

Himachal Pradesh Urban Rent Control Act, 1987

25 of 1987

[20 October 1987]

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to provide for the control of rents and evictions within the limits of Urban areas in the State of Himachal Pradesh. Be it enacted by the Legislative Assembly of Himachal Pradesh in the Thirty-eighth Year of the Republic of India, as follows :-

1. Short Title, Extent And Commencement :-

(1) This Act may be called the Himachal Pradesh Urban Rent Control Act, 1987.

(2) It extends to all urban areas in the State of Himachal Pradesh.

(3) This Act shall and shall be deemed to have come into force on the 17th Day of November, 1971, but -

(i) Provisions contained in clause (h) and (i) of section 2; section 4; section 5; sub-section (2) of section 15; section 17; sub-section (3) of section 30; section 34 and Schedule-I of this Act shall be deemed to have come into force on the appointed day;

(ii) provisions contained in clause (d) of section 2; sub-sections (1) and (3) of section 15; section 16; section 27; section 28 and Schedule-II of this Act shall and shall be deemed to have come into force from the day on which the corresponding provisions were inserted in clause (d) of section 2; section 14-A; section 14-B;

section 23-A and section 23-B of the Himachal Pradesh Urban Rent Control Act, 1971 (23 of 1971);

(iii) provisions contained in section 4 and section 29 of the Himachal Pradesh Urban Rent Control Act, 1971 (23 of 1971) shall be deemed to have remained in force during the period reckoned from the day on which these were substituted or inserted, as the case may be, in the said Act, till the appointed day; and

(iv) provisions contained in section 35 shall come into force at once. The act extend to all Urban Areas.

2. Definitions :-

In this Act, unless the context otherwise requires,-

In State of H.P., it has come into force with effect from 20th Oct. 1987 on which date it receives the assent of the President.

(a) "appointed day" means the 18th day of August, 1987;

(b) "building" means any building or part of a building let out for any purpose whether being actually used for that purpose or not, including any land, godowns out- houses or furniture let out there with but does not include a room in a hotel, hotel or boarding house;

(c) "Controller" means any person who is appointed by the State Government to perform the functions of a Controller under this Act;

(d) "landlord" means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf, or for the benefit, of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who sublets any building or rented land in the manner hereinafter authorised, a specified landlord and every person from time to time deriving title under a landlord;

(e) "non-residential building" means a building being used-

(i) mainly for the purpose of business or trade; or

(ii) partly for the purpose of business or trade and partly for the purpose of residence, subject to the condition that the person who carried on business or trade in the building resides therein :

Provided that if a building is let out for residential and non-residential purposes, separately to more than one person, the portion thereof let out for the purpose of residence shall not be treated as non-residential building.

Explanation:- Where a building is used mainly for the purpose of business or trade, it shall be deemed to be a non-residential building even though a small portion thereof is used for the purpose of residence;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "rented land" means any land let out separately for the purpose of being used principally for business or trade;

(h) "residential building" means any building which is not a non-residential building;

(i) "specified landlord" means a person who is entitled to receive rent in respect of a building on his own account and who is holding or has held an appointment in a public service or post in connection with the affairs of the Union or of a State;

(j) "tenant" means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after termination of the tenancy and in event of the death of such person such of his heirs as are mentioned in Schedule-I to this Act and who were ordinarily residing with him at the time of his death, subject in the order of succession and conditions specified, respectively in Explanation-I and Explanation-II to this clause, but does not include a person placed in occupation of a building or rented land by its tenant, except with the written consent of the landlord or a person to whom the collection of rent or fees in a public market, cart-stand or slaughter house or of rents for shops has been farmed out or leased by a municipal corporation or a municipal committee or a notified area committee or a cantonment board;

Explanation-I.- The order of succession in the event of the death of the person continuing in possession after the termination of his tenancy shall be as follows :-

(a) firstly, his surviving spouse;

(b) secondly, his son or daughter, or both, if there is no surviving spouse, or if the surviving spouse did not ordinarily live with the deceased person as a member of his family up to the date of his death;

(c) thirdly, his parent(s), if there is no surviving spouse, son or daughter of the deceased person, or if such surviving spouse, son, daughter or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death; and

(d) fourthly, his daughter-in-law, being the widow of his predeceased son, if there no surviving spouse, son, daughter or

parent(s) of the deceased person, or if such surviving spouse, son, daughter or parent(s), or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death;

Explanation-II. The right of every successor, referred to in Explanation to continue in possession after the termination of the tenancy shall be personal to him and shall not, on the death of such successor, devolve on any of his heirs; and

(k) "urban area" means any area administered by a municipal corporation, a municipal committee, a cantonment board, or a notified area committee or any area declared by the State Government, by notification, to be an urban area for the purposes of this Act.

SYNOPSIS

1. Building
2. Controller
3. Landlord
4. Residential Building and Non-Residential Building
5. Specified landlord
6. Inheritance of Tenancy
7. Contractual tenancy
8. Statutory Tenant
9. Miscellaneous

(For more Case Law see under E.P. Urban Rent Restriction Act)

1. BUILDING

Himachal Pradesh Registration of Hotels and Travels Building-Building not registered with the prescribed authority as a hotel-Building cannot be treated as a hotel. Kundan Lal Ahuja vs. Surinder Nath, AIR 1991 H.P. (7) Controller

For this reason the benefit of second proviso of sec. 14(2) cannot be allowed to a tenant, who is ordered to be evicted by appellate authority.

Landlord

A letter of Administration granted by a competent court is conclusive of the representative title Sec 2(c) of the Act includes "Administrator" in the definition of landlord. Surjit Verma vs. Bawa Jung 2002(3) SLC 298.

2. CONTROLLER

Appellate Authority cannot fall within the definition of the word Controller while deciding an appeal. Shri Swamy Bhandari vs. Smt. Shila Sharma, 1982(2) Rent Law Reporter (H.P.) 545.

3. LANDLORD

A person who manages the property and collects rent himself on behalf of other land lord is a landlord - He can file application for eviction of tenant. Mohinder Singh v. Mohd Ibrahim, 1983(1) Rent Law Reporter (H.P.) 556.

4. RESIDENTIAL BUILDING AND NON- RESIDENTIAL BUILDING

"Residential Building" and "Non- Residential" Building - Determination of- Original purpose of tenancy not decisive to determine the nature of the building- Character of building to be determined with reference to the actual user found on the date of filing of eviction petition- Building originally let out solely for purposes trade and business -- Subsequently found to be under use for mixed purpose namely business as well as residence -- Building to be treated as residential building. Shri Balak Ram vs. Shri B.N. Gupta, 1977 Sim LC 265 (HPHC)

5. SPECIFIED LANDLORD

Specified landlord- Summary proceedings- Cause of action- Respondent retiring from service on 31.10.1988- Purchasing demised premises on 4.8.1989 already under tenancy of the petitioner- Not covered under the definition of "specified landlord"- In order to get benefit tenant at the time of his retirement from the service - The cause of action arises on the date of retirement- Respondent entitled to no relief. Union of India vs. Duni Chand Sharma, 1993(2) SLC. 29 H.P.

Himachal Pradesh Road Transport Corpn. is an instrumentality of State within the meaning of Art 12 of the constitution - A retired employee of Corporation would be a specified landlord- Entitled to avail the benefit of summary ejectment of tenant. Om Prakash Auri vs. Shiv Lal Behal, 1996(2) Rent Law Reporter (H.P.) 662

6. INHERITANCE OF TENANCY

Death of tenant after enforcement of Himachal Pradesh Urban Rent Control Act of 1971 - B virtue of clause (j) of Section 2 of Himachal Pradesh Urban Rent Control Act of 1987, the persons mentioned in Schedule - I of 1987 Act, who were ordinarily residing with him at the time of his death, subject to order of succession and conditions specified in Explanations I and II of clause (j) of Section 2, held to be entitled to retain the possession of tenanted premises as statutory tenants. Narinder Kumar vs. Ramesh Kumar, 1995(1) SLC 104 (HP) HC AIR 1976 SC 2229 reffer.

Inheritance of tenancy after the death of statutory tenant- It is to be determined according condition specified in explanation I + II of clause (J) of Sec. 2 of the Act. Smt. Satya Devi and another vs. Ravinder Kaur and others, 1989(2) Rent Law Reporter (H.P.) 220.

AIR 1990 HP 43 (FB) AIR 1985 SC (796 relied.

Death of tenant- Tenancy rights not to be limited to one of the heirs only- All persons enumerated in explanation I in the definition of the tenant in the Act will have to be treated as tenants (being heirs) sequence in which their mention is made in the explanation - Otherwise it will frustrate the very object of the Act Smt. Indra Vati vs. Smt. Devki Devi, 1989(1) SLC 36.

7. CONTRACTUAL TENANCY

Contractual tenancy- Heritable- In absence of contract to the contrary, the interest of such a tenant in the immovable property - Such interest of a tenant is heritable. Shri Dewan Chand vs. Krishan Kumar, 1980(2) Rent Law Reporter (H.P.) 622. 2 LR 1980 HP 333

8. STATUTORY TENANT

Statutory Tenant- Though a person ceases to be tenant after determination of tenancy still he continues to have the protection of Rent Act Cannot be evicted except in accordance with the provisions of Rent Act - Acceptance of rent from such does not revive his original tenancy. Shri Dewan Chand vs. Krishan Kumar, 1980(2) Rent Law Reporter (H.P.) 622.

Statutory tenancy - Statutory tenant is not a tenant in the sense that he has an estate- Such tenancy cannot be transferred or inherited except where any Rent Act provides otherwise. The only right of the statutory tenant is personal that is not to be evicted. ILR 1986 HP FB 333.

Statutory tenancy- Heritable to the extent provided in the section - Protection granted to the heirs is subject to the terms of the tenancy under which the deceased tenant was holding the premises. Shri Dewan Chand vs. Krishan Kumar, 1980(2) Rent Law Reporter (H.P.) 622., 1980 I LR 333 PB.

Statutory Tenant- Death of tenant- At the time of filing civil suit parties were governed by East Punjab Rent Restriction Act Widow of deceased Tenant entitled to retain possession as tenant on the same terms and Conditions of original Tenancy. Shri Trilok Chand vs. Shri Arjun Singh, 1977(2) Rent Law Reporter (H.P.) 653. LLR 77 H.P. 365; ILR 1976 HP 519 relied.

Statutory tenancy in respect of shop- It is heritable- Heirs of Statutory tenant are entitled to same protection against eviction as afforded to tenant under the act. Smt. Sarya Devi vs. Ravinder Kaur. 1989(2) Rent Law Reporter (H.P.) 220.

9. MISCELLANEOUS

Retain

Expression Retain- connotes the idea of continuation of possession which was already, there- therefore- After the death of Karta business run by managing Member of family- Possession will be deemed. It tenant widow left the possession She cannot claim the reinstatement of said possession - Sec 21 of H.P. urban Rent control Act. Trilok Chand and other Vs. Arjun Singh 1977 Sim. LC 509 (HP)(HC).

Expression retain- Meaning of- Business run by the deceased in his capacity of Karta of joint Hindu family- After the death of Karta business run by managing members of the family - Possession be deemed to be the possession of all the members of Joint Hindu Family - Widow of deceased Karta be deemed to be retained the possession of the suit premises. Trilok Chand vs. Shri Arjun Singh, 1977(2) Rent Law Reporter (H.P.) 653.

3. Exemptions :-

(1) The State Government may direct that all or any of the provisions of this Act shall not apply to any particular building or rented land or any class of buildings or rented lands.

(2) The provisions of this Act shall not apply to any building or rented land owned by the Government.

4. Determination Of Fair Rent :-

(1) The Controller shall, on application by the tenant or the landlord of a building or rented land, and after holding such enquiry as he may think fit, fix the fair rent for such a building or rented land.

(2) The fair rent under sub-section (1) shall be,-

(a) in respect of the building, the construction whereof was completed on or before the 25th day of January, 1971 or in respect of land let out before the said date, the rent prevailing in the locality for similar building or rented land let out to a new tenant during the year 1971; and

(b) in respect of the building, the construction whereof is completed after the 25th day of January, 1971 or in respect of land let out after the said date, the rent agreed upon between the landlord and the tenant preceding the date of the application, or where no rent has been agreed upon, the rent shall be determined on the basis of the rent prevailing in the locality for similar building or rented land on the date of application.

(3) Notwithstanding that the fair rent for building or rented land

has been fixed under the East Punjab Urban Rent Restriction Act, 1949 (3 of 1949) or under the Himachal Pradesh Urban Rent Control Act, 1971 (23 of 1971), a landlord or tenant of such a building or rented land shall be entitled to get its fair rent fixed under this section.

(4) Notwithstanding anything contained in this Act, the Controller may fix the fair rent on the basis of the compromise arrived at between the parties to the proceedings and such rent shall be binding only on the parties and their heirs.

(5) The fair rent fixed under this section shall be operative from the date on which the application is filed under this section.

5. Revision Of Fair Rent In Certain Cases :-

(1) Save as provided in sub-section (2), when the fair rent of a building or rented land has been fixed under section 4, no further increase or decrease in such fair rent shall be permissible for a period of five years :

Provided that the decrease may be allowed in cases where there is a decrease or diminution in the accommodation or amenities provided.

(2) Notwithstanding anything contained in any law for the time being in force or in any contract, a landlord shall, in addition to the increase in rent provided in this Act, be entitled to increase the rent of a building or land at the rate of 10% (per cent) of the fair rent or the agreed rent, as the case may be after every five years and such increase shall be,-

(a) in a case where such a building or land has been let out for a period of five years or more immediately proceeding the commencement of this Act -

(i) first with effect from the date of such commencement; and

(ii) again with effect from the expiry of the period of every five years from such commencement and

(b) where such a building or land has been let out before such commencement for a period shorter than five years and the maximum period within which such building or land remains let out extends beyond five years from the date of the commencement of such a tenancy -

(i) first with effect from the date of expiry of five years from the commencement of such tenancy;

(ii) again with effect from the date of expiry of the period of every five years from the date on which revision made under clause (i)

takes effect.

(3) Any dispute between the landlord and the tenant in regard to any increase or decrease in rent under this section shall be decided by the Controller. In present Act there is provision for the increase of Rent at the rate of 10% of the fair rent or the agreed rent after every five years.

6. Increase In Fair Rent In What Cases Admissible :-

Save as provided under Section 5, when the fair rent of a building or rented land has been fixed under section 4, no further increase in such fair rent shall be permissible except in cases where some addition, improvement or alteration has been carried out in the building or rented land at the landlords expense and if the building or rented land is then in the occupation of a tenant, at his request: Provided that the fair rent as increased under this section shall not exceed the fair rent payable under this Act for a similar building or rented land in the same locality with such addition, improvement or alteration and it shall not be chargeable until such addition, improvement or alteration has been completed.

7. Landlord Not To Claim Anything In Excess Of Fair Rent :-

Save as provided in this Act, when the Controller has fixed the fair rent of a building or rented land under Section 4-

(a) the landlord shall not claim or receive any premium or other like sum in addition to fair rent or any rent in excess of such fair rent, but the landlord may stipulate for and receive in advance an amount not exceeding one months rent;

(b) any agreement for the payment of any sum in a addition to rent, or of rent in excess or such fair rent, shall be null and void.

8. Fine Or Premium Not To Be Charged For Grant, Renewal Or Continuance Of Tenancy :-

(1) Subject to the provisions of this Act, no landlord shall claim or receive any rent in excess of the fair rent, notwithstanding any agreement to the contrary.

(2) No landlord shall, in consideration of the grant, renewal or continuance of a tenancy or sub-tenancy of any building or rented land, claim or receive payment of any premium, pugree, fine, advance or any other like sum in addition to the rent.

9. Rent Which Should Not Have Been Paid May Be

Recovered :-

Where any sum has been paid which sum is by reason of the provisions of this Act not payable, such sum shall, at any time within a period of one year after the date of the payment, or in the case of payment made before the commencement of this Act within one year after the appointed day, be recoverable by the tenant by whom it was paid or his legal representative from the landlord who received the payment or his legal representative, and may, without prejudice to any other method of recovery, be deducted by such tenant from any rent payable within such one year by him to such landlord.

Explanation.- In this section, the expression "legal representative" has the same meaning as assigned to it in the Code of Civil Procedure, 1908 (5 of 1908) and includes also, in the case of joint family property, the joint family of which the deceased was a member.

10. Increase Of Rent On Account Of Payment Of Rates, Etc. Of Local Authority But Rent Not To Be Increased On Account Of Payment Of Other Taxes Etc :-

(1) Notwithstanding anything contained in any other provisions of this Act. The landlord shall be entitled to increase the rent of a building or rented land, and if after the commencement of the tenancy any fresh rate, cess or tax is levied in respect of the building or rented land, by the Government or any local authority, or if there is an increase in the amount of such a rate, cess or tax being levied at the commencement of the tenancy :

Provided that the increase in rent shall not exceed the amount of any such rate, cess or tax or the amount of the increase in such rate, cess or tax, as the case may be.

(2) Notwithstanding anything contained in any law for the time being in force or in any contract, no landlord shall recover from his tenant the amount of any tax or any portion thereof in respect of any building or rented land occupied by such tenant by any increase in the amount of the rent payable or otherwise, save as provided in sub-section (1).

11. Cutting Off Or Withholding Essential Supply Or Service :-

(1) No landlord either himself or through any person purporting to

act on his behalf shall, without just and sufficient cause cut off or withhold any essential supply or service enjoyed by the tenant in respect of the building or rented land let out to him.

(2) If a landlord contravenes the provisions of sub-section (1), the tenant may make an application to the Controller complaining of such contravention.

(3) If the Controller is satisfied that the essential supply or service was cut off or withheld by the landlord with a view to compelling the tenant to vacate the premises or to pay an enhanced rent the Controller may pass an order directing the landlord to restore the amenities immediately pending the inquiry referred to in sub-section (4).

Explanation.- An interim order may be passed under this sub-section without giving notice to the landlord.

(4) If the Controller, on enquiry, finds that the essential supply or service enjoyed by the tenant in respect of the building or rented land was cut off or withheld by the landlord without just and sufficient cause he shall make an order directing the landlord to restore such supply or service.

(5) The Controller may, in his discretion, direct that compensation not exceeding one hundred rupees.

(a) be paid to the landlord by the tenant, if the application under sub-section (2) was made frivolously or vexatiously;

(b) be paid to the tenant by the landlord, if the landlord had cut off or withheld the supply or service without just and sufficient cause.

Explanation-I.- In this section, "essential supply or service" includes supply of water, electricity, lights in passages and on staircases, conservancy and sanitary services.

Explanation-II.- For the purposes of this section, withholding any essential supply or service shall include acts or omissions attributable to the landlord on account of which the essential supply or service is cut off by the local authority or any other competent authority.

12. Conversion Of A Residential Building Into A Non-Residential Building :-

No person shall convert a residential building into a non-residential building except with the permission in writing of the Controller.

13. Landlords Duty To Keep The Building Or Rented Land In Good Repairs :-

(1) Every landlord shall be bound to keep the building or rented land in good and tenantable repairs.

(2) if the landlord neglects or fails to make, within a reasonable time after receiving a notice in writing, any repairs which he is bound to make under sub-section (1), the tenant may make the same himself and deduct the expenses of such repairs from the rent or otherwise recover them from the landlord :

Provided that the amount so deducted or recoverable in any year shall not exceed one-twelfth of the rent payable by the tenant for the year.

(3) Where any repairs without which the building or rented land is no longer habitable or useable, except with undue inconvenience, are to be made and the landlord neglects or fails to make them after receiving notice in writing, the tenant may apply to the Controller for permission to get such repairs done on his own and may submit to the Controller an estimate of the cost of such repairs, and thereupon the controller may after giving the landlord an opportunity of being heard and after considering such estimate of the cost and making such enquiries as he may consider necessary, by an order in writing permit the tenant to make such repairs at such cost as may be specified in the order and it shall thereafter be lawful for the tenant to get such repairs done on his own and to deduct the cost thereof, from the rent, which shall in no case exceed the amount so specified or otherwise recover it from the landlord:

Provided that the amount so deducted or recoverable in any year shall not exceed 3 months rent payable by the tenant:

Provided further that if any repairs not covered by the said amount are necessary in the opinion of the Controller and the tenant agrees to bear the excess cost himself, the Controller may permit the tenant to make such repairs.

14. Eviction Of Tenants :-

:

(1) A tenant possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise, whether before or after the termination of the tenancy, except in accordance with the provisions of this Act.

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after

giving the tenant a reasonable opportunity of showing cause against the applicant, it satisfied-

(i) that the tenant has not paid or tendered the rent due from him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable :

Provided that if the tenant on the first hearing of the application for ejectment after due service pays or tenders the arrears of rent and interest at the rate of 9 per cent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid:

Provided further that if the arrears pertain to the period prior to the appointed day, the rate of interest shall be calculated at the rate of 6 per cent per annum:

Provided further that the tenant against whom the Controller has made an order for eviction on the ground of non-payment of rent due from him, shall not be evicted as a result of his order, if the tenant pays the amount due within a period of 30 days from the date of order; or

(ii) that the tenant has after the commencement of this Act without the written consent of the landlord -

(a) transferred his rights under the lease or sublet the entire building or rented land or any portion thereof, or

(b) used the building or rented land for a purpose other than that for which it was leased; or

(iii) that the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land; or

(iv) that the tenant has been guilty of such acts and conduct as are nuisance to the occupiers of buildings in the neighbourhood; or

(v) that the tenant has ceased to occupy, the building or rented land for a continuous period of twelve months without reasonable cause, the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application :

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.

