
(1975) 10 AHC CK 0012

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 5329, 5340, 5344, 5345 and 8312

Smt. Champa Kunwar Trust

APPELLANT

Vs

The District Judge, Rampur and Others

RESPONDENT

Date of Decision : 06-10-1975

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 21(1)

Citation : AIR 1976 All 252

Hon'ble Judges : K.C. Agarwal, J

Bench : Single Bench

Advocate : R.D. Gupta, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

K.C. Agarwal, J.—These five connected writ petitions are directed against the judgment of the District Judge, Rampur filed by five different parties and as they can be decided by a common judgment, they are being taken up together.

2. Champa Kunwar Trust is a public charitable trust created by one Srimati Champa Kunwar under a trust deed dated 1-2-1948. It owns a Dharamshala building including several shops constructed in the same premises situated in Bazar Safdarganj, Rampur. The Trust filed an application u/s 21 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, briefly stated as "the Act", for eviction of the following tenants occupying different shops belonging to the Trust:

(i) Dr. Murari Lal Gupta (ii) Chiranji Lal (iii) Bannu Lal Chatwala (iv) Jagan-nath (v) Satya Prakash and Atma Prakash (vi) Shabban Hotelwala.

3. Amongst these tenants Satya Prakash and Atma Prakash were occupying the biggest shop having six doors on a rent of Rs. 75/- per month. The application was filed by the Trust on the ground that the objects of the trust were to provide

residential facilities to travellers and pilgrims, medical facilities to the general public, educational facilities and to spread and propagate educational and cultural activities among general public. For the aforesaid purposes of the Trust and fulfilment of its objects the Trust wanted to construct the entire dharamshala building, including the shops, afresh with the funds raised from the public. But as its tenants mentioned above were not willing to vacate the premises, the Trust had to file the application for obtaining orders of ejectment against them.

4. The application was contested by all the tenants by means of separate written statements. They pleaded that neither the need of the Trust was bona fide nor was the building required to be reconstructed after demolition. They claimed that the Trust was a purely religious Trust having been created only for Dharamshala purposes. The object of the Trust would be completely frustrated if the Dharamshala building was demolished and reconstructed for the purposes mentioned in the application. Each one of them claimed that his need for the shop in his possession was greater than that of the landlord.

5. The prescribed authority repelled all the contentions raised on behalf of the tenants holding that the need of the Trust for reconstruction after demolition was genuine and that the same was required by it for its objects. After giving the above finding and deciding all other objections against the tenants, he proceeded to decide individual need of each of the tenants and compared the same with that of the Trust. On comparison he found that the need of the Trust was greater than those of tenants. With regard to Satya Prakash and Atma Prakash, he, however, held that as they were carrying on the shop for the last several years so it was necessary to leave a part of the accommodation in their possession to enable them to carry on their business in the disputed shop. On this view, the Prescribed Authority gave the area of two shops out of the six in their occupation. Consequently, the application of the Trust was partly allowed in respect of the area of four shops but was rejected for the rest of the area equivalent to two shops.

6. Aggrieved by the judgment of the Prescribed Authority all the tenants filed appeals u/s 22 of the Act before the District Judge on the grounds, inter alia, that the Prescribed Authority was not justified in holding that the need of the Trust was greater as compared to them. The Trust also filed an appeal against the order of the Prescribed Authority in so far as he rejected its application against Satya Prakash and Atma Prakash. The learned District Judge, who decided these appeals, dismissed all the appeals excepting the one preferred by Satya Prakash and Atma Prakash. This appeal was allowed in part. They were permitted to retain possession of the shop in their occupation excepting the following:--

(1) They shall allow 7" area in the southern side for the use of Jagannath appellant for his use as a shop or as agreed to between them.

(2) They shall allow space to the Trust on the northern side so as to leave at

least 7" land for the gate. It will be measured from the southern end marked A B by me in the map of the southern line of shops in the new plan paper No, 32/3."

7. The learned District Judge virtually . endorsed all the findings of the Prescribed Authority and in agreement with him found that the demolition was necessary as claimed by the Trust for its own purposes and objects. Since he held that the area of the two shops allowed by the Prescribed Authority was small to meet their requirement, on this finding he left the whole of the shop in their possession subject to the conditions that they give an area of 7" wide (equal to one shop) towards southern side to Jagannath and further leave 7" wide for the purpose of the gate for the Dharamshala which will be used as its passage. In doing so the learned Judge examined new plan (paper No. 32/3) submitted by the Trust and held that the provision of 9" made in this map for the gate was not necessary and 7" if left, would serve the purpose.

