

(2012) 07 AHC CK 0070

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 33751 of 1999

Smt. Uma Yadav

APPELLANT

Vs

A.D.M. (Supply)/R.C.E.O. Vns. and Others

RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 11, 12, 13, 14, 16

Citation : (2012) 8 ADJ 652 : (2013) 1 ALJ 276 : (2013) 1 RCR(Rent) 13

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Janardan Sahai, A.K. Nigam, M.K. Nigam, Rahul Sahai, Surendra Tewari, for the Appellant; C.K. Parekh, S.R. Gupta, Smt. A. Gupta, Subhash Chandra Yadav, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Sudhir Agarwal, J.—Heard Sri M.K. Nigam, learned counsel for the petitioner, Sri C.K. Parekh, learned counsel for the respondents and perused the record. This writ petition has arisen out of the order dated 31st May, 1999 passed by Rent Control & Eviction Officer, Varanasi (hereinafter referred to as "RCEO") in Case No. 38 of 1996 (Smt. Indrani Sharma v. Smt. Uma Yadav and others) declaring vacancy in certain parts of the building in question and fixing next date for completing the proceedings relating to allotment.

2. The dispute relates to House No. C.K.8/8 situated in Mohalla Garhwasi Tola, Varanasi. The respondent No. 2 and 3 filed application dated 20.7.1996 u/s 16(1) (b), Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. 13 of 1972) (hereinafter referred to as "Act, 1972") for declaring vacancy at the premises in question and for eviction of petitioner from the said accommodation giving vacant possession to the applicant i.e. respondent No. 2 and 3. It was contested by the petitioner filing objection dated

12.94996. The application was initially rejected by RCEO vide order dated 22.2.1997 where against a revision was preferred, which was allowed vide order dated 20.2.1999 and the matter was remanded to RCEO.

3. Pursuant to the aforesaid remand, the impugned order has been passed by respondent No. 1 allowing the application of respondent No. 2.

4. The petitioner has challenged the impugned order inter alia raising the following grounds:

a. Sri Kashi Nath Sharma had no concern with the house in question. It was never dedicated to Shivji Virajman and Sri Kashi Nath Sharma could not therefore be said to be a Shebait of endowment. The respondent No. 3 therefore cannot claim himself to be the Shebait relying on the alleged deed executed by Kashi Nath Sharma.

b. The application for declaring vacancy alleging illegal occupation of the premises in question by the tenant i.e. the petitioner, could not have been filed after more than a decade and such an application deserved to be dismissed on the ground of limitation/laches. It was barred by limitation.

5. In the context of above submission, Sri Nigam submitted where no limitation is prescribed, a reasonable time should have been inferred and if an application of the kind in question is not filed within a reasonable time, the same is liable to be rejected on the ground of laches/extra ordinary delay; and/or limitation, as the case may be. In support thereof, he placed reliance on the judgments of this Court in Anil Kumar Dixit v. Smt. Maya Tripathi 2006(1) ADJ 264; Raj Dhari v. Smt. Ranjana Gupta, 2006(1) ARC 878; Abdul Khaliq v. A.D.J., 2007(2) ARC 629; Jamuna Devi v. D.J., 2009(10) ADJ 607; Hazi Naseem Ahmed v. RCEO Varanasi, 2009(5) ADJ 263; Rajeev Maurya v. RCEO Meerut, 2008(3) ARC 359 and in State of Jharkhand and Others etc. Vs. Shivam Coke Industries, Dhanbad, etc., .

6. He also informed this Court that question of limitation has already been referred by an Hon'ble Single Judge of this Court for consideration by larger Bench in Arun Kumar Joseph Vs. Victor Samuel Mathews and Another, .

7. The first question, whether respondents No. 2 and 3 had authority to file the application in question. Learned counsel for the petitioner submitted that the respondents No. 2 and 3 are drawing their authority from Sri Kashi Nath Sharma, alleged Shebait of the property in question. He referred to an earlier order passed in P.A. Case No. 32/94, dismissed by Prescribed Authority vide order dated 28th February, 1996 (Annexure 5-A page 60) and submitted that the Prescribed Authority found therein that Sri Kashi Nath Sharma was not the owner of the property in question at all.

8. I have gone through the aforesaid judgment. It appears that the said judgment had arisen out of the proceedings initiated by Shivaji Mahadev Ji Devtayan Virajman through Shebait and Manager Smt. Indrani Wife of Sri Ajit

Kumar Sharma and Smt. Indrani Sharma against Smt. Uma Yadav and four others under Sections 21(1)(a) of Act, 1972 seeking release of premises in question on the ground of personal need. The defendants therein contested the said application alleging that the property in dispute, i.e. House No. 8/8 (Old No. 59/7) was owned by one Raja Ram, who bequeathed the said property to his wife Smt. Saraswati Devi. Sri Raja Ram died on 10th March, 1991. After his death, Smt. Saraswati Devi, widow became owner of the property in question. It was subsequently transferred vide registered Will dated 13th May, 1941 by Smt. Sarswati Devi in favour of one Shri Ram who became the sole owner of the said property and before his death, he executed a Wish Deed on 11th March, 1985 in favour of one Bal Krishna Das Mehra and his son Jai Krishna Das Mehra which was duly registered. Sri Bal Krishna Das Mehra later died on 21st September, 1991 and his son Jai Krishna Das Mehra became the sole owner of property in question. It was never dedicated to Shivaji Mahadevji at any point of time, and hence, the Deity never became owner of the property in question. Consequently the question of Shebait and Managership of Smt. Indrani Devi could not have arisen. The Court below found that petitioners/applicants therein failed to produce any evidence showing ownership of the property in dispute either of Deity Shivaji Mahadevji or that of Sri Kashi Nath Sharma and, therefore, the application was not maintainable.

9. It is no doubt true that Prescribed Authority had rejected earlier application filed u/s 21(1)(a) of Act, 1972, recording its findings that applicant therein had failed to prove ownership on the property in question, but the Counsel for petitioner could not show that the said finding shall operate *res judicata* in the present case so as to bar RCEO from considering the issue again in the present application filed u/s 16(1)(b) and 12 of the Act, 1972. In fact Sri Nigam did not raise any argument in respect thereto. The Court also finds that earlier decision dated 28.2.1996 was rendered in the absence of any argument advanced on behalf of the applicant before the Prescribed Authority, as is evident from page 69 of the paper book.