(3) A landlord may apply to the Controller for an order directing the

tenant to put the landlord in possession :-

(a) in the case of a residential building, if-

(i) he requires it for his own occupation :

Provided that he is not occupying another residential building owned by him in the urban area concerned:

Provided further that he has not vacated such a building without sufficient cause within five years of the filing of the application, in the said urban area; or

(ii) it was let to the tenant for use as a residence by reason of his being in service or employment of the landlord, and the tenant has ceased, whether before or after commencement of this Act, to be in such service or employment :

Provided that where the tenant is a workman who has been discharged or dismissed by the landlord from his service or employment in contravention of the provisions of the Industrial Disputes Act, 1947 he shall not be liable to be evicted until the competent authority under that Act confirms the order of discharge or dismissal made against him by the landlord;

(iii) the landlord is a member of the Armed Forces of the Union of India and requires it for the occupation of his family and if he produces a certificate of the prescribed authority referred to in section 7 of the Indian Soldier (Litigation) Act, 1925, that he is serving under special conditions with the meaning of section 3 of that Act or is posted in a non-family station.

Explanation-I. For the purposes of this sub-clause-

(1) the certificate of the prescribed authority shall be conclusive proof of the fact that the landlord is serving under special conditions, or is posted in a non-family station;

(2) "family" means parents and such relation(s) of the landlord as ordinarily reside with him and is/are dependent upon him;

(iv) the tenant has, whether before or after the commencement of the Act, built or acquired vacant possession of or been allotted, a residence reasonably sufficient for his requirements;

(b) in the case of rented land, if-

(i) he requires it for his own use :

Provided that he is not occupying in the urban area concerned any other rented land for the purpose of his business:

Provided further that he has not vacated such rented land without sufficient cause within five years of the filing of the application in the urban area concerned;

(ii) he requires rented land for construction of residential or non-residential building or for establishment of industry;

(ii) the tenant lets out his rented land to some body else on higher rent;

(c) in the case of any building or rented land, if he requires it to carry out any building work at the instance of the Government or local authority or any Improvement Trust under some improvement or development scheme or if it has become unsafe or unfit for human habitation or is required bonafide by him for carrying out repairs which cannot be carried out without the building or rented land being vacated or that the building or rented land is required bonafide by him for the purpose of building or re-building or making thereto any substantial additions or alterations and that such building or re-building or addition or alteration cannot be carried out without the building or rented land being vacated;

(d) in the case of any residential building if he requires it for use as an office, or consulting room by his son who intends to start practice as a lawyer, an architect, a dentist, an engineer, a veterinary surgeon or a medical practitioner, including a practitioner of Ayurveduc, Unani or Homeopathic System of Medicine or for the residence of his son who is married, if-

(i) his son as aforesaid is not occupying in the urban area concerned any other building for use as office, consulting room or residence, as the case may be; and

(ii) his son as aforesaid has not vacated such a building without sufficient cause, after the commencement of this Act, in the urban area concerned :

Provided that where the tenancy is for a specified period, agreed upon between the landlord and the tenant, the landlord shall not be entitled to apply under this sub-section before the expiry of such period :

Provided further that where the landlord has obtained possession of any building or rented land under the provisions of clause (a) or clause (b), he shall not be entitled to apply again under the said clause for the possession of any other building of the same class or rented land:

Provided further that where a landlord has obtained possession of any building under the provisions of clause (d), he shall not be entitled to apply again under the said clause for the use of, or for the residence of the same son, as the case may be.

(4) The Controller shall, if he is satisfied that the claim of the landlord is bonafied, make an order directing the tenant to put the landlord in possession of the building or rented land on such date as may be specified by the Controller and if the Controller is not so

satisfied he shall make an order rejecting the application:

(5) Where a landlord who has obtained possession of the building or rented land in pursuance of an order under sub-section (3), does not occupy it himself, or if possession was obtained by him for his family in pursuance of an order under sub-clause (iii) of clause (a) of sub-section (3), his family does not occupy the residential building, or if possession was obtained by him on behalf of his son in pursuance of an order under clause (d) of sub-section (3) his son does not occupy it for the purpose for which the possession was obtained, for a continuous period of twelve months from the date of obtaining possession or if possession was obtained under sub-section (2) of section 15 he does not occupy it for personal use for a continuous period of 3 months from the date of obtaining possession or where a landlord who has obtained possession of a building under clause (c) of sub-section (3) puts that building to any use other than that for which it was obtained or lets it out to any tenant other than the tenant evicted from it, the tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of such building or rented land and the Controller shall make an order accordingly.

(6) Where a landlord has acquired any premises by transfer, no application for the recovery of possession of such premises shall be made under this section on the ground specified in sub-clause (i) of clause (a) of sub-section (3) unless a period of five years has elapsed from the date of such acquisition.

(7) Where the Controller is satisfied that any application made by a landlord for the eviction of a tenant is frivolous or vexatious, the Controller may direct that compensation not exceeding five hundred rupees be paid by the such landlord to the tenant.

SYNOPSIS

1. Residential building
2. Tender of Rent
3. Arrears of Rent
4. Amount due
5. Landlord and Tenant
6. Jurisdiction
7. Jurisdiction of Civil Court
8. Power of Appellate Court to grant permission to withdraw ejectment application with permission to file it again on the same cause of action
9. Admission
10. Evidence

11. Acquisition of another reasonable sufficient accommodation by tenant
12. Cross objections
13. Part Performance of Agreement to sell the property
14. Building unsafe and unfit for human habitation
15. Ceased to occupy the premises
16. Execution
17. Execution of eviction decree
18. Withdrawal of ejectment applications
19. Estoppel
20. Res judicata
21. Amendment of plaint
22. Pleadings
23. Subsequent events
24. Bona fide necessity
25. Time given to tenant to vacate the premises
26. Sub-letting
27. Reconstruction
28. Inspection Note
29. Undertaking
30. Impairing materially the value or utility of building
31. Change of user
32. Onus
33. Occasional
34. Contempt
35. Co-owners
36. Applicability of CPC
37. Interpretation of Statutes

(For more Case Law see under E.P. Urban Rent Restriction Act)

1. RESIDENTIAL BUILDING

Residential building- Allotment of residential premises to the tenant by the Government- Eviction proceedings by the landlord against the tenant on the ground that the tenant had been allotted a residence- Eviction ordered- Held that the tenant was not entitled to resist the eviction proceedings on the ground that he lost the allotted residence by surrender before the commencement of eviction proceedings. *Shri Dewan Chand Bhalla vs. Dr. Ashok Kumar Bhoil*, 1994(2) Rent Law Reporter (Supreme Court) 178

2. TENDER OF RENT

Subsequent Legislation- Tenant not tendering arrears of rent on the first date of hearing- Subsequently 1971 Act came into force repealing the Punjab Act- Thereafter came into force the 1987 Act -

Arrears of rent tendered after 30 days of the order of eviction- Subsequent legislation should be taken note of and applied in determining the rights of the parties- No liability incurred by the tenant for the reasons of non-payment of arrears of rent, interest and costs at the first date of hearing of the petition as provided for in proviso to Section 13(2)(1) of the Punjab Act continues inspite of the right conferred on the tenant by the 1987 Act to pay arrears of rent, interest and costs within 30 days after the order of the Rent Controller for relief against eviction as provided for in the 3rd proviso to Section 14(2)(1) of 1987 Act- Right conferred on the tenant for relief against eviction as per the 3rd proviso to Section 14(2)(1) of 1987 Act cannot be defeated by the extension of the any legal fiction of continuance of the repealed Punjab Act- Petitioner entitled to relief under the 1987 Act. Vishwa Rattan vs. M/s Ram Krishan, 1990(1) Rent Law Reporter (H.P.) 532.

3. ARREARS OF RENT

Arrears of Rent/Amounts due- and impaling the value by addition and altration- Amount due in the second proviso means the amount which is calculated by Rent controller - Removing of tin roofing and a pole without land lords consent is enough. Kali Dass Vasudeva vs. Swaran Singh, 1980 SL 5175 H.P. Sec.

Payment not made even within 30 days of the order of eviction passed by the Rent Controller- Tenant having not availed of proviso to clause (i) of sub-section (2) of section 14 liable to be evicted for non-payment of arrears of rent. Smt. Kailash Khanna vs. K.S. Goolry. 1990(1) Rent Law Reporter (H.P.) 157.

Period of "one month" for depositing arrears of rent to avoid order of eviction- One month to be considered of 30 days - Payment made on 31st days not a valid payment under the Act. Shri Krishan Kumar vs. Shri Gurbax Singh 1977(2) Rent Law Reporter (H.P.) 81. The amount due- Comprises only arrears of Rent due and not the arrears of rent together with interest @ 9 per cent per annum of such arrears and the cost of eviction petition as assessed by the Controller. Om Parkash vs. Sarla Kumari, 1990(2) Rent Law Reporter (H.P.) 487

Arrears of Rent/Amount due- Ejectment application on the ground of non-payment of rent- A tenant who contests a claim of non-payment of rent and fails to avoid order of eviction passed on the ground of arrears of rent cannot avoid it by merely paying the rent due till the date of filing of the application- The words "amount due" occurring in the third proviso in the context will mean the amount due on and upto the date of the order of eviction-- It will

take into account not merely the arrears of rent which gave cause of action to file a petition for eviction but also include the rent accumulated during the pendency of eviction petition as well.

Held:

Sub-section (i) of Section 14 creates a ban against the eviction of a tenant except in accordance with the provisions of the Act. The ban is liable to be lifted. Sub-section (2) of Section 14 provides the circumstances in which the ban is partially lifted. It contemplates that where an eviction petition is filed, inter alia, on the ground of non-payment of rent by the landlord, the Controller has to be satisfied that the tenant has neither paid nor tendered the rent in the circumstances mentioned in clause (i) of sub-section (2) of Section 14. He has to arrive at this satisfaction after giving a reasonable opportunity of showing cause against it to the tenant. But there are cases where the tenant, on being given notice of such an application for eviction, may like to contest or not to contest the application. The tenant is given the first chance to save himself from eviction as provided in the first proviso to clause (i) of sub-section (2) of Section 14. This first proviso contemplates that the tenant may on the first hearing of the application for ejection pay or tender in court the rent and interest at the rate mentioned, in the proviso on such arrears together with the cost of application assessed by the Controller and in that case the tenant is deemed to have duly paid or tendered the rent within the time as contemplated by clause (i) of sub-section (2) of Section 14. Where the tenant does not avail of this opportunity of depositing as contemplated by the first proviso and waits for an ultimate decision of the application for eviction on the ground of non-payment of rent, the Controller has to decide it and while deciding the Controller has to find whether the ground contained in Clause (i) of sub-section (2) of Section 14 has been made out or not. If the Controller finds that the ground as contemplated by clause (i) of sub-section (2) of Section 14 is made out, he is required to pass an order of eviction on the ground of non-payment of rent due from him. A second opportunity to avoid eviction is provided by the third proviso to clause (i) of sub-section (2) of Section 14. But the second opportunity is provided after the order of eviction. The benefit of avoiding eviction arises if the tenant pays the "amount due" within the period of 30 days of the date of order.

The question is what is the meaning of the words "amount due" occurring in the third proviso to clause (i) of sub-section (2) of Section 14 of the Act.

It will be noticed that there is no provision in the Act for giving powers to the Controller to direct payment or deposit of "pendentolite" rent for each month during the pendency of the petition for eviction of the tenant. First proviso to sub-section (2) of Section 14 shows that in order to show payment or valid tender as contemplated by clause (i) of sub-section (2) of Section 14 by a tenant in default, he has to pay on the first date of hearing the arrears of rent alongwith interest and costs of the application which are to be assessed by the Controller. Surely where a tenant does not avail of the first opportunity and contest the eviction petition on the ground of non-payment of arrears of rent and fails to show that he was not in default and court finds that the ground has been made out, an order of eviction has to follow. Therefore, it does not stand to reason that such a tenant who contests a claim and fails to avoid order of eviction can still avoid it by merely paying the rent due till the date of the filing of application for ejectment. The third proviso to clause (i) of sub-section (2) of Section 14 should also receive an interpretation which will safeguard the rights of both the landlord and tenant. The "amount due" occurring in the third proviso in the context will mean the amount due on and upto the date of the order of eviction. It will take into account not merely the arrears of rent which gave cause of action to file a petition for eviction but also include the rent which accumulated during the pendency of eviction petition as well. If the tenant has been paying the rent during the pendency of the eviction petition to the landlord, the "amount due" will be only arrears which have not been paid. The landlord, as per the scheme of the section, cannot be worse off vis-a-vis a tenant who was good enough to deposit in court the arrears of rent together with interest and costs on the first date of hearing. If the interpretation given by the High Court is accepted the result would be that the tenant will be better off by avoiding to pay the arrears of rent with interest and costs on the first date of hearing and prefer suffering order of ejectment after contest and then merely offer the amount due as mentioned in the application for ejectment to avoid eviction. This could not be the intention of the legislature.

In such cases it will be advisable if the Controller while passing the order of eviction on the ground specified in clause (i) of sub-section (2) of Section 14 of the Act specifies the "amount due" till the date of the order and not merely leave it to the parties to contest if after passing of the order of eviction as to what was the amount due. Madan Mohan vs. Krishan Kumar Sood, 1993(1) Rent Law Reporter

(Supreme Court) 198; Lelied in Wazir Chand vs. Ambika Rani 2005(2) Sim LC 498.

Payment of arrears of rent in pursuance of orders of Controller to avoid the order of eviction passed on ground of non-payment of arrears of rent-Deposit in Court amounts to payment of landlord. Dr. Mangal Singh Kathai vs. Shri K.D. Sharma, 1978(1) Rent Law Reporter (H.P.) 843.

Sec. 14(2) ii. Court of Rent Controller passed an order for eviction on the ground of non-payment of rent due from the respondent tenant with interest and cost- Tenant deposited amount within stipulated period in the court of rent Controller- No prohibition in the Act debarring the court from accepting the deposits - Amounts to payments to land Lord. Dr. Mangal Singh Kathiat vs. Sh. K.D. Sharma 1978 Sim L cases 185 (HP)(HC)

Mode of depositing rent- Tenant in arrears of rent- Direction by the Rent Controller to deposit the arrears in treasury within 30 days - Computing the period of 30 days- Order on 9.1.1987- Civil courts closed from 19.1.1987 to 17.2.1987- Deposit on the first day of opening of civil courts- Held that the arrears of rent would be deemed to have been paid within 30 days from the date of order. Padam Nabh Sharma vs. Balwant Rai Gotra, 1993(2) SLC 170 HP

Non-payment of rent-- Tenant paying arrears of rent due within the prescribed period but without interest on the arrears of rent and cost of eviction petition- Tenant not liable to eviction on the mere ground that he has not paid the interest and costs of eviction petition to the landlord- The words "Amount due" comprises only arrears of "Rent due" and not the arrears of rent together with interest and costs of the eviction petition. Om Parkash vs. Sarla Kumari, 1990(2) Rent Law Reporter (H.P.) 487 over ruled in Wazir Chand vs. Ambika Rani.

Section 14- Eviction petition on the ground of arrears of rent and bona fide need for reconstruction of building- Rent Controller found that the demised premises have outlived its life and is unfit and unsafe for human habitation and requires reconstruction- eviction on the ground of arrears of rent declined- In appeal by defendant- Contrary conclusion arrived at - Hence this revision petition-Held- Conclusions arrived at by the Appellate Authority are unsustainable whereas those arrived at by Rent Controller are reasonable and sustainable.

[Rakesh Kumar and another vs. Bhim Bahadur and another, 2002 (3) Shim. L.C. 302]

Section 14, See C.P.C., 1908- Section 100.

[Ram Swaroop vs. Mandir Thakran Kalyan Rai, 2002(1) Shim. L.C. 335]

Section 14- See Civil Procedure Code, 1908- Section 115.

[Bijainder Singh vs. Jaspal Singh, 2001(3) Shim. L.C. 263]

Section 14- Proceedings for ejectment on the ground of arrears of rent and bona fide need of her husband for office as he is a practicing Advocate-Rent Controller finally disposed of the matter by holding that respondent has failed to pay arrears of rent and directed to handover the vacant possession of the shop- In appeal appellate authority found that sufficient evidence has not been led, hence remanded the proceeding for determination- Hence this revision petition- Issue raised on behalf of the petitioner that so far power of the appellate authority is concerned, of the petitioner that so far power of the appellate authority is concerned, it is as per Section 24 of the Act- so far the rigorous of Order 41 Rules 23 and 23-A of CPC are concerned they are wholly inapplicable to the respondent-Held-Once this conclusion arrived at then appellate authority below had no jurisdiction to have ordered the remand of the case- Order quashed and set aside.

Land Lord and Tenant- Tenant - Sub letting preruses- Agent of land lord accepting rent from sub-tenant for a number of years- Sub Tenant putting up the claim of direct tenancy held it was a case of sub-letting Nill payment of rent did not create direct tenancy.

Dr. Gyan Parkash vs. Som Nath and other 1996(1) Rent Law Reporter (SC) 113.

HIMACHAL PRADESH HIGH COURT, SHIMLA

Arun Kumar Goel and K.C. Sood, JJ.

Civil Revision No. 332 of 2003

Decided on 11th August, 2005

Wazir Chand - Petitioner

Versus

Ambaka Rani and another - Respondents

Himachal Pradesh Urban Rent Control Act 1987 - Section 14 - Expression - "Amount Due" as occurring in third provision includes arrears of rent up till the date of the passing of the final eviction order - Interest at the rate of 9% per annum and cost of the application will be assessed by rent controller.

Legislature intention interpreted - By using the expression "Amount due in the third proviso the legislature clearly intended that the arrears of rent along with interest and costs, as has been stipulated in the first Proviso, should be paid by the tenant after the eviction order is passed against him if the tenant wanted to avoid the

enforcement or the execution of the eviction order.

IMPORTANT POINT

Direction : To All Rent Controller in the state of Himachal Pradesh :- Whenever a Rent Controller passes an eviction order in terms of section 14(2)(i) of 1987 Act must specify the exact amount of rent payable the tenant to land of course, alongwith interest and cost, after taking evidence from the parties concerned how much amount already paid by tenant and received by the landlord.

V.K. Gupta, J.- Because of an incongruous situation having arisen, wing to an apparent conflict between an earlier Division Bench judgment this Court and a subsequent judgment by the Supreme Court, this Reference, to resolve the incongruity, has been referred to this Full Bench. The Division Bench judgment of this court was in the case of Om Parkash vs. Sarla and others reported in 1991(1) Sim. LC 45, and subsequent Supreme Court judgment was in the case of Madan Mohan and another vs. Krishan Kumar Sood, reported in 1994 Supp (1) SCC 437.

2. What exactly is the point of controversy involved in this case- The point of controversy involved for adjudication before us is directly relatable two provisos forming part of Section 14 of the Himachal Pradesh Urban Rent Control Act, 1987 (1987 Act, for short). These are the first proviso and the third proviso to Clause (i) of sub-section (2) of Section 14 of 1987 Act (hereafter these two provisos are to be referred to as the "first proviso" and the "third proviso", as would be applicable to our case is reproduced hereunder which reads thus :-

"14. (1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise, whether before or after the termination of the tenancy, except in accordance with the provisions of this Act.

(2) A landlord who seeks to evict his tenants shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied-

(i) that the tenant has not paid or tendered the rent due from him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable:

Provided that if the tenant on the first hearing of the application for ejection after due service pays tender the arrears of rent and

interest at the rate of 9 per cent per annum on such arrears together with the cost of application assessed by the controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid:

Provided further that if the arrears pertain to the period prior to the appointed day, the rate of interest shall be calculated at the rate of 6 per cent per annum:

Provided further that the tenant against whom the Controller has made an order for eviction on the ground of non-payment of rent due from him, shall not be evicted as a result of his order, if the tenant pays the amount due within a period of 30 days from the date of order; or

3. The first proviso stipulates that if on the first hearing of the application for ejectment the tenant pays or tenders the arrears of rent as well as interest at the rate of 9% per annum on such arrears and also pays the to have duly paid the rent within the time mentioned in Clause (i) of sub-section (2). The relatability of the fact situation forming the subject matter of the first proviso is to the first hearing of the application for ejectment. In other words, whenever an application for ejectment is filed before a Rent Controller on the ground that the tenant has not paid or tendered the rent due from him either within 15 days after the expiry of the time fixed in the agreement of tenancy, or by the last day of the month next following that for which the rent was payable, if there was no agreement of tenancy between the tenant and the landlord, and such an application comes up before the Rent Controller on the first hearing date, if on such first hearing date the tenant pays or tenders the arrears of rent alongwith interest and cost, he shall be deemed to have duly paid the rent within the time aforesaid with the consequence that eviction proceedings against him shall stand terminated. If, however, on such an eviction application having been filed by the landlord, on the first date of hearing if the tenant does not pay or tender the arrears of rent with interest and costs, in other words does not avail of the special benefit offered to him by the first proviso, the eviction proceedings against him shall commence and if the Rent Controller at the culmination of the eviction proceedings finds and holds that the tenant was indeed in default in so far as the arrears of rent are concerned he shall make an order directing stage of the passing of the final order of eviction on the ground of non-payment of rent that the third proviso comes into play which stipulates on the ground of non-payment of rent due from him may still (despite the passing of the eviction order

against not be evicted as a result from the date of the passing of the order. Whereas, therefore, in the first proviso the tenant can get the benefit of the eviction proceedings being terminated on the first hearing of the application upon his paying the arrears of rent, interest thereupon at the rate of 9% per annum as well as the costs of the application, under the third proviso the tenant can have the benefit of the eviction order not being put into execution if he pays within 30 days from the date of the passing of the eviction order "amount due".

4. What then is the meaning of the expression "amount due" as it has been used in the third proviso - Does the expression "amount due" include or should it include the arrears of rent, (and if so upto and for what period) as well as interest upon the arrears of rent and the costs of the application, or does it or should it include only the arrears of rent (for whatever period), excluding from its ambit and applicability the interest element upon the arrears of rent and the costs of the application - this precisely is the question of law which has been referred to this Full Bench for consideration and adjudication. The Division Bench judgment of this Court on this question of law in the case of Om Parkash vs. Sarla Kumari and others (supra) held as under :-

"13. With these observations, we answer the reference as under:-

"The expression the amount due occurring in the third proviso to Section 14(2)(i) comprises only the arrears of the rent due and not the arrears of rent together with interest at the rate of 9 per cent per annum on such arrears and the cost of eviction petition as assessed by the Controller."

