
(1984) 01 AHC CK 0049

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 4100 of 1980

Ram Nath Export Private Limited

APPELLANT

Vs

The Additional District Judge and Others

RESPONDENT

Date of Decision : 31-01-1984

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 2, 20, 21, 21(1), 22
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 — Rule 16, 16(1), 16(2), 26(1)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 2, 20, 21, 21(1), 22
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 — Rule 16, 16(1), 16(2), 26(1)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 2, 20, 21, 21(1), 22
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 — Rule 16, 16(1), 16(2), 26(1)

Citation : (1984) AWC 65 Supp

Hon'ble Judges : B.N. Saprui, J

Bench : Single Bench

Advocate : B.D. Mandhyan and Sunil Ambwani, for the Appellant; Sushil Harkauli and S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.N. Saprui, J.—This writ petition has been filed by Messrs Ram Nath Export Private Limited who are tenants of a portion of premises No. 6/354, New Khandari Road, Agra of which Raj Kumar Arora and Ratan Lal Arora were owners and which according to Raj Kumar Arora, has now come to the share of Raj Kumar Arora alone.

2. The fact in this writ petition are that Raj Kumar Arora alone filed an application u/s 21(1)(a) of U.P. Act 13 of 1972 (hereinafter referred to as "the Act"), being case No. 203 of 1973 of the court of Prescribed Authority/A.D.M.(E) Agra but

subsequently after an objection being taken by the tenant, the other brother Ratan Lal Arora got himself impleaded as an applicant. The case set up by the landlord was that M/s. Ram Nath Export Private Limited were tenants of three rooms, one kitchen, one store room, one laterine, one bath room, two verandahs and the court-yard on a rent of Rs. 400/- per month. Another portion was said to be in the tenancy of one Sri S.S. Ambwani at a monthly rent of Rs. 100/- against whom also an application u/s 21(1)(a) of the Act was filed. That case in the application by the landlord was that Raj Kumar Arora had a large family consisting of himself, his wife, four sons and three daughters. It was said by the landlord that the entire family of Raj Kumar Arora was living in a portion of rented house bearing number 1838 old 16/130 new, Ghatia Azam Khan Agra on a rent of Rs. 45/- per month. This portion in the tenancy of Raj Kumar Arora consisted of two small rooms and a kitchen. It was then said that Raj Kumar Arora was a business man and was paying income tax in three figures and he was a man of status. Out of the 7 children of Raj Kumar Arora, six were school going children. It was asserted that the accommodation in possession of Raj Kumar Arora was entirely insufficient and unsuitable for the requirement. He prayed that the accommodation in possession of the tenant be released in favour of the landlord. It was the case of the landlord that plot No. 56 was purchased by Raj Kumar Arora and his brother Ratan Lal. Arora in May, 1965 and they lived in the house from May, 1965 till August, 1967. Thereafter, it was asserted, the accommodation was let out in 1967 to the tenant through Sri Trilok Nath of M/s. Trilble Nath & Co.; and to Mr. S.S. Ambwani. It was further the case of the landlord that there had been separation between the two brothers in the year 1969 and the house had been partitioned on 16-3-70. It was also the case of the landlords that the tenant had vacated part of the accommodation in his possession which had been occupied by Ratan Lal in whose share the portion occupied by him had fallen as a consequence of partition. It was averred that Ratan Lal had been impleaded as applicant No. 2 in order to avoid technical objection, it was then said that the tenant was occupying the building for business purposes and the building was being used by them in connection with their export business in shoes. It was further asserted that the landlord would suffer great hardship if the application for release was rejected whereas the tenant would not suffer any hardship in consequence of the release application being allowed.

3. The defence interalia was that previously the tenancy was in the name of M/s. R.D. Ramnath Company. Thereafter the tenancy was changed in the name of M/s. Ram Nath Export Private Ltd. It was then asserted that there was no partition between the two brothers as asserted in the application u/s 21(1)(a) of the Act. It was also the case of the tenant that the tenant would suffer great hardship if the application for release was allowed. It was said that customers from Russia come to the accommodation for inspection of goods. It was then said that the applicant was residing in house No. 1838 old 16/130 new Ghatia Azam Khan Agra and this property was owned by Smt. Shilawati wife of Sri Manohar Lai, the

real elder brother of the applicant. It was said that in this accommodation he was" in possession of 4 rooms, one kitchen, one latrine, one verandah, one pauli, Sahan on the ground floor. The tenant prayed that the application u/s 21(1)(a) of the Act be dismissed.