10. Be that as it may, this aspect has already been considered by Revisional Court in its order dated 20th February, 1999 whereby RCEO's earlier order dated 22nd February, 1997 was set aside and this revisional order has attained finality between the parties. The Revisional Court had taken a view that the earlier order shall not be construed as final on the issue that Indrani Sharma is not the landlady and it cannot be held to have been decided finally. Moreover, when RCEO has recorded on the basis of evidence otherwise finding, and this has not been reversed by revisional order which has attained finality. The impugned order therefore cannot be allowed to be assailed for the first time now in this writ petition on this ground.

11. The Courts below have recorded a finding based on evidence that in respect to the premises in dispute, the petitioner and other tenants have paid rent to Sri Kashi Nath till 1990. It is also the finding recorded by the Courts below that the

petitioner is in occupation of the premises in question since 26.11.1985 but without any order of allotment and therefore her occupation of premises in dispute is wholly illegal and unauthorized. The Courts below have also referred to other evidence, namely, payment of water tax, house tax etc. by Smt. Indrani Devi. These are findings of fact having not been shown perverse or contrary to record, I do not find that the same warrants interference in the restricted and narrow scope of judicial review under Article 226/227 of the Constitution. No manifest error of law has been shown.

12. Under Article 227 of the Constitution, in supervisory jurisdiction of this Court over subordinate Courts, the scope of judicial review is very limited.

13. The scope of judicial review in writ jurisdiction under Article 226 or supervisory jurisdiction under Article 227 of the Constitution of India is very narrow. It is not to correct the errors in the orders of the Court below but to remove manifest and patent errors of law and jurisdiction without acting as an appellate authority.

14. This power involves a duty on the High Court to keep the inferior Courts and tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes.

15. In *D.N. Banerji Vs. P.R. Mukherjee and Others*, , the Court said:

Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under articles 226 and 227 of the Constitution to interfere.

16. A Constitution Bench of Apex Court examined the scope of Article 227 of the Constitution in *Waryam Singh and Another Vs. Amarnath and Another*, and made following observations at p. 571:

This power of superintendence conferred by article 227 is, as pointed out by Harries, C.J. in *Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee*, , to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.

17. In *Mohd. Yunus Vs. Mohd. Mustaqim and Others*, , the Apex Court held that this Court has very limited scope under Article 227 of the Constitution and even the errors of law cannot be corrected in exercise of power of judicial review under Article 227 of the Constitution. The power can be used sparingly when it comes to the conclusion that the Authority/Tribunal has exceeded its jurisdiction or proceeded under erroneous presumption of jurisdiction. The High Court cannot

assume unlimited prerogative to correct all species of hardship or wrong decisions. For interference, there must be a case of flagrant abuse of fundamental principles of law or where order of the Tribunal, etc. has resulted in grave injustice.

18. For interference under Article 227, the finding of facts recorded by the Authority should be found to be perverse or patently erroneous and de hors the factual and legal position on record. (See: Nibaran Chandra Bag etc. Vs. Mahendra Nath Ghughu, ; Rukmanand Bairoliya v. The State of Bihar and others, AIR 197, SC 746; Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, ; Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives, ; Reliance Industries Ltd. Vs. Pravinbhai Jasbhai Patel and others, ; Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, ; and Virendra Kashinath Ravat and Another Vs. Vinayak N. Joshi and Others,).

19. It is well-settled that power under Article 227 is of the judicial superintendence which cannot be used to up-set conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them. (See: Mrs. Rena Drego Vs. Lalchand Soni, Etc., ; Chandra Bhushan (Deceased) by Lrs. Vs. Beni Prasad and Others, ; Smt. Savitrabai Bhausahab Kevate and Others Vs. Raichand Dhanraj Lunja, ; and M/s. Savita Chemicals (Pvt.) Ltd. Vs. Dyes and Chemical Workers Union and Another,).

20. Power under Article 227 of the Constitution is not in the nature of power of appellate authority enabling re-appreciation of evidence. It should not alter the conclusion reached by the Competent Statutory Authority merely on the ground of insufficiency of evidence. (See: Union of India and Others Vs. Himmat Singh Chahar,).

21. In Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, , the Hon''ble Apex Court has held that there is no justification for the High Court to substitute its view for the opinion of the Authorities/Courts below as the same is not permissible in proceedings under Articles 226/227 of the Constitution.

22. In Mohan Amba Prasad Agnihotri and Others Vs. Bhaskar Balwant Aher (D) Through I.Rs., , the Hon''ble Supreme Court held that jurisdiction of High Court under Article 227 of the Constitution is not appealable but supervisory. Therefore, it cannot interfere with the findings of fact recorded by Courts below unless there is no evidence to support findings; or the findings are totally perverse.

23. In Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers'' Union and Another, , the Court observed that it is impermissible for the Writ Court to reappreciate evidence liberally and draw conclusions on its own on pure

questions of fact for the reason that it is not exercising appellate jurisdiction over the awards passed by Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the purpose ordinarily should be considered to have become final. The same cannot be disturbed for the mere reason of having based on materials or evidence not sufficient or credible in the opinion of Writ Court to warrant those findings. At any rate, as long as they are based upon some material which are relevant for the purpose, no interference is called for. Even on the ground that there is yet another view which can reasonably and possibly be taken, the High Court cannot interfere.

24. In *Union of India and Others Vs. Rajendra Prabha and Another*, , the Hon''ble Apex Court held that the High Court, in exercise of its extraordinary powers under Article 227 of the Constitution, cannot re-appreciate the evidence nor it can substitute its subjective opinion in place of the findings of Authorities below.

25. Similar view has been reiterated in *State of Maharashtra v. Milind and others*, (2001) 1 SCC 4; *M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd.*, ; and *Ouseph Mathai and Others Vs. M. Abdul Khadir*, .

26. In view of discussions made hereinabove the first issue is answered against the petitioner.

27. Now I come to the second issue; whether impugned order deserve to be set aside on the ground that occupancy of petitioner having been found since 1985, and the application in question was filed in 1996, therefore it was barred by limitation or otherwise liable to be non suited on the ground of extra ordinary delay and laches, etc..

28. It is not disputed by Sri Nigam, learned counsel for the petitioner that the Act provides that no person can occupy a premises governed by the provisions of Act 1972 unless an order of allotment has been made in his favour. The restriction is absolute and even a landlord or tenant with their consent cannot outway application of the Act. The mischief, the statue intent to remove cannot be allowed to prevail or exist or continue by the act of the parties. There are different provisions in the statute which fails any such attempt on the part of owner of the premises and a person in need of an accommodation on rent or otherwise, by ignoring the procedure prescribed in the statute. For the purpose of occupying any building or accommodation, in respect whereto Act, 1972 applies, one has to go strictly as per the procedure prescribed in the said statute.

