

(2010) 12 AHC CK 0172

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 70333 of 2010

Smt. Krishna Devi

APPELLANT

Vs

Additional District Judge and
Others

RESPONDENT

Date of Decision: Dec. 8, 2010

Acts Referred:

- Limitation Act, 1963 - Article 182
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 11, 12, 12(1), 12(3A), 12(3B)
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rule 8

Citation: (2011) 2 ADJ 333 : (2011) 2 RCR(Rent) 118

Hon'ble Judges: Shashi Kant Gupta, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Shashi Kant Gupta, J.

This writ petition is directed against the judgment and order dated 15.11.2010 passed by the Additional District Judge, Court No. 14, Kanpur Nagar in Revision No. 21 of 2010 upholding the order dated 28.1.2010 passed by the Rent Control and Eviction Officer in Case No. 4 of 2010 whereby the disputed premises was declared vacant and consequently released in favour of the landlord-Respondent Nos. 3 and 4.

2. Brief facts of the case are as follows:

3. Premises in dispute i.e. 119/2766 A Darshanpurwa, Kanpur (hereinafter referred to as "disputed premises") was allotted to the Petitioner in the year 1957 thereafter, the disputed premises was purchased by one Gaya Prasad who filed a suit No. 1187 of 1966 for arrears of rent and ejectment against the Petitioner and

the said suit was decreed against the Petitioner. In pursuance of the execution proceedings (Execution Case No. 197 of 1968) the Petitioner was evicted from the disputed premises and the decree holder got the possession thereof. The Petitioner, however, after vacating the premises again forcefully occupied the disputed premises, therefore, a Suit No. 526 of 1976 was filed by Gaya Prasad on 26.8.1981 for possession and damages for the use and occupation. The said suit was decreed on 26.8.1981 but the said decree was not executed, as a result whereof the Petitioner continued in the possession over the disputed premises. The said premises was subsequently sold by Gaya Prasad vide sale-deed dated 13.12.2006 to the Respondent Nos. 3 and 4, Anil Kumar Agrawal and Smt. Kanchan Agrawal.

4. On 22.5.2007 an allotment application was filed by the Respondent No. 2, whereupon and the Rent Control and Eviction Officer (hereinafter referred to as "the RCEO") called for a report from the Rent Control Inspector. The Petitioner submitted his written statement before the Rent Control Inspector wherein he claimed himself to be the tenant of the disputed premises on the rent of Rs. 10/- per month. By order dated 19.9.2008, the RCO declared the vacancy of the said premises. Consequently, the Petitioner filed a Writ Petition No. 63294 of 2008 against the order of the vacancy which was dismissed as not pressed on 15.9.2008. In the meantime, the premises was released on 21.1.2010 in favour of the landlord-Respondent Nos. 3 and 4. Aggrieved and dissatisfied with the order dated 21.8.2010 passed by the RCEO, the Petitioner filed a Revision No. 21 of 2010, which was dismissed by the judgment and order dated 15.11.2010 by the Additional District Judge, Court No. 14, Kanpur. Hence, the present writ petition.

5. The learned Counsel for the Petitioner has submitted that even though the decree was passed against him for possession and damages for use and occupation in the year 1981, the said decree was not executed within the stipulated period, therefore, the Petitioner acquired ownership rights by adverse possession. It was further submitted that the provisions of Sections 11, 12 and 13 of the U.P. Act No. 13 of 1972 (hereinafter referred to as "the Act") cannot be invoked against the trespasser. Next contention of the learned Counsel for the Petitioner is that the declaration of vacancy in the year 2008 is time barred, since the Petitioner was living in the premises uninterruptedly since 1981 and no attempt was made by the landlords to initiate the vacancy proceedings qua disputed premises.

6. Per contra, learned Counsel for the Respondents submitted that the Petitioner, at no point of time, had ever claimed ownership by adverse possession before the Court below and in this connection also referred to the paragraph Nos. 3 and 9 of the affidavit dated 6.9.2007, wherein the Petitioner claimed himself to be a tenant of the disputed premises on the rent of Rs. 20/- per month with effect from 1971 and also admitted that the Petitioner continuously paid rent of the disputed premises upto 5.8.2006 to the erstwhile owner Gaya Prasad and Radha Devi. Learned Counsel for the Respondents further submitted that Sections 11, 12 and 13 of the Act are

fully applicable in the matter since the Petitioner is occupying the premises without any allotment order, as such, the Petitioner u/s 13 of the Act will be deemed to be an unauthorized occupant of the disputed premises. He further submitted that the Limitation Act is not applicable in the matter. He further contended that the present petition is not maintainable as the previous writ petition No. 63294 of 2008 filed against the declaration of vacancy dated 28.1.2010 was dismissed by this Court as not pressed without granting any liberty to the Petitioner to file a fresh writ petition, therefore, the present writ petition is liable to be dismissed on this ground alone.