8. Again the aforesaid judgment of the learned District Judge these five petitions have been filed in this Court. Out of these five petitions four have been preferred by the following tenants:

(i) Writ No. 5429 of 1974 -- Bannulal.

(ii) Writ No. 5345 of 1974 -- Chiranji Lal.

(iii) Writ No. 5344 of 1974 -- Jagannath.

(iv) Writ No. 5340 of 1974 -- Satya Prakash and Atma Prakash.

The Petition No. 8312 of 1974 has been filed by Smt. Champa Kunwar Trust. I will first take the points urged by the counsel appearing for the tenants.

9. The first point raised was that the Trust being exclusively for the Hindus provided for discrimination in respect of its beneficiaries on the ground of religion, and, therefore, the application made by the Trust was not maintainable in view of Clause (i) of the Third Proviso to Sub-section (1) of Section 21 of the Act. The submission has no substance. The Trust has filed the original trust deed executed by Smt. Champa Kunwar in which the property was dedicated by her for the Dharamshala. It has also filed a copy of the new Scheme framed by the District Judge in Original Suit No. 9 of 1968. Brij Saran v. Janam Din. This Scheme provides for certain other objects apart from the Dharamshala, which was mentioned in the original trust deed. There is nothing in the objects of the Trust restricting its benefits to persons of a particular caste or creed. Members of the general public are entitled to use the Dharamshala and derive other benefits from the activities in which the Trust may indulge in future. I, accordingly, do not find any substance in this submission.

10. The next argument raised on behalf of the tenants was that the Scheme of the Trust, for the execution of which new constructions are proposed after demolition of the old building was opposed to the main purpose of the Trust and, therefore, the application made by the Trust u/s 21 of the Act was liable to be

rejected. A reference was made to the original trust deed executed by Smt. Champa Kunwar for showing that the only object for which the Trust was founded was the Dharmshala, and as, according to the submission of the tenants, other objects for which now reconstruction was proposed, was foreign to the trust deed, therefore, the Trust could not get released of the building in its favour for fulfilment of those objects. For considering the above argument, it may be noticed that a suit u/s 92, CPC was filed for settlement of a Scheme for management of the trust property and appointment of trustees. The said suit was numbered as Suit No. 9 of 1968 and was ultimately decided on 29-5-1971. By this judgment, the learned District Judge framed a Scheme for ensuring proper administration of the Trust. The trustees were further ordered to prepare a scheme for the administration of the Trust, in pursuance of which on 30-8-1971 a scheme was submitted. This scheme was ultimately finalised on 15-3-1973. The new scheme, which was approved by the District Judge in suit No. 9 of 1968 makes a provision for a number of objects, besides having a building as Dharamshala. Those objects, inter alia, are construction of a library and reading room, dispensary or a charitable hospital and making provision for educational and cultural facilities. As a result of framing of this new scheme, the object of the Trust cannot be said to be restricted to the use of the property for the purpose of Dharmshala alone. In framing the scheme, the learned District Judge was not restricted to the arrangement contemplated by the author of the Trust. The general charitable intention having been expressed in the trust deed, the learned District Judge could provide for other charitable objects in which the Trust could participate. In this view of the matter, the argument of the learned counsel appearing for the tenants that permission could not be given to the Trust for reconstruction to fulfil the new objects, falls to the ground.

11. Before I discuss other points involved in these petitions, it appears necessary to deal with the petitions of Chiranji Lal and Bannu Lal on merits, as those points do not arise for consideration in these two petitions. Bannu Lal was a tenant of a shop situated in front of the gate of the Dharamshala, He had placed a takhat and a tin shed thereon. It was a purely temporary structure. The Trust had filed the application for his eviction on the ground that the space occupied by him was needed by it for construction of a new building. The case of Bannu Lal, however, was that he was carrying on the business and that as he had no alternative accommodation, he would suffer if the permission was granted to the Trust. The Prescribed Authority as well as the District Judge considered the requirement of the Trust and also that of Bannu Lal. On comparison, they found that the need of Bannu Lal could not be said to be greater than that of the Trust. The finding about the need of the Trust is based on appreciation of the evidence and circumstances. The same, therefore, cannot be said to be illegal.