29. The restrictions/prohibition under the Act 1972 in general are as under:

(i) There is a prohibition upon the landlord from receiving a premium or additional payment over and above the rent for admitting a tenant to a building governed by Act 1972. A similar restriction upon a tenant for admitting a sub-tenant or any other person has been provided (Section 4 of the Act, 1972).

(ii) Section 11 thereafter mandates about letting of any building except in pursuance of an allotment order issued u/s 16, save otherwise under the Act by

any other prohibition (Section 11 of the Act).

30. A building, when is vacated by a landlord or tenant, cannot allowed to be occupied by any person unless there is an order of allotment or release. If in violation of the above, any person occupies the same, he would be deemed to be an "unauthorized occupant". There is only one provision which regularized occupation of existing tenant(s) who were occupying a premises, whether as a licensee or tenant, with the consent of landlord before the commencement of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976, which came into force on 5th July, 1976. There is no other provision which contemplates any regularization of a possession obtained in violation of the Act, 1972. It also does not confer any valid status or legality on the occupation of the premises if it is in the teeth of the statutory provisions of Act, 1972. The continuance of flagrant violation of statute for any length of period has also not been conferred with legality by prescribing any period of limitation by Act 1972.

31. Now I may consider the relevant authorities on the subject cited at the Bar on this issue.

32. In Anil Kumar Dixit (supra) Hon''ble S.U. Khan, J. took the view that where no limitation is provided, an application for allotment/release u/s 12 and/or 16 will have to be filed within a reasonable time. His Lordship relied on Apex Court decision in Mansaram Vs. S.P. Pathak and Others, . The Court also relied on Brij Bala Jain v. Amar Jeet Kaur, 1996(2) ARC 474 wherein the Court in para 11 held that in any case 12 years period should be taken as reasonable time for initiating proceedings under the statute from the date, cause of action arises for taking an action. The Court thus held that the proceedings initiated by RCEO at the instance of one Promod Kumar Tripathi submitting allotment application in the year 2002, though the shop in dispute was occupied by the tenant in 1989, are barred by time. The other relevant provisions of the Act were not noticed by the Hon''ble Court in the aforesaid judgment.

33. Rajdhari v. Smt. Ranjana Gupta and another, 2006(3) ADJ 409, is another decision by the same Hon''ble Judge (Hon''ble S.U. Khan, J.) and following His Lordship''s earlier decision in Anil Kumar Dixit (supra) as is evident from para 5 of the judgment, a similar view was taken. There also proceedings were initiated on an allotment application of one Deshraj Singh filed in the year 2000. The RCEO, however released premises in favour of landlady by order dated 31st August, 2001 where against revision was dismissed being not maintainable on the ground that Revisional Court against allotment order cannot examine correctness of the order of declaration of vacancy. The Court reversed this finding referring to Apex Court''s decision in Achal Misra v. R.S. Singh, 2005 (1) ARC 877 (SC) and held revision maintainable. Here also Section 4 and 11 are neither referred nor considered at all.

34. Abdul Khaliq (supra) is the judgment of Hon''ble Sanjay Misra, J.. His

Lordship has also relied on the Apex Court decision in Mansaram (supra) and this Court's judgment in Anil Kumar Dixit (supra) observing that there should be a time limit within which the proceedings u/s 12 of the Act can be started. The Court held that 12 years period should be taken as reasonable time for initiating proceedings under the statute "from the date cause of action arises". Following the same, Court non-suited the landlord for initiating proceedings u/s 16 of the Act after 19 years. In para 4 of the judgment in Abdul Khaliq (supra), His Lordship referred to another judgment of this Court in Munna Lal Agarwal Vs. Rent Control and Eviction Officer/City Magistrate and Others, , observing, where without any allotment proceedings the landlord has executed an agreement to the tenant and let out the premises after July, 1976, he can file a suit for eviction on the grounds mentioned u/s 20(2) and release application u/s 21 of the Act but cannot file release application on the ground of unauthorized occupancy, pleading a deemed vacancy u/s 12/16 of the Act. Here also various provisions of the Act were neither argued nor referred to nor discussed by the Court namely Sections 11, 13, 14, 31 and 35 of the Act, 1972.

35. Rajeev Maurya (supra) is also a similar decision by His Lordship Hon. S.U. Khan, J following Apex Court's decision in Mansaram (supra) and His Lordship's earlier decision in Anil Kumar Dixit (supra).

36. Jamuna Devi (Smt.) (supra) is a decision of Hon"ble V.K. Shukla, J.. Following Mansaram (supra), Brij Bala Jain v. Amar Jeet Kaur, 1996(2) ARC 479 and Anil Kumar Dixit (supra), the Court set aside the order of RCEO and remanded the matter for reconsideration. The proceedings were initiated by landlord after purchasing property in dispute on 27th October, 2005. He filed an application u/s 16(1)(b) of Act, 1972, seeking eviction of about 35 tenants from the premises in question which was a very big building on the ground that they were all unlawful occupants having occupied premises in question without any allotment orders. The RCEO allowed application and declared vacancy vide order dated 6th February, 2007. Thereafter he also released the premises in favour of landlord by order dated 3.5.2007. The Court observed that erstwhile landlord never had initiated any such proceedings. The tenants were residing in the premises for more than two decades and the contention of the tenants was that they were occupying the premises before 1977. The Court found it justified to set aside the order of RCEO, observing that it was passed mechanically.

37. Hazi Naseem Ahmad (supra) is a judgment of Hon"ble Prakash Krishna, J and His Lordship also followed this Court's decisions in Anil Kumar Dixit (supra) and Abdul Khaliq (supra), Sarla Devi v. Shailesh Kumar and others, 2008 (3) ARC 632 and Jamuna Devi (supra) as also Apex Court's decision in Mansaram (supra). His Lordship also referred to a contrary decision in Shambhu @ Shambhu Dayal v. The Rent Control and Eviction Officer and others, 2007(2) ADJ 19 (NOC), but observing that therein earlier authorities were not noticed, His Lordship followed other decisions.