4. The Prescribed Authority by his judgment dated 24-6-1975 dismissed the application filed by the landlord. The landlord's application against Sri S.S. Ambwani was also dismissed,

5. The landlord filed two appeals which were consolidated and disposed of together. Misc. Appeal No. 433 of 1975 was filed against M/s. Ram Nath Export Private Limited and Misc. Appeal No. 432 of 1975 was filed against Sri S.S. Ambwani.

6. The first question taken up by the appellate authority was whether there was a bonafide need on the part of Raj Kumar for the accommodation in dispute. The appellate authority noted that for deciding this question it was necessary to decide whether there had been a partition between Raj Kumar and his brother Ratan Lal. The Prescribed Authority had found that there was no partition between the two brothers and the property was still joint. Documents had been filed before the Prescribed Authority to establish that a partition had taken place. The Prescribed Authority held that since the document itself showed partition of the house it required registration and it not having been registered, the same was inadmissible in evidence. The appellate authority held that the deed dated 15-12-67 was not a partition deed but was a memorandum of partition and as such did not require registration. The appellate authority found that after the partition the half portion allotted to Ratan Lal was numbered as 6/354-A and the other half allotted to Raj Kumar was numbered as 6/354. This fact was corroborated by the assessment receipts and municipal assessment paper. It noted that paper No. 51-K/6 is the deed of dissolution under which both the partners had separated their business and Arora cloth stores had come to the share of Raj Kumar. It took note of the fact that both the brothers had jointly taken a loan to build the house in dispute but it found that because of the partition they were paying the said loan separately according to their share. It then found that Raj Kumar is the owner of half portion of the house which bears the number 6/354, A portion of this house was found to be in possession of M/s. Ram Nath Export Private Ltd., and the other portion in the occupation of Sri S.S. Ambwani. Two rooms besides kitchen, latrine and bath room were found in possession of Sri S.S. Ambwani and three rooms besides kitchen, latrine and bath room were found to be in possession of M/s. Ram Nath Export Private Ltd. It found on the basis of the statement of Raj Kumar that he was in occupation of this rented house on the ground floor and only two rooms were in his possession and the other two rooms of the ground floor were in possession of his brothers-in-law Ramesh Kumar and Suresh Kumar. The accommodation in possession of Raj Kumar as a tenant was found to be rented at Rs. 45 /- per month. It found that the family of Raj Kumar consisted of himself, his wife and 7 children. Three of his

daughters were 18 years, 10 years and 5 years old respectively. His sons were found to be studying in class 8, 6 and 3 respectively. It found that the need of the landlord, namely, Raj Kumar for the accommodation was bonafide and genuine.

7. Then the appellate authority took up the question of comparative hardship. It found that during the pendency of this case the tenant M/s. Ram Math Export Private Limited had taken on rent Kothi No, B-52 Kandbari Road, Agra from Sri G.L. Shipatone at a monthly rent of Rs. 750/- and that subsequently Vivek Lal S/o Radhey Lal, the Managing Director of the firm tenant had purchased this Kothi for a consideration of Rs. 88000/-. It noticed that according to the tenant firm this Kothi was required by the tenant for the sake of carrying on manufacturing purposes. It found that both the parties, i.e., the landlord and the tenant, were economically well off. It further found that Raj Kumar will face great hardship if his application u/s 21(1)(a) of the Act is rejected whereas the tenant can maintain its office for business purposes else-where and in view of its affluent economic position it can obtain another accommodation for business purposes of the same nature in the vicinity easily. The appeal as against Sri S.S. Ambwani was also allowed by the appellate authority. In the result both the appeals succeeded.

8. Aggrieved, M/s. Ram Nath Export Private Limited alone has filed the present writ petition. It is not disputed that Sri S.S. Ambwani has vacated the accommodation in his occupation and possession thereof has been taken by Raj Kumar Arora.