5. The first proviso as well as the third proviso came up for consideration and appropriate interpretation before the Supreme Court in the case of Madan Mohan and another vs. Krishan Kumar Sood (supra) and their Lordships of the Supreme Court while dealing with the distinctive application of the two provisos, the first proviso dealing with the stage at the first hearing of the eviction application and the third proviso relating to a stage after the passing of the final eviction order, held that a tenant cannot be better off in a situation where he fails to avail of the opportunity granted to him in the first proviso and waits for all the long years thereafter and allows himself to suffer an eviction order and then decide to pay the arrears of rent. The following observations in para 14 of the said judgment are apposite and we quote :-

"14. It will be noticed that there is no provision in the Act for giving powers to the controller to direct payment or deposit of pendent

lite rent for each month during the pendency of the petition for eviction of the tenant. First proviso to sub-section (2) of Section 14 shows that in order to show payment or valid tender as contemplated by clause (i) of sub-section (2) of Section 14 by a tenant in default, he has to pay on the first date of hearing the arrears of rent alongwith interest and costs of the application which are to be assessed by the Controller. Surely where a tenant does not avail of the first opportunity and contests the eviction petition on the ground of non-payment of arrears of rent and fails to show that he was not in default and court finds that the ground has made out, an order of eviction has to follow. Therefore, it does not stand to reason that such a tenant who contests a claim and fails to avoid order of eviction can still avoid it by merely paying the rent due till the date of filling of the application for ejectment. The third proviso to clause (i) of sub-section (2) of Section 14 should also receive an interpretation which will safeguard the rights of both the landlord and tenant. The amount due occurring in the third proviso in the context will mean the amount due on and up to the date of order of eviction. It will take into account not merely the arrears of rent which gave cause of action to file a petition for eviction but also include the rent which accumulated during the pendency as well. If the tenant has been paying the rent during the pendency of the eviction petition to the landlord, the amount due will be only arrears which have not been paid. The landlord, as per the scheme of the section, cannot be worse off vis-a-vis a tenant who was good enough to deposit in Court the arrears of rent together with interest and costs on the first date of hearing. If the interpretation given by the High Court is accepted the result would be that the tenant will be better off by avoiding to pay the arrears of rent with interest and costs on the first date of hearing and prefer suffering order of ejectment after contest and then merely offer the amount due as mentioned in the application for ejectment to avoid eviction. This could not be the intention of the legislature."

6. Had the Legislature in the third proviso used the expression "arrears of rent" instead of the expression "amount due", perhaps the legislative intent could be held discernible that the Legislature intended that the tenant should only pay the arrears of rent and nothing more, nothing less. Since, however, the Legislature has used the expression "amount due" in the third proviso, we should have no hesitation in holding that the Legislature clearly intended that if a tenant wished to avoid the execution of the final eviction order, he has to pay the "amount due" not merely the "arrears of

rent" and as per our construction, the expression "amount due" occurring in the third proviso should include the components and the elements of the arrears of rent payable uptill the date of the passing of the eviction order as well as interest upon such arrears of rent at the rate of 9 per cent per annum and the costs of the application, as would be assessed by the Controller. In our such construction we are guided by the ratio and the observations in para 14 of the Supreme Court judgment in Madan Mohan and another vs. Krishan Kumar Sood (supra) because there is no manner of doubt that the landlord as per the Scheme of Section 14 of the 1987 Act cannot be worse off vis-a-vis a tenant who was good enough to deposit in Court the arrears of rent together with interest and costs on the very first date of the hearing of the eviction application (as per first proviso). If the view taken in the division Bench judgment of this Court in the case of OM Parkash vs. Sarla Kumari and other (supra) is accepted and if the interpretation given to the expression "amount due" in that judgment is also accepted, as observed by their Lordships of the Supreme Court the result would be that a tenant would be better off by avoiding to pay the arrears of rent with interest and costs on the first date of hearing and prefer suffering order of eviction after contest and then, upon the passing of the order of eviction merely offer the arrears of rent as mentioned in the application for ejectment and succeed to avoid his eviction. Such surely could not have been the intention of the Legislature.

7. The legislative intent can also be clearly discerned from the fact that in the third proviso the Legislature advisedly did not use the expression "rent due" or "arrears of rent due". Had the Legislature used either of these two expressions or any other similar expression in the third proviso, perhaps one could argue that the legislative intent was that that the tenant should be held liable to pay the rent or the arrears of rent only. But by using the expression "amount due" in the third proviso the Legislature clearly intended that the arrears of rent alongwith interest and costs, as has been stipulated in the first proviso, should be paid by the tenant after the eviction order is passed against him if the tenant wanted to avoid the enforcement or the execution of the eviction order.

Based upon the aforesaid observations, therefore, we have no hesitation in holding that the expression "amount due" as occurring in the third proviso includes the arrears of rent uptill the date of the passing of the final eviction order, as also the interest upon such arrears of rent at the rate of 9 per cent per annum and the costs of

the application as would be assessed by the Rent Controller. The Division Bench judgment of this Court in the case of Om Parkash vs. Sarla Kumari and others (supra) laying down ratio to the contrary and giving contrary interpretation to the expression "amount due", not being a good law is hereby over-ruled by us. We also declare that any other judgment of this court adopting a contrary view or giving a contrary interpretation of the expression "amount due", not being a good law, shall stand over-ruled.

8. In Madan and another v. Krishan Kumar Sood (supra), their Lordships of the Supreme Court while interpreting third proviso and holding that the tenant is liable to pay not merely the arrears of rent which gave cause of action to file a petition for eviction, but also the rent and the arrears of rent which accumulated during the pendency of the eviction petition, in para 15 of the judgment suggested that it would be advisable if the Controller while passing the order of eviction on the ground specified in Clause (i) of sub-section (2) of Section 14 of 1987 Act also specified the exact "amount due" till the date of the passing of the order and not leave it to the parties so that after passing of the eviction order the parties start a fresh contest, a fresh bout of litigation and raise fresh disputes about how much amount was exactly due from tenant to the landlord. The following observations in para 15, being apposite are reproduced hereunder:-

"15 In such cases it will be advisable if the Controller while passing the order of eviction on the ground specified in Clause (i) of sub-section (2) of Section 14 of the Act specified the "amount due" till the date of the order and not merely leave it to the parties to contest it after passing of the order of eviction as to what was the amount due."

9. Taking a cue from the aforesaid observations of their Lordships of the Supreme Court in Madan Mohan and another v. Krishan Kumar Sood (supra), we hereby issue a binding direction to all the Rent Controllers in the State that whenever a Rent Controller passes an eviction order in terms of Section 14(2)(i) of the 1987 Act, it must in the same eviction order in its concluding part specify the exact amount of rent payable by the tenant to the landlord, of course, alongwith interest and costs. Undoubtedly, based on the ratio in Madan Mohan and another v. Krishan Kumar Sood (supra) the rent payable by the tenant to the landlord, which the Rent Controller would be specifying in the order of eviction would be the arrears of rent upto the filing of the eviction petition under Section 14(2)(i) as well as the arrears of rent which have accumulated

during the pendency of eviction petition, right up to the date of passing of the eviction order. The purpose behind the Rent Controller specifying in the eviction order the exact amount of rent payable by the tenant is to directly link it with the third proviso so as to effectively enable the tenant to know with certainty the amount that he is liable to pay to save his eviction.

10. There can be situations and circumstances where a tenant may have a grievance that even though the Rent Controller in the final eviction order has specified the amount of rent payable by the tenant to the landlord, yet while doing so the Rent Controller did not take into account any amount paid by the tenant by way of arrears of rent during the pendency of the eviction petition. Disputes and controversies can arise with regard to this aspect of the matter, in as much as in certain situations and circumstances a tenant can contend and agitate that during the pendency of the petition he had been paying the rent to the landlord and despite such payments having been made by him, the Rent Controller did not reflect such payments nor took note of them, nor adjusted such payments while assessing and specifying, in the course of final eviction order the rent payable by the tenant to the landlord. To avoid the happening of any such eventuality, we wish to observe and direct that the onus to prove that the tenant had been paying any rent or arrears of rent during the pendency of the eviction petition, with view to claim adjustment of such amount in the final analysis, would lie on the tenant alone and upon no one else. The only way in which such apprehended dispute can effectively be avoided is for the tenant to conclusively establish before the Rent Controller before the passing of the final eviction order, that the tenant had actually paid a specified amount by way of arrears of rent during the pendency of eviction petition. A duty, therefore, would be cast always on the tenant to establish beyond any doubt before the Rent Controller, before the passing of final eviction order, that during the pendency of the eviction petition the tenant had paid a particular amount towards the arrears of rent so that the tenant gets the amount adjusted in the final analysis.

With a view to minimize and outtail any scope for any dispute on this account we wish to observe and lay down as a binding principle of law that any prudent tenant in normal course of wisdom would like to avoid any dispute about establishing the fact of such payment being made during the pendency of the eviction petition by taking recourse to Section 21 of the 1987 Act because the endeavour of every tenant should be to establish beyond any doubt

conclusively the fact of any amount of rent having been paid during the pendency of the petition. After all, when the landlord and the tenant are locked in a litigation over the fact of the tenant allegedly having committed defaults and the landlord seeking eviction of the tenant from the property in question on the ground of default, it cannot legitimately be believed that the tenant in the face of such litigation would risk payment to the landlord without his insisting on conclusive proof of such payment having been made. The Rent Controller, therefore, while taking note of any such submission of the tenant has to take into account above referred circumstances and, therefore, while passing the final eviction order and specifying the exact amount payable, has to give credit and adjustment only to such amount which the tenant claims it has paid as has been conclusively established. Any claim of the tenant which is shrouded in doubt, or which does not have the trappings of any conclusive proof, has to be rejected.

11. The Reference accordingly is answered in the aforesaid terms. The revision petition, in the light of the aforesaid answer to the Reference shall now be listed before an appropriate Single Bench for disposal in accordance with law.

4. AMOUNT DUE

See above (Arrears of Rent)

5. LANDLORD AND TENANT

Landlord and Tenant-Pay of rent by alleged sub-tenant does not amount to creation of direct tenancy- Premises in possession of tenant- The alleged sub-tenant claiming direct tenancy- Mere payment of rent by alleged sub-tenant does not amount to creation of direct tenancy between landlord and alleged sub-tenant unless there is an evidence on the record that original tenant had surrendered the tenancy. Dr. Gyan Parkash vs. Som Nath, 1996(1) Rent Law Reporter (Supreme Court) 113

Landlord and Tenant- Waiver- Acceptance of rent after expiry of original tenancy- Tenant statutorily protected- Acceptance of rent merely of piece of evidence of show existence of implied agreement of continuance of tenancy- If no more evidence available, the mere acceptance of rent without reservation would not necessarily lead to the conclusion of implied agreement to continue the original agreement of tenancy. Shri Trilok Chand Vs. Shri Arjun Singh, 1977 Sim LC 509 HP HC.

6. JURISDICTION

Non Payment of Rent.- Principle of Merger -

Power to extend time for deposit of arrears of rent- Authorities

under the Act not competent to extend the period beyond the statutory time prescribed under the Section- Period of 30 days cannot be extended by any authority under the Act. Shri Swamy Bhandari vs. Smt. Shila Sharma, 1983 Sim LC (1) H.P. HC, AIR 1983 HP. 36

Ejectment application made before the expiry of five years from the date of acquisition of the property by the landlord-- No maintainable- The fact that the application was made before the expiry of five years but the period of five years expired during the pendency of proceedings is of no consequence any application made before expiry of a period of five years by new Land lord transfer void. Rent Controller has no jurisdiction to entertain the ejectment application. Gauri Shankar vs. Tilak Raj Sharma, 1988(2) 1988(2) Sim LC cases 303.

Title- Question of title- Determination of- Jurisdiction of Rent Controller to determine- Rent Controller has no jurisdiction to determine the question of title between the parties- Competency vests in the civil court- Rent Controller competent to find out if relationship of landlord and tenant exists between the parties arrayed before him Rent Controller to refer the parties to the civil court if he cannot determine the question of relationship as landlord and tenant between them. Satya Devi vs. M/s. Ram Gopal Angania, 1986 Sim LC 164 HPHC.

Land Lord and Tenant:- Determination of relationship of- Rent Controller holding that the relationship of landlord and Tenant existed between the parties-Denial the title of owner- Jurisdiction- No jurisdiction of Rent Controller- rent controller can refuse the parties to civil court- Appellate Authority was in error in setting aside order. Satya Devi Ms. Roni Gopal 1986 Sim LC 164.

Doctrine of merger-Ex parte ejectment order- Appeal against ejectment order as well as application before Rent Controller to set aside ex parte ejectment order filed- Appeal dismissed as barred by time- Ejectment order of Rent Controller merged into the appellate order- Rent Controller not competent to set aside the ex parte ejectment order. Smt. Surinder Kaur vs. Shri Mohinder Bahadur Singh, 1978 Sim LC cases 75.

7. JURISDICTION OF CIVIL COURT

Jurisdiction of Civil Court to try ejectment suit in respect of matters covered by the Act-- Civil Court not competent to implement the provisions of the Rent Act and try any proceedings for eviction of a tenant on any of the grounds contemplated by Rent Act-- Civil Court can try only those ejectment suits wherein grounds of

eviction are other than those covered by the Rent Act. Shri Trilok Chand vs. Shri Arjun Singh, 1977 Sim LC 509.

8. POWER OF APPELLATE COURT TO GRANT PERMISSION TO WITHDRAW EJECTMENT APPLICATION WITH PERMISSION TO FILE IT AGAIN ON THE SAME CAUSE OF ACTION

Power of Appellate Court to grant permission to withdraw ejectment application with permission to file it again on the same cause of action- Appellate Court competent to grant such permission especially when both the parties consented to the same. Dr. Shri Bhagwan Singh vs. Ramesh Kumar, 1981(1) Rent Law Reporter (H.P.) 130.

Sec. 21 and 14- Civil Procedure 1908 - Order 23 Rule 1- Application by Landlord for withdrawal of ejectment petition with eibeeoty to file fresh due to some Technical defect- Possession granted by appellate Court - Provision of C.P.C. may not be strictly applicable to the proceeding under the Act- principle of C.P.c. still applicable - Competent to grant permission - When both the parties consenlit to same- Petition filed of the 3 yrs. Challenging the order of Appellate authority- A eitigant cannot take advortage of their own strong. Dr. Bhagwan Singh vs. Ramesh Kumar 1981 (1) Rent Law Reporter HP. 130.

9. ADMISSION

Statement of counsel before lower Court- High Court cannot enquire into submission made before lower Courts. Girish Kumar Mundra vs. Sat Pal Jain, 1989(2) Rent Reporter (H.P.) 205.

10. EVIDENCE

Documents/Evidence- Permission to place on record documents not filed alongwith ejectment application- Permission sought almost at its threshold-Petition allowed to place on record the documents. HC Directed the Rent Control to the applicant Landlord to file the documents in question. Mrs. Balbir Kochhar vs. Sh. S.V. Bhandari, 1989(1) Rent Law Reporter (H.P.) 553 : 1989 (1) SLC 169 (HP)

Evidence- Landlord has to prove his allegations for seeking ejectment-

He cannot rely merely on his own statement or the weakness of the tenants evidence. M/s Ram Asra-Hari Chand vs. Tara Chand, 1983(2) Rent Law Report (H.P.) 141.

1 1 . ACQUISITION OF ANOTHER REASONABLE SUFFICIENT ACCOMMODATION BY TENANT

Acquisition of another reasonable sufficient accommodation by tenant- Tenant a Government servant allotted Government

accommodation and remained in possession for three years- After receiving notice from the landlord to quit surrendered Government accommodation allotted to him- An allotment of Government accommodation falls within the ambit of Section 14(3)(a)(iv)- Once protection under the Act is lost because of allotment of Government accommodation it cannot be revived at any point of time or under or under any circumstances-Protection of Rent Act once lost cannot be revived- Surrender of Government accommodation or an retirement will not revive the lost rights of protection under Rent Act. Protection granted to the tenant under the Act is subject to the rights of land lord for his eviction on the ground specified. Diwan Chand Bhalla Vs. Dr. A.K. Bhoil, 1990(2) SLC 146 H.P (HC)

12. CROSS OBJECTIONS

Eviction sought on the ground of impairing of value and utility and change of user-The ground of change of user went against the landlord- However, issue regarding impairing of value and utility decided in his favour and petition for eviction was allowed on that ground- Landlord can go in appeal in respect of issue decided against him although order of eviction was passed in his favour. Ashok Kumar vs. Uttam Chand, 1996(2) Rent Law Reporter (H.P.) 62.

H.P. Urban Rent Control Act, 1987, Sections 14(2)(v) and 24(5)- Revision-Eviction of tenanted premises sought on grounds of arrears of rent and cessation of tenant to occupy tenanted premises for a continuous period of more than 12 months- eviction petition allowed by Rent Controller and appellate authority reversed the findings of rent Controller- A very strong presumption that shop remained unoccupied and unused during February 1990 to May, 1993- Tenant failed to explain non-consumption of electricity and rebut presumption- Non-consumption of electricity is of demised premises- Reliable evidence on record that premises remained closed during February 1990 to May 1993 and no business transacted- Rent Controller right in holding that tenant ceased to occupy tenanted premises for continuous period of 12 months and that rendered himself liable for eviction contrary view taken by Appellate Authority not sustainable.[Paras 12, 18, 20, 21, 25, 26 and 28]

Cases referred

AIR 1990 H.P. 79; 1999(2) R.L.R. 703; 2000(2) RLR 395; 1986 S.L.C. 168; 1990(1) R.C.R. 381; 1994(2) R.C.R. 351;AIR 1990 SC 879.

13. PART PERFORMANCE OF AGREEMENT TO SELL THE PROPERTY

Section 14-Part Performance of Agreement to sell the property- Agreement to sell the property in occupation of tenant- By virtue of agreement tenancy did not come to an end- Possession was also not transferred- Liability of tenant to pay rent does not cease as a result of agreement to sell the property in favour of tenant- Tenant liable- Possession of tenant not protected by Section 53-A of the Transfer of Property Act. Gursaran Sh. Vs. Shakuntala (Smt.), 1996(2) Rent Law Reporter (H.P.) 81.

SECTION 14

Demolition and Reconstruction - Entire building is an old structure and requires reconstruction and re-building as being very old building likely to be collapsed- Re building and reconstruction upheld in view of inspection Report and condition of building - Ejectment allowed. 1997(1) SLC 227 HPHC.

Demolition and reconstruction- Entire building is an old structure and requires reconstruction- Proceedings under Section 133, Cr. P.C. already stand initiated by Municipal Committee-No statutory requirement that before filing ejectment application plans of the building must be sanctioned-Storage of building material also no essential- Finances can be arranged these days for construction of building- Pick and choose from testimony not to be followed- Entire evidence to be appreciated- Ejectment on the ground of bona fide requirement for reconstruction after demolition ordered. Amar Nath vs. Balbir Kochhar (Mrs.), 1997(1) Rent Law Reporter (H.P.) 276. 1997(1) Shim L.C. 227 HPHC

14. UNSAFE AND UNFIT FOR HUMAN HABITATION

Unsafe and unfit for human habitation - Petitioner not stating in the pleadings that the demised premises are needed for building or rebuilding - The Controller framing an issue on the point whether the premises in dispute bona fide required for reconstruction - Parties led the evidence on the issue - Appellate authority should also have applied its mind to the issue and rendered a finding on it - Appellate authority not considered all the material on record - Order of appellate authority illegal-Case remanded. Roshan Lal vs. Prabh Dayal, 1981(2) Rent Law Reporter (H.P.) 598

15. CEASED TO OCCUPY THE PREMISES

Ejectment Petition on the ground

That Respondent/Tenant Ceased to occupy the building for a continuous period of 5 yrs. without any reasonable cause- Premises lying locked- No evidence to show that tenant had gone there for treatment on account of ill-health and caretaker was looking after premises- Ceased to occupy continuously even upto the date of

filing petition- Casual visit of tenant would not clothe the tenant with a status of in occupation of the premises- Tenant liable for ejectment. St. Michael's Cathedral Catholic Club vs. Harbans Kaur Nayani, 1997(1) Rent Law Reporter (H.P.) 308, 1997(1) SLC 237.

Ceased to occupy the premises- Neither any electricity consumed nor any payment made towards its consumption for the alleged period of non-occupation of the demised premises- Keeping of luggage in the premises immaterial- Tenant liable to be evicted for having ceased to occupy the premises for a continuous period of 12 months without reasonable cause. Joginder Nath Sood vs. Jagat Ram Sood, 1990(1) Rent Law Reporter (HP.) 163.

Sec.14- Ejectment- ceased to occupy premises the building for a continuous period of twelve months without reasonable causal- Neither electricity consumed nor payment made for consumed electricity- Appellate Authority recording finding against tenant- Finding according to law and evidence on record- Keeping luggage in premises immaterial - Interference unmarraorted. Joginder Nath Sood vs. Jagat Ram 1989 (1) SLC 179 HP HC.

Ceased to occupy- Eviction of tenant sought on the ground that he had ceased to occupy the demised premises continuously for a period of more than 12 months- Transfer of tenant from Shimla to Dharamshala- Premises occupied by the wife and mother-in-law of tenant- Tenant also visited the premises often- No evidence to show that the premises had remained continuously closed for the last 12 months- Eviction petition liable to be dismissed. Bharat Singh Rathour vs. R.N. Sharma, 1993(1) Rent Law Reporter (H.P.) 156.