38. It is no doubt true that in Babloo v. Munna Lal Verma and another, 2007 (3)

ARC 633, Hon"ble Rakesh Tiwari has taken a different view distinguishing the decision of this Court in Smt. Brij Bala Jain (supra) after referring Apex Court"s decision in Mansaram (supra) and by observing in paras 19 and 20 of the judgment as under:

19. The whole scheme of the Act provides that in certain circumstances, the relationship of tenant and landlord can be legally brought to an end if the landlord is restrained by a blanket decision of the Court in garb that proceedings cannot be initiated beyond a certain period, i.e., on the ground of reasonable limitation, the landlord has to exercise his option within certain period, or within reasonable time by the Courts. In that circumstances, the landlord would not be able to bring or institute any suit against the tenant being "beyond the reasonable period of time" this would be in direct conflict with object and reasons, as well as scheme in the provisions of the Act.

20. The Court below relying upon paragraph 10 of the judgment rendered in the case of Mansaram Vs. S.P. Pathak and Others, , held that:

There is no limitation for taking such steps either by the landlord or by the Rent Control and Eviction Officer. Where the Act does not provide for specific limitation for taking such action, the Court has held in various decisions that it should be within a reasonable time.

39. Having said so, I find that in State of Jharkhand and others (supra) the Apex Court has taken an otherwise view and it goes against the basic submission advanced by counsel for the petitioner. The Court clearly held when Limitation Act and its provisions have not been made applicable, the same cannot be applied. However, the Court further says, when power has been conferred on a quasi judicial authority to be exercised, and no period of limitation has been prescribed, it shall be exercised within a reasonable period of time and what is the reasonable period of time, would depend on the facts and circumstances of each case. In para 46 of the judgment, the Court said:

In our considered opinion, such extraordinary power i.e. suo motu power of initiation of revisional proceeding has to be exercised within a reasonable period of time and what is a reasonable period of time would depend on the facts and circumstances of each case.

40. The Apex Court relied on its earlier decisions to express the above opinion dealing with the words "reasonable period". I would refer the relevant extract thereof in Government of India Vs. Citedal Fine Pharmaceuticals, Madras and Others, , in para 6 of the judgment where the Court said:

6....While it is true that Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the rule is to be made, but that by itself does not render the rule unreasonable or violative of Article 14 of the Constitution. In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be

reasonable period, would depend upon the facts of each case.

41. In *State of Punjab and Others Vs. Bhatinda District Coop. Milk P. Union Ltd.*, , in para 18 the Court said:

18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.

42. In *Smt. Sulochana Chandrakant Galande Vs. Pune Municipal Transport and Others*, , the Court said:

29. In view of the above, we reach the inescapable conclusion that the revisional powers cannot be used arbitrarily at a belated stage for the reason that the order passed in revision u/s 34 of the 1976 Act, is a judicial order. What should be reasonable time, would depend upon the facts and circumstances of each case.

43. In the aforesaid judgments, considering the statute, nature of power and other aspect, the Court finds that power exercised by the competent authority within about three years or soon after expiry of three years cannot be said to be unreasonable.

44. The provisions of Act 1972 and in particular Sections 11, 12, 13, 17, 31 came to be considered before Apex Court in *Nutan Kumar and Others Vs. IInd Additional District Judge and Others*, and the Court in para 12 of the judgment said :

Section 13 of the said Act specifically provides that a person who occupies, without an allotment order in his favour, shall be deemed to be an unauthorised occupant of such premises. As he is authorised occupation he is like a trespasser. A suit for ejectment of a trespasser to get back possession from a trespasser could always be filed. Such a Suit would not be on the contract/agreement between the parties and would thus not be hit by principles of public policy also.

45. It is worthy to notice at this stage that the two Judge judgment in *Nutan Kumar and others* (supra) held that earlier three judge judgment in *Nanakram Vs. Kundalrai*, , is binding and continues to hold the field wherein it was held that in absence of any mandatory provision obliging eviction in case of contravention of the provisions of the Act, the lease would not be void and the parties would be bound, as between themselves, to observe the conditions of lease. This factum has been reiterated in para 13 of the judgment in *Nutan Kumar and others* (supra) as under:

Thus unless the statute specifically provides that a contract contrary to the provisions of the statute would be void the contract would remain binding between the parties and could be enforced between the parties themselves.

46. It is also worthy to mention that Apex Court also considered another earlier judgment in *Woman Shrinivas Kini v. Ratilal Bhagwandas and Co.*, 1995 (Supp.

2) SCR 217, wherein an agreement was executed between the landlord and tenant permitting subletting. However, Section 15 of Bombay Hotel and Lodging Houses Rates Control Act, 1947 prohibits subletting by a tenant wholly or partly any premises in any manner and it is declared unlawful. The Court held that in view of the specific provision of a statute declaring subletting unlawful, the provision of the statute shall prevail over the contract.

47. In Krishna Khanna Vs. Additional District Magistrate, Kanpur and Others, , the Apex Court held that so long as the Act and the Rules continued in force, the control of letting vested in the appropriate authority and not in the parties. Agreement of the kind embodied in the compromise petition between the landlord and tenant would not curtail powers of the appropriate authority. It was also held that irrespective of the agreement between the parties the appropriate authority was entitled to exercise the powers vested in him under the statute.

48. In Geep Industrial Syndicate Ltd. Allahabad v. The Rent Control and Eviction Officer, Allahabad and others, 1982 (2) ARC 585, construing Sections 11 and 13, this Court said that a contract may be binding on the parties but not on the authorities, which would mean that the possession of a person who has been illegally let it out would be unauthorized. Sections 11 and 13 of the Act make that position very clear. No one now can either let out any premises without an allotment order nor can anyone occupy the same. If any one occupies the premises without an allotment order, he would not only be an "unauthorized occupant" but also liable to prosecution u/s 31 of the Act. The Court further said:

His possessions being unauthorized cannot be recognized in the eye of law and if it cannot be recognized in the eye of law, there would be a vacancy. That would entitle the Rent Control and Eviction Officer u/s 16 to pass an allotment order.

49. The Court further said:

Section- 11 prohibits a person from letting any building except in pursuance of an allotment order issued u/s 16. Since there is a prohibition imposed on the right of any person, which will include a landlord and tenant both, the person occupying the premises would be in an unauthorized possession. Such a person could not be treated to be a tenant. The authorized possession of a person gives a right or authority to occupy it, whereas unauthorized would mean that the person occupying is not possessed of rightful or legal power and, as such, no legal competency which can have any recognition in the eye of law, as a result of which the premises would be deemed to be unoccupied or unfilled, or empty. If that is so, the Rent Control and Eviction Officer u/s 16 takes within its purview also possession of a person which is not recognized in law. If a person without any authority occupies a premises, his possession would be of no value and the premises would be available to the District Magistrate for passing an allotment order u/s 16.