12. So far as Chiranji Lal is concerned, he was using the shop in his tenancy for a small tea stall. The learned District Judge found that Chiranji Lal was having another big shop just adjoining the shop in dispute and was doing cycle business therein. On consideration of the material available on the record, he held that the

shop was needed" by the Trust for opening a Peyau and other purposes. So, he held that the need of the Trust was greater.

13. We are now left with three petitions filed by Jagannath, Satya Pra-kash and Atma Prakash, and Champa Kunwar Trust. As mentioned above, Jagannath, Satya Prakash and Atma Prakash are the tenants whereas the Champa Kunwar Trust is the landlord. The learned District Judge had allowed the application made by the Trust as against Jagannath releasing the shop in his occupation in favour of the Trust, but had refused to release the shop in the tenancy of Satya Prakash and Atma Prakash. These two tenants were, however, directed to let out a portion of the shop in their occupation to Jagannath and to leave another 7 feet of their shop in favour of the Trust for the purpose of enabling it to make the gate. Consequent upon the aforesaid judgment of the learned District Judge, Jagannath has filed the petition on the ground that the application made by the Trust u/s 21 of the Act was wrongly allowed against him. Similarly, Satya Prakash and Atma Prakash have alleged that the direction of the learned District Judge to accommodate Jagannath as well as to leave 7 feet of land for the Trust to construct the gate, was illegal inasmuch as the same was done against the provisions of Section 21 of the Act. The Champa Kunwar Trust also was dissatisfied with the judgment of the learned District Judge, as according to its case it was entitled to the grant of the application made by it for release in its entirety and that the learned District Judge was not right in rejecting the application to the extent indicated above.

14. One of the main arguments raised by Sri V. K. Khanna, appearing for Jagannath, Satya Prakash and Atma Prakash, was that the learned District Judge erred in allowing the application filed by the Trust u/s 21 of the Act, although the Trust had not established that the shop in their occupation was needed by the Trust for the purpose of reconstruction, after demolition. He mainly relied on the fact that the Trust had not got the sanction of the map which provided for new constructions in place of these shops from the District Judge. According to his submission, obtaining of sanction from the District Judge was a necessary requirement for establishing the bona fide need within the meaning of the expression used in Section 21 of the Act, and as no such permission was obtained, the application was liable to be rejected.

15. In the application filed u/s 21 of the Act, on 28-9-1972, the Trust had mentioned the various objects for the fulfilment of which the application was filed by it. Amongst the objects, those mentioned were which had been approved by the District Judge in Suit No. 9 of 1968 as well. These objects, as noted above, were opening a charitable hospital, a library and providing for educational facilities. At the time when the application was filed, the Trust had submitted a plan, which was paper No. 79/3. This map did not cover the entire building which was sought to be demolished and was in respect of only a part of it showing the construction of 17 shops. The Trust has filed an application to the District Judge, Rampur, on 9-12-1972 seeking permission to construct these 17 shops in a

portion of the Dharmshala. On 10-2-1972, the then District Judge, Rampur, Sri Murli Dhar, inspected the property and having found that the scheme was ambitious and beneficial, granted the approval for its construction. It, however, appears that subsequently the trustees filed another map, which is paper No. 32/3. In this map, the areas occupied by the shops by Jagannath as well as Satya Prakash and Atma Prakash were specified for the construction of a dispensary, a room for the library, and the gate. The argument raised by the counsel for the tenants was that as this new map had not received the sanction of the District Judge, therefore, the release of the shops in occupation of these tenants could not be made in favour of the Trust permitting them to make reconstruction after demolition of the same.

16. A perusal of the facts stated above and the judgment of the learned District Judge indicates that the Trust had not obtained the sanction of the plan contained in paper No. 32/3. But, the same was not necessary for filing the application u/s 21 of the Act and obtaining the release order. It has already been mentioned that the Trust had obtained the approval of the scheme providing for the construction of a library room, a dispensary, etc. The scheme having already been finalised, the Trust could file the application u/s 21 for the release of the shop in occupation of Jagannath or Satya Prakash and Atma Prakash for fulfilment of the above objects. As a matter of fact, the Trust had already mentioned these objects in the application filed by it and had asserted that the release of the shops in occupation of the aforesaid three tenants and also others was needed by the Trust for achieving the objects mentioned therein. The emphasis of the learned counsel for the tenants that the Scheme was not finalised on the date on which the application u/s 21 of the Act was filed is, however, wholly immaterial as during the pendency of the case before the Prescribed Authority the scheme was finalised and the same was taken note of by the Prescribed Authority as well as the District Judge. The mere sanction of the plan in these circumstances was not of much consequence.