Eviction sought on ground of non-occupation of building by the tenant for the last some years- Tenant occasionally visits the premises- Occasional visits means non-occupation of building- Eviction justified. Mohinder Singh vs. Mohd Ibrahim, 1983(1) Rent Law Reporter (H.P.) 556

Ejectment on the ground "the tenant has ceased to occupy the building or rented land for a continuous period of twelve months without reasonable cause" - Liability to eviction arises even if the 12 months period commenced before the Act came into force- Period should stand completed on the date the application for eviction made. Kanwar Surjit Singh, Advocate vs. Pritam Singh Patpatia, 1977(1) Rent Law Reporter (H.P.) 153.

Ceased to occupy- Premises in occupation of sub-tenant and continuously in use by sub-tenant- Tenant cannot be said to have ceased to occupy the premises for a continuous period of twelve

months. M/s Ram Asra Hari Chand vs. Tara Chand, 1983(2) Rent Law Reporter (HP.) 141.

Occupy- Evidence- Electricity Department persons have been seeing the premises in a locked condition as and when they went for meter reading or for handing over the electricity bills - Landlord has been able to prove that the tenant has failed to occupy the disputed premises for a continuous period of 12 months or more ending with the date of filing of eviction petition - Order of eviction upheld. S. Gurbax Singh vs. Kali Dass, ILR 1980 H.P. 176.

Authorities below holding that premises remain unoccupied for 12 months-High Court will not interfere with finding of facts- Asupation means actual. ILR 1980 H.P. 176.

Sec. 14(2) v. Question whether a tenant is ceased to occupy the tenanted premises- Factors for determination- Ceased to occupy building for the last 12 months without reasonable cause- Nature and extent of the occasional visits, animus deserendi and totality of circumstances of each case will have to be considered for purpose of determining whether the tenant has ceased to occupy the premises for a continuous period of 12 months without reasonable cause is a question of fact and has to be determined on the merit of each case. G.C. Bhatia vs. R.L. Seth, 1987(1) Rent Law Reporter (H.P.) 67.

Section 15- Second proviso - Landlord or his spouse-Already in occupation of a residential building within the local area- Does not acquire any right to seek tenants- Eviction on grounds mentioned under Section 15.

In a case where the landlord is already in occupation of a residential building either owned by him or by his spouse within the local area, he cannot, in view of the second proviso of Section 15 be said to have acquired any right to seek tenants eviction and on that ground the eviction petition will not be maintainable.

[B.N. Gupta vs. Ganga Ram, 1994 (2) Shim. L.C. 142 (HP) : AIR 1994 HP 126.

Section 15 (2)- Eviction petition- Petitioner alleged to be specified landlord of a portion of premises-Eviction on ground of personal need after retirement from defence services and with no other suitable accommodation in local area in his occupation- In Municipal Corporation second landlord along with other co-owners recorded in its occupation- Petitioner failed to establish that he did not own or possess any other suitable accommodation- Owners in occupation of entire upper storey- Owners included petitioner also- Held, thus petitioner has not come with honest intention- Petition dismissed.

In this case, it was mandatory upon the petitioner to legally establish that he did not own or possess any other suitable accommodation. The additional facts brought on record clearly established that owners were in occupation of entire upper storey and a part of lower storey. The owners included father of the petitioner from whom he inherited his share in the building. There is nothing on record to rebut these additional facts especially when these facts were appreciated when learned Counsel for petitioner during the Specified Land lord- Section 15(2)- Suit for tenanted premises- Premises required for opening clinic as land lord retired from Health Deptt.- Rent Controller refused to leave to contest and ordered eviction from premises in question- Requirement of land lord of the tenanted premises cannot be said either not bonafide or those are not unsuitable for his needs-Impugned order of eviction passed Rent Controller upheld 2001(3) SLC 35 Referred J.M. Sharma Vs. Dr. M.M. Bhalla 2003(2) SLC 394.

Mohar Singh Chopra Vs. Om Prakash Lt. H.L.J. 2005(1) 374 (HP)

Baldev Parsad vs. Rakesh Bhasker 1995(2) SLC 176.

Sections 15(2) and 16 (4)- See Civil Procedure Code, 1908, Section 115.

[Devi Ram vs. Shyam Sunder, 1996(2) Shim. L.C. 82 (HP)]

Sections 15 (2) and 16(4)- Eviction application under Section 15(2) of Act- Landlord petitioner retired as Chief Medical Officer under State Government filed eviction application against tenant respondent within one year of retirement for setting down and running his E.N.T. Clinic in suit premises- Tenant filed application under Section 16(4) with affidavit seeking to contest it and same allowed by impugned order of Rent Controller- Scope of inquiry by Rent Controller- Held, Rent Controller to inquire whether landlord bona fide required for starting E.N.T. Clinic and tenant also entitled to raise relevant contentions against such claim of specified landlord.

The impugned order is bad in law as it is not within the scope of the Rent Controller to find out regarding the suitability of accommodation for running a Clinic by the landlord-petitioner. However, the tenant-respondent shall be entitled to raise all relevant contentions as against the claim of the specified landlord. The landlord has also to prove that the accommodation in possession of the tenant is bona fide required for starting E.N.T. Clinic by him. The scope of inquiry of the rent Controller in the present application for eviction filed under Section 15(2) of the Act shall be confined to the above two points.

[Dr. B.L. Kapoor vs. Ram Kumar, 1996(2) Shim. L.C. 315 (H.P.)]

Sections 15(2) and 16(4)- Suit for eviction- On ground of bona fide requirement by specified landlord respondent- Suit decreed- Hence present petition by tenant- Landlord being railway employee due to retire- No other accommodation with him- Thus, being specified landlord entitled to seek ejectment from residential premises- Contention of tenant that wife of landlord is serving and no bona fide requirement made out and that actually he wants ejection in order to sell this house at good price- No misrepresentation of facts-Held, fact that wife of landlord is serving as teacher is no ground to dispel bona fide requirement- Petition dismissed.

The learned Rent Controller came to the conclusion that the landlord respondent was a "specified landlord" due to retire from Railway Department on attaining the age of superannuation on 30.11.1994 and he being the landlord of the tenanted premises was entitled to possession of the tenanted premises by way of ejectment of the tenant-petitioner. The learned Rent Controller also came to the conclusion that there has been no misrepresentation of facts on the part of the landlord-respondent qua his ownership in respect of the tenanted premises. Consequent upon such findings, the petition made by the landlord respondent under Section 15(2) of the Rent Act was allowed and an order of ejectment came to be passed against the tenant-petitioner.

The mere fact that the wife of the landlord-respondent is employed at Rajpura as a teacher and that she is to retire sometime in the year 1998 will not go to show that the requirement of the landlord-respondent is not bona fide. It is in evidence that the landlord respondent is residing in the Government accommodation at Patiala allotted to him during the course of his service, and, consequent upon his retirement he has to vacate the same. There is nothing on the record to show that the landlord-respondent or his wife owns and possesses any other accommodation either at Patiala or Rajpura. The law as found in Section 15(2) of the Rent Act places a restriction on a specified landlord to apply for the eviction of the tenant within one year of his retirement. The landlord-respondent, therefore, cannot be asked to wait till the retirement of his wife in order to seek ejectment of the tenanted premises.

Though, the tenant-petitioner has averred in her reply that the landlord-respondent was interested in disposing of the tenanted premises after getting it vacated for which purpose he had already contacted a property dealer, the name of such property dealer was never disclosed by her in her reply, nor the name of the property

dealer was suggested by her during the course of cross-examination of the landlord-respondent as PW-1. Such name has been disclosed by her only when she appeared as RW-1 and such property dealer has come to be examined as RW-4. It is admitted by RW 4 that his wife is a colleague of tenant-petitioner. Therefore, RW-4 was a convenient witness for the tenant-petitioner. The learned Rent Controller has rightly placed on reliance on the testimony of RW-4.

On the basis of the evidence coming on the record, Court is satisfied that the learned Rent Controller has rightly come to the conclusion that the tenanted premises are bona fide required by the landlord-respondent.

[Smt. Anita Chanana vs. Shri Surinder Singh Obrei, 1996(2) Shim L.C. 284 (HP)]

16. EXECUTION

Execution -- Compromise decree before the applicability of Himachal Pradesh Urban Rent Control Act -- Execution of decree passed by the Civil Court--Execution of decree not permissible in view of protection to the tenant under Section 14 of the Rent Control Act. Suraj Mal vs. Kamla Sharma, 1991(1) Sim L.C. 172

17. EXECUTION OF EVICTION DECREE

Brother of tenant was occupying tenanted premises along with tenant - Eviction decree against tenant- Death of tenant- Brother of tenant not cotenant nor eviction decree passed against him - Warrant of possession issued against him - He cannot approach the executing Court under Order 21, Rule 99 CPC unless dispossessed - A third party cannot take recourse to Order 21, Rule 99 CPC without being actually dispossessed - However he may approach the executing Court under Order 21, Rules 101 and 102 CPC. Snehlata vs. Surinder Sood, 1997(1) Rent Law Reporter 424 (H.P.)

Sec. 14 Eviction order- execution petition objection by petitioners/judgment- Debtor- Premises being in possession of tenants who are not made party- No evidence regarding alleged tenancy- even if that are sub-Tenants in possession- They are bound by eviction. M/s K.N. Trading Co. vs. Masonic Fraternity of Shimla 1995(2) Sim. L. Cases 342.

18. WITHDRAWAL OF EJECTMENT APPLICATIONS

Withdrawal of ejectment applications- Though provision of Order 23 rule 1 of Civil Procedure Code may not be strictly applicable to proceedings under Rent Act but its principles are still applicable. Dr. Shri Bhagwan Singh vs. Shri Ramesh Kumar, 1981(1) Rent Law Reporter (H.P.) 130.

19. ESTOPPEL

Under Section 14 of the Himachal Pradesh Urban Rent Restriction Act, mere knowledge of the landlord about occupation of tenanted premises by the registered society and acceptance of rent for the tenanted premises tendered by the tenant in the name of registered society will not create a sub-tenancy unless induction of sub-tenant is made with the written consent of the landlord-- No estoppel against the Statute- Landlord not estopped from claiming eviction of unauthorised sub-tenant alongwith the tenant- Unless original tenancy has been surrendered by tenants mere acceptance of rent from society does not make sub-tenancy legally authorised- Unless written consent of landlord has been obtained for creating sub tenancy by tenant, he cannot escape the liability of eviction on the ground of creating unauthorised sub-tenancy. Ram Saran vs. Pyare Lal, 1996(2) Rent Law Reporter (Supreme Court) 412

20. RES JUDICATA

Resjudicata - Ex parte eviction order an order after contest- Application to set aside ex parte ejectment order maintainable appellate authority dismissing appeal as time barred. - Controller also competent to grant stay of execution of order till the decision on the application - Ejectment order not to operate as res judicata. Smt. Surinder Kaur vs. Shri Mohinder Bahadur Singh, ILR 1977 HP 776.

21. AMENDMENT OF PLANT

Amendment of plaint - Ejectment application on ground of bona fide necessity of his son likely to marry- After marriage application to amend the plaint that son married and requirement for married- Real controversy on the basis of pleadings already on record- Open to the petitioner to prove subsequent development - Amendment not necessary. Shri Ishwar Dass vs. Shri Duni Bhoil, 1979(2) Rent Law Reporter (H.P.) 327.

Sec. 14- Civil Procedure Code- Order 6 Rule 17 ejectment Application filed on the ground of marriage of son- Amendment application before Appellate authority by petitioner Landlord as his son got married subsequently- Application for Amendment rejected - No interference by the High Court- Amendment not necessary. Lwas Datt vs. Duni Chand Bhoil 1979 Sim LC 332 HP HC.

22. PLEADINGS

Pleadings- Written statement- Inconsistent plea not set up in the written statement cannot be allowed-Ejectment application on the ground of sub-letting - The alleged sub-tenant respondent No. 3 did not come out in the written statement with a case that the

original tenant had surrendered the tenancy and thereafter that authorised agent of the landlord had accepted the respondent No. 3 as a direct tenant on acceptance of rent by cheques - In the written statement a complete different case set up i.e. direct tenancy in favour of respondent No. 3 from 1971 - This case that respondent No. 3 later on because tenant because of payment of rent by her by cheques and acceptance of such payment by the agent of the landlord being completely inconsistent with the pleadings of respondents Nos. 2 and 3- This should not be countenanced by the Court- Different case cannot be allowed to be set up. Dr. Gyan Parkash vs. Som Nath, 1996(1) Rent Law Reporter (Supreme Court) 113

Pleadings- Ejectment application on ground of bona fide personal necessity- Statement of witnesses in examination-in-chief about particular ingredient- No cross examination qua that point- Statement in examination-in-chief be accepted as correct. Shri Ochhi Ram vs. Shri Moti Ram, 1979(1) Rent Law Reporter (H.P.) 788.

Pleadings- Eviction of tenant sought on the ground of personal necessity- Landlord not pleading in the petition that he was not occupying another residential building owned by him nor he had vacated such building without sufficient cause within five years of the filing of the application in the Urban area concerned- Defective pleadings- Petition liable to be dismissed. Tara Chand Sharma vs. Baij Nath, 1993(1) Rent Law Reporter (H.P.) 119.

Pleadings-- Bona fide necessity for a married son by landlord- Essential for landlord to plead that his son did not occupy any other building in the same urban area and that he has not vacated such a building without sufficient cause after the commencement of the Act in the said urban area. Smt. Mastu Devi vs. Harish Chander ILR, 1980 (H.P.) 349

Pleadings- Written statement- Holding over- Implied agreement regarding continuation of tenancy after expiry of its term to be specifically pleaded and proved by defendant in written statement- In absence of pleadings such plea involving disputed questions of facts cannot be raised. Shri Trilok Chand vs. Shri Arjun Singh, 2 LR 77 HP 365 AIR 1964 SC 807 AIR 1951 SC 115 relied on.

23. SUBSEQUENT EVENTS :- COMPROMISE TIME ALLOWED TO VACATE.

Before expiry of time allowed fill a suit-Subsequent developments can only be taken into consideration so long as lis is pending- Such events cannot be taken into consideration after the order has

become final. B.N. Pandey vs. Indra Chohan, ILR 83 HP 54.

24. BONA FIDE NECESSITY

Petitioner having ground floor of the demised premises in his occupation at the time of filing the petition- Held that petition for eviction under sub-section (2) of Section 145 of Himachal Pradesh Urban Rent Control Act of 1987 was not maintainable even though the petitioner was a specified landlord being a retiree from State civil service.

Held:

The object in conferring right to recover immediate possession under Section 15, as contained in the Act has been introduced with the sole purpose of avoiding unnecessary delay to certain categories of landlords under certain conditions, in seeking eviction of the tenant. Special procedure for achieving the said object has been provided for in Section 16 of the Act. In the absence of Section 15 and Section 16, even a specified landlord, in case of urgent and dire necessity, to seek tenants eviction would have to resort to the general provisions contained in section 14 for which normally the time required in finalising the proceedings would be sufficiently long. It was in order to mitigate the hardship of certain categories of tenants that provisions were introduced but that action cannot be said to altogether absolve the landlord from proving the bona fides of his claim or in the tenant in urging and showing that the claim is not bona fide. There is enough indication in support of this construction because of the use of the words bonafide requirement under Section 16 of the Act, which says special procedure for disposal of applications for eviction on of the ground of bonafide requirement under Section 14 (3)(A)(iii) and Section 15. Thus, even a claim of eviction against a tenant under section 15(1) and Section 15 (2) must be a bonafide one. Since the second proviso to Section 15 in clear terms states that right conferred shall not be construed as conferring a right to recover the possession of more than one residential building. Similar words contained in the Delhi Rent Act were construed in *Narain Khammans vs. Parduman Kumar Jain*, 1985(1) Rent Law Reporter 166 (SC) to mean that if such a person, who has been conferred a special right has other premises which he owns either in his own name or in the name of his wife, which are available to him for his residential accommodation or into which he has already moved, he cannot maintain an application for eviction under summary remedy. There is no reason why similar interpretation be not put to the right conferred under sub-section (2) of Section 15 of the Act, namely,

that if a specified landlord has in his possession other premises, which he owns either in his own name or in the name of his wife, which are available to him for his residence or into which he has already moved, he cannot maintain an application under Section 15 of the Act.

The word suitable accommodation cannot be read to mean sufficient accommodation, in case ground is made out that accommodation available is not sufficient. In that case, the landlord has to seek tenants eviction under Section 14 (3) of the Act and not under sub-section (2) of Section 15 of the Act, in view of the second proviso, which postulates within it the requirement that a specified landlord cannot recover possession of more than one residential building.

As the petitioner is and on the date of filing eviction petition was already in occupation of the ground floor of the building it was rightly held by the Rent Controller that petition for eviction under sub-section (2) of Section 15, though he is a specified landlord, will not be maintainable. In case he has got any remedy, he can seek tenants eviction under Section 14(3) of the Act by alleging and proving his additional need and requirement. B.N. Gupta vs. Ganga Ram, 1994(1) Rent Law Reporter (H.P.) 484.

Bonafied requirement of the land lord mere fact that the landlord is allowed to live with relations as a guest or as a relation does not negative the bonafied need of the premises for personal like and occupation.

Kamlesh Kumar vs. Laritri Devi ILR 1984 HP 419

Bonafied requirement :-

Sec 14(3)(a)(i)(e), 14(3) b and 14(3)(c) petition by a member of Armed Forces for eviction of tenant on the ground of premises were requested for his self occupation Land lord petitioner must also satisfy the Controller that his claim to bonafied. Amar Singh vs. Sohan Lal 1982(2) Rent Law Reporter 571 ILR 1982 HP 592.

Bonafied requirement for Reconstruction :-

Ejectment- Sought on the ground of bonafied requirement for demolition and construction- onus lies on the land lord to prove- Land lord failed to prove his bonafide requirement for reconstruction- No interefence by HC Ashok Kumar vs. Tilak Raj 1990(2) Sim LC 40 H.P.

Bonafied requirement:- Sec 14(3)(iii)- Bonafied of Respondent working in Army under special condition as prescribed under clause (a) and (b) of sec. 3 of Indian Soldier Litigation Act 1925- Certificate Produced by land lord-Required premises for family

Members eviction. Upheld Dalip Singh vs. Lt. Col. M.K. Chauhan 1990(2) Sim LC 21 HP.

Bonafied Requirement - Eviction- Family living other place- Personal requirement of landlord for some accommodation at S in tension of landlord to settle his family could be considered bonafide requirement.

Sec 14(3) (a) (i) -

Rent control and Eviction:- Bonafide requirement of land lord- eviction on basis of scope - Court not to ordinarily deny relief to land lord who genuinely and bonafide requires tenanted premises for occupation by himself or member of his family their case of requirement within the meaning of sec 14(3)(a)(i) is fully made out. Three proviso of sec 14 will not come into the way of land lord. 2005(3) SCC 375 Kailash Chander vs. Dharm Dass.

Before a landlord could claim eviction of a tenant on the ground that the tenant had built a residence for himself it must also be established by him that such residence was reasonably sufficient for requirements of the tenant-- Order of eviction of tenant cannot be upheld as it falls short of the ground which the landlord must establish before he can seek ejection of the tenant on the ground that the tenant had built a residence for himself. Bhagat Ram Thakur vs. Smt. Enakshi Mahajan, 1988(2) Rent Law Reporter (H.P.) 730.

Neither any inquiry made by the Controller nor any finding recorded by him that the residence which has been built by the tenant was reasonably sufficient for his requirements- Order of eviction set aside. Bhagat Ram Thakur vs. Enakshi Mahajan, 1988(2) Rent Law Reporter (H.P.) 730.

25. TIME GIVEN TO TENANT TO VACATE THE PREMISES

Time for vacation- Decree of eviction under Section 14(3)(c) passed-- Time for vacation of the premises by tenant cannot be more than three months in view of the clear provisions of the Act. State of HP. Vs. Satwant Singh Kochhar, 1994(1) Rent Law Reporter (H.P.) 705.

26 Subletting:- Tenant of shop creating partnership- If tenant is actively associated in partnership business- Retains the use and control over the tenancy premises with him, may be along with partner with him, the tenant may not be said to have parted with possession- However, if the uses and control of the tenancy premises has been parted with it will be subletting. 2004(1) RCR (rent) 596 SC.

Respondent parted with exclusive possession and subletting is not

proved by petitioner Appellate Authority confirmed the order of Rent Controller-Finding fact is not liable to disturb in exercise of revisional jurisdiction-Allegation of subletting by petitioner subtenant as necessary party not necessary party. 1996 Section 36 (relied), Asha Gupta Vs. Balbir Singh 2001 (1) SLC 224.

Eviction on ground of non payment of rent as well as additions and alterations in demised premises-No legally acceptable produced by land lord to show that the value of premises stood materially impaired because of unauthorized acts of tenant- Variance in pleadings and proof of land lord-Appellate Authority neither committed impropriety nor illegality so as to call for any interference. 1994 Supp (1) SCC 437 (referred). Vir Khanna Vs. Bindrawati 2003 (3) SLC 16.

26. SUB-LETTING

Sub-letting- Close relatives of tenant residing with him in suit premises out of love and affection are not paying any rent to tenant-It cannot be said that the tenant has sublet the premises or transferred his right or interest therein. Sneh Lata V. Surinder Sood, 1997 (1) Rent Law Reporter 424 (H.P).

Sub-tenant independently carrying on the business of tailoring in the tenant premises- Neither he is a family member of tenant - Tenant parted with the possession of the property- Sub-letting proved. Salig Ram V. M/s. Kishori Lal Jagat Ram, 1997 (1) Sim 446 H.P.

Sec. 14 2(ii) Punjab Rent Act 1941 Eviction on ground of sub-letting-Tenant liable to eviction if premises were sub-let after commencement of the Act and not earlier. Dharam Pal v. Durga Dass, 1983 (1) AIR 1982 HP 121 1982 Sim LC 127.