7. Heard Sri Arvind Kumar Tiwari, learned Counsel for the Petitioner, Sri Atul Dayal, learned Counsel for the Respondents No. 3 and 4 and perused the record.

8. It is not disputed that the Petitioner was evicted in execution of a decree (execution case No. 197 of 1968), from the premises in dispute in the year 1969 however the Petitioner after vacating the premises again forcefully occupied the said premises, as such, the suit for possession and damages for use and occupation was filed against him in 1976 which was decreed against the Petitioner in the year 1981. However, the decree was not put to execution as a result the Petitioner continued in the possession. Later on, the disputed property was sold to the present owners in the year 2006. Thereafter, an allotment application was filed by Respondents, as a result whereof the vacancy was declared on 28.1.2010. Aggrieved with the said order, the Petitioner filed a writ petition No. 63294 of 2008, however, the said writ petition was dismissed as not pressed and no liberty was granted by this Court to the Petitioner to file a fresh petition. Subsequent thereto, the release application filed by the landlords was allowed by the R.C.E.O. Against the said order, revision u/s 18 of the Act was filed which was dismissed by the ADJ, Kanpur. Hence, the present writ petition.

9. The first contention of the Petitioner weaves round the argument that the declaration of vacancy is time barred as the Petitioner is living in the disputed premises uninterruptedly from 1981 and no effort was made to initiate vacancy proceedings until 2006.

10. Relying upon the principles laid down in the case of Smt. Brij Bala Jain (supra), he submitted that even though the said Statute does not provide for any limitation to declare vacancy but it should be exercised within a reasonable time.

11. Per contra, learned Counsel for the Respondent landlord submitted that the law of limitation will not come in the way in filing the release application as the Petitioner is an unauthorized occupant of the premises in dispute and there is a recurring cause of action.

12. The Apex Court in the Case of Uttam Namdeo Mahale (supra) has held as under:

Mr. Bhasme, learned Counsel for the Appellant, contends that in the absence of fixation of rule of limitation, the power can be exercised within a reasonable time

and in the absence of such prescription of limitation, the power to enforce the order is vitiated by error of law. He places reliance on the decisions in [The State of Gujarat Vs. Patil Raghav Natha and Others](#), [Ram Chand and Others Vs. Union of India \(UOI\) and Others](#), and *Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim*, CA No. 5023/85 decided on August 22, 1996. We find no force in the contention. It is seen that the order of ejectment against the applicant has become final. Section 21 of the Mamalatdar's Court Act does not prescribe any limitation within which the order needs to be executed. In the absence of any specific limitation provided thereunder, necessary implication is that the general law of limitation provided in Limitation Act (Act 2 of 1963) stands excluded. The Division Bench, Therefore, has rightly held that no limitation has been prescribed and it can be executed at any time especially when the law of limitation for the purpose of this appeal is not there. Where there is statutory rule operating in the field, the implied power of exercise of the right within reasonable limitation does not arise. The cited decisions deal with that area and bear no relevance to the facts.

13. In [Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others](#), the Apex Court has held that Court has no power to fix any limitation where it is not provided in the statute as this would amount to legislate the statute. In this regard the relevant portion of paragraph No. 13 of this decision is extracted as under:

