time and as such the release order passed by the Rent Control & Eviction Officer u/s 16 (1) (b) of UP. Act No. 13 of 1972 having been confirmed by the District Judge on the basis of vacancy declared on 16th March, 1990 requires no interference under Article 226/227 of the Constitution of India.

30. However, in view of the peculiar circumstances, both the parties have agreed that the eviction order may remain in abeyance till 15th March, 2006.

31. Consequently, the petitioner is granted time up to 15th March, 2006 provided undertaking is given before the Rent Control and Eviction Officer by 15th January, 2005.

32. However, petitioner shall not make any obstruction in execution proceeding after 15th March, 2006 and the petitioner shall hand over the vacant possession to the landlord on or before 15th March, 2006.

33. Consequently, writ petition lacks merits and is dismissed.