17. A court dealing with an application u/s 21 of the Act is required to consider the bona fide requirement of the Trust for its occupation the building sought to be demolished and reconstructed. Such an occupation must be for its object. In the instant case, when the scheme had been approved by the District Judge, it cannot be said that the application for release was liable to be rejected simply because the plan had not been sanctioned by him. The plan being in consonance with the scheme could not be held to be contrary to it. Normally, it is correct that the trustee cannot be expected to incur the least risk and, therefore, should apply to the court for direction. But, such an occasion arises if there is any real doubt. In the instant case, it cannot be said that the scheme having been already approved, there was any doubt. Dealing with such a situation. Twinn in his book on Trusts at page 279 observed as under:--

"It is a Rule of equity that what is compellable or would have been ordered by the court is equally valid if done without an order of the court."

18. It may be noted that although the learned District Judge has observed in his judgment that the sanction of the plan was necessary, but he finally relied upon this very map and passed the orders in the appeals preferred before him. This does not only create confusion but also demonstrates that he gave contradictory findings on the same. If he really flat that the map given in paper No. 32/3 could not be acted upon without proper sanction, he should have rejected the application of the Trust and not allowed the same to the extent indicated by him in the judgment. As observed above, this approach of the learned District Judge appears to me to be fallacious and has resulted into an illegal order, which is not sustainable. The observations made by him to the effect that the Trust should have filed an application for amendment making a specific case about the portion pointing out its modified scheme, do not appear to be justified. In the application filed u/s 21 of the Act, the Trust had already mentioned these objects" for which the eviction of the aforesaid tenants was required. The mere omission to make specific mention of the constructions proposed to be made on this portion of the land at that time could not be said to have resulted in causing any prejudice to these tenants, specially when they fought out the case knowingly that their portions were also needed by the Trust for the purposes specified in the application.

19. A perusal of the judgment of the Prescribed Authority shows that the application made by the Trust was treated both u/s 21 (1) (a) as well as Clause (b) of the aforesaid section, The Prescribed Authority found that the Trust had made out a claim of its bona fide requirement u/s 21 (a) as against all the tenants excepting Satya Prakash and Atma Prakash. According to his view, Satya Prakash and Atma prakash should have been left with 3 portion of the shop in their occupation. The Prescribed Authority had, however, found that the Trust had not made out any case for an order of eviction on the grounds mentioned in Clause (b) of Section 21 (1). In other words, according to its findings, the shop in their occupation was not in a dilapidated condition and, therefore, the said clause did not apply. The learned District Judge also, in appeal, found that the shop was not in a dilapidated condition. Although the application made by the Trust did not mention that any portion of the building was in a dilapidated condition, but as the two courts below had taken the application made by the Trust as one u/s 21 (1) (b) as well, I would also take it to be one made under that provision also. As stated above, since the finding of the two authorities concurrently was that the portion in the occupation of Satya prakash and Atma Prakash was not in a dilapidated condition, respecting the said finding as one of fact, I would also not be prepared to interfere with the judgment of the learned District Judge on that count.

20. The question, however, remains whether the Trust could get release of the shops in the tenancy of Jagannath or Satya Prakash and Atma Prakash establishing that these shops were not in a dilapidated condition. Section 21 (1) (a) of the Act reads as under:--

"that the buildings is bona fide 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, for the objects of the trust."

21. A perusal of the aforesaid provision would show that a landlord is entitled to get an order of release in his favour provided he established that the building is bona fide required after demolition and new construction for occupation for the objects of the Trust. For the purpose of establishing the bona fide requirement after demolition and new construction the court must be satisfied that the intention to reconstruct is genuine and not colourable. In order to establish the bona fide requirement, the landlord will further be required to prove that his need to reconstruct is honest in the circumstances and that the application has not been filed with any ulterior motive. There is however, no justification in reading the words "the building is bona fide requires either in its existing form or after demolition and new construction by the landlord for occupation" as equivalent to "the building is bona fide required after demolition." Either the building requires demolition or not is immaterial for the purposes of application of Clause (a) of Subsection (1) of Section 21 of the Act. A case of a dilapidated building may call for an immediate demolition without there being any further provision for bona fide requirement by the landlord. But, Clause (a) of Section 21(1) does not deal with the case of dilapidated condition of a building. The conditions required for fulfilment in order to obtain the eviction of a tenant under this clause is that the building is bona fide required after demolition and new construction by the landlord for his occupation. The expression of this provision is, therefore, wide enough to cover cases where a landlord bona fide requires a building for demolition in order to fulfil its objects. In my view, therefore, the proper interpretation which is required to be put to this provision is to find out whether the landlord immediately requires the building for demolition in order to fulfil his requirements and if he establishes the same, he becomes entitled, of course, subject to fulfilment of other conditions, to get an order of eviction of the premises under Clause (a) of Section 21(1) of the Act. As stated above, the bad condition of the building is not necessary to be taken into account for the purposes mentioned above.

