ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.4.2000

BEFORE
THE HON'BLE SUDHIR NARAIN, J.

Civil Misc. Writ Petition No. 18425 of 2000

Smt. Nirupa Rana and others
...Petitioners
Versus
Ist Additional District Judge, Dehradun & another ... Respondents

Counsel for the Petitioners:
Shri K.K. Arora

Counsel for the Respondents:
S.C.

U.P. Urban Building (Regulation of letting and Rent) Act 1972-S-21 (1) (a)- Release Application by land lord- an Engineer in Air Force Services- on the ground within short while the land lord is going to retire has to settle his unmarried sister after demolishing the accommodation and raising new construction- whether the bonafide need can be considered for unmarried sisters- held 'yes'.

Held-

The need of a land lord depends on various factors. He may require an accommodation for a person who may be helping him or the land lord is under an obligation to accommodate such person, e.g. a servant, a brother receiving education and an unmarried sister who is dependent on him. His sister Usha is unmarried and his another sister Niloufer is mentally retarded. There is no one except the respondent to look after them. The need of the land lord has rightly been examined by the Prescribed Authority in this context. Para 6

By the Court

1. This writ petition is directed against the order of the Prescribed Authority dated 23.5.1997 allowing the release application filed by the land lord-respondent no. 2 and the order of the appellate authority dated 1.3.2000 dismissing the appeal against the said order.

2. Respondent No. 2 is the land lord of the disputed premises. He filed an application for release of the disputed accommodation against three tenants, namely S.S. Thapa, B.S. Rana and Sri Ahmad under section 21 (1) (a) of U.P.Act N.13 of 1972 (in short the Act). Sri S.S. Thapa is a tenant of the premises comprising of two rooms, half verandah and a kitchen. In the application, it was stated that the accommodation in occupation of the aforesaid tenants was in a dilapidated condition and required demolition and reconstruction. The land lord is an Engineer in Indian Airlines and is going to retire on 31.1.2001. He has to settle his sister Usha who is unmarried and another sister Niloufer who is mentally retarded. He will construct after demolition of the building for residential purpose.

3. The application was contested only by two tenants. Namely S.S. Thapa and B.N. Rana. Sri H.Ahmad did not file any written objection. It was denied that the disputed accommodation was in a dilapidated condition and requires demolition and reconstruction. The need of the land lord-respondent was also denied.

4. The Prescribed Authority made a local inspection of the premises in dispute and he recorded a finding that the need of the land lord was bona fide and he will

occupy it for residential purpose. On a comparative hardship, it was found that he would suffer a greater hardship in case the application was rejected. The application was, accordingly, allowed. The petitioners preferred an appeal against the said order. The appeal has been dismissed by the respondent no.1 by the impugned order dated 1.3.2000.

I have heard Sri K.K. Arora, learned counsel for the petitioners who assailed the findings recorded by both the authorities.

5. Learned counsel for the petitioners submitted that the authorities below failed to record any finding as to how much accommodation was required by the land lord. It is contended that there are three tenants. Two tenants have one room accommodation and the third tenant had two room' accommodation besides another tenant had vacated the accommodation and thereafter it was demolished and an open land was available for him to raise construction. There was no dispute about the extent of the accommodation with the tenants. The Prescribed Authority had made local inspection and it has been found that the land lord- respondent is serving as an Engineer in Indian Airlines. Keeping in view of his status, even if the entire accommodation is taken with the tenants, he will be having four rooms and this cannot be taken more than his requirement.

6. It is next contended that in the application he had stated about the need of his sisters but they are not members of the family as defined under section 3 (g) of the Act. The need of a land lord depends on various factors. He may require an accommodation for a person who may be helping him or the landlord is under an obligation to accommodate such person, e.g. a servant, a brother receiving education and an unmarried sister who is dependent on him. His sister Usha is unmarried and his another sister Niloufer is mentally retarded. There is no one except the respondent to look after them. The need of the landlord has rightly been examined by the Prescribed Authority in this context.