27. RECONSTRUCTION

Reconstruction-Eviction petition on the ground that the building had become unfit and unsafe for human habitation and was required for rebuilding-Apart of building in bad shape - No finding that the entire building was damaged-Eviction on the ground improper. Munna Devi v. Daropati Devi, 1990(1)

Rent Law Reporter - Eviction petition on the ground that the building had become unfit and unsafe for human habitation and was required-Not stated in the eviction petition that the premises cannot be reconstructed and rebuilt without vacating the same - Required to be specifically alleged in the petition and evidence adduced to the effect in order to succeed on the ground. 1990(1) Sim LC 109 HP.

Reconstruction-Building bona fide required for the purpose of

reconstruction-Failure to prove that the building is in dilapidated condition-Building required certain repairs only-Eviction cannot be ordered. Vidya Devi v. Gulzari Lal, 1990(1) Sim LC 210 HP.

28 INSPECTION NOTE :-

Demolition and reconstruction-Inspection Note-Inspection Note prepared by Rent Controller regarding the condition of building - It carries value to the extent as the things have appeared and in what shape. Amar Nath v. Balbir Kochhar (Mrs.), 1997(1) Sim LC HP 227.

29. UNDERTAKING

Eviction/Undertaking-Eviction proceedings- Compromises between the landlord and the tenant-Undertaking by the tenant before the Court on oath to vacate the premises by a specific date- Tenant seeking discharge from the undertaking-Tenant relieved of the obligation to vacate the premises as per the undertaking given by him. Roshan Lal Pokta vs. Roshan Lal 1991(2) Sim LC 346 HP.

30. IMPAIRING MATERIALLY THE VALUE OR UTILITY OF BUILDING

Impairing materially the value and utility of the building-Premises let out for Kiryana business-Tenant installed Atta Chakki and Oil earlier-For installation of these units, the tenant had to dig the floor and fix the machines-The digging of floor and fixing of machine definitely caused damage to the building-Continuous running of machines causing some vibration and creating noise when is source of continuous nuisance to neighbourhood-All this impaired the value annutility of building. Ashok Kumar vs. Uttam Chand, 1995(2) Shim LC HP.

Impairing the value and utility of the building/temporary construction- Cabin temporary in nature- No part of the cabin embedded in the walls or floor of the tenanted premises - Temporary construction of Cabin cannot be said to have impaired the value and utility of the building. Salig Ram vs. Mr. Kishori Lal Jagat Ram, 1997(1) Sim LC cases 446 HP.

Ejectment on ground of impairing materially the value or utility of building- Mere fact of converting the portion into cabins or living rooms by making alterations- No conclusion about impairing materially the value or utility of the building to be drawn- To be proved independently by evidence.

Bhri Balak Ram vs. Shri B.N. Gupta, 1977 Sim LC 265

Impairing materially the value and utility of the building- Removal of tin roofing and pole- Fixing plywood ceiling- Scrapping of the walls as a result of such removal process- Amounts to impairing materially the value and utility of building. Kali Dass Vasudeva vs.

Swaran Singh, 2 LR 1980 HP 191.

Impairing the value and utility of the building- Construction of enclosure temporary in nature and of light weight- Construction in open verandah which was laying open-Construction does not have the effect of impairing the value and utility of the building. Shimla Central Co-operative Consumers Store Limited, Shimla vs. S. Darshan Singh 1990(2) Rent Law Reporter (H.P.) 633.

31. CHANGE OF USER

Change of user - Tenant installing Oil expeller and Atta Chakki in part of the premises let for Kiryana business and general merchandise- Cannot be said that it was an allied business- A case of change of use- However, it could be true that the premises in dispute been rented out for installation of said two units originally, then Karyana shop in that part of premises could be said to be an allied business and not a change of user. Ashok Kumar vs. Uttam Chand, 1995(2) Sim. L.C. 373 HP.

Change of user- Eviction- Eviction proceedings for using a portion of building for a purpose other than that for which it was originally let out-Conversion of building to same use for which it was originally let out before initiation of eviction proceedings-- Eviction application maintainable. Himachal Road Transport Corporation vs. M/s Bhanno Mull, 1992 Sim L.C. 110 AIR 1992 HP 37.

Change of user- Ejectment proceedings- Small portion of building put to use for a purpose other than for which it was originally let out-Conversion of portion of non-residential building into residential building- Tenant not liable for ejectment under Section 14(2)(ii)(b) of the Himachal Pradesh Urban Rent Control Act. Himachal Road Transport Corporation vs. M/s. Bhanno Mull, AIR 1992 HP 37

Change of user - Premises let out for storage of bananas Premises used for manufacturing steel trunks and sale thereof- Eviction ordered on the ground of change of user of premises. Shiv Ram vs. Sheela Devi, 1993(1) Sim L Cases 266

Non-occupation of premises - Question of fact - Eviction sought on ground of non-occupation of the premises for a continuous period of 12 years - Non-occupation of premises is a question of fact- Has to be determined on merits of each case. G.C. Bhatia vs. R.L. Seth, 1986 Sim Lan cases 168

Change of user- Building originally let solely for purposes of trade and business- Subsequently found to be under use for mixed purpose namely business as well as residence- Building to be treated as residential building- Amounts to change of user- Tenant liable to be evicted - Tenant liable to be evicted- Bona fide personal

requirement need not be proved - Tenant also liable to be evicted.
Shri Balak Ram vs. Shri B.N. Gupta, 1977 SLJ 85 DB HP

Change of user before the commencement of the Act- Continued up to the date of filing petition i.e. Non-residential building converted into residential building. 1977 SLJ 85 DB HP Section.

Eviction- concurrent findings of facts of lower authorities regarding the use of shop as godown in contravention of terms of tenancy are quite in tune with the evidence on record and the statutory provisions involved- Order of eviction valid. Dalbir singh vs. Chanchal Singh, 1991(1) Rent Law Reporter (H.P.) 351.

32. ONUS

Onus-- Onus to prove continuance of original agreement of tenancy after its expiry by acceptance of rent-- Lies on the Tenant must plead and prove. Shri Trilok Chand vs. Shri Arjun Singh, 1977(2) Rent Law Reporter (H.P.) 653.

33. OCCASIONAL STAY

Occasional stay- Eviction of tenant sought on ground of non-occupation of the premises for the last 12 months without any reasonable cause- Tenant transferred from Shimla-Not vacating premises- His family members visiting the premises and staying there during each summer and particularly in the months of may and June- Tenant had no animus to give up the premises- Occasional use of the premises by the tenant does not amount to non-occupation of the building- No ground for eviction. G.C. Bhatia vs. R.L. Seth, 1987(1) Rent Law Reporter (H.P.) 67.

34. CONTEMPT

Contempt- Application for ejectment- Undertaking by the tenant to vacate the premises by a specific date - Contempt petition by landlord against tenant for not vacating the demised premises by the specified date- Contempt petition not maintainable. Roshan Lal Pokta vs. Roshan Lal Chauhan, 1991(2) Sim LC 346

35. CO-OWNERS

Co-owners- Eviction application by one co-owner out of the several co-owners-One co-owner can sue without adding the other co-owners as party. J.C. Saraswati vs. P.N. Bhatt, 1990(1) Rent Law Reporter (H.P.) 6.

36. APPLICABILITY OF CPC

Procedure- Provisions of C.P.C. not strictly applicable - Application to set aside ex parte eviction order- Maintainable. Smt. Surinder Kaur vs. Shri Mohinder Bahadur Singh, 1979(2) Rent Law Reporter (H.P.) 345

37. INTERPRETATION OF STATUES

Provisos are read with main provision which proceed the provisos- Provisos under Section 14(3)(a)(i) not required to be satisfied by the landlord approaching the court under Section 14(3)(a)(iii). J.C. vs. P.N. Bhatt, 1990(1) Rent Law Reporter (H.P.) 6.

15. Right To Recover Immediate Possession Of Premises To Certain Persons :-

(1) Where a person who being in occupation of any residential premises allotted to him by the Central Government, the State Government or any local authority is required by, or in pursuance of, any general or special order made by the Central or State Government or local authority, as the case may be, to vacate such residential accommodation default, to incur certain obligations, on the ground that he or his spouse or dependent child and from the date of such order, to such a person notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract (whether express or implied), custom or usage to the contrary, a right to recover immediate the possession of any premises let out by him :

Provided that nothing in this section shall be construed as conferring a right the person, who himself or whose spouse or dependent child owns, within the urban area, two or more dwelling houses, to recover the possession of more than one dwelling house, and it shall be lawful for such person to indicate the dwelling house, the possession of which he intends to recover.

(2) Where a specified landlord, at any time within one year prior to or within one year after the date of his retirement or after his retirement but within one year of the appointed day whichever is later, applies to the Controller, along with a certificate from the authority competent to remove him from service indicating the date of his retirement and his affidavit to the effect that he or his spouse does not own and possess any other suitable accommodation in the local area in which he intends to reside or to start his own business, to recover possession of one residential building for his own occupation, there shall accrue, on and from the date of such application to such specified landlord, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract (whether expressed or implied), custom or usage to the contrary a right to recover immediate possession of such residential building or any part or parts of such building if it is let out in part or parts:

Provided that in case of death of the specified landlord, the widow or widower of such specified landlord and in the case of death of such widow or widower, mother or father or a child or a grandchild or a widowed daughter-in-law who was dependent upon such specified landlord at the time of his death shall be entitled to make an application under this section to the Controller,--

(a) in the case of death of such specified landlord before the appointed day, within one year of the said day;

(b) in the case of death of such specified landlord after the appointed day, but before the date of his retirement, within one year of the date of his death;

(c) in the case of death of such specified landlord after the appointed day and the date of his retirement, within one year of the date of such retirement;

and on the date of such application the right to recover the provision of the residential building which belongs to such specified landlord or his spouse at the time of his death shall accrue to the applicant;

Provided further that nothing in this section shall be so construed as conferring a right, on any person to recover possession of more than one residential building inclusive of any part or parts thereof if it is let out in part or parts.

Provided further that the Controller may give the tenant a reasonable time for putting the specified landlord or, as the case may be, the widow, widower, child, grandchild or widowed daughter-in-law in possession of the residential building and may extend such time not exceeding three months in the aggregate.

Explanation.- For the purposes of this section, the expression "retirement" includes the voluntary retirement out does not include resignation discharge or dismissal from service.

(3) Notwithstanding anything contained elsewhere in this Act, or in any other law for the time being in force or in any contract custom or usage to the contrary where the landlord exercises the right of recovery conferred on him by this Act, no compensation shall be payable to him the tenant or any person claiming through or under him and no claim for such compensation shall entertained by any court, tribunal or other authority:

Provided that where the landlord had received-

(a) any rent in advance from the tenant, he shall, within a period of ninety days from the date of recovery of the possession of premises by him, refund to the tenant such amount as represents the rent payable for the un-expired portion of the contract agreement or

lease;

(b) any other payment, he shall, within the period aforesaid, refund to the tenant a sum which shall bear the same proportion to the total amount so received, as the un-expired portion of the contract or agreement, or lease bear to the total period of contract or agreement of lease :

Provided further that, if any default is made in making any refund as aforesaid, the landlord shall be liable to pay simple interest at the rate of nine per cent per annum.

SYNOPSIS

1. Specified landlord
2. Leave to defend ejectment application/Summary procedure
3. Co-owner

1. SPECIFIED LANDLORD

Specified landlord - Death of original specified landlord - Property inherited by several Cohier - A coheir though authorised to receive the rent not covered by the definition of "specified landlord" under the Act- Application for eviction filed of such heir not maintainable. Niranjana Dass vs. Trilok Chand, 1996 (2) Rent Law Reporter (Supreme Court) 634.

Specified landlord/Personal necessity- Eviction petition- Petitioner having ground floor of the demised premises in his occupation at the time of filing the petition- Held that petition for eviction under sub-section (2) of Section 15 of Himachal Pradesh Urban Rent Control Act, 1987 was not maintainable even though the petitioner was specified landlord being a retiree from State Civil Service.

Held:

The object in conferring right to recover immediate possession under Section 15, as contained in the Act has been introduced with the sole purpose of avoiding unnecessary delay to certain categories of landlords under certain conditions, in seeking eviction of the tenant. Special procedure for achieving the said object has been provided for in Section 16 of the Act. In the absence of Section 15 and Section 16, even a specified landlord, in case of urgent and dire necessity, to seek tenants eviction would have to resort to the general provisions contained in section 14 for which normally the time required in finalising the proceedings would be sufficiently long. It was in order to mitigate the hardship of certain categories of tenants that provisions were introduced but that action cannot be said to altogether absolve the landlord from proving the bona fides of his claim or in the tenant in urging and showing that the claim is not bona fide. There is enough indication

in support of this construction because of the use of the words bonafide requirement under Section 16 of the Act, which says special procedure for disposal of applications for eviction on the ground of bona fide requirement under Section 14(3)(A)(iii) and Section 15. Thus, even a claim of eviction against a tenant under Section 15(1) and Section 15(2) must be a bonafide one. Since the second proviso to Section 15 in clear terms states that right conferred shall not be construed as conferring a right to recover the possession of more than one residential building. Similar words contained in the Delhi Rent Act were construed in *Narain Khamran vs. Parduman Kumar Jain*, 1985(1) Rent Law Reporter 166 (SC) to mean that if such a person, who has been conferred a special right has other premises which he owns either in his own name or in the name of his wife, which are available to him for his residential accommodation under summary remedy. There is no reason why similar interpretation be not put to the right conferred under sub-section (2) of Section 15 of the Act, namely, that if a specified landlord has in his possession other premises, which he owns either in his own name or in the name of his wife which are available to him for his residence or into which he has already moved, he cannot maintain an application, under Section 15 of the Act.

The word suitable accommodation cannot be read to mean sufficient accommodation, in case ground is made out that accommodation available is not sufficient. In that case, the landlord has to seek tenants eviction under Section 14(3) of the Act and not under sub-section (2) of Section 15 of the Act. In view of the second proviso, which postulates within its requirement that a specified landlord cannot recover possession of more than one residential building.

As the petitioner is and on the date of filing of eviction petition was already in occupation of the ground floor of the building it was rightly held by the Rent Controller that petition for eviction under sub-section (2) of Section 15, though he is a specified landlord, will not be maintainable. In case he has got any remedy, he can seek tenants eviction under Section 14(3) of the Act, by alleging and proving his additional need and requirement. *B.N. Gupta vs. Ganga Ram*, 1993(2) Sim LC 235 HP.

Himachal Pradesh Road Transport Corpn. is an instrumentality of State within the meaning of Art 12 of the Constitution of India -A retired employee of Corporation would be a specified landlord-Entitled to avail the benefit of summary ejectment of tenant. *Om Prakash Attri vs. Shiv Lal Behal*, 1996 (2) Rent Law Reporter (H.P.)

662.

Specified landlord is a person entitled to receive Rent on his own account Summary proceedings - Cause of action - Respondent retiring from service on 31.10.1998- Purchasing demised premises on 4.8.1989 already under tenancy of the petitioner - Not covered under the definition of "specified landlord"- In order to get benefit of eviction of tenant is a summary way, the person concerned must be specified landlord qua the premises as well as the tenant at the time of his retirement from service- The cause of action arises on the date of retirement-- Respondent entitled to no relief. Union of India vs. Duni Chand Sharma, 1994 (2) Rent Law Reporter (H.P.) 313 = 1993(2) Sim LC 29 HP.

"Specified landlord" Section 15(2) and 16(4) specified landlord Recovery of immediate possession- 2 inport applicability and relevance of the provision- Special provision of law distinct from section 14 of the Act - intention of the legislature to treat different obligation upon the tenant to apply to the Rent Controller and disclose in his affidavit the fact disintitled the specified landlord to recover immediate possession - Landlord did not specifically dispute the facts that he is having other accommodation - Order passed by Rent Controller and set aside - Leave granted to tenant v/s 16(5) of the act, matter remanded.

Latest HLJ 2005 HP 374 Mohar Singh vs. Om Parkash.

Specified Landlord - Special provision for ejectment of tenant - Retirement of a member of Armed Forces- Daughters cannot maintain suit for eviction of tenant under special procedures prescribed during life time of his father.

Ombalika Dass vs. Leulisa show, 2005(1) RCR (Rent) (1) SC.

Specified landlord- Landlord is a doctor- Wants to start his own E.N.T. clinic- Entitled to get the privilege conferred on a specified landlord under Section 15(2) of the Act. Dr. B.L. Kapoor vs. Ram Kumar, 1997(1) Rent Law Reporter (H.P.) 74.

Specified landlord - Appeal Revision- Petition by a Specified landlord under Section 15 of the Himachal Pradesh Urban Rent Control Act of 1987 for recovery of immediate possession of the disputed premises- Dismissal of petition by the Rent Controller- Held that revision would lie against the order of Rent Controller and appeal will not be maintainable. B.N. Gupta vs. Ganga Ram, 1993(2) Rent Law Reporter (H.P.) 56.

Specified landlord- Section 115 of HP Urban Rent Control Act, Section 15(2) and 16(4) 15 days notice is mandatory - Bona fide requirement- Leave to contest - Failure of tenant to put appearance

within fifteen days after service of summons upon application for eviction by specified landlord and to file affidavit seeking leave to contest - Rent Controller has no jurisdiction to extend the period of 15 days- the provisions of Section 16(2) are mandatory. *Devi Ram vs. Shyam Sunder*, 1997(1) Rent Law Reporter 432 (H.P.) 1996(2) Sim L Cases 82.

Specified landlord- Bona fide requirement- Specified landlord has to file certificate and affidavit to the effect that his or her spouse does not possess/own any other suitable accommodation in the local area. *Devi Ram vs. Shyam Sunder*, 1997(1) Rent Law Reporter 432 (H.P.) 1996(2) Sim L Cases 82.

Specified landlord- Bona fide requirement- Tenant not filing application for leave to defend the suit filed by specified landlord for eviction - Neither filed any Affidavit - It is obligatory for the Rent Controller to pass eviction order accepting the statements made by the specified landlord in the eviction petition. *Devi Ram vs. Shyam Sunder*, 1997(1) Rent Law Reporter 432 (H.P.).

Specified landlord Section 15(2) - Suit for eviction of tenanted premises-Premises required for opening clinic as land lord retired from Health Deptt. -Rent Controller refused to leave to contest and ordered eviction from premises in question - Requirement of land lord of the tenanted premises cannot be said either not bona fide or those are not unsuitable for his needs - Impugned order of eviction passed be Rent Controller upheld. 2001(3) SLC 35 Referred. *J.M. Sharma Vs. M.M. Bhalla* 2003(2) SLC 394.

Mohar Singh Chopra vs. Om Prakash Lt. H.L.J. 2005(1) 374 (HP)

Baldev Prdesh vs. Rakesh Bhasker 1995(2) SLC 176

2. Leave to defend ejectment application/Summary procedure

It is a special provision to enable land lord to seek immediate possession, The right of landload is independent. He can seek eviction for his residence.

Summary procedure/Leave to defend ejectment application - Grounds raised by tenant are not such which even on proof can go to the extent of entailing the dismissal of ejectment application. Leave to defend ejectment application rightly declined. *Smt. Shakuntla Devi vs. Shri Mohan Lal Gupta*, 1990(2) Rent Law Reporter (H.P.) 589; 1991(1) SLC 38 HP.

Tenant filing affidavit that accommodation already in possession of specified landlord sufficient for his requirement - Issue triable - Leave to defend ejectment application granted. *Shri. K.S. Rawat vs. Shri. H.S. Wsht, Retired Executive Engineer* 1990(2) SLC283 HP. The petitioner being a specified landlord. The inquiry is

summary vide section 16(7) of the Act.

3. CO-OWNER

Summary ejectment-- Co-owner landlord is entitled in avail the benefit of summary ejectment of tenant-- Entitled to maintain ejectment application. Om Prakash Attri vs. Shiv Lal Behal, 1996 (2) Rent Law Reporter (H.P.) 662.

16. Special Procedure For The Disposal Of Applications For Eviction On The Ground Of Bona Fide Requirement Under Section 14(3) (A) (Iii) And Section 15 :-

:

(1) Every application by a landlord for the recovery of possession of any premises under sub-clause (iii) of clause (a) of sub-section (3) of Section 14 or Section 16 shall be dealt with in accordance with the procedure specified in this section.

(2) After an application under sub-clause (iii) of clause (a) of sub-section (3) of section 14 or section 15 is received, the Controller shall issue summons, in relation to every application referred to in sub-section (1), in the form specified in Schedule-II.

(3) (a) The Controller shall in addition to and simultaneously with the issue of summons for service on the tenant also direct the summons to be served by registered post, acknowledgement due, addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides, or carries on business or personally works for gain and may, if the circumstances of the case so require also direct the publication of the summons in a newspaper circulating in the locality in which the tenant is last known to have resided or carried on business or personally worked for gain.

(b) When an acknowledgement purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or his agent had refused to take delivery of the registered articles, the Controller, after such enquiry as he deems fit, is satisfied about the correctness of the endorsement, he may declare that there has been a valid service of summons on the tenant.

(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in Schedule-II shall not contest the prayer for eviction from the

premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord or by the specified landlord, or as the case may be, the widow, widower, child, grandchild or widowed daughter-in-law of such specified landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

(5) The Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such fact as would disentitle the landlord or the specified landlord or as the case may be, the widow, widower, child, grandchild or widowed daughter-in-law of such specified landlord from obtaining an order for the recovery of possession of the premises on the ground specified in sub-clause (iii) of clause (a) of sub-section (3) of Section 14 or in section 15.

(6) Where leave is granted to the tenant to contest the application, the Controller shall commence the hearing of the application as early as practicable.

(7) Notwithstanding anything contained in Section 14, the Controller shall, while holding an enquiry in a proceeding, follow the practice and procedure of a Court of Small Causes, including the recording of evidence.