22. I, however, should not be understood to mean that if a landlord does not bona fide intend to immediately demolish the building, he can invoke the aforesaid provision merely with a view to evict the tenant. The court would be justified to look into the scheme, the plan and the resources of the landlord to find out as to whether the intention of the landlord is bona fide or not and if after considering these facts it comes to the conclusion that the landlord bona fide requires the building it will not be justified to reject the application simply on the ground that the building is not in a dilapidated condition and, therefore, the need of the landlord cannot be said to be genuine.

23. In *Bhulan Singh and Others Vs. Ganendra Kumar Roy Chowdhury*, a Bench of the Calcutta High Court took the view that, the words "bona fide required by the landlord" could not be read as "premises bona fide requiring rebuilding." Harris, C.J., delivering the judgment of the Bench put the matter as under:--

"it was suggested that this provision giving the landlord a right to possession if he established that he required the premises bona fide for rebuilding could have no application whatsoever unless the state of the premises was such that they required to be rebuilt. It is to be observed that proviso (f) to Section 11 (1) of the Act does not mention premises requiring rebuilding. What it states is that Sub-section (1) shall have no application if the landlord requires the premises bona fide for rebuilding. The state of the premises therefore is not an essential factor in the case. However, it cannot be overlooked that in this case the learned Judge has accepted the evidence of a witness which showed that these premises were very old, dilapidated, dangerous and likely to fall if extensive repairs were not done to them quickly.

It appears to me that the premises are bona fide required by the landlord for the purpose of "rebuilding" if the landlord honestly requires them for that purpose. The equivalent of the phrase "bona fide" is "honestly". It refers to the state of the landlord's mind. The landlord therefore will be entitled to possession as against the tenant if he established that he honestly requires the premises for rebuilding."

24. In *Mohammed Azizuddin v. Aziz Hassan* (1960) 2 Andh WR 203 the Andhra Pradesh High Court was required to consider the scope of Section 15 (3) (a) (iv) of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954. The question in this case was whether the landlord had satisfied the requirement of bona fide need for the purpose of rebuilding and dealing with the same the Andhra Pradesh High Court said as under:--

"In so far as Clause (iv) is concerned, the landlord would be entitled to an order for eviction if he bona fide requires the house for building or rebuilding or making substantial repairs etc. Here again the question of bona fides would be a question of fact, that is, the Rent Controller would be entitled to take into consideration the fact that the landlord has the means and that he intends in fact to construct a big or a small building, and whether it is reasonable or necessary to construct it or not is not a matter which could be taken into consideration because that would depend upon the means and the intention of the landlord to make the best use of his property, a matter in which his view will not be substituted by the view of the Rent Controller. If the landlord has the means to build and intends to build a three-storeyed building as in this case, that does not go counter to the policy of the Rent Control Act. In fact, it may effectuate the policy because the policy of the Rent Control Act is to protect the tenants, having regard to the scarcity of accommodation. If a landlord can afford to build premises with greater accommodation, certainly that would in some way relieve the scarcity."