50. In Shafaqat Hussain v. District Judge, Moradabad and others, 1999 (2) ARC 608, Hon'ble D.K. Seth, J. construed the cumulative effect of Sections 11 and 13

of the Act, 1972 in para 9 of the judgment as under:

By reason of Section 13, occupation of a building by a tenant, without order of allotment, even with the consent of the landlord, is unauthorised. Whereas by reason of Section 11, such occupation is forbidden. The cumulative effect of Sections 11 and 13 makes an occupation by a person, claiming to be tenant, without order of allotment, is void-no matter even if such occupation is with the consent of the landlord.

51. The status of a person occupying a premises without any allotment order has also been considered by Hon''ble U.S. Tripathi, J. in Reeta Chauhan (Smt.) v. Virendra Govind Upadhyaya, 2004(2) ARC 14 and relying on Apex Court's decision in Nutan Kumar (supra) and Nanak Ram (supra), in para 13 of the judgment, His Lordship said:

Thus, now it is settled position of law that a person occupying a premises without any allotment order in his favour shall be deemed to be an unauthorized occupant of such premises and his position is that of a trespasser. Consequently, a suit for ejectment of a trespasser to get back possession from a trespasser could always be filed by the landlord/owner of the premises.

52. In Narendra Singh v. Surendra Nath Dinger, 2006 (3) ARC 521 Hon''ble Rakesh Sharma, J. following this Court's earlier decisions in Kanhaiya Lal v. The Rent Control and Eviction Officer and others, 2002 (1) ARC 551 and Satya Narain v. Rent Control and Eviction Officer, Kanpur Nagar and others, 2002 (2) ARC 702 observed that an unauthorised occupant having no allotment order has got no right to intervene in the release of the premises.

53. In Murlidhar Aggarwal and Another Vs. State of Uttar Pradesh and Others, , the Court finds (while confirming Full Bench judgment in Udho Dass v. Prem Prakash, (1963) ALJ 406, in para 16 of the judgment) in para 17 that a tenancy, if created illegally, the landlord and tenant cannot raise objection thereto but their agreement would not bind the District Magistrate who despite the lease executed between the parties can treat the accommodation vacant and evict therefrom the tenant who is in occupation of the accommodation without an allotment order. The Court says that this is his statutory obligation. For my purpose, the above judgment is being relied for the proposition that a vacancy in violation of mandate of Sections 11 and 13 renders the occupant's possession, unauthorised, conferring no right upon him to retain possession, as such, an unauthorised occupant cannot arrest or check the power of RCEO to allot the premises in question to the prospective allottees in accordance with law.

54. Having said so, I am clearly of the opinion that an illegal possession of an accommodation which falls within the purview of Act, 1972 cannot be legalized merely by passage of time and it would neither authorize the Competent Authority to treat such otherwise unauthorized occupation, valid, regular or lawful nor would deprive him from proceeding to allot such accommodation to another person in accordance with law by taking into notice the provisions of

"deemed vacancy" of such accommodation. The declaration of vacancy is by operation of law. It does not require any authority of an Executive Officer but legislature itself, on happening of certain things, has declared that it shall result in a vacancy and has treated the same as a "deemed vacancy" though in effect actual vacancy may not be there and some one might be occupying the premises. The law says and declares that premises shall be "deemed vacant" and the officer, concerned is bound to proceed accordingly for allotment of accommodation to prospective allottees which is in furtherance of objective of the Act.

55. It is no doubt true, when a statute is made to confer benefit upon someone, it is always open to such person to waive such benefit. But in respect to the statutes dealing with tenant and landlord, the position is otherwise. The Apex Court considered the objective and purpose of enactment of U.P. (Temporary) Control of Rent and Eviction Act, 1947 in *Murlidhar Aggarwal and another (supra)* and observed that policy of the Act appears to be that responsible officials like District Magistrate should consider the claim of landlords, tenants etc. in passing different orders. At that time also, the Court recognized alarming scarcity of accommodation and it is nobody's case that such situation has undergone any substantial improvement as on date. The objective of legislature in enacting such a law like Act 1972 is to protect tenants from greedy and grasping landlords, and from their resorting to Court for eviction of tenants without reasonable grounds. It is in this context the Apex Court in a subsequent decision has observed that it is only Section 21 which shows some favour to the landlord otherwise entire statute takes care of providing protection to tenants in the hands of landlords. The Court also said that it cannot be doubted that a benefit provided by statute can be waived by the person for whom the benefit is there, provided no question of public policy is involved. In *Shri Lachoo Mal Vs. Shri Radhey Shyam*, , the Court said:

If the object of a statute is not one of general policy, or if the thing which is being done will benefit only a particular person or class of persons, then the conditions prescribed by the statute are not considered as being indispensable. This rule is expressed by the maxim of law, *quilibet potest renuntiare juri pro se introducto*. As a general rule, the conditions imposed by statutes which authorise legal proceedings are treated as being indispensable to giving the Court jurisdiction. But if it appears that the statutory conditions were inserted by the legislature simply for the security or benefit of the parties to the action themselves, and that no public interests are involved, such conditions will not be considered as indispensable, and either party may waive them without affecting the jurisdiction of the Court...See *Craies on Statute Law*, 7th ed., pp. 269-270

56. In such a case, the legal maxim which normally gets attracted is *culibet licit renuntiare juri pro se introducto*. It means that everyone has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, which may be dispensed

with without infringing any public right or public policy. Where, in an Act, there is no express prohibition against contracting out of it, it is necessary to consider whether the Act is one which is intended to deal with private rights only or whether it is an Act which is intended, as a matter of public policy, to have a more extensive operation.

57. The provisions of Act, 1972 if construed in the context of the above, it cannot be doubted that the same have been enacted for protecting one set of people from another set of people, the one from their situation and condition are liable to be oppressed and imposed upon. The people who are in necessity cannot be said to be free men. A person in the need of accommodation for his residence etc. cannot be said to have power of bargaining at par with the owner of the building. Necessitous men are not free men. The policy of the statute therefore is protection of a weaker class in the community from harassment of comparative powerful class.

58. The statute in the present case bars any occupation of building by a person who has not been given an allotment order by Competent Authority in exercise of power under the statute. If we try to ignore this illegality on account of sheer passage of time, it would defeat the very-objective. The mischievous people, in collusion, may take away accommodation from otherwise needy people whose interest is to be watched and taken care of by the Competent Authority for the purpose of allotting such accommodation, considering various factors provided in the statute.