(8) No appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in this section:

Provided that the High Court may, for the purposes of satisfying that an order made by the Controller under this section is according to law, call for the records of the case and pass such orders in respect thereto as it thinks fit.

(9) Where no application for revision has been made to the High Court, the Controller may exercise the powers of review in accordance with the provisions of Order XLVII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908).

(10) Save as otherwise provided in this section, the procedure for the disposal of an application for eviction on the ground specified in clause (a) of sub-section (3) of section 14 or in Section 15 shall be the same as the procedure for the disposal of applications by the Controller.

COMMENTS

1. Scope/Interference

2. Leave to defend

1. SCOPE

Scope/ Interpretation- Words according to law occurring in the proviso to Section 16(8) of the Himachal Pradesh Urban Rent Control Act of 1987-Power of interference be High Court three under ambit and extent of reassessment of evidence or interference with finding of fact - According to law does not mean an error of law in the opinion of the High Court but a conclusion which no judge could reasonably reach either in law or in fact. *Amar Singh vs. Ram Lal Mohindru*, 1993(1) Rent Law Reporter (H.P.) 127 - 1994 Supp. SLC 9 HP.

Scope- Power of High Court under provide to Section 16(8) of the Himachal Pradesh Urban Rent Control Act- It is narrower than under Section 24(5) of the Act. *Amar Singh vs. Ram Lal Mohindru*, 1993(1) Rent Law Reporter (H.P.) 127.

Revisional Jurisdiction - Revisional Jurisdiction conferred on the High Court under Section 25 of Act is not as narrow as one conferred under section 115 of Civil Procedure Code - Finding of fact arrived at by Appellate authority cannot be lightly interfered with by HC

P.M. Punnoose vs. K.M. Nunnerddin 2003(2) RCR (Rent) 6532 SC.

2. LEAVE TO DEFEND

Leave to defend - Tenant putting in belated appearance after the stipulation of 15 days - Rent Controller has no jurisdiction to extend the period of 15 days prescribed for putting in appearance by tenant under mandatory provisions of Section 16(2) and Schedule 2 of the Himachal Pradesh Urban Rent Control Act, 1987. *Devi Ram vs. Shyam Sunder*, 1996 (2) SLC 82 HP.

Leave to defend- If no application for leave to contest the eviction petition is filed it is obligatory for the /rent Controller eviction order accepting the statements made by the specified landlord in the eviction petition. *Devi Ram vs. Shyam Sunder*, 1997(1) Rent Law Reporter (H.P.) 69.

Specified landlord- Bona fide requirement- Leave to contest- Failure of tenant to put appearance within fifteen days after service of summons upon application for eviction by specified landlord and to file affidavit seeking leave to contest- Rent Controller has no jurisdiction to extend the period of 15 days- The provisions of Section 16(2) are mandatory. *Devi Ram vs. Shyam Sunder*, 1997(1) Rent Law Reporter 432 (H.P.).

Specified landlord- Bona fide requirement- Specified landlord has to

file certificate and affidavit to the effect that his or her spouse does not possess/ own any other suitable accommodation in the local area. *Devi Ram vs. Shyam Sunder*, 1997(1) Rent Law Reporter 432 (H.P.).

Specified landlord- Bona fide requirement- Tenant not filing application for leave to defend the suit filed by specified landlord for eviction- It is obligatory for the Rent Controller to pass eviction order accepting the statements made by the specified landlord in the eviction petition. *Devi Ram vs. Shyam Sunder*, 1997(1) Rent Law Reporter 432 (H.P.).

Specified Landlord Section 15(2) Suit for eviction of tenanted premises-Premises required for opening clinic as land lord retired from Health Deptt. Rent Controller refused to leave to contest and ordered eviction from premises in question- Requirement of land lord of the tenanted premises cannot be said either not Bonafide or those are not unsuitable for his needs Impugned order of eviction passed Rent Controller upheld. 2001(3) SLC 35 Referred *J.M. Sharma Vs. Dr. M.M. Bhalla* 2003(2) SLC 394.

Mohar Singh Chopra Vs. Om Prakash Lt. H.L.J. 2005 (1) 374 (HP).
Baldev Pradesh Vs. Rakesh Bhasker 1995(2) SLC 176.

17. Recovery Of Possession In Case Of Tenancies For Limited Period :-

Where a landlord does not require the whole or any part of any premises for a particular period, and the landlord, after obtaining the permission of the Controller in the prescribed manner, lets the whole of the premises or part thereof as residence for such period as may be agreed to in writing between the landlord and the tenant and the tenant does not. on the expiry of the said period, vacate such premises, then, notwithstanding anything contained in section 14 or in any other law, the Controller may, on any application made to him in this behalf by the landlord within such time as may be prescribed, place the landlord in vacant possession of the premises or part thereof by evicting the tenant and every other person who may be in occupation of such premises.

18. Decisions Which Have Become Final Not To Be Reopened :-

The Controller shall summarily reject any application under sub-section (2) or sub-section (3) of Section 14 which raises substantially issues as have been finally decided in a former

proceeding under this Act.

19. Boards Of Vacant Buildings :-

Whenever any building which was constructed before the commencement of this Act, and was being let out the tenants remains vacant for a period of twelve months, the Controller may on receipt of an application from a person serve the landlord a notice informing him that he should show cause why the vacant building be not let out to a tenant, who will pay fair rent to the landlord. On hearing the landlord, the Controller may, on such terms on which the building was being let out, lease the same to a person who has in his occupation no other building either as an owner or a tenant.

20. Receipt To Be Given For Rent Paid :-

(1) Every tenant shall pay rent within the time fixed by contract or in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable.

(2) Every tenant who makes payment of rent to his landlord shall be entitled to obtain forthwith from the landlord or his authorised agent a written receipt for the amount paid to him duly signed by the landlord or his authorised agent.

(3) If the landlord or his authorised agent refuses or neglects to deliver to the tenant a receipt referred to in sub-section (2), the Controller may, on an application made to him in this behalf by the tenant within two months from the date of payment and after hearing the landlord or his authorised agent, by order, direct the landlord or his authorised agent to pay to the tenant, by way of damages, such sum not exceeding double the amount of rent paid by the tenant and the cost of the application and shall also grant a certificate to the tenant in respect of the rent paid.

21. Deposit Of Rent By The Tenant :-

(1) Where the landlord does not accept any rent tendered by the tenant within the time referred to in section 20 or refuses or neglects to deliver a receipt referred to therein or where there is a bonafide doubt as to the person or persons to whom the rent is payable the tenant may deposit such rent with the Controller in the prescribed manner.

(2) Deposit shall be accompanied by an application by the tenant

containing the following particulars, namely :-

- (a) the building or rented land for whom the rent is deposited with a description sufficient for identifying the building or rented land;
- (b) the period for which the rent is deposited;
- (c) the name and address of the landlord or the persons claiming to be entitled to such rent; and
- (d) such other particulars as may be prescribed.

(3) On such deposit of the rent being made, the Controller shall send in the prescribed manner a copy or copies of the application to the landlord or persons claiming to be entitled to the rent within endorsement of the date of the deposit.

(4) If an application is made for the withdrawal of any deposit of rent, the Controller shall if satisfied that the applicant the person entitled to receive the rent deposited, order the amount of the rent to be paid to him in the manner prescribed:

Provided that no order for payment of an deposit of rent shall be made by the Controller under this sub-section without giving all persons named by the tenant in his application under sub-section (2) as claiming to be entitled to the payment of such rent an opportunity of being heard and such order shall be without prejudice to the rights of such persons to receive such rent being decided by a court of competent jurisdiction.

(5) If at the time of filing the application under sub-section (4), but not after the expiry of thirty days from receiving the notice of deposit, the landlord or the person or persons claiming to be entitled to the rent complains to the Controller that the statements in the tenant application of the reasons and circumstances which led him to deposit the rent are untrue, the Controller, after giving the tenant an opportunity of being heard, may levy on the tenant a fine which may extend to an amount equal to two months rent, if the Controller is satisfied that the said statements were materially untrue and may order that a sum out of the fine realised be paid to the landlord as compensation.

(6) The Controller may, on the complaint of the tenant and after giving an opportunity to the landlord of being heard levy on the landlord a fine which may extend to an amount equal to two months rent, if the Controller is satisfied that the landlord, without any reasonable cause, refused to accept rent though tendered to him within the time referred to in section 20 and may further order that a sum out of fine realised be paid to the tenant as compensation.

22. Time Limit For Making Deposit And Consequences Of Incorrect Particulars In Application For Deposit :-

(1) No rent deposited under section 2 shall be considered to have been validity deposited under that section, unless the deposit is made within twenty-one days of the time referred to in section 20 for payment of the rent.

(2) No such deposit shall be considered to have been validly made, if the tenant wilfully makes any false statement in his application for depositing the rent, unless the landlord had withdrawn the amount deposited before the date of filing an application for the recovery of possession of the building or rented land from the tenant.

(3) If the rent is deposited within the time mentioned in sub-section (1) and does not cease to be a valid deposit for the reason mentioned in sub-section (2), the deposit shall constitute payment of rent to the landlord as if the amount deposited had been validly tendered.

23. Savings To Acceptance Of Rent And Forfeiture Of Rent In Deposit :-

(1) The withdrawal of rent deposited under section 21 in the manner provided therein shall not operate as an admission against the person withdrawing it of the correctness of the rate of rent, the period of default the amount due, or of any other facts stated in the tenants application for depositing the rent under the said section.

(2) Any rent in deposit which is not withdrawn by the landlord or by the person or persons entitled to receive such rent shall be forfeited to Government by an order made by the Controller, if it is not withdrawn before the expiration of five years from the date of posting of the notice of deposit.

(3) Before passing an order of forfeiture, the Controller shall give notice to the landlord or the person or persons entitled to receive the rent in deposit by registered post at the last known address of such landlord or person or persons and shall also publish the notice in his office and in any local newspaper.

24. Vesting Of Appellate Authority On Officers By State Government :-

(1) (a) The State Government may, by a general or special order,

by notification, confer on such officers and authorities, as it thinks fit, the powers of appellate authorities for the purposes of this Act, in such area or in such classes of cases as may be specified in the order.

(b) Save as otherwise provided in this Act, any person aggrieved by an order passed by the Controller, except the orders for the recovery of possession made by the Controller in accordance with the procedure prescribed under section 16, may, within fifteen days from the date of such order on such longer period as the appellate authority may allow for reasons to be recorded in writing, prefer an appeal in writing to the appellate authority having jurisdiction. (In computing the period of fifteen days, the time taken to obtain a certified copy of the order appealed against shall be excluded).

(2) On such appeal being preferred, the appellate authority may order stay of further proceedings in the matter pending decision on the appeal.

(3) The appellate authority shall decide the appeal after sending for the records of the case from the Controller and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as it thinks fit either personally or through the Controller.

(4) The decision of the appellate authority and subject only to such decision, an order, of the Controller shall be final and shall not be liable to be called in question in any court of law except as provided in sub-section (5) of this section.

(5) The high Court may, at any time on the application of the aggrieved party or on its own motion call for and examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order or proceeding and may pass such order in relation thereto as it may deem fit.

SYNOPSIS

1. Appeal
2. Appellate Authority
3. Revisional Jurisdiction
4. Remand
5. Jurisdiction
6. Jurisdiction of Appellate Court
7. Supervisory Power
8. Acquiescence
9. Delay and Laches
10. Doctrine of merger

11. Amendment of ejection application

1. APPEAL

Sec. 14 - Transfer of property, Act- Section 53-A- Eviction of tenant under Section 14 - Possession not delivered to tenant under Agreement Tenant not entitled to claim benefit of doctrine of part performance thus not within ambit of Section 53.

Cross objection-Eviction sought on the ground of impairing of value and utility and change of user-The ground of change of user went against the landlord - However, issue regarding impairing of value and utility decided in his favour and petition for eviction was allowed on that ground - Landlord can go in appeal in respect of issue decided against him although order of eviction was passed in his favour. *Ashok Kumar v. Uttam Chand*, 1995 (2) Shim. L.C. 375 HP.

Appeal-Person aggrieved-Ejectment application on the ground of non-payment of rent as well on other grounds-Ejectment ordered by Rent Controller only on the ground of non-payment of rent-Finding on other ground against the landlord-Tenant can scope eviction if he deposit the rent within 30 days from the date of order-Landlord in the circumstance is a person aggrieved land lord can challenge on the ground of cease to occupy the premises for a continuous period of over twelve Months, landlord comes under the definition of Person aggrieved and as such can file appeal. *M/s Ram Asra-Hari Chand v. Tara Chand*, AIR 1983 H.P. 65

2. APPELLATE AUTHORITY

Appellate Authority-District and Session Judges appointed by notification as appellate authority under Section 15 of East Punjab Urban Rent Restriction Act-Continue to be Appellate Authority under Himachal Act. *Kanwar Surjit Singh, Advocate v. Pritam Singh Patpatia*, 1977(1) Rent Law Reporter (H.P.) 153.

Sec 14(2) (i) and 21 order of eviction by Rent Controller-stay of dispossession by Appellate Authority Appellate Authority cannot fall within the definition of the word Controller while deciding an appeal. *Shri Swamy Bhandari vs Smt. Shila Sharma*, 2LR 1982 H.P. 659.

3. REVISIONAL JURISDICTION

[*Shri Amar Nath vs. Smt. Vidya Devi and 2 others*, 1999 (1) Shim. L.C. 66.

Section 24(5)- Revision petition against order of Appellate Authority (Rent Control)- Eviction of tenant- Bona fide requirement of landlord- Landlord to show alteration cannot be carried out of building being vacated- Evidence of tilting of beams downwards-

Construction within Core Area are banned pleaded by tenant vide Notification dated 11.8.2000 published in Gazette- Notification speaks of ban but not absolute ban- Reconstruction permissible with prior approval of State - Non obtaining of approval from State docs not disentitle petitioner to claim ejectment- Interference in finding not proper by Revisional Court - Landlord- Meaning of.

High Court in exercise of revisional powers has limited jurisdiction and powers cannot be exercised as a Court of appeal-Exercise of power as a Court of appeal should not have been done by High Court in the facts of the case. Dr. Gyan Parkash vs. Som Nath, 1996(1) Rent Law Reporter (Supreme Court) 113.

Sections 14(2)(v) and 21 (5) - Revisional jurisdiction-Concurrent finding of fact that the tenant has ceased to occupy the premise for a continuous period of 12 months before filing of the eviction petition-Premises in dilapidated condition - Evidence produced by the parties has been appreciated by the Rent Controller and the Appellate Authority-No interference with these findings of fact-High Court generally does not interfere. Revision dismissed 1976 P.L.R. 799 relied on. S. Gurbax Singh v. Kali Dass, 1980 Sim L Cases 192 HP.

Revisional power-Transfer application-No specific order of Rent Controller- Under challenge-Section 24 not applicable to such proceeding. Shri S.S Kaushal v. Dr. K.L. Shukla, 2 LR 1975 HP 211. Revision-Subsequent events-Consideration of-Subsequent events can be taken into consideration at the stage of deciding the revision petition. The parties were stateway decided to file Affidavit with regard to their position. G.C. Bhatia v. R.L. Seth, 1987(1) Rent Law Reporter (H.P.) 67.

Concurrent finding of facts of lower authorities regarding the use of shop as godown in contravention of terms of tenancy are quite in tune with the evidence on record and the statutory provision involved-Order of eviction valid. Dalbir Singh v. Chanchal Singh, 1991(1) Rent Law Reporter (H.P.) 351.

Revision-Final order of ejectment passed by Rent Controller-No appeal filed before Epaulet Authority-Revision not maintainable. Order of Appellate Authority become final. State of Himachal Pradesh v. Smt. Ruldi Devi, IILr 1979 HP 29.

Revisional jurisdiction-Matter regarding interpretation of the word amount due-A purely legal matter-Court competent to look into the legality or the propriety of the order of the lower authorities. Kali Dass Vasudeva v. Swaran Singh, 1980 2 LR 191 HP.

Revisional jurisdiction-Not open of High Court to re-appraise the

evidence and disturb the finding of fact arrived at on the basis of evidence on record. Om Parkash Attri v. Shiv Lal Behal, 1996(2) Rent Law Reporter (H.P) 662.

Revisional Jurisdiction-Finding based upon erroneous interpretation of law-High Court competent to interfere in revision. M/s Ram Asra-Hari Chand v. Tara Chand, 2 LR 83 HP 101.

Section 24(5)- Eviction petition- On ground of bona fide personal need-Rent Controller and Appellate Authority concurrently ordered eviction of petitioner tenant- Contention that there is no bona fide need as remaining portion of big building lying vacant and sufficient for residence of landlady- Further contention that husband of landlady being Inspector General of Police posted at Shimla already occupying Government accommodation alongwith his family including landlady- Held, landlady can not be compelled to live in Government accommodation and it is for her wish to decide what accommodation will suit her residential requirement- Revision petition dismissed. Naresh Kumar and other vs. Surinder Paul, 2001(2) Shim. L.C. 337 (HP).

4. REMAND

Appellate Authority not competent to remand the case after setting aside the order of Rent Controller-Can only direct further inquiry as envisaged by Section. 21 (3) intended for deciding Appeal-Appellate making the inquiry order of Appellate Authority does so to enable the Appellate Authority to dispose of appeal pending before it. Surinder Kaur v. Mohinder Bhadur Singh. 2 LR 1976 H.P. 620.

Remand of case-Order of ejectment-Appeal against-Appellate Authority not empowered to remand the case to the Rent Controller for fresh decision Smt. Surinder Kaur v. Shri Mohinder Pal Singh, 2 LR 1976 H.P. 620.

HIMACHAL PRADESH HIGH COURT

V.M. Jain, Judge

Civil Revision No. 130 of 2004

decided on 7.10.2005

Pushpa Rani - Petitioner

Versus

Gian Chand and another - Respondents

For the Petitioner :

Mr. Ajay Kumar, Advocate.

For the Respondents :

Mr. G.C. Gupta, Senior Advocate with

Mr. Mohinder Gautam, Advocate.

H.P. Urban Rent Control Act 1987 - Section 24(5) maintainability of Revision Petition - Punjab Urban Rent Restriction Act 1947 - East Punjab Urban Restriction Act, 1949 and Himachal Pradesh Urban Rent control Act 1987 - By virtue of Section 23 of H.P. General Clauses Act, 1968, the notification issued by the Government of Himachal Pradesh in respect of the 1949 Act and General of Punjab in respect of 1947 Act by which all the District Judge have been conferred/invested with the powers of Appellate Authorities - No order except the order passed under Sections 4, 11, 13 and 14 of 1987 Act by Rent Controller are applicable.

Order 1 Rule 10 C.P.C. - revision filed against the order of Rent Controller were sub-tenant allowed to impleading him as necessary - Part is set aside - No held sub-tenant is not a necessary part - Order 1 Rule 10 is not appealable - Revision Petition allowed.

V.M. Jain, J.- This revision petition under Section 24(5) of the Himachal Pradesh Urban Rent Control Act, 1987 (hereinafter referred to as the 1987 Act) has been filed by the landlord against the order dated 31.7.2004 passed by the Rent Controller, whereby application under Order 1 Rule 10 read with Section 151 CPC, filed by Parkash Chand applicant for being impleaded as a respondent in the ejectment petition filed by the landlord against Gian Chand-tenant, was allowed and applicant Parkash Chand was ordered to be impleaded as respondent in the ejectment petition filed by the landlord and the landlord was directed to suitably amend the petition.

The facts, which are relevant for the decision of the present petition, are that Smt. Pushpa Rani (landlord) had a petition under Section 14 of the 1987 Act against Gian Chand-tenant, seeking his ejectment from the demised premises on various grounds. The petition was contested by Gian Chand tenant by filing a reply. Subsequently, Gian Chand tenant amended the reply with the permission of the Court. The landlord filed rejoinder to the reply by the tenant. The case was at the stage of the evidence of the respondent-tenant, namely, Gian Chand, on the additional issues which were framed after the amendment of the reply, when an application under Order 1 Rule 10 read with Section 151 CPC was filed by Parkash Chand applicant, for being impleaded as a respondent in the aforesaid ejectment petitions filed by the landlord. The said application was contested by the landlord. After hearing both sides and perusing the records, the learned Rent Controller, vide impugned order dated 31.7.2004, allowed and said application of Parkash Chand applicant and ordered that he be

impleaded as respondent No.2 in the ejectment petition filed by the landlord and the landlord was directed to suitably amend the ejectment petition. Aggrieved against this order dated 31.7.2004 passed by the learned Rent Controller, the landlord filed the present revision petition in this Court under Section 24(5) of the 1987 Act.

3. Notice of the present petition was issued to the respondents and the records were also requisitioned.

I have heard the learned counsel for the parties and have gone through the records careful-/-.

4. The learned counsel appearing for respondent No. 2, namely, Parkash Chand (added respondent in the ejectment petition), at the outset, raised a Court. It was submitted that under Section 24 of the 1987 Act any person aggrieved by an order passed by the Rent Controller could file an appeal to the Appellate Authority having jurisdiction, within 15 days from the date of the order. It was submitted that in view of the provisions of Section 24(1)(b) of the 1987 Act, the impugned order dated 31.7.2004 passed by the learned Rent Controller was appealable authority and as such the present revision petition filed by the petitioner under Section 24(5) of the 1987 Act was not maintainable in this Court. Reliance in the regard was placed on the law laid down by this Court in the case *Som Nath vs. Sewa Ram*, 1985, Shimla Law Cases 167 and the case *Smt. Sudarshna Devi Sood vs. M/s. Super Sanitation and others*, bearing Cr. No. 320 of 2000 decided on 31.8.2001.