25. In *Mahboob Badsha v. M. Manga Devi* (1965) 2 MLJ 209, the Madras High Court considering the scope of Section 14 (1) (b) of the Madras Buildings (Lease and Rent Control) Act, 1960, observed as below:--

"There is nothing in the language of Section 14 (1) (b) to warrant the interpretation that the words "bona fide required by the landlord" is referable only to the condition of the building ruling out every other consideration. It must not be forgotten that the Madras Buildings (Lease and Rent Control) Act is in essence ex-proprietary in character involving serious curtailment of the rights of owners of properties and therefore Courts should not give any undue or wide interpretation to the provision beyond what the express language of the provision warrants, in consonance with the avowed object of the legislation, namely, unreasonable eviction of tenants. There is nothing in the object of the enactment or in the language of Section 14 (1) (b) which compels or necessarily warrants the view that once a building is let out, the landlord can never obtain possession of the property either for better investment or for improvement in the sense that the tenant acquires a permanent right, as it were, subject only to the dilapidated condition of the building. The condition of the building is obviously an objective test to be established by evidence and capable of verification by personal local inspection. If the crux of the question centres round the physical state or condition of the building, there will be very little scope for the notion of a bona fide requirement. There is no warrant for reading the words "bona fide required by the landlord", either the building requires demolition or not. But it is not possible to have a conception of a building bona fide requiring demolition. A decrepit building no doubt may call for immediate demolition and without anything more the landlord could be said to have satisfied the requirement or condition of his bona fide requiring the building for immediate demolition. But the terms of the Section are clearly wide enough to cover cases where the landlord bona fide requires a building for the expansion of his own business or for legitimate purposes. A concrete and immediate proposal or scheme to demolish an existing building and reconstruct it into a bigger, more productive and higher income yielding one cannot by any means be said to be mala fide. The proper view to take of Section 14 (1) (b) would be that whenever the condition of the building is not such as to require immediate demolition the case of the landlord should be scrutinized to find out whether he bona fide intends to immediately demolish the building or whether the provision is invoked merely with a view to evict the tenant. In that context the plans or schemes of the landlord his resources, his getting sanction from the Municipal Authorities for the reconstruction etc., would have a bearing as tending to establish the bona fide requirement of the landlord. Section 14 (1) (b) is not rendered inapplicable merely because the building is not old or dilapidated but is in a good condition. In other words, if the intention of the landlord for demolition and reconstruction is proved to be genuine and not spurious or specious, he will be entitled to obtain an order for eviction u/s 14 (1) (b) whether or not the condition of the building is such as to require immediate demolition, the age and dilapidated condition of the

building not being a sine qua non for such eviction."

26. In *Panchamal Narayan Shenoy Vs. Basthi Venkatesha Shenoy*, , the argument advanced by the learned counsel appearing for the tenant was that the condition of the building must be such that it was immediately necessary to demolish it. The argument was repelled by the Supreme Court by observing that in considering the bona fide requirement of the landlord the desire of the landlord to put the property to a more profitable use after demolition and reconstruction was also a factor that might be taken into account in favour of the landlord. The Supreme Court further observed that in its opinion it was not necessary for the landlord to establish that the condition of the building was such that it required immediate demolition.

27. In *S.M. Gopalakrishna Chetty Vs. Ganeshan and Others*, , the Supreme Court admitting the right of a landlord observed that a landlord had every right to demolish his property in order to make a new construction on the site with a view to improve his business and to get better utilization of his investments, and such a step per se could not be characterised as mala fide on the part of the landlord.

28. The authorities cited above fully support my view that the dilapidated condition of the building was not necessary for obtaining the eviction of the tenants under Clause (a) of Section 21 (1) of the Act. So far as the bona fide requirement is concerned, it may be observed that the learned District Judge did not dispute that the Trust did not require the space for library, dispensary etc. He, however, took into consideration two factors for holding that the Trust could not be given the possession of the shops in occupation of Satya Prakash and Atma Prakash. One of them has already been discussed by me, the same being that the building was not in a dilapidated condition.

29. The other ground which was taken into account by the learned District Judge was that as the Trust could manage to have the library and the dispensary etc., at a place different than shown in the map (paper No. 32/3), therefore, the application made by the Trust against the aforesaid tenants was liable to be rejected. The question that arises for consideration is whether it was open to the District Judge to reject the application made by the Trust despite the finding of its bona fide requirement for the purposes mentioned by it in the application on the grounds, mentioned above. The fact that the Trust wanted to reconstruct the building after demolition for the purposes indicated above was not doubted by the learned District Judge, He, however, felt that the Trust could satisfy the need of the library by providing for the same in the hall and placing almirahs there. Further, that the dispensary could be opened by the Trust in the first floor instead of at the place of the shop in occupation of Satya Prakash and Atma Prakash. On a consideration of the provisions of Section 21 (1) (a) of the Act I do not find that the learned District Judge could reject the application on the aforesaid ground. The learned District Judge had to enquire into the bona fide requirement of the premises after demolition for reconstruction for the occupation by the