9. The learned Counsel for the Petitioner has assailed the finding of the appellate authority that there was a partition between Raj Kumar Arora and Ratan Lal Arora is vitiated because it held that the document dated 15-12-67 did not require registration. He submits that the deed purports to affect partition and as such required registration. It is also submitted that the finding of the appellate authority that the deed only recorded a pre-existing partition is erroneous in law. The document dated 15-12-67 has been filed as Annexure-12 to the writ petition. It recites that Ratan Lal and Raj Kumar had jointly purchased plot No. 56 Kandhari Road, Agra under sale deed dated 14-5-65. In order to obviate further differences and to ensure that the relationship between the two brothers were not spoiled, they had divided the property into two parts. The document then went on to recite the details of the partition. The document itself does not effect the partition. In the circumstances the appellate authority was correct in holding that the document was a memorandum incorporating the terms of the partition of the house which had already been affected and as such did not require registration. Further the finding on the question of partition was based on a consideration of the evidence on record and as such the finding is a finding of fact which cannot be challenged in a writ petition. The finding of the appellate authority that Raj Kumar Arora is living with his family, which is a large family, in two rooms in house No. 16/130 new Ghatia Azam Khan, Agra is also a finding of

fact which cannot be challenged in a writ petition. Thus the finding as a whole that the need of Raj Kumar Arora was a genuine need, is a finding of fact which cannot be successfully assailed in a writ petition.

10. The next question that arose for determination was the question of comparative hardship to the parties.

11. It has been found that the tenant had taken another house on rent during the pendency of the proceedings and later on in January, 1979 Vivek Lal S/o Sri Radhey Lal, Managing Director of the firm tenant, had purchased the said house No. B-52 Kandhari Road, Agra shows that the accommodation can be used by the tenant though the case of the tenant is that it was taken only for the purposes of manufacturing shoes. It has also been found by the appellate authority that financially the tenant was in a position to get another house or show-room for the maintenance of their office for business purposes. This finding can also not be said to be vitiated.

12 The learned Counsel for the Petitioner then contended that after the filing of the writ petition Sri S.S. Ambwani had vacated the portion of the accommodation in his possession and as such the need of the landlord was satisfied. In the supplementary affidavit of Sri Dharma Chand Sharma Accountant of the Petitioner-firm, it is stated that two rooms, kitchen and one latrine bathroom have been vacated by Sri S.S. Ambwani and possession thereof has been taken by the landlord on 11-4-82. This fact is not disputed on behalf of the landlord. It is then said that since the filing of the release application the eldest daughter of Raj Kumar got married on 30-6-1982 and the second daughter also got married recently at Agra. It is then stated that the eldest son Mukesh is engaged in cloth business and is living permanently at Delhi. It is then stated that the family of Raj Kumar is reduced by 3 members and he has got in his occupation two large rooms measuring 10" 6" x 9" 15" x 11"6", a kitchen 6" x 6" 9" laterine and bathroom 5" x 6" 8" and a varendah 6" x 6" 9". It is also asserted that the landlord has retained possession of a portion of house No 16/130 New, Ghatia Azam Khan which he has not vacated. It is then said that the disputed house is jointly owned by Raj Kumar with his brother Ratan Lal and a portion of it has been lei out to Sri Anand Kishan Chopra on a monthly rent of Rs. 1800/-.

13. In reply a supplementary counter affidavit was filed by Sri Raj Kunaar Arora. It is said in paragraph 5 of the supplementary counter affidavit that the accommodation in dispute consists of 5 big rooms, 3 small rooms, 2 kitchens, 2 latrines, 1 bath room, and 3 verandahs and a big court-yard. Paragraph 7 of the supplementary counter affidavit runs as follows:

That the contents of paragraph No. 5 of the Supplementary Affidavit 6f Sri Dharara Chand Sharma are incorrect and denied. In reply it is stated that the deponent is living in the portion vacated by Sri Ambwani with great difficulty. At present the deponent's family consists of himself, his wife his son Mukesh aged about 24 years who is assisting the deponent in running his shop; deponents son

Pradeep aged about 22 years who is a student of B.Com.; the deponent's son Vikas aged about 18 years who is in Intermediate Final; the deponent's daughter Seema aged about 16 years who is studying in High School (Final); that the deponent's son Satish aged about 12 year who is studying in class VI, Mukesh is to be married son. The deponent pays Rs. 15000 - per year as Income Tax. Further the deponent's two other married daughters and their in-laws as well as other relations of the deponent often came to stay with the deponent when they visit Agra. In these circumstances the deponent desperately need the total disputed accommodation.

It is further said that the house in Ghatia Azam Khan, Agra has been vacated by the deponent because it was 5 k.m. from the deponent's house.