5. On the other hand, the learned counsel appearing for the petitioner submitted before me that the order dated 31.7.2001 passed by the Rent controller was not appealable before the Appellate Authority, in view of the law laid down by this court in the following cases:

(8) *Mrs. Balbir Kochhar and others vs. S.V. Bhandari and others*, 1989 Shimla Law Journal 494.

(9) *Shakuntla Devi (Smt.) vs. Santosh (Smt.) and others* 2002 (1) Current Law Journal 338;

(10) *Mani Ram vs. Smt. Sudesh Kumari*, 202 (3) Shimla Law Cases 58, equivalent to 2003(1) Shimla Law Journal 831.

6. After hearing the learned counsel for the parties and perusing the record, in my opinion, there is no merit in the preliminary objection raised before me by the learned counsel for respondent No.2 and that the present revision petition filed by the landlord, against the order dated 31.7.2004 passed by the Rent Controller, is maintainable in this Court.

7. The present State of Himachal Pradesh consists of two parts. One part is commonly known as old Himachal while the other part is commonly known as the new Himachal. "Old Himachal is the one which was in existence prior to the year 1966 when a vast area, which was earlier part of the State of Punjab, was merged with the State of Himachal Pradesh, at the time when the State of Haryana was created, out of Punjab State, at the time of Re-organization of States. The present case pertains to the New Himachal inasmuch, the demised premises is situated in Shimla, which was part of the State of Punjab till 1966.

8. In the erstwhile State of Punjab, an Act called the Punjab Urban Rent Restriction Act, 1947, (hereinafter called 1947 Act) was enacted. Later on, an Act; known as East Punjab Urban Restriction Act, 1949, (hereinafter called 1949 Act) was enacted in the State of Punjab exercising powers under Section 15(1)(a) of the 1947 Act, the Governor of Punjab had issued the following notification dated 14th April, 1947:-

"In exercise of the powers conferred by sub-clause (a) of clause (1) of Section 15 of the Punjab Urban Rent Restriction Act, 1947, the Governor of Punjab is pleased to confer on all District and Sessions Judges in the Punjab in respect of the urban area in their respective existing jurisdiction, the powers of the Appellate Authorities for the purpose of the said Act, with regard to orders made by Rent Controllers under Sections 4, 10, 12 and 13 of the said Act."

9. Subsequently, as referred to above, the 1949 Act was enacted in the State of Punjab. The provisions of the said 1949 Act were made applicable to the in State of Himachal Pradesh (which area is now known as Old Himachal). Thereafter, vide notification dated 15.3.1950, the Government of Himachal Pradesh issued the following notification:

"In exercise of the powers conferred by sub-clause (a) of clause (1) of Section 15 of the Hast Punjab Urban Rent Restriction Act, 111 of 1949, as applied to Himachal Pradesh, and in suppression of this Administration Notification No.A/5/92/48-II, dated the 24th February, 1949, all the District and Sessions Judges in Himachal Pradesh are hereby invested in respect of the Urban areas in their respective existing jurisdictions with the powers of appellate authorities for the purposes of the said Act with regard to orders made by the Rent Controllers under Section 4, 10, 12 and 13 of the said Act.

10. From a perusal of the above, it would be clear that that

provisions of the 1949 Act were made applicable to the Old Himachal any by virtue of Notification dated 15.3.1950 in the State of Himachal Pradesh, all the District and Sessions Judges in the State of Himachal Pradesh were invested with the powers of Appellate Authorities for the purpose of 1949 Act, with regard to the orders made by the Rent Controllers under Sections 4, 10, 12 and 13 of the 1949 Act.

11. So far as the area comprised in New Himachal are concerned, the laws applicable in the erstwhile of Punjab as on 1.11.1966 would be applicable till new laws were enacted, since the area comprised in new Himachal was carved out from the erstwhile State of Punjab and was merged with the State of Himachal Pradesh with effect from 1.11.1966. Thus, for the areas comprised in new Himachal the provisions of the East Punjab, urban Restriction Act, 1949 were already applicable and the notification which was issued in respect of the 1947 Act, conferring powers of Appellate Authorities on all the District and Sessions Judge, with regard to orders made by the Rent Controllers under Sections 4, 10, 12 and 13 of 1947 Act, was already applicable.

12. From a perusal of above it would be clear that in the entire State of Himachal Pradesh, as it existed after the merger of the area, which was previously part of the erstwhile State of Punjab, with effect from 1.11.1966, the provisions of the 1949 Act were applicable by virtue of the notifications issued by the Punjab Government, exercising the powers under 1947 Act and also by the State of Himachal Pradesh, exercising powers under 1949 Act all the District and Sessions Judges were conferred invested with the powers of Appellate Authorities with regard to the orders made by the Rent Controllers under Sections 4, 10, 12 and 13 of the 1947 Act and 1949 Act which were *pari materia*.

13. Subsequently, the State of Himachal Pradesh enacted its own Rent Act, known as Himachal Pradesh Urban Rent Control Act, 1971, (hereinafter called 1971 Act) in respect of the entire area comprising the State of Himachal Pradesh. Subsequently, the present Rent Act, known as Himachal Pradesh Urban Rent Control Act, 1987 was enacted superseding the 1971 Act. The provisions of Sections 4, 11, 13 and 14 of the 1971 Act and 1987 Act, as enacted in the State of Himachal Pradesh are *pari materia* to the provisions of Sections 4, 10, 12 and 13 of the 1947 Act and the 1949 Act, as enacted in the State of Punjab.

14. It is the admitted case of the parties before me that no separate notification conferring powers of Appellate Authorities

upon the District and Sessions Judges in the State of Himachal Pradesh was issued by the Himachal Pradesh Government after the coming into force of the 1971 Act and the 1987 Act. Thus, we have to fall back upon 1947 notification, which was issued by the Governor of Punjab under the 1947 notification, which was issued by the Governor of Punjab under the 1947 Act (for the new Himachal) and the 1950 notification, which was issued by the Himachal Pradesh Government under the 1949 Act (for the old Himachal) vide which all the District and Sessions Judges were conferred/invested with the powers of Appellate Authorities for the purposes of aforesaid Acts, with regard to the orders made by the Rent Controllers under Sections 4, 10, 12 and 13 of the 1947 Act of 1949 Act, respectively.

15. It is not doubt true that the 1947 Act, 1949 Act (as applicable to the State of Himachal Pradesh) and 1971 Act, referred to above, have since been repealed and as at present the Rent Act which is applicable to the State of Himachal Pradesh is the 1987 Act. However, by virtue of the 1947 Act and 1949 Act (as applicable to the State of Himachal Pradesh) and 1971 Act having been repealed, the notification which were issued by the Governor of Punjab in respect of 1947 Act and by the Government of Himachal Pradesh in respect 1949 Act, as already reproduced above, would still be applicable in the State of Himachal Pradesh, by virtue of the provisions of section 23 of the H.P. General Clauses Act, 1968, which reads as under:

"23. Continuation of orders etc. issued under enactments repealed and re-enacted:- Where any Himachal Pradesh Act is repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, or, scheme, rule, form or bye-law, made or issued under the repealed Act, shall, so far as it is not consistent with the provisions re-enacted continue in force, and be deemed to have been made or issued under the provisions so re-enacted unless and until it is superseded by any appointment, notification order, scheme, rule, form, or bye-law made or issued under the provisions so re-enacted."

16. Thus, it would be clear that the notification which were issued under the 1947 Act and 1949 were still applicable in the State of Himachal Pradesh and as such, the District and Sessions Judges in the State of Himachal Pradesh would exercise the jurisdiction to act as Appellate Authorities by virtue of these notifications against specific orders passed by the Rent Controllers, as decided in these notifications.

17. Once it is found that the notification which were issued under the 1947 Act and 1949 Act were still applicable in the State of Himachal Pradesh, in my opinion, it would be clear that it is only by virtue of these notifications that the District and Sessions Judges in the State of Himachal Pradesh exercised the powers of Appellate Authorities under the Rent Acts, against the orders passed by the Rent Controllers. That being so, in my opinion, it would also be clear that by virtue of these notifications, the District and Sessions Judges had been invested/conferred with the powers of Appellate Authorities only against the orders passed by the Rent Controllers under Sections 4, 10, 12 and 13 of the 1947 Act and 1949 Act. That being the position, in my opinion, the District and Sessions Judges in the State of Himachal Pradesh have the jurisdiction to act as Appellate Authorities under the 1971 Act and 1987 Act, only in respect of the orders which have been passed by the Rent Controllers under Sections. 4, 11, 13 and 14 of the 1971 Act and 1987 (which the equivalent to Sections 4, 10, 12 and 13 of the 1947 Act and 1949 Act).

18. In view of the above, in my opinion, it would be clear that the District and Sessions Judge in the State of Himachal Pradesh can exercise powers of Appellate Authorities under the 1971 Act and 1987 Act only in respect of the orders which have been passed by the Rent Controllers under Sections 4, 11, 13 and 14 of the 1971 Act and 198- Act and no other order passed by the Rent Controllers would be Appealable before the District and Sessions Judge, as Appellate Authorities, in the state of Himachal Pradesh.

19. In 1989 Shimla Law Journal 494 (supra), the prayer of the landlords for production of certain documents was rejected by the Rent Controller. Aggrieved against the same, the landlords filed revision petition in this Court. The respondents-tenants raised an objection about the maintainability of the revision petition of this court against the aforesaid order passed by the Rent Controller, on the ground that landlords could have gone in appeal before the Appellate Authority and the revision petition in this Court was not maintainable. It was found by this Court that ! notification attributable to Section 24(1)(a) of the 1987 Act, which was applicable to this case, was the one, which was initially issued in exercise of powers under Section 3 of the 1949 Act. After noticing that as per the said notification the powers of appellate authorities we to be exercised by all the District and Sessions Judges with regard to the orders made by the Rent Controllers under Sections 4, 10, 12 and 13 of the 1949 Act, it was held by this Court that the

order which was passed by the Rent Controllers and which was under challenge in the revisions petition, was not of the nature contemplated by the aforesaid provisions of the 1949 Act. It was further held that since the said order passed by the Rent Controllers could not be assailed by the landlords in an appeal, the revision petition filed by the landlords was maintainable. The authority *Som Nam Vs. Sewa Ram*, IIR1985 HP 133 (supra), which was relied upon by the learned counsel for the respondents in the said revision petition, was distinguished.

20. The law laid down by this Court in 1989 S.L.J. 494 (supra) was relied upon by this Court in 2002 (I) Cur. L.J. (H.P.) 338 (supra) and it was held that an appeal was maintainable only against an order passed under Sections 4, 10, 12 and 13 of the 1949 Act, keeping in view the notifications vesting/conferring the powers of appellate Authorities upon the District and Sessions Judges only in respect of the orders passed by the Rent Controllers under Sections 4, 10, 12 and 13 of the 1949 Act, which was corresponding to Sections 4, 11, 13 and 14 of the 1987 Act. Reliance was also placed on various judgment of Punjab and Haryana High Court in this regard. The law laid down in 2002(1) Cur.L.J. (H.P) 338 was again followed by this Court in 2002(3) Shimla Law Cases 58 (supra), equivalent to 2003(1) Shimla Law Journal 831 (supra) and it was held that an appeal would lie to the appellate authority only against an order passed by a Rent Controller under Sections 4, 11, 13 and 14 of the 1987 Act, and against no other order.

21. Similar view was taken by this Court in the case *Kanwar Pritam Singh vs. Sh. Pritam Singh Patpafia*, 1977 Rent Law Reporter 153 (I) (H.P.) and it was held that the notification issued under Section 15 of the 1949 Act conferred on the District and Sessions Judges the powers of Appellate Authority for the purposes of that Act, with regard to the orders made by Rent Controllers under Section 13 (as also under Sections 4, 10, 12) of the 1949 Act. It was also held that by reason of the H.P. General Clauses Act, the said notification must be deemed to be valid for the 1971 Act and that a District and Sessions Judge in the State of Himachal Pradesh is vested with appellate jurisdiction under 1971 Act also. It was further held that there was no substantial difference between powers exercised by the Rent Controllers under Section 13 of the 1949 Act and Section 14 of the 1971 Act and as such there is no reason why the notification should not operate as appointing District and Sessions Judges in Himachal Pradesh as Appellate Authorities only, with regard to the said orders made by the Rent Controllers under the

provisions of 1971 Act.

22. So far as the two authorities relied upon by the learned counsel appearing for respondent No.2 are concerned, in my opinion, the law laid down in the said Authorities would have no application to the facts of the present case. In 1985 Shimla Law Cases 167 (supra) it was only noticed that under Sections 21(1)(a) of the 1971 Act the State Government is competent to confer powers of Appellate Authorities on such officers and Authorities as it may think fit whereas sub-clause (b) provides the filing of an appeal against an order passed by the Rent Controller. Thus, it was concluded that an order passed by the Rent Controller is appealable before the Appellate Authority appointed by the State Government. Without considering the notifications, under which the District and Sessions Judges were conferred the power of Appellate Authorities, it was only noticed that it had not been disputed that all the District Judges in the State of Himachal Pradesh have been conferred the powers of the Appellate Authorities for the purpose of 1971 Act by the State Government under Section 21 of the said Act and as such the order under challenge before this Court by way of revision petition was certainly appealable and the appeal lay before the Appellate Authority and that the revision petition was not maintainable. However, in my opinion, the law laid down by this Court in the aforesaid authority would have no application to the facts of the present case, since the notifications vide which the powers of Appellate Authorities were conferred upon the District and Sessions Judges, were not considered and the case was decided per incuriam, inasmuch as, in the reported case, it was not disputed that all the District Judges in the State of Himachal Pradesh were conferred the powers of Appellate Authorities under the 1971 Act. Since the notification vide which the powers of the Appellate Authorities were conferred/invested on the District and Sessions Judges it was clearly specified that the District and Sessions Judge could exercise the powers of Appellate Authorities only in respect of the orders passed by the Rent Controller under Sections 4, 10, 12 and 13 of the 1947 Act and 1949 which fact was not brought to the notice of this Court and thus was not considered by this Court while deciding the said petition, in my opinion, it could certainly be said that the said petition was decided per incuriam and the law laid down in the said authority would have no application to the present case.

23. Similarly, in Smt. Sudarshna Devi Soods case (supra), this Court was considering the provisions of Section 24(1) of the 1987

Act. It was noticed that under Section 24(1)(b) of the 1987 Act there was a reference to an order and not a final order and as such the order rejecting an application to summon a person as a witness could be said to be an order within the meaning of clause (b) to sub-section (1) of Section 24 of the 1987 Act and hence it was appealable before the Appellate Authority. However, in my opinion, the law laid down in this Authority would also have no application to the facts of the present case, inasmuch as, this judgment was also passed by this Court without noticing the notifications under which the powers of Appellate Authorities were conferred upon the District and Sessions Judge only in respect of the orders passed by the Rent Controllers under Sections 4, 10, 12 and 13 of the 1947 Act and 1949 Act, which are equivalent to Sections 4, 11, 13 and 14 of the 1971 Act and 1987 Act, enacted in the State of Himachal Pradesh, That being so, in my opinion, the judgment passed in Smt. Sudarshna Devi Soods case (supra) was also decided per incuriam and would have no application to the present case.

24. In view of the detailed discussion above, in my opinion, it would be clear that in the present case the order dated 31.7.2004 by the Rent Controller was not appealable to the Appellate Authority, inasmuch as, it was admittedly not an order passed by the Rent Controller under Sections 4, 11, 13 and 14 of the 1987 Act. Accordingly the preliminary objection raised by the learned counsel appearing for Respondent No.2 is hereby rejected.

25. Coming on merits, the learned counsel appearing for the petitioner-landlord submitted before me that no case was made out for allowing Parkash Chand applicant to be impleaded as a respondent in the ejectment petition filed by Gian Chand tenant, seeking his ejectment from the demised premises. It was submitted that the petitioner landlord had sought the ejectment of Gian Chand tenant from the demise premises on various grounds including non-payment of rent and subletting etc. In the amended written statement Gian Chand tenant had taken up the plea that he was not the tenant but the Joint Hindu Family was the tenant of the demised premises. It was submitted that applicant Parkash Chand could not be impleaded as a respondent in the ejectment petition filed by the landlord, even if the case of the landlord was that Gian Chand, tenant had sublet the premises to Parkash Chand, considering that sub-tenant is not a necessary party. Reliance has been placed on the law laid down by the Honble Supreme Court, in the case Balvant N. Viswamitra and others v. Yadav Sadashiv Mule (deceased by L.Rs) and others, AIR 2004 SC 4377. It was further

submitted that even otherwise Parkash Chand applicant could not be impleaded as a respondent in the ejectment petition merely because he claims himself to be a member of the alleged Joint Hindu Family.

26. On the other hand, the learned counsel appearing for the respondents submitted before me that the learned Rent Controller had rightly allowed the application filed by Parkash Chand applicant under Order 1 Rule 10 CPC and had rightly impleaded Parkash Chand applicant as a respondent in the ejectment petition, since Parkash Chand applicant was in possession of the suit property.

27. After hearing the learned -counsel and perusing the record, in my opinion, there is considerable force in the submission made before me by the learned counsel for the petitioner-landlord. I am further of the opinion that the present revision petition has to be allowed, order dated 31.7.2004 passed by the Rent Controller has to be set aside and the application under Order 1 Rule 10 CPC filed by Parkash Chand applicant for being impleaded as a respondent in the ejectment petition, has to be dismissed.

28. As referred to above, Smt. Pushpa Rani-landlord had filed the ejectment petition under Section 14 of the 1987 Act against Gian Chand tenant, seeking his ejectment from the demised on various grounds, including the ground of non payment of rent and having sub-let the premises in favour of his brother Parkash Chand. Another ground taken in the ejectment petition was that the respondent tenant had acquired vacant possession of residential accommodation which was reasonably sufficient and much more commodious than the tenanted accommodation and has shifted in the said premises alongwith his family and as such the tenant is liable to be evicted from the demised premises on this ground as well. Initially, Gian Chand tenant in the written reply denied that he was in the arrears or rent or that he has shifted to some other premises with his family or that he had sub-let the premises in question to his brother Parkash Chand. It was also denied that the demised premises was occupied by the alleged sub tenant. Subsequently, the respondent tenant amended the written reply and in the said reply it was alleged that the demised premises were taken on rent by Malkiat Chand, father of the respondent tenant, for himself and for the respondent and both were paying the rent to the petitioner and the alleged sub tenant, namely, Parkash Chand was residing there since the premises had been taken on lease, being a member of the family of the respondent and his father Malkiat Chand who form a joint and undivided Hindu Family.

It was alleged that since the landlord had failed to implead Malkiat Chand as a party, the petition was bad for non joinder of necessary parties. It was further alleged that the petition was also bad for non joinder of the alleged sub-tenant, namely, Parkash Chand who was also a necessary party to the present petition.

29. After the respondent tenant, namely, Gian Chand had filed the aforesaid amended reply to the ejectment petition, applicant Parkash Chand filed the application dated 5.7.2002 under Order 1 Rule 10 read with Section 151 CPC for impleading Parkash Chand as respondent No.2 in the ejectment petition filed by Smt. Pushpa Rani against Gian Chand, taking up the plea that the application was the real brother of the respondent tenant and was residing in the demised premises since the year 1977 as a tenant along with others and not as a sub-tenant and that the petitioner landlord had intentionally not impleaded the applicant as respondent in the ejectment petition. It was accordingly prayed that the applicant be impleaded as respondent No.2 in the ejectment petition. The said application was contested by the petitioner-landlord by filing a reply, alleging therein that the applicant was not a necessary party and no case was made out for impleading him as respondent No.2 in the ejectment petition. After hearing both sides, the learned Rent Controllers allowed the aforesaid application under Order 1 Rule 10 CPC and impleaded Parkash Chand applicant as respondent No.2 in the ejectment petition.

30. In AIR 2004 SC 4377 (supra) it was held by the Honble Supreme Court that a sub tenant was not a proper or necessary party in a petition for ejectment filed by the landlord against the tenant, since there was no privity of contract between the landlord and the alleged sub-tenant. Reference was made to the law laid down by the Honble Supreme Court in the cases Udit Narayanm Singh Malpaharia v. Addl. Member, Board of Revenue Bihar, AIR 1963 SC 786, M/s Importers and Manufacturers Ltd.v. Pheroze Frantroze Taraporewala and Ors., AIR 1953 SC 73 and Rupchand Gupta v. Raghvanshi (Pvt.) Ltd. and another, AIR 1964 SC 1889.

31. In view of the law laid down by the Honble Supreme Court in the above mentioned authorities, in my opinion, applicant Parkash (Parkash Chand) could not be considered to be a necessary party in the ejectment petition filed by Smt. Pushpa Rani landlord against Gian Chand tenant, even if according to Smt. Pushpa Rani, landlord, Gian Chand tenant had sub let the premises to his brother Parkash Chand. Furthermore, in case Parkash Chand applicant is claiming himself to be a direct tenant Smt. Pushpa Ram applicant is

claiming himself to be a direct tenant under Smt. Puspha Rani landlord, against Gian Chand tenant. In my opinion, the learned Rent Controller had erred in law in ordering Parkash Chand applicant to be impleaded as respondent No.2 in the aforesaid ejectment petition filed by Smt. Pushpa Rani landlord against Gian Chand tenant.

32. For the reasons recorded above, the present petition is allowed, order dated 5.7.2004 passed by the learned Rent Controller is set aside and the application under Order 1 Rule 10 CPC filed by Parkash Chand applicant is dismissed with no order as to costs.

Parties through their counsel are ordered to appear before the learned Rent Controller on 17.11.2005 For further proceedings in accordance with law.

5. JURISDICTION

Jurisdiction-Order passed by Controller in exercise of the jurisdiction vested in him under the Act-Civil Suit calling in question the order of Controller compromised order cannot be challenged or re-open. Shri B.N. Pandey v. Smt. Indra Chohan, ILR 1985 HP 69.