59. Though the judgments in Anil Kumar Dixit (supra) and other cases following the aforesaid decision have not at all considered the Apex Court judgment in Nutan Kumar and others (supra) and various others, as discussed above, and have also not discussed various relevant provisions available in the statute itself, and to some extent it appears that ex facie these judgments may suffer the principle of per in curium or the doctrine of ignorantia but for the purpose of present case, I do not intend to delve into this adventure for the reason that present case can be decided even by following the dictum laid down therein. In other circumstances, I could have referred this matter also to be considered by a Larger Bench since, in my view, the judgments which have supplied a kind of limitation or laches to legalize such unauthorised occupation wants reconsideration but in the present case, I find that even if the aforesaid decisions are made applicable to the facts of this case, still no benefit can be given to the petitioner.

60. The decisions in Anil Kumar Dixit (supra), Brij Bala Jain (supra), Raj Dhari (supra), Abdul Khaliq (supra), Munna Lal Agarwal (supra), Rajeev Maurya (supra), Jamuna Devi (supra) etc. referred above, all say, if 12 years period has expired from the date the "cause of action has arisen" for taking an action, no action thereafter shall be permitted. Therefore, in order to attract the aforesaid period of 12 years, as applied by judicial precedents, reckoning point is the "date of cause of action".

61. In all these judgments, mentioned above, basic judgment of Apex Court followed is of Mansaram (supra). It is a two judges Bench judgment which had arisen out of an order dated 2nd November 1977 passed by House Allotment Officer (hereinafter referred to as "HAO") under the provisions of Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 (hereinafter referred to as "Order, 1949") where against petition was also dismissed by Nagpur Bench of Bombay High Court. The relevant provisions considered therein were Clauses 22, 23, 25 and 28 of Order, 1949.

62. Suffice it to mention that under the aforesaid Order, 1949, Collector was given limited power of allotting a vacant accommodation to a person holding an office of profit under Union or State Government or to any person holding a post under Madhya Pradesh Electricity Board or to a displaced person or to an evicted person. In order to enable the Collector to do so, Clause 22 obliges the landlord to intimate vacancy in a house whereupon Collector is/was under an obligation to pass an order of allotment within fifteen days. If Collector fails to allot accommodation within fifteen days from the date of intimation, landlord would be free to let out the premises to any person.

63. In the aforesaid case, Sri Mansaram, who was a Government servant in Telephone Department at Nagpur came into possession of accommodation in 1954. At that time one Basantrai Sharma was the landlord. Sri Basantrai Sharma died but sometime after 1967. Sri Mansaram also retired from service in 1967 but continued in possession of aforesaid accommodation. One S.P. Pathak filed application on 7th December, 1976 before HAO claiming that Sri Mansaram was occupying premises without any letter of allotment and in violation of Clause 22(2) of Order, 1949 and even after retirement is illegally continuing to occupy the same. Sri Mansaram contested the application stating that he was ensured by the then landlord late Basantrai Sharma that premises were being permitted to be occupied in accordance with Sub-clause (2) of clause 23 which permits the landlord to let the premises to whomsoever he considers proper, if he has not received an allotment letter/order from Collector within fifteen days from the date of intimation of vacancy under Clause 22.

64. The Apex Court found that HAO did not examine the question whether an intimation was given by Sri Basant Rai Sharma or not, whether any letter of allotment was issued within time prescribed or not. When the tenant has come up with a specific case, such an enquiry on the part of HAO was must. The Apex Court also observed that before the tenant would be charged with contravention of Clause 22(2), it was incumbent upon HAO to enquire whether Basantrai Sharma had sent any intimation of vacancy to the Collector as required by Clause 22(1)(b) or not. The Court further said, if it was not sent, landlord's successor in interest could not have been allowed to take advantage of wrong of their predecessor, particularly when successors of Basantrai Sharma, by avoiding to participate in the proceedings, attempted to help the applicant S.P. Pathak, who was also alleged to be a near relation of the husband of one of the successor

of late Basantraï Sharma. In para 10 of the judgment the Court observed:

...Further the tenant contended that deceased landlord gave him an assurance as required by Clause 23(2). In the light of this contention it was obligatory upon the landlord or his successor in interest to prove that no such assurance as claimed by the appellant was ever given to him. Shri S.P. Pathak, the applicant claims to be a stranger. Original landlord Basantraï Sharma was dead by the time the present proceedings commenced. Her successor in interest Smt. Usha Rani N. Sharma remained absent. Appellant gave evidence that he was given the assurance that the premises were being let out to him in accordance with Sub-clause (2) of Clause 23. And Sub-clause (2) of Clause 22 protects a tenant against charge of unauthorised occupation if he enters premises on the assurance as aforesaid as provided in Clause 22(2). The order made, by the House Allotment Officer is conspicuously silent on this most relevant question why the allegation of assurance put forward by the appellant was not examined by him and why it was rejected sub silent ion. The non-application of mind by the quasi judicial authority to the most relevant point which goes to the root of the matter completely vitiates the order of the House Allotment Officer, because once the allegation of assurance canvassed for on behalf of the appellant is accepted, he is not liable to be evicted on the ground that he entered the premises in contravention of Clause 22(2).

65. Having said so, the Court in Mansaram (supra) further said that after retirement, continuance of tenant could have attracted Clause 25 of Order, 1949 only if he would have been found in possession of the premises under an order of allotment made by Collector either under clause 23 or Clause 24A. In absence of such an allotment order, HAO could not have drawn an inference that premises were allotted to the tenant since he was holding an office of profit under the Government. The Court in para 11 of the judgment further said:

...If there is no order of allotment issued to the appellant on the ground that he is holding an office of profit, the House Allotment Officer had no jurisdiction to call upon him to vacate the premises on the short ground that he has ceased to hold the office of profit. The House Allotment Officer has in terms held that as the appellant has retired in 1967, and therefore he is not entitled to continue to occupy the premises. This line of reasoning proceeds on the assumption that there was initially an order of allotment in favour of the appellant on the ground that he was holding an office of profit, the assumption being not borne out by the facts. In the absence of an allotment order, the House Allotment Officer has no jurisdiction to call upon the appellant to vacate the premises on the short ground that he has ceased to hold the office of profit.