14. The learned Counsel for the Petitioner contends that the writ petition should be allowed and the matter should be remanded to the appellate authority to decide whether the accommodation, whose possession has been obtained by Raj Kumar Arora from Sri S.S. Ambwani, would be sufficient to meet his ends or not. The extent of the accommodation in the disputed house is known. The extent of the accommodation which was in possession of Sri S.S. Ambwani and which has now come into the possession of Raj Kumar Arora is also known. The only dispute is as to whether the eldest son of the landlord is permanently living in Delhi or is living with Raj Kumar Arora in the house in dispute. It is open to this Court in proceedings between the landlord and tenant under U.P. Act No. 13 of 1972 to take note of subsequent events. Rule 16(1)(a) provides where the landlord already has adequate and reasonable suitable accommodation having regard to the number of members of his family and their respective ages and his means and social status, his claim for additional requirements shall be construed strictly. Thus the social status of the landlord and the respective ages of the members of his family are both relevant criterion in deciding an application u/s 21(1)(a) of the Act. The fact that the landlord pays an income tax of Rs. 15000/- per year shows that he is a successful business man. The accommodation vacated by Sri S.S. Ambwani, which is now in possession of Raj Kumar Arora, is certainly insufficient to meet his needs specially in View of the fact that many of his children are grown up. I do not consider it necessary to prolong the proceedings by remanding the matter for fresh decision by the appellate authority. This Court while taking note of events subsequent to the decision in an appeal u/s 22 of the Act can take note of subsequent events and if the relevant facts are fully before it and there is not much controversy on fact, determine the question involved between/the parties. Even assuming that the eldest son of Raj Kumar Arora had settled in Delhi, the need of the landlord Raj Kumar Arora would not be met by the accommodation in his possession in the house in dispute.

15. The learned Counsel for the Petitioner then contended that this Court should take into consideration the provisions of Rule 16(1)(d) of the Rules framed under the Act before deciding the dispute between the partes. Rule 16(1) provides as

follows:

In considering the requirements of personal occupation for purposes of residence by the landlord or any member of his family, the Prescribe Authority shall, also have regard to such factors as the following:

(a)....

(b)....

(c)....

(d) where the tenant's needs would be adequately met by leaving with him a part of the building under tenancy and the landlord's needs would be served by releasing the other part, the prescribed authority shall release only the latter part of the building.

16. Rule 16(1)(d) contemplates a position where, an authority, on a consideration of the respective needs of the landlord and tenant comes to the conclusion that the needs of both can be reasonably met by releasing a portion of the accommodation to the landlord, he shall release only that part of the accommodation. In this case I have already found that the need of the landlord would not be met by confining the landlord to the accommodation in his possession. Further considering the Social and financial status of the landlord I find that the whole accommodation in possession of the tenant is required by the landlord.

17. However, I must here take notice of an argument advanced on behalf of the Respondent-landlord that the provisions of Rule 16(1) are not applicable because the disputed premises has been let out for business purposes and only the circumstances mentioned in Rule 16(2) have to be taken into account. Rule 16(2) runs as follows:

While considering an application for release under Clause (a) of Sub-section (1) of Section 21 in respect of a building let out for purposes of any business the prescribed authority shall also have regard to such facts as the following;

(a)....

(b)....

(c)....

(d)....

18. The learned Counsel for the Respondent-landlord has urged that the building in question was let out to the tenant for business purposes and as such no question of invoking the provisions of Rule 16(1)(d) arises. In support of this proposition the learned Counsel for the Respondent has relied upon the case of Smt. Chanda Devi v. The XIIth Addl. District Judge, Kanpur 1983 ARC 825. In that case it was observed as follows:

Building is defined in Sub-clause (i) of Section 2 to mean a residential or non-residential roofed structure, Section 21 entitles a landlord to file an application for eviction of a tenant from the building under tenancy or any specified portion thereof. No distinction has been made between commercial or residential and nonresidential building either in the definition or for purposes of release. A landlord could file application for release of entire building or any specified portion, irrespective of whether the building was used for residential or business purposes. But once an application for release is made either of the entire building or any specified portion, the question is whether the authorities could release only a portion. In respect of residential building there is a specific provision in Clause (d) of Sub-rule (1) to Rule 16 empowering authorities to release only a part if the need of landlord was satisfied, by that. It dose not apply to non-residential building, let out for purposes of any business. Argument of a learned Counsel for opposite party that use of word "also" in Sub-rule (d) indicates that circumstances mentioned under it are not exhaustive, therefore the guideline provided in Sub-rule (1) for residential building could be taken into account while comparing hardship of commercial accommodation, cannot be accepted as word "also" has been used in Sub-rule (1) as well. Comparison of hardship of landlord and tenant cannot be regulated with mathematical precision. It has to vary from case to case. But to serve as guideline various factors have been enumerated in the Sub-rule (1) and (2). They, obviously, are not exhaustive. That is why the word "also" has been used in both sub-rules.