In dealing with this question, it is necessary to bear in mind that though the legislature knew how the problem of recovery of wages had been tackled by the Payment of Wages Act and how limitation had been prescribed in that behalf, it has omitted to make any provision for limitation in enacting Section 33C(2). The failure of the legislature to make any provision for limitation cannot, in our opinion, be deemed to be an accidental omission. In the circumstances, it would be legitimate to infer that legislature deliberately did not provide for any limitation u/s 33C(2). It may have been thought that the employees who are entitled to take the benefit of Section 330(2) may not always be conscious of their rights and it would not be right to put the restriction of limitation in respect of claims which they may have to make under the said provision. Besides, even if the analogy of execution proceedings is treated as relevant, it is well known that a decree passed under the CPC is capable of execution within 12 years, provided, of course, it is kept alive by taking steps in aid of execution from time to time as required by Article 182 of the Limitation Act, so that the test of one year or six months' limitation prescribed by the Payment of Wages Act cannot be treated as a uniform and universal test in respect of all kinds of execution claims. It seems to us that where the legislature has made no provision for limitation, it would not be open to the Courts to introduce any such limitation on grounds of fairness or justice. The words of Section 33C(2) are plain and unambiguous and it would be the duty of the Labour Court to give effect to the said provision without any considerations of limitation. Mr. Kolah no doubt emphasized the fact that such belated claims made on a large scale may cause considerable inconvenience to the employer, but that is a consideration which the legislature may

take into account, and if the legislature feels that fair play and justice require that some limitations be prescribed, it may proceed to do so. In the absence of any provision, however, the Labour Court cannot import any such consideration in dealing with the applications made u/s 33C(2).

14. The principles laid in the aforesaid decision has been followed by this Court in Civil Misc. WP 26826 of 2009, Chandra Mohan Sama v. Banwari Lal Ghai and Anr. dated 13.8.2010 wherein this Court has held that if the limitation of 12 years as reasonable period is read in the provision of U.P. Act No. 13 of 1972, though there is a definite lack of legislative intent in the Act in this regard, it would amount to permitting illegal occupants to grant legal sanction to their acts. Occupation of building without allotment would frustrate the regulatory provisions of the Act and not germane to the object for which the Act was legislated.

15. Thus, in view of the above, this Court is of the considered opinion that limitation should not be read where it is not specifically provided for.

16. The second contention of the learned Counsel for the Petitioner that he has acquired ownership rights by way of adverse possession is totally untenable for the following reasons; firstly, this plea was never taken by the Petitioner before the Court below. Secondly, the Petitioner, in paragraphs 3 and 9 of the affidavit filed before the Court below as well as before the Rent Control Inspector, has very categorically claimed himself as a lawful tenant of the disputed premises. He also stated therein that the rent of the disputed premises was paid upto the year 2006 to the erstwhile landlord Gaya Prasad, as such, the Petitioner cannot be permitted to take two contradictory pleas at the same time.

17. The third contention of the learned Counsel for the Petitioner is that the provisions of Sections 11, 12 and 13 of the Act are not applicable in the matter and the proceedings under the Act cannot be initiated against trespasser. The contention of the learned Counsel is totally misconceived and without any foundation. The Petitioner has claimed himself to be a tenant of the disputed premises on the rent of Rs. 10/- per month and made categorical averment to this effect in paragraphs 3 and 9 of the affidavit filed before the Court below.

18. At this stage the relevant provisions of the said Act need to be set out. Sections 11, 12, 13 and 31 read as follows:

11. Prohibition of letting without allotment order. - Save as hereinafter provided, no person shall let any buildings except in pursuance of an allotment order issued u/s 16.

12. Deemed vacancy of building in certain cases. - (1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if--

(a) he has substantially removed his effects therefrom, or

(b) he has allowed it to be occupied by any person who is not a member of his family, or

(c) in the case of a residential building, he as well as members of his family have taken up residence, not being temporary residence, elsewhere.

(2) In the case of non-residential building, where a tenant carrying on business in the building admits a person who is not a member of his family as a partner or a new partner, as the case may be, the tenant shall be deemed to have ceased to occupy the building.

(3) in the case of a residential building, if the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, notified area or town area in which the building under tenancy is situate, he shall be deemed to have ceased to occupy the building under his tenancy;

Provided that if the tenant or any member of his family had built any such residential building before the date of commencement of this Act, then such tenant shall be deemed to have ceased to occupy the building under his tenancy upon the expiration of a period of one year from the said date.

xxx xxx xxx

xxx xxx xxx

(3-A) If the tenant of a residential building holding a transferable post under any Government or local authority or a public sector corporation or under any other employer has been transferred to some other city, municipality, notified area or town area, then such tenant shall be deemed to have ceased to occupy such building with effect from the thirtieth day of June following the date of such transfer or from the date of allotment to him of any residential accommodation (whether any accommodation be allotted under this Act or any official accommodation is provided by the employer) in the city, municipality, notified area or town area to which he has been so transferred, whichever is later.