66. Having said so, in para 12 the Court has also examined thereafter a further connected issue regarding conduct and the manner in which Sri S.P. Pathak, a total stranger, came to challenge possession of Sri Mansaram. The Court observed that tenant entered premises in 1954. Numerous proceedings between him and late Basantraï Sharma were taken to evict the tenant and to permit

entry of late Basantrai Sharma to the premises but failed. Till Sri Basantrai Sharma was alive, no one raised controversy about entry of tenant in the premises being unauthorised or in contravention of any provision of Order, 1949. This would permit an inference that late Basantrai Sharma (landlord) accepted the tenant and his tenancy as if it did not suffer from any infirmity. When the tenant retired in 1967, at that time also (late) Basantrai Sharma was alive but he did not take any steps for his ouster. Meaning thereby entry of Mansaram, in the premises, was under the power of the landlord to let out the premises, once the Collector has failed to issue an allotment order. Even after his death, successors of landlord did not raise any objection about occupation of premises by tenant Sri Mansaram. It is only, a stranger, S.P. Pathak, came forward in 1976, to complain about alleged unauthorised entry of the tenant in the premises without placing relevant facts and without permitting enquiry into the matter by HAO. The Court said, the factum that (late) Basantrai Sharma did not avail opportunity to evict him on his retirement in 1967 when he had already taken steps for his eviction in various other proceedings, shows that tenant could not have been evicted under the provisions meant for such eviction since he was not holding the premises under an allotment order but under residuary power of landlord to let out the accommodation. The rent was also accepted from the tenant by Basantrai Sharma till his death and thereafter by his successor. It is in these circumstances the Court formulated a question, "whether at this distance of time can a tenant be thrown out on the ground that his initial entry was unauthorised" and, then, Court considered and answered the said proposition as under:

...Could he be at this distance of time, thrown out on the ground that his initial entry was unauthorised. To slightly differently formulate the proposition, could the initial unauthorised entry, if there be any, permit a House Allotment Officer, 22 years after the entry, to evict the appellant on the short ground that he entered the premises in contravention of Clause 22(2) ? Undoubtedly, power is conferred on the Collector to see that the provisions of the Rent Control Order which disclosed a public policy are effectively implemented and if the Collector therefore, comes across information that there is a contravention, he is clothed with adequate power to set right the contravention by ejecting anyone who comes into the premises in contravention of the provisions. But when the power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner. Exercise of power in a reasonable manner inheres the concept of its exercise within a reasonable time. Undoubtedly, no limitation is prescribed in this behalf but one would stand aghast that a landlord to some extent in *pari delicto* could turn the tables against the person who was in possession for 22 years as a tenant. In such a situation, even though the House Allotment Officer was to reach an affirmative conclusion that the initial entry 22 years back was an unauthorised entry and that failure to vacate premises till 9 years after retirement was not proper, yet it was not obligatory upon him to pass a peremptory order of eviction in the manner in which he has done. In such a situation, it would be open to him not to evict the appellant. In this connection,

we may refer to *Murlidhar Aggarwal and Another Vs. State of Uttar Pradesh and Others*, wherein one Ram Agyan Singh who came into possession of premises without an order of allotment in his favour as required by Section 7(2) of the U.P. (Temporary) Control of Rent and Eviction Act, 1947, was permitted to retain the premises by treating his occupation lawful and this Court declined to interfere with that order. No doubt it must be confessed that Section 7A conferred power on the District Magistrate to take action against unauthorised occupation in contravention of the provisions of the U.P. (Temporary) Control of Rent and Eviction Act, 1947, but there was a proviso to the section which enabled the District Magistrate not to evict a person found to be in unauthorised occupation, if the District Magistrate was satisfied that there has been undue delay or otherwise it is inexpedient to do so. There is no Such proviso to Clause 28 which confers power on the Collector to take necessary action for the purpose of securing compliance with the Rent Control Order. But as stated earlier, where power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner and the reasonable exercises of power inheres its exercise within a reasonable time. This is too well established to need buttressing by a precedent. However, one is readily available in *The State of Gujarat Vs. Patil Raghav Natha and Others*. In that case Commissioner exercised suo motu revisional jurisdiction u/s 211 of the Bombay Land Revenue Code which did not prescribe any period of limitation for exercise of revisional jurisdiction. The Commissioner exercised revisional jurisdiction one year after the Collector made the order which was sought to be revised. The High Court set aside the order of the Commissioner. In the appeal by State of Gujarat, this Court declined to interfere holding inter alia that the revisional power in the absence of prescribed period of limitation must be exercised within a reasonable time and period of one year was held to be too late. This aspect must be present to the mind of House Allotment Officer before just rushing in on an unproved technical contravention brought to his notice contrived by the successor in interest of the deceased landlord, and evicting the appellant 22 years after his entry and 9 years after his retirement on the short ground that his entry in the year 1954 was in contravention of Clause 22(2).

67. The Court held, when a power is conferred to be exercised but without any limitation provided therefore, it must be exercised in a reasonable manner and within a reasonable time. The Court relied on its earlier decision in *Murlidhar Aggarwal and Another Vs. State of Uttar Pradesh and Others*, where it had declined to interfere where a tenant occupied a premises without an order of allotment in his favour as required by Section 7(2) of U.P. (Temporary) Control of Rent and Eviction Act, 1947 (hereinafter referred to as "Act, 1947"), by referring to Section 7-A and proviso thereto, which enables the District Magistrate not to evict a person, found to be in unauthorised occupation, if District Magistrate is satisfied that there has been undue delay or otherwise it is expedient to do so.

68. The Court castigated the approach of HAO, observing that he should not have rushed to form an opinion of unauthorised occupation on unproved technical

contravention brought to his notice by successor in interest of the deceased landlord after twenty years from the date of possession and after nineteen years from the date of his retirement. It was the wholesome effect of various issues considered by the Court in Mansaram (supra) whereupon it set aside the order passed by HAO.

69. Thus it is evident that decision relied in Murlidhar Agarwal (supra) was in the context of a statute which conferred power upon the District Magistrate to decline an order of eviction on the ground of delay etc. and decision in Mansaram (supra) was in view of peculiar facts, as noticed above.

70. I do not find any period of limitation as such prescribed in para 12 of the judgment in Mansaram (supra) holding that in no case an order of eviction shall be declined or an unauthorised or illegal entry of a tenant shall stand regularized after a particular period of time, treated to be a period of limitation, particularly in a case which would be in the teeth of the statute based on proved facts demonstrating an admitted illegal entry in the premises and where the authorities concerned cannot be held responsible for not taking appropriate action for want of any information.

71. Can it be said that cause of action would arise immediately as and when a person occupy an accommodation without any letter of allotment and in all cases this 12 years period will commence therefrom, I find that on this aspect, no issue has ever been raised in all the aforesaid decisions and therefore it has neither been argued nor decided as to when a "cause of action would arise" and "whether it would necessarily arise in any case only on the date when a person takes possession of a accommodation without any latter of allotment or there can be different dates".