To this extent there may be substance in submission of learned Counsel for the Petitioner....

19. The next decision relied upon by the learned Counsel for the Respondent is the case of Deep Chand Nem Chand Jain v. The Prescribed Authority A.D.M.(E), Saharanpur 1980 ARC 479. In that case the landlord had instituted proceedings for eviction of the tenant on the ground that he needed certain business premises, which were tenanted, for his own purposes and sought release thereof. It was in that connection that the question of application of Rule 16(1)(d) came up for decision in that case. It was observed in paragraphs 37, 38, 39 and 40 as follows:

37. To my mind, in the U.P. Act No. XIII of 1972 while in the regard to residential building, there is a mandatory requirment to give a finding of the nature mentioned above, whether the tenant raises that plea or not, in view of the law laid down by the Supreme Court in the aforesaid decision, there is no such corresponding duty in regard to commercial buildings. To my mind, there being no such parallel statutory provisions in respect of commercial buildings, the Court is not required to give such a finding in the absence of a plea specifically raised in that behalf by the tenants.

38. Sri Kackker, however, contended that there is and ought not to be no such dichotomy between Sub-rules (1) and (2) of Rule 16. He argued that Rule 16(1) must be deemed to have framed with a view to effectuating the purpose of

Section 21(1) of the Act. It must, therefore follow that necessity to give such a finding is implicit in the substantive provision of the Act, namely, Section 21(1) which applied both to a residential as well as non-residential building.

39. I do not agree.

40. I have already held above that Section 21(1) of the Act imposes no such duty and I do not agree that there does not exist a dichotomy between residential and non-residential building. The Legislature has laid down distinct" cost of rules for the Clauses of buildings, residential and commercial. Considerations relevant for directing eviction of the tenants from residential accommodation are inherently different and distinct from those applicable to commercial buildings. The omission of a rule corresponding Rule 16(a)(d) in regard to commercial building is, therefore, significant and cannot be ignored.

20. These two decisions support the contention of the learned Counsel for the Respondents that the provisions of Rule 16(1)(d) will not apply to the facts of the present case as the building was let out to the tenant for business purposes.

21. The learned Counsel for the Petitioner has referred to certain decisions in support of his contention that the provisions of rule 16(1)(d) should be applied. The first decision relied upon by the learned Counsel for the Petitioner is the case of Transport Corporation of India v. Bal Krishna Lal Poddar 1979 ARC page 371. In that case the landlord applied u/s 21 of the Act for the release of three shops in possession of the tenant on the ground that he needed them for the purposes of his own business. This application was allowed. A learned Judge of this Court held that the accommodation should be partitioned in such a manner, so that both could carry on business. In this case application of Rule 16(1)(d) was not considered.

22. The next decision relied upon by the learned Counsel for the Petitioner is the case of Purshottam v. Additional District Judge, Jaunpur 1982 (2) ARC 279. In that case the premises was being used both for residential and non-residential purposes. The learned Judge in these circumstances held as follows:

On the question of comparative hardship much stress has been laid by the learned Counsel for the Petitioner who contended that conclusions of the appellate court on the question is manifestly erroneous. Learned Counsel contended that while deciding the question of comparative hardships the appellate court did not take into consideration the guide-lines laid down under Rule 16(1)(d) of the Rules framed under the "Act" as it was this rule which became applicable in view of the fact that on the date when application u/s 21 of the "Act" was moved for release of the premises in question the same was being used for residential purposes as well as for non-residential purposes. The contention of the learned Counsel is not without force. It is true that the premises are being used for the purpose of Godown, i.e., for nonresidential purposes and in a portion of the premises in dispute Smt. Bimla Devi was residing. It may be that the premises as a whole can be used for residential

purposes and might have been used as such in the past, but in the circumstances of the case the principle laid down in Rule 26(1)(d) can be applicable to the facts of the case. Had it been a case under Rule 16(2) and the premises were being used for non-residential purposes even then if the court would have considered the need of the landlord, may it be for release of a part of the premises, the order could not have been necessarily struck down on the ground of being in violation of law and the same could have been upheld as valid. In view of the fact that the court below has not entered into the question whether requirement of law would be met if part of the premises are released in favour of the landlord as has been laid down in Rule 16(1)(d) of the Rules framed under the "Act", the writ petition deserves to be allowed.