H.P. Urban Rent Control Act, 1987, Section 15(2)- Suit for eviction of tenanted premises- Landlord employed as Deputy Chief Engineer retired from service and shifted to Nahan and started living in remaining portion of demised premises- Accommodation in possession of landlord not sufficient according to his status and requirement of family consisting of married son and daughter- Requirement of landlord cannot be said to be fanciful or unjustified- Rent Controller directed the tenant to hand over possession of tenanted premises- Tenant owns and possess four storeyed residential building in town of Nahan in name of his father- Landlord gave details of his requirement which cannot but be said "bona fide" - Tenant cannot as that landlord can adjust himself within the available accommodation- Requirement of landlord for accommodation in occupation of tenant cannot be said to be lacking bona fides- Conclusion reached by Rent Controller not on extraneous factors and upheld. Manish Aggarwal vs. Mohinder Singh, 2003(3) sim. LC 111

[Change of user/New case-Change of user not plead as a ground for ejectment-Appellate Court cannot make out a new case and order - Ejectment on that ground. Amar Nath v. Balbir Kochhar (Mrs.), 1997 (1) Sim L Cases 227 H.P.

6. JURISDICTION OF APPELLATE COURT

Additional evidence-Power of Appellate Court to take-Appellate Court competent to take additional evidence in the interest of

justice and proper adjudication of the dispute. *Shri Ochhi Ram v. Moti Ram*, Powers given to an Appellate Authority under Section 21 (3) are wide enough to include such power ILR 1979 HP 95

7. SUPERVISORY POWER

Application for transfer-Concurrent jurisdiction of High Court and Subordinate Court-Jurisdiction of the Subordinate Court be first invoked by the party seeking relief. *Daya Ram v. Gasin Chand*, ILR 1976 HP 314.

Revision Sections 14(3)(a)(i) and 24(5)- Eviction petition- On ground of bona fide need concurrent findings of both the Courts allowing eviction petition - Whether suffers from any illegality or impropriety- Subsequent events- To be taken into account - Material facts suppressed b landlord - Bona fide need must subsist till conclusion of eviction proceedings- Subsequent events and suppressed facts disclosing no bona fide need of landlord who has sufficient accommodation with him and his family members- Held, eviction order set aside and revision allowed.

In the present case as well, the landlord has failed to make a full and fair disclosure of all the material facts inasmuch as he did not disclose the full accommodation available with him. Therefore, his eviction petition is liable to be dismissed on this short ground alone by setting aside the orders of the two Courts below.

Even on merits, the landlord has not been able to prove his bona fide requirement.

It is well settled that the bona fide requirement pleaded by the landlord must not only exist on the date of making of the petition but the same must subsist till the date of the making of the final order of ejectment. If in the mean-time events have cropped up which would show that the requirement of the landlord no longer subsists, then the action brought by the landlord for eviction of his tenant must fail. Once the appeal against the order of eviction is filed, the appeal being continuation of the original proceedings, the landlords requirement must be shown to exist even at the appellate stage. If the tenant is in a position to show that the need or requirement of the landlord no more exists due to the subsequent events, it would be open to him to point out such events and the Court has to examine and evaluate such subsequent events before arriving at a conclusion whether the need of the landlord exists or not. Examining the statement of the landlord himself, it becomes evident that the three married sons of the landlord have been given separate accommodations wherein they are living separately with their respective families. One of the wives of the landlord has

died. At present, the family of the landlord consists of himself, his wife and two unmarried sons, that is only four members. The accommodation, admittedly available with him, in no terms can be said to be insufficient. The subsequent events brought on the record show that the bona fide requirement, if any, existing as on the date of filing of the eviction petition no longer subsists. Therefore, the landlord is not entitled to seek ejectment of the tenant.

[Vijay Kapoor and another vs. Maya Ram, 1997(1) Shim. L.C. 469 (HP) AIR 1998 HP 15]

8. ACQUIESCENCE

Impairing the value and utility of the building/Unauthorised construction made long back and within the knowledge of the landlord - Landlord did not agitate and acquiesced in the same - Proceedings for ejectment initiated at belated stage on this count not proper. It has to be clearly established by clear cogent evidence since it is not only a question of law but question of fact also, 1990(2) Sim LC 317 H.P. Shimla Central Co-operative Consumers Store Limited, Shimla v. S. Darshan Singh, 1990(2) Rent Law Reporter (H.P) 633.

9. DELAY AND LACHES

Ejectment application allowed to be drawn with the consent of the petitioner-After receiving notice as a fresh petition revision filed after three years-Conduct of the petitioner shows that he had been sleeping over the matter for three years though fully aware of the impugned order-Petitioner guilty of laches. Dr. Shri Bhagwan Singh v. Shri Ramesh Kumar, 1981(1) Rent Law Reporter (HP) 130.

10. AMENDMENT OF EJECTMENT APPLICATION

Amendment of ejectment application - Order rule 17 - One cause of action cannot be allowed to be changed - Petitioner wanted to seek permission to introduce altogether new and inconsistent facts. M/s. Bansi Lal Ganpati Rai v. Bhoj Raj, 1980(2) Rent Reporter (H.P) 17.

11. DOCTRINE OF MERGER

Doctrine of merger H.P. Urban Rent Control Act is a social legislation has been enacted to safeguard the interest of Tenant - Ex parte ejectment order-Appeal against ejectment order as well as application before Rent Controller to set aside ex parte ejectment order filed-Appeal dismissed as barred by time - Ejectment order of Rent Controller merged into the appellate order-Rent Controller not competent to set aside the ex parte ejectment order. Smt. Surinder Kaur v. Shri Mohinder Bhadur Singh, 1980 Sim LC 1 H.P.

[Parvinder Singh vs. Smt. Renu Gautam and others, 1998(2) Shim.

LC. 39 (HP)]. set aside by Honble Supreme Court and Remanded back 2004 (4) Sec. 794.

SUPREME COURT OF INDIA

R.C. Lahoti, Brijesh Kumar and Arun Kumar, JJ.

Civil Appeals Nos. 1680-81 of 1999

Decided on 22.2.2004

Parvinder Singh - Appellant

Versus

Renu Gautam and others - Respondents

For the Appellant:

Mr. Gourab Benerji, Senior Advocate

(Ms Ruby S. Ahuja and

Ms. Manik karanjawala, Advocates

For the Respondents :

Mr. Rekha Palli Mr. E. C. Agarwala, Advocates.

Rent Control & Eviction - Sub-letting/Sub-Tenancy and sub-tenant - Rent controller usually protect the tenant so long as he himself use the premises but not his transfer - This is done to defeat the purpose of filing petition against tenant - Partnership created by tenant - Partnership created by tenant cannot be necessarily held sub let the premises unless parting with possession - Camouflaged under the cloak of partnership - Transaction not permitted by law - Court is not stop tearing the veil of partnership and finding out real nature of transaction - Rent control law usually protect the tenant so long as he himself use the premises but not his transferee inducted into possession.

Rent Control Act & Eviction - Transfer of Property Act - Tenant is a heritable unless a legal bar operating against heritability is shown to exist one who inherits tenancy right also inherits the obligations increased by deceased tenant along with rights he had.

R.C. Lahoti, J.- The suit premises consist of a shop bearing No. 96/1, Lower Bazar, Shimla, governed by the H.P. Urban Rent Control Act, 1987. The appellant is the landlord-cum-owner of the shop, it was let out to late Vijay Gautam under an oral lease. On 31-12-1998, a partnership deed was signed between late Vijay Gautam and Harbhajan Singh, Respondent herein. On 26-6-1991, Vijay Gautam died. The partnership stood dissolved consequent thereupon. On 29-6-1991, another deed of partnership was signed between Respondent 1, the widow of late Vijay Gautam acting for herself and as guardian of Respondent 2, the minor son of Vijay Gautam, on the one hand and Harbhajan Singh, Respondent 3 on the other hand. On 7.7.1992, the appellant initiated proceeding for

eviction of the respondents from the shop alleging that the tenant Vijay Gautam had sub-let the premises to Harbhajan Singh which sub-letting has been continued by the heirs- Respondents 1 and 2, after the death of Vijay Gautam. A ground of default in payment of rent was also taken. The suit for eviction was dismissed by the Controller and the dismissal was upheld by the Appellate Authority as also by the High Court in civil revision. Feeling aggrieved, the landlord has filed this appeal by special leave.

2. A perusal of the three judgments, impugned herein, shows that the ground for eviction for default in payment of rent has been negated by all the three courts. So far as the ground of sub-letting is concerned, the plea has not been gone into on merits by any of the courts because of the law laid down by a two-Judge Bench of this Court in *A.S. Sulochana vs. C. Dharmalingam*, 1987(1) SCC 180. In *A.S. Sulochana* case the tenant was sought to be evicted on the ground of sub-letting within the meaning of Section 10(2)(ii)(a) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The facts found therein were that the original landlord and tenant between whom the lease was created had both died. No evidence, direct or circumstantial, was available wherefrom it could be inferred if the lease prohibited the tenant from creating a sub-tenancy or whether the sub-tenancy was created by the tenant without the written consent of the landlord. Under the Tamil Nadu Act, the landlord could not succeed in evicting the tenant without establishing that Section 10(2)(ii)(a) was violated. Thus, the Court found that an inference as to creation of an unlawful sub-tenancy within the meaning of Section 10(2)(ii)(a) of the Tamil Nadu Act could not be drawn. However, the Court went on to observe :

"When the statute says the tenant who is sought to be evicted must be guilty of the contravention, the court cannot say, guilt of his predecessor-in-interest will suffice. The flouting of the law. the sin under the Rent Act must be the sin of the tenant sought to be evicted, and not that of his father or predecessor-in-interest. Respondent inherited the tenancy, not the sin, if any, of his father. The law in its wisdom seeks to punish the guilty who commits the sin, and not his son who is innocent of the rent law offence. It being a penal provision in the sense that it visits the violator with the punishment of eviction, it must be strictly construed...."

3. *A.S. Sulochana* case came up for the consideration of a three-Judge Bench of this Court in *Imdad Ali vs. Keshav Chandel*, 2003 (4) SCC 635 though in the context of dealing with a ground for eviction

under a local rent control law of Madhya Pradesh. A.S. Sulochana case was distinguished and also adversely commented upon. The Court felt that in A.S. Sulochana case the Division Bench was influenced by the opening clause of the relevant provision in the Tamil Nadu Act which begins with "a landlord who seeks to evict his tenant" so as to hold that the facts constituting the ground for eviction should be referable to the present tenant and not to his predecessor who had already died. The Court further held in Imdad Ali case.

"It matters not whether such default is made by the original tenant or by his successor inasmuch as the successor-in-interest of the original tenant continues to be a tenant within the meaning of the provisions thereof. By reason of death of the original tenant, a new tenancy is not created. A successor-in-interest of a tenant holds his tenancy right subject to rights and obligations of his predecessor. He does not and cannot claim a higher right than his predecessor. It is now well settled that a person by reason of inheritance or assignment does not derive any better title than his predecessor, and, thus, the right which the original tenant did not possess cannot be passed on to his successor."

4. In Imdad Ali case the three - Judge Bench opined that the law laid down in A.S. Sulochana case was not applicable for interpreting a provision in the M.P. Accommodation Control Act, 1961. The Bench also said :

"We, however, do not subscribe to the general observations made in A.S. Sulochana case and to the said extent, it cannot be held to have laid down a good law and is overruled accordingly."

"14. (1) *****

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied-

XXX

(ii) that the tenant has after the commencement of this Act without the written consent of the landlord-

(a) transferred his rights under the lease or sub-let the entire building or rented land or any portion thereof, or

* * *

The Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application:

6. Tenancy is a heritable right unless a legal bar operating against inheritability is shown to exist. Thus, the one who inherits tenant rights also inherits the obligations incurred by the deceased tenant along with the rights which he had. It is difficult to accept a proposition that on death of the tenant his heirs inherit only rights and not obligations. If that be so, then so then the heirs would not be liable to pay any arrears of rent which were not paid by the deceased tenant.

7. The judgments of the Controller, the Appellant Authority and the High Court which proceeded on A.S. Sulochana case cannot now be sustained and deserve to be set aside.

8. The rent control legislations which extend many a protection to the tenant, also provide for grounds of eviction. One such ground, most common in all the legislations, is sub-letting or parting with possession of the tenancy premises by the tenant. Rent Control laws usually protect the tenant so long as he may himself use the premises but not his transferee inducted into possession of the premises, in breach of the contract or the law, which act is often done with the object of illegitimate profiteering or rack-renting. To defeat the provisions of law, a device is at times adopted by unscrupulous tenants and sub-tenants of bringing into existence a deed of partnership which gives the relationship of tenant and sub-tenant an outward appearance of partnership while in effect what has come into existence is a sub-tenancy or parting with possession camouflaged under the cloak of partnership. Merely because a tenant has entered into a partnership he cannot necessarily be held to have sub-let the premises or parted with possession thereof in favour of his partners. If the tenant is actively associated with the partnership business and retains the use and control over the tenancy premises with him, may be along with the partners, the tenant may not be said to have parted with possession. However, if the use and control of the tenancy premises has been parted with and deed of partnership has been drawn up as an indirect method of collecting the consideration for creation of sub-tenancy or for providing a cloak or cover to conceal a transaction not permitted by law, the court is not estopped from treating the veil of partnership and finding out the real nature of transaction entered into between the tenant and the alleged sub-tenant.

9. A person having secured a lease of premises for the purpose of his business may be in need of capital or finance or someone to assist him in his business and to achieve such like purpose he may enter into partnership with strangers. Quite often partnership is

entered into between the members of any family as a part of tax planning. There is no stranger brought on the premises. So long as the premises remain in occupation of the tenant or in his control, a mere entering into partnership may not provide a ground for eviction by running into conflict with prohibition against sub-letting or parting with possession. This is a general statement of law which ought to be read in the definence of the terms of lease or the rent control legislation and in order to save himself from the peril of eviction brings into existence, a deed of partnership between him and his sub-leasee to act as a cloak on the reality of the transaction. The existence of deed of partnership between the tenant and the alleged sub-tenant would not preclude the landlord from bringing on record material and circumstances, by adducing evidence or by means of cross-examination, making out a case of sub-letting or parting with possession or interest in tenancy premises by the tenant in favour of a third person. The rule as to exclusion of oral by documentary evidence governs the parties to the deed in writing. A stranger to the document is not bound by the terms of the document and is, therefore, not excluded from demonstrating the untrue or collusive nature of the document or the fraudulent or illegal purpose for which it was brought into being. An enquiry into reality of transaction is not excluded merely by availability of writing reacting the transaction. *Tyagaraja Mudaliar vs. Vedathanni*, AIR 1936 PC 70 : 63 IA 126 is an authority for the proposition that oral evidence in departure from the terms of a written deed is admissible to show that what is mentioned in the deed was not the real transaction between the parties but it was something different. A lease of immovable property is transfer of a right to enjoy such property. Parting with possession or control over the tenancy premises by the tenant in favour of a third person would amount to the tenant having "transferred his rights under the lease" within the meaning of Section 14(2)(ii)(a) of the Act.

10. Shri Gourab Banerji, the learned Senior Counsel for the appellant submitted that all the relevant evidence and material are available on record and both the parties have adduced the necessary evidence. All that is needed is to be done is, its appreciation and to draw inferences. In such circumstances and keeping in view the period of time for which the proceedings have already remained pending, we deem it proper to remand the matter to be Appellate Authority for hearing and decision afresh.

11. Accordingly, the appeals are allowed. The judgments of the

High Court and the Appellate Authority are set aside. The case is remanded to Appellate authority to hear and decide the appeal afresh after hearing parties and to record a finding on the availability of ground for eviction under Section 14(2) of the H.P. Urban Rent Control Act, 1987 and then decided appeal finally. The costs shall abide the result.

25. Power To Summon And Enforce Attendance Of Witnesses :-

For the purposes of this Act, an appellate authority or a Controller appointed under this Act shall have the same powers of summoning and enforcing the attendance of witnesses and compelling the production of evidence as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908).

26. Execution Of Orders :-

Save as otherwise provided in section 31, any order made by the Controller or an order passed on appeal under this Act, shall be executable by the Controller as a decree of a civil court and for this purpose the Controller shall have all the powers of a civil court.

27. Institution And Disposal Of Applications :-

(1) Where there are two or more Controllers appointed at the same station to exercise jurisdiction under this Act, in the same territory, it shall be the senior-most (in service) of such Controllers who alone shall be competent initially to entertain all applications and proceedings under this Act.

(2) The Controller competent to entertain applications and proceedings under this Act under sub-section (1) may transfer any such proceedings or applications pending before him for disposal to any other Controller of competent jurisdiction.

28. Power To Transfer Proceedings :-

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(1) The High Court may, on an application made to it or otherwise by order, transfer any proceeding pending before any appellate authority to another appellate authority and the appellate authority, to whom the proceeding is transferred, may, subject to any special directions in the order of transfer, dispose of the proceeding.

(2) The High Court or appellate authority may on an application made to it or otherwise by order, transfer any proceeding pending before any Controller to another Controller within its jurisdiction and the Controller to whom the proceeding is transferred may, subject to any special direction in the order of transfer, dispose of the proceeding.

29. Landlord And Tenant To Furnish Particulars :-

Every landlord and every tenant of a building or rented land shall be bound to furnish to the Controller, or any person authorised by him in that behalf, such particulars in respect of such building or rented land as may be prescribed.

30. Penalties :-

(1) If any person contravenes any of the provisions of Section 10, Section 11, Section 12 or Section 29, he shall be punishable with fine which may extend to one thousand rupees.

(2) If any person contravenes any of the provisions of clause (a) of Section 7 or Section 8, he shall be punishable with imprisonment which may extend to two years and with fine.

(3) The specified landlord or widow, widower, mother, father, child, grandchild or widowed daughter-in-law of such landlord, as the case may be who having evicted tenant from a building in pursuance of an order made under sub-section (2) of section 15 does not occupy it for a continuous period of three months from the date of such eviction or out the whole or any part of such building, from which the tenant was evicted to any person other than the tenant shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or both.

(4) No court inferior to that of a magistrate of first class shall try any offence punishable under this Act.

(5) No court shall take cognizance of an offence punishable under this Act, unless the complaint in respect of the offence has been made within three months from the date of the commission of the offence.

31. Controller To Exercise Power Of A Magistrate For Recovery Of Fine :-

Any fine imposed by a Controller under this Act shall be paid by the

person fined within such time as may be allowed by the Controller and the Controller may, for good and sufficient reason, extend the time, and in default of such payment, the amount shall be recoverable as a fine under the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and the Controller shall be deemed to be a magistrate under the said Code for the purposes of such recovery.

32. Validation :-

(1) Notwithstanding anything contained in any judgment, decree or order of my court, anything done or any action taken (including any notification or direction issued or rents fixe or permission granted or order made) or purported to have been done or taken under the Himachal Pradesh Urban Rent Control Act, 1971 (23 of 1971) prior to its repeal, shall be deemed to be as valid and effective as if the provisions contained in the said Act and in the enactments subsequently amending the said Act were enacted after procuring the assent of the President, and the said Act had been in force at all material times when such thing was done or such action was taken.

(2) Nothing in this Act shall render any person guilty of an offence for any contravention of the provisions of this Act which was not an offence under the Himachal Pradesh Urban Rent Control Act, 1971 (23 of 1971) and which occurred before the appointed day.

33. Power To Make Rules :-

(1) The State Government may, by notification, make rules for the purposes of carrying out all or any of the provisions of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly, while it is in session, for a total period of not less than fourteen days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session in which it is so laid or the sessions aforesaid, the Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(3) In making any rule the government may provide that a breach thereof shall be punishable with fine which may extend to Rs.500/-

and when the breach is a continuing one with further fine which may extend to Rs. 1,000/-.

34. Repeal And Savings :-

(1) The Himachal Pradesh Urban Rent Control Act, 1971 (23 of 1971), is hereby repealed.

(2) Notwithstanding such repeal, but subject to the provisions contained in sub-section (3), all suits, appeals and other proceedings, including execution proceedings, under the said Act, pending before any court or appellate or revisional authority, on the appointed day shall be disposed of in accordance with the provisions of this Act as if the provision contained in this Act were, at the relevant time in force.

(3) Nothing contained herein shall authorise any court or authority or tribunal to reopen any suit proceedings in which the orders passed have already become final and executed.

35. Repeal Of H.P. Ordinance No. 5 Of 1987 :-

(1) The Himachal Pradesh Urban Rent Control Ordinance, 1987 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act, as if this Act had come into force on the day on which such thing was done or action was taken.

SCHEDULE 1

SCHEDULE I

[See clause (j) of section 2]

1. Spouse;
2. Son;
3. Daughter;
4. Mother;
5. Father;
6. Widow of pre-deceased son;
7. Son of pre-deceased son; 8. Daughter of pre-deceased son

SCHEDULE 2

SCHEDULE II

(See section 16)

FORM OF SUMMONS IN A CASE WHERE RECOVERY OF POSSESSION OF PREMISES IS PRAYED FOR ON THE GROUND OF A BONA FIDE REQUIREMENT UNDER SUB-CLAUSE (iii) OF CLAUSE (a) OF SUB-CLAUSE (3) OF SECTION 14 OR SECTION 15.

To

(Name, description and place of residence of the tenant)

Whereas Shri.....has filed an application copy of which is annexed) for your eviction from.....(here insert the particular of the premises) on the ground specified in sub-clause (iii) of clause (a of sub-section (3) of section 14 of or in section 15.

You are hereby summoned to appear before the Controller within fifteen days of the service hereof and to obtain the leave of the Controller to contest the application for eviction on the ground aforesaid; in default whereof, the applicant will be entitled, at any time after the expiry of the said period of fifteen days, to obtain an order for your eviction from the said premises.

Leave to appear and contest the application may be obtained on an application to the controller supported by an affidavit as is referred to in sub-section (5) of section 16.

Given under my hand and seal of the Court this day theof.....19.

Controller