72. In my view, this question is of much relevance so as to attract the aforesaid period of limitation or laches, what-ever terminology one may use. Such illegal occupation/unauthorised occupation can be challenged/assailed by three sets of people:

(i) Landlord, whose accommodation is unauthorizedly occupied by someone.

(ii) Applicant, i.e. a prospective allottee who is in the need of an accommodation and has applied for allotment of an accommodation to RCEO. Here we will term him as "prospective allottee" for future discussion.

(iii) RCEO/District Magistrate, as the case may be, who has power to declare vacancy or to proceed to make allotment in case of a deemed vacancy of a particular premises.

73. In respect to the first set namely, owner of the premises, normally he would get knowledge of occupation of his building by someone unauthorizedly as soon as such possession is taken and therefore, so far as landlord/owner is concerned in his/her case, cause of action may arise on the date of such unauthorised occupation. However where landlord can show that for certain reasons, namely

landlord is residing elsewhere in different city or in different country or for any other reason, had no knowledge whatsoever about such unauthorised occupation, cause of action would arise and continue to arise on the date he acquired such knowledge for the simple reason that without such knowledge, one is not expected to take an action for ejectment/release from unauthorised occupant.

74. So far as the authorities are concerned, one cannot presume that they can get knowledge immediately as soon as a person is put in possession of a building unauthorisedly, i.e. without any letter of allotment. Such possession can be given in various ways namely, by outgoing tenant without any notice to the landlord and Rent Control Authorities and/or by inducting an outsider to the premises in question and thereafter vacating the premises by tenant already occupying it, or with the consent of landlord, possession of an accommodation is given to a person without informing the authorities and without making the building available for allotment under the statute.

75. Section 15 makes it obligatory upon tenant and landlord to inform the Rent Control Authorities i.e. District Magistrate about vacancy occurring or likely to fall within a specific time with the power to condone delay in giving such information. It is only when this provision has been complied with, it can be said that District Magistrate or Rent Control Authorities had the knowledge of vacancy and yet, if they do not take any action to evict an unauthorised occupant for such a long time, the laches can be applied. In my view, so far as Rent Control Authorities are concerned, in their case, cause of action would arise on the date, factum of unauthorised occupation by someone has come to their knowledge.

76. Attributing knowledge of unauthorised occupation without any intimation to authorities may render redundant and virtually nullify the efficacy of the statute, and, the purpose and objective with which these provisions have been made. Probably for this reason, in respect to certain cases where action may not have been taken by Rent Control Authorities immediately, the legislature itself has made provision like Section 12 regarding "deemed vacancy" of building and such "deemed vacancy" would continue. Action for vacation of an unauthorised occupant can be conceived only when authorities concerned gather information/notice of such unauthorised occupation. Therefore, in case of Rent Control Authorities, again it is the knowledge of such unauthorised occupation wherefrom the said period of 12 years would commence and not otherwise.

77. Now coming to the third category namely prospective allottee(s). They also cannot be presumed to possess knowledge every time, whenever an individual has got possession unauthorisedly or otherwise i.e. without any letter of appointment or not. The position of vacancy can be gathered by prospective allottee only when vacancy in a premises is entered in the register maintained in the office of RCEO as contemplated in Rule 9(3) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 (hereinafter referred to as "Rules, 1972") unless it can be shown otherwise by positive evidence that

particular prospective allottee acquired knowledge of unauthorised occupation at a particular point of time even before entry of vacancy in the register under Rule 9(3) and in such case, cause of action may arise from that date. Therefore, in respect to the third category, either it is the date on which vacancy is entered in the register maintained under Rule 9(3) of Rules, 1972 or the date of knowledge acquired by the prospective allottee.

78. In the present case, it is admitted case of petitioner that they came into possession of the premises in question on 26.11.1985. It is nobody's case that landlord of premises in question, whosoever he was, gave information to the Rent Control Authorities about aforesaid vacancy either in 1985 itself or before it or even thereafter. Section 15 admittedly was never complied. For the first time, when application was filed by respondents No. 2 and 3 on 20th July, 1996 for releasing vacancy in question to them, it may be said that Rent Control Authorities got information about alleged unauthorised occupation of premises in dispute from the petitioner. This was an ex parte information. In accordance with the statute, the premises was inspected by Rent Control Inspector who submitted his report on 5th August, 1996 verified this fact. Therefore at the earliest either it is 20th July, 1996 or 5th August, 1996 which are the dates when it can be said that District Magistrate/RCEO got knowledge of factum of unauthorised occupation of the premises in dispute from the petitioner, giving cause of action to him (RCEO) to take action in accordance with law against such unauthorised occupation. The impugned order thereafter has been passed on 31st May, 1999. It thus cannot be said that even if aforesaid decisions in Anil Kumar Dixit (supra) and its follow up are applied, the impugned order declaring vacancy of premises in question on account of unauthorised occupancy by petitioner being without any letter of appointment is barred by limitation or laches.

79. Even otherwise, without anything more, there is no gap of 12 years between alleged possession of premises in question by the petitioner and application filed by respondents No. 2 and 3. The possession is claimed by petitioner w.e.f. 26.11.1985 and application was filed by respondents No. 2 and 3 on 20th July, 1996. It is within eleven years from the date of alleged cause of action if in terms of what has been contended by learned counsel for the petitioner is taken to be correct. Hence application filed by respondent No. 2 within 12 years cannot be said to be barred by time as held in Anil Kumar Dixit (supra). Therefore, from admitted facts of this case, it cannot be said that application was filed beyond time. It is not the actual date of the order passed by RCEO which would be considered whether it is barred by time or not, but it is initiation of the action which would attract principle of limitation, if at all, it applies.

80. Since present writ petition can be decided even after applying the dictum laid down in the aforesaid decision in Anil Kumar Dixit (supra) etc., in the context of reckoning point of cause of action, in the peculiar facts and circumstances, I have proceeded to decide this matter instead of keeping it pending and referring

to Larger Bench, as no useful purpose would be served in view of the distinguishing facts of this case and the issue which has been considered by this Court in this case.

81. No other point has been argued.

82. In view of the above discussion, the impugned order dated 31st May, 1999 passed by RCEO cannot be said to be erroneous in any manner warranting interference under Article 226/227 of the Constitution.

83. The writ petition lacks merit. Dismissed. Interim order, if any, stands vacated.