(3-B) If the tenant of a residential building is engaged in any profession, trade, calling or employment in any city, municipality, notified area or town area in which the said building is situate, and such engagement ceases for any reason whatsoever, and he is landlord of any other building in any other city, municipality, notified area or town area, then such tenant shall be deemed to have ceased to occupy the first mentioned building with effect from the date on which he obtains vacant possession of the last mentioned building whether as a result of proceedings u/s 21 or otherwise.

(4) Any building or part which a landlord or tenant has ceased to occupy within the meaning of Sub-section (1), or Sub-section (2), or Sub-section (3), Sub-section (3-A) or

Sub-section (3-B), shall, for the purposes of this Chapter, be deemed to be vacant.

(5) A tenant or, as the case may be, a member of his family, referred to in Sub-section (3) shall, have a right, as landlord of any residential building referred to in the said sub-section which may have been let out by him before the commencement of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction)(Amendment) Act, 1976 to apply under Clause (a) of Sub-section (1) of Section 21 for the eviction of his tenant from such building, notwithstanding that such building is one to which the remaining provisions of this Act do not apply.

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

31. Penalties. - (1) Any person who contravenes any of the provisions of this Act or any order made thereunder or attempts or abets such contravention, shall be punished on conviction with imprisonment of either description for a term which may extend to six months or with fine which may extend to five thousand rupees or with both.

(2) Whoever demolishes any building under tenancy or any part thereof without lawful excuse shall be punished, on conviction, with imprisonment of either description for a term which may extend to one year or with fine which may extend to five thousand rupees or with both.

(3) Where a person has been convicted for contravention of Sub-section (1) of Section 4, the Court convicting him may direct that out of the fine, if any, imposed and realised from the person so convicted, an amount not exceeding the amount paid as premium of additional payment over and above the rent for admission as a tenant or sub-tenant to any building may be paid to the tenant by whom such payment was made:

Provided that any amount so paid to the tenant shall be taken into account in awarding compensation or restitution to him in any subsequent claim.

19. The plain reading of Section 13 of the Act clearly goes to show that any person occupying the premises without any allotment order will be deemed to be an unauthorized occupant of the premises and in the present case, neither the Petitioner was able to produce any allotment order in his favour nor was entitled for any benefit u/s 14 of the Act.

20. In terms of Section 13 of the Act, without an order of allotment, tenants status under the deeming provision is that of an unauthorized occupant and that of trespasser and the suit for getting back possession from the trespasser can also be

filed. However, it does not debar the rent control and eviction officer/appropriate authority under the Act from setting in motion the machinery for declaring vacancy of the premises in dispute when he is of the opinion that the premises which comes within the ambit of the rent control act is being occupied by the unauthorized occupant/trespasser without an allotment order. The U.P. Act No. 13 of 1972 of the Act does not make any distinction between the unauthorized occupant and the trespasser so as to limit the power of the Rent Control Eviction Officer/District Magistrate from initiating the proceedings u/s 12 of the Act particularly when the landlord fails to taken any eviction proceedings against the trespasser.

21. The Apex Court in the case of *Nutan Kumar and Ors. v. IInd Additional District Judge and Ors.* 2002 (2) ARC 645, has held that Section 13 of the said Act specifically provides that a person who occupies, without an allotment order in his favour, shall be deemed to be an unauthorized occupant of such premises. As he is in unauthorized occupation he is like a trespasser. A suit for ejectment of a trespasser to get back possession from a trespasser could always be filed. Such a Suit would not be on the contract/agreement between the parties and would thus not be hit by principles of public policy also. However, the Apex Court in the aforementioned case has not said that for ejecting an unauthorized occupant/trespasser only the suit is a remedy. It has not any where put any restriction on the appropriate authority, to seek ejectment of the unauthorized occupant/trespasser by initiating the proceedings u/s 12 of the Act in the light of Sections 11 and 13 of the Act.

22. I am fortified in my view by the following decisions which I wish to briefly refer to as follows:

1. *Ajay Pal Singh and Ors. v. District Judge Meerut and Ors.* 2008 (5) ADJ 538 (DB)

22. From the provisions of the Act and Rules framed thereunder, it is apparently clear that the legislature is aware of the fact that an unauthorized occupant is necessarily inducted into the premises contrary to the provisions of the Act by the landlord himself and despite such facts being in the knowledge of the legislature, it has nor placed any restriction on the right of the right of the landlord so far as release of such premises, which are deemed to be vacated u/s 12(4) of 1972 Act is concerned, either under the 1972 Act or Rules framed thereunder.

23. In such circumstances, the intention of the legislature is cleared that the right of the landlord to make an application for release in respect of deemed vacancy covered by Section 12(4) be not hampered or impaired part in any manner only because of his being inducted an unauthorized occupant. No restriction on his right to make an application u/s 16(1)(b) has been provided for and therefore no restriction is required to be provided by the Court in such right of the landlord.

2. *G. Industrial Syndicated Allahabad v. Rent Control and Eviction Officer* 1982 (1) ARC 585.

13. From the above, it would appear that in case of an illegal letting or subletting, the view taken was that the contract may be binding on the parties to it, but not on the authorities, which would mean that the possession of a person who has been illegally let in would be unauthorised. Sections 11 and 13 of the present Act make that position very clear. No one now can either let out any premises without an allotment order nor can anyone occupy the same. If any one occupies the premises without an allotment order, he would not only be an unauthorized occupant but also liable to prosecution u/s 31 of the said, Act. His possession being unauthorised cannot be recognised in the eye of law and if it cannot be recognised in the eye of law, there would be a vacancy. That would entitle the Rent Control and Eviction Officer u/s 16 to pass an allotment order.

15. Counsel for the Petitioner, however, urged that the use of the expression "where a landlord or a tenant ceases to occupy a building or part thereof in indicative of the fact that this section will apply only to cases contemplated by Section 12 inasmuch as the words "cease to occupy" have been used in Sub-section (4) of Section 12. To us, it appears that Section 13 serves the dual purpose. It may apply to a case covered by Section 12 but it has to be read alongwith Section 11 as well. Section 13 is common to both the provisions. That being so, the applicability of Section 13 cannot be restricted to cases covered by Section 12.

19. Assuming that Section 13 of the Act applies only to cases contemplated by Section 12, alternatively we find that, as possession of Nizam Shervani was unauthorised and illegal, there was a vacancy even at the time when the house was in his occupation and after it was vacated by him. Section 11 prohibits a person from letting any building except in pursuance of an allotment order issued u/s 16. Since there is a prohibition imposed on the right of any person, which will include a landlord and tenant both, the person occupying the premises would be in an unauthorised possession. Such a person could not be treated to be a tenant. The authorised possession of a person gives a right or authority to occupy it, whereas unauthorised would mean that the person occupying is not possessed of rightful or legal power and, as such, no legal competency which can have any recognition in the eye of law, as a result of which the premises would be deemed to be unoccupied or unfilled, or empty. If that is so, the Rent Control and Eviction Officer u/s 16 would be entitled to pass an order of allotment. The vacancy talked of in Section 16 takes within its purview also possession of a person which is not recognised in law. If a person without any authority occupies a premises, his possession would be of no value and the premises would be available to the District Magistrate for passing an allotment order u/s 16.

20. In *Murli Dhar Agrawal v. State of U.P.* (supra), the Supreme Court found that since there was no prohibition in U.P. Act No. III of 1947 for letting or occupying, the contract arrived at between the two would be binding. The lacuna has not been removed. In Act XIII of 1972, there is a prohibition on the right of any person to let

out which will impose a corresponding obligation not to occupy the same. In the absence of a provision like Section 11 of the present Act, the Supreme Court held that the contract of letting in that case was binding between the landlord and the tenant. However, what is material to consider is that even in that case the Supreme Court found that such a contract was not binding on the District Magistrate and he could treat the building as vacant and evict therefrom the tenant. Section 11 has made the position crystal clear. The District Magistrate can ignore the contract arrived at between a landlord and the tenant and pass an appropriate order for allotment u/s 16. What he may be required to do is to afford an opportunity of hearing before evicting the tenant.

3. Jamil Ahmad v. Additional District Judge 1995 (2) ARC 309.

9. The findings given by Prescribed Authority (Munsif), Dehradun on 13.4.1990 vide Annexure C.A.-13 is a judicial pronouncement after considering all aspect of the case and the present Petitioner being a party to it is bound by it. In view of this judgment Annexure C.A.-13 this Court has no hesitation in coming to the conclusion that Petitioner Jameel Ahmad son of Safique Ahmad is a rank trespasser. Section 13 of the Act lays down that no person shall occupy a building otherwise than under an order of allotment or release u/s 16 and if he does so he shall be deemed to be an unauthorized occupant of such building. The provisions of Section 13 are in addition to Section 31 which prescribes a penalty for unauthorized occupation of a house. The contention on behalf of the Petitioner that even if he is a trespasser he cannot be evicted under the provisions of Act No. 13 of 1972 and a regular suit should have been filed for his ejectment, is not tenable. It is the Petitioner himself who in collusion with Respondent No. 4 Pradeep kumar brought the matter within the purview of Act No. 13 of 1972. The Petitioner persuaded Respondent No. 4 to file an application under the Act and he had succeeded in getting the house allotted in the name Respondent No. 4. In revision the matter was remanded by the learned District Judge and it was thin that it came to be released in favour of the landlord. It has also been seen above that Petitioner himself filed an application u/s 27 of the Act. It is not, therefore, open to him to argue that the case is not governed by Act No. 13 of the 1972.

10. A reference in this connection may be made to the case of R.C. Bajpai and Co. v. VIIth Additional District Judge Kanpur Nagar 1994 (1) ARC 532. In the above case an earlier authority of this Court has been relied upon which is 1982 (1) ARC 585. A Division Bench has held in the case of Geep Industrial Syndicate Ltd. Allahabad v. R.C. And E.O. Allahabad, as under:

Section 11 of the Act imposes a prohibition restriction against letting without an allotment order. Section 12 contemplates certain contingencies in which a landlord or tenant of a building would be deemed to have ceased to occupy it. Section 13 provides for restriction on occupation of building without allotment order. A conjoint reading of Section 11 imposes prohibition on letting without allotment

order. Section 13 places restriction on occupation without an allotment or release. These two sections, it would appear that neither could a landlord let out a premises without an allotment order nor can anyone occupy it. These two provisions were enacted to undo the effect of Full Bench decision of this Court in *Udho Das v. Prem Prakash*. The learned Judge further observed as below; "From the above admission it would appear that in case of an illegal letting or subletting, the view taken was that the contract may be binding on the parties to it, but not on the authorities which would mean that the possession of a person who has been illegally let in would be unauthorized. Sections 11 and 13 of the Present Act make that position very clear. No one can either let out any premises without an allotment order no can anyone occupy the same. If anyone occupy the premises without an allotment order, he would not only be an unauthorized occupant but also liable to prosecution under 31 of the said Act. His possession being unauthorized cannot be recognized in the eye of law and if it cannot be recognized in the eye of law, there would be a vacancy.

4. *Manoj Krishna Shukla v. Mahaveer* 2007 (2) ARC 209

13. The revisional Court has also recorded detailed findings regarding service of notice on the Petitioner and his father, Sri Lok Nath Shukla. The Rent Control Inspector's report was signed by Sri Manoj Krishna Shukla, Petitioner and verified by his Counsel, Sri Mukul Asthana. The procedure prescribed in the relevant rules including Rule 8, was followed by the concerned Rent Control Inspector and other rent control authorities. As far as opportunity of hearing is concerned, the revisional Court recorded detailed findings that written objections were filed by the Petitioner opposing the release application no 15.5.2000 and the case was listed on 16.5.2000. Thereafter the case was listed on 20.5.2000. It was open for Manoj Krishan Shukla, Petitioner in this writ petition to put forth his submission on or before 20.5.2000. He was also represented through a legal practitioner. The revisional Court had, thus, found that adequate opportunity of hearing was afforded to the Petitioner.

14. The revisional Court while relying on the judgments as in *Suraj Bhan v. Additional District Judge Agra* 1997 (2) ARC 592; *Raj Kumar Kanodiya v. IIIrd Additional City Magistrate* 1997 (2) ARC 558; *Narayani Devi v. Mahendra Kumar Tripathi* 1998 (1) ARC 153 (SC); *Hardev Upadhyay v. Dr. Laeeq Ahmad* 1979 ARC 290, has held that the Petitioner, Manoj Krishna Shukla, revisionist was illegally occupying the premises without having any valid allotment order of the premises and, therefore, he had no right to contest the release application or file the revision. There was nothing on record to prove that the Petitioner, Manoj Krishna Shukla's father, Sri Lok Nath Shukla was paying rent to the previous landlord, Ram Autar Shukla. No documents have been filed before the Rent Control Officer or the revisional Court and even in this Court to prove that the tenancy existed between Ram Autar Shukla and Lok Nath Shukla. The Petitioner has failed to demonstrate before this Court also that he was a lawful occupant, having an allotment order in his favour of this father, Sri Lok Nath Shukla was ever inducted as tenant.

29. Even otherwise, it is well settled that an illegal and unauthorized occupant without having any right or title and valid allotment order cannot participate in the release proceedings before the trial Court. However, in the present case, the Petitioner was afforded opportunity to remain associated with the trial. He has also taken assistance of a legal practitioner, Sr. Mukul Asthana, who had filed his Vakalatnama and the objections. The Petitioner has failed to prove before the trial Court, revisional Court and this Court also that he was a lawful, legal tenant of the house in dispute. It is amply clear that the Petitioner has failed to establish a case for inference in the judgment and order passed by the lower Court, which has recorded concurrent findings of facts. He has also failed to persuade the Court to take a different view in the matter other than what has been decided by the Courts below.

5. Nutan Kumar and Ors. v. IInd Additional District Judge and Ors. 2002 (2) ARC 645

....This Court held by the majority of the Judges that so long as the Act and the Rules continued in force the control of letting vested in the appropriate authority and not in the parties. It was held that agreement of the kind embodied in the compromise petition could not curtail the powers of the appropriate authority. It was held that irrespective of the agreement between the parties the appropriate authority was entitled to exercise the powers of allotment vested in him. It must be mentioned that Justice Bhagwati, as he then was, in his minority and partly dissenting Judgment held that unless the consent decree was held to be invalid it would be binding on the tenant and even though the powers of the appropriate authority may not be curtailed, the tenant would be bound by the terms of the agreement between him and the landlord. This authority therefore also lays down nothing contrary to Nanakram's case. This authority merely deals with the right of the appropriate authority to exercise the powers given to him under the Act.

23. The premises in the possession of an unauthorized occupant would be deemed to be vacant for the purposes of Rent Control Act, even if an unauthorized occupant is inducted into the premises contrary to the provisions of the Act by the landlord himself, the legislature has not placed any restriction on the rent control authorities to initiate proceedings u/s 12 of the Act. So far as the release of such premises which are deemed to be vacant u/s 12(4) of the Act is concerned, the application of release has to be considered on merit in accordance with law by the District Magistrate. The unauthorized/prospective allottee has no right to interfere in the aforesaid proceeding of release.

24. There is one more aspect in this regard which cannot be ignored if the person let out his house ignoring the provisions prohibiting the letting without allotment order or has occupied the premises forcefully without any allotment order would be an unauthorized occupant but also liable to be prosecuted u/s 31 of the Act and his possession being unauthorized cannot be recognized in the eyes of law. There would be a vacancy and that would entitle the Rent Control Eviction Officer u/s 16 to

pass an allotment/release order.

25. Learned Counsel for the Respondents has relied upon the decision of this Court in the case of Jamuna Prasad v. Incharge District Judge Kanpur Nagar and Ors. 2003 (2) ARC 299. In my opinion, the case is clearly distinguishable on facts and has no bearing whatsoever on the matter in hand.

26. Learned Counsel for the Petitioner in support of his contention has also referred to the decision of Uttaranchal High Court in the case of Devendra Kumar Pandey v. District Supply Officer Prescribed Authority/Rent Control and Eviction Officer Nainital and Anr. 2001 (2) ARC 516. For the reasons I have given in this judgment I respectfully disagree with the view taken by the learned Single Judge of the Uttaranchal High Court in the aforementioned case of Devendra Kumar (supra).

27. This Court cannot over look the fact that the Petitioner had forcefully occupied the premises without any allotment order, he would not be entitled for any relief from this Court since it is well settled that the remedy of writ petition is a discretionary remedy and the Court will not grant any relief to a person who has not come with clean hands.

28. Thus in view of the above discussions, I do not find any illegality in the judgment and orders passed by the Court below.

29. Before parting with this case, it is also relevant to note that the present petition against the declaration of vacancy is not maintainable as the previous Writ Petition No. 63294 of 2008 filed against the declaration of vacancy dated 28.1.2010 was dismissed by this Court as not pressed without granting any liberty to the Petitioner to file a fresh petition.

30. In the result, the petition is, accordingly, dismissed.