Trust. The moment the District Judge was satisfied about the same, he could not say that although the shop in occupation of Satya Prakash and Atma Prakash was needed by the Trust for its occupation yet the Trust should not make any construction there. Conceding the power which has been exercised in the instant case, in favour of the Prescribed Authority or the District Judge, in appeal, it might sometime bring about a result which may defeat the purpose of reconstruction itself. In a matter of reconstruction, the intention of the landlord to make the best use of his property should be the governing factor, subject of course that his intention is not mala fide. In such a matter, the Court cannot substitute its own opinion and thwart the very purpose of reconstruction. In my opinion, the notions of judicial officers in a matter like this is likely to result in defeating the object and purpose of Clause (a) of Section 21 (1) of the Act. Furthermore, when in the instant case, the District Judge found that the portion in the tenancy of Satya Prakash and Atma Prakash was required by the Trust for its occupation, the ground on which the eviction of these tenants was refused was perverse.

30. Learned counsel for the tenants in Writ Petition No, 8312 of 1974 however, strenuously contended that the findings of the learned District Judge are findings of fact and this Court could not interfere with the same while exercising its supervisory jurisdiction under Article 226 of the Constitution. I do not find any substance in the said submission. As stated above, the finding is based on wrong interpretation of Section 21 (1) (a) and misconception of the scope given to an authority under it. The finding of greater need of the tenants Satya Prakash and Atma Prakash recorded by the learned District Judge is also founded on the aforesaid wrong approach to the case and, therefore, the same also cannot be considered as a finding of fact disentitling this Court to interfere with the same. It may be noted that the Trust made an offer for providing alternative accommodation to Satya Prakash and Atma Prakash in the new constructions which have been made by it. This offer was made by the counsel appearing for the Trust before me in this case. One of the grounds on which this offer was not accepted by the learned counsel appearing for Satya Prakash and Atma Prakash was that they had sentimental attachment for the shop in their occupation for the last seventy five years, particularly when the name of the road on which the shop is situate is also known by the name of their grandfather. Sentiments apart, the fact remains that Satya Prakash and Atma Prakash can get an accommodation in the same bunding for running their business. They will not be put to such a loss for which the genuine and bona fide requirement of the Trust to demolish the building to enable it to reconstruct the same for greater public charitable purposes be sacrificed.

31. Learned counsel for the tenants contended that the Act professed to control letting and eviction of tenants therefrom. He also contended that the direct and immediate object of the Act was to ensure accommodation to the tenants and, therefore, the Court should make an interpretation of Section 21 (1) (a) in a manner that it fulfilled the objects of the Act. It is indisputable that the Act was

passed for the purposes indicated above. But, at the same time, Section 21(1)(a) cannot be interpreted in a manner that it defeats the very object for which it was enacted. Moreover, the interpretation made by me does not defeat the object of the Act.

32. Before closing the judgment, I wish to refer to another aspect regarding the direction of the learned District Judge to let out a portion of the shop of Satya Prakash and Atma Prakash to Jagannath. It may be recalled that with regard to the shop in occupation of Jagannath, the finding of the learned District Judge was that the need of the Trust was greater than that of Jagannath. On this finding, he directed the eviction of Jagannath from the shop in his tenancy. He, however, thereafter, required him to be accommodated in a portion of the shop in the tenancy of Satya Prakash and Atma Prakash. Such a direction could not be given by the learned District Judge in exercising the power of appeal arising out of an order u/s 21. The expression "order eviction of a tenant from the building under tenancy or specified part thereof", only empowers the Prescribed Authority or the Judge in appeal to grant an order of eviction in respect of a part of the premises in the tenancy of a tenant. It does not entitle either the Prescribed Authority or the appellate court to create a new tenancy and to allot the same to a tenant. It is well recognised that a statutory authority has the power given to it under the Statute.

33. In the result, Writ Petitions Nos. 5340 of 1974, 5344 of 1974, 5345 of 1974 and 5429 of 1974 are dismissed, while Writ Petition No. 8312 of 1974 is allowed. The orders of the Prescribed Authority as well as that of the District Judge are quashed to the extent indicated above. Consequently, the application made by the Trust u/s 21 of the Act shall stand allowed in its entirety. The stay order passed in the aforesaid petitions are discharged. No order as to costs. Three months' time is allowed to Satya Prakash and Atma Prakash for vacating the shop in their occupation.