7. It is further submitted that the application filed by respondent no. 2 was not maintainable under section 21 (1) (a) of the Act. It is contended that the application was filed against three tenants. One of the tenants was Sri B.S. Rana. He died on 19.3.1996, during the pendency of the proceedings before the Prescribed Authority. An application for substitution was filed for impleadment of his widow Smt.Nirupama Rana and his four sons. One of his sons, namely, Vikas Rana, after the death of his father, was recruited in the Army in December, 1996 and was posted in Shilong. It is submitted that after his recruitment in the Army, the application under section 21 (1) (a) of the Act was not maintainable in view of clause (iii) to third proviso of Section 21 (1) (a) of the Act which reads as under:-

Provided also that no application under clause (a) shall be entertained-

"(iii) in the case of any residential building, against any tenant who is a member of the armed forces of the Union and in whose favour the prescribed authority under the Indian Soldiers (Litigation) Act, 1925 (Act No. IV of 1925) has issued a certificate that he is serving under special conditions within the meaning of Section 3 of that Act, or where

he has died by enemy action while so serving then against his heirs"

8. This submission was not raised before the Prescribed Authority. The appellate authority has also referred to any argument alleged to have been raised before it. In para 18 of the writ petition, it has not been stated that which counsel argued the appeal before the appellate authority raising this question. The petitioners have not filed any affidavit of such counsel.

9. On examining the merit of this submission, I do not find any substance. Sri B.S. Rana was a tenant but he was not in Army service at the time when the application was filed under section 21 (1) (a) of the Act against him. He was already retired from service. In my view clause (iii) of third proviso will be applicable as against the tenant who was a member of the armed forces of the Union at the time of the filing of the application. If a tenant has died and one of his heirs is recruited in army service, later on, this clause will not be applicable unless the tenant had died by enemy action as is clear from words" or where he has died by enemy action while so serving then against his heirs."

10. Secondly, this provision will be applicable when such tenant is serving in special condition within the meaning of Section 3 of the Indian Soldiers (Litigation) Act, 1925. The petitioners have not shown in the writ petition under what special conditions one of the sons of the deceased-tenant, namely, Vikas Rana is serving in the Army. The petitioners have annexed a certificate (Annexure '9' to the writ petition) alleged to have been issued by the prescribed authority that he is serving under special conditions but the special conditions have not been mentioned. The intention of the Legislative is that if the tenant is a member of the armed forces of the Union and there are special conditions, he may not be evicted even if the need of the land lord is bona fide. Section 3 of the said Act reads as under :-

" 3. Circumstances in which an Indian Soldier shall be deemed to be serving under special conditions:- For the purposes of this Act, an Indian solider shall be deemed to be or, as the case may be , to have been serving-

(a) under special conditions (when he is or has been serving under war conditions), or overseas, or at any place (beyond India, or any such place within India as may be specified by the Central Government by notification in the Official Gazette) ;

(b) under war conditions- when he is or has been, at any time during the continuance of any hostilities declared by the {Central Government} by notification in the {Official Gazette} to constitute a state of war for the purposes of this Act of at any time during a period of six months thereafter –

(i) serving out of India,

(ii) under orders to proceed on field service.

(iii) Serving with any unit which is for the time being mobilized, or

(iv) Serving under conditions which, in the opinion of the prescribed authority, preclude him for obtaining leave of absence to enable him to attend a court as a party to any proceeding or when he is or has been at any other time serving under conditions service under which has been

declared by the (Central Government) by notification in the {Official Gazette} to be service under war conditions, and

[(c) overseas- when he is or has been serving in any place outside India (other than Ceylon) the journey between which and (India) is ordinarily under taken wholly or in part by sea]"

The petitioners have failed to establish that any special condition existed as contemplated under the said section.

In view of the above, the writ petition is dismissed.

11. In the end, learned counsel for the petitioners prayed that some time may be granted to the petitioners to vacate the disputed premises. Considering the facts and circumstances of the case, the petitioners are granted six months' time to vacate the disputed premises provided, they give an undertaking on affidavit before the Prescribed Authority within two weeks from today that they will vacate the disputed premises within the time granted by this Court and would hand over its peaceful possession to the landlord-respondent No. 2.

Petition Dismissed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 24.4.2000

BEFORE
THE HON'BLE M. KATJU, J.