23. This decision relied upon by the learned Counsel for the Petitioner is in part against him because the court has held that if Rule 16(2) applies then rule 16 (1) (d) would not have been applicable. It applied Rule 16 (1)(d) because part of the premises were being used for residential purposes.

24. Section 21(1) of the Act provides that a landlord may make an application for release of any building under tenancy but there is a proviso saying that no application under Clause (a) shall be entertained in a case of residential building for occupation for business purposes. Now we come to the rules. Rule 16 has laid down certain guidelines which the Prescribed Authority has to apply while determining an application u/s 21(1)(a) of the Act. Rule 16(1)(a) to (g) will apply when the release is sought by the landlord for personal occupation or for purposes of residence by any member of his family.

25. Rule 16(2) applies when an application is made for release of a building which has been let out for purposes of any business. The question is whether in a case, as in the instant case, the provisions of Rule 16(1)(d) can be taken into consideration by the Prescribed Authority in respect of a building which is occupied by a tenant for business purposes. The argument of Sri S.S. Bhatnagar, counsel for the Respondent, is that the provisions of Rule 16(1)(d) cannot be applied because the premises has been let out to the tenant for business purposes. On the other hand the learned Counsel for the Petitioner has urged that since the building is required by the tenant for his residence and the residence of the members of his family, Rule 16(1)(d) would also apply. In other words the submission of Sri Sunil Ambwani, learned Counsel for the Petitioner, is that the criterion prescribed in both Rules 16(1) and 16 (2) had to be considered by the Prescribed Authority while deciding the application u/s 21(1)(a) of the Act filed by the landlord. Neither Rule 16 nor any of its sub-rules specifically deal with a situation like the instant one. In this situation we have to look to the policy behind the Act. The Act has been passed to provide, in the interest of the 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. Section 20 bars a suit for eviction against a tenant except on the specified grounds. Then we come to Section 21 which deals with

the application by landlord for release of a building under the occupation of a tenant. Under Clause (a) release can be ordered on the ground that the building is bonafide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling or where the landlord is the trustee of a public charitable trust. Clause (b) provides for release of the building in dilapidated condition which is required by the landlord for demolition and new construction. In this background that Rule 16 has been framed. Rule 16(2)(c) and (d) are intended to govern cases where the release is sought by the landlord for business purposes and self employment of specified relation of the landlord. Rule 16(2)(a) and (b) lay down certain criteria which can be applied both in cases where the release is sought for personal occupation or for business purposes. Coming to Rule 16(1) there is nothing to indicate in "the Rule that its operation is excluded when a building occupied by a tenant for business purposes is required by the landlord for personal occupation or residence. Rule 16 (1) and (2) must be read together and not as operating in exclusive of fields. A consequence of accepting Sri S.S. Bhatnagar's argument would be that in case where the landlord's need for personal occupation or use was genuine, he would be entitled to get the tenant evicted from a premises occupied by the business purposes even though the landlord's need can be met by releasing only a part of the said accommodation. Such a contention would be against the scheme of the Act and would really defeat the purposes of the Act. If the two rules are read together as applying to a case where a building is required by the landlord for his personal occupation and is being used by the tenant for business purposes, the problem is resolved.

26. It has been urged by Sri S.S. Bhatnagar that Rule 16(2) of the, Rules framed under the, Act has given lesser protection to tenants of buildings occupied for business purposes than to tenants of buildings occupied by them for residential purposes. That may be so. That in itself is no reason for reading the Rule as he liked them to read. I am, therefore, of the opinion that Rule 16(1)(d) apply to the facts of the present case. However, that will not affect the decision of this writ petition as I have already held that the need of landlord would not be met unless the entire accommodation in possession of the tenant is released in favour of the landlord.

27. In the end, before parting with this case, I must express my deep appreciation of the skill and the persuasiveness with which Sri Sunil Ambwani, counsel for the Petitioner, and Sri S.S. Bhatnagar, counsel for the Respondents, have argued the case.

28. In the result, the writ petition fails and is dismissed with costs. In order to give time to the Petitioner to make alternative arrangement, it is ordered that the order of appellate authority shall be given effect to on the expiry of three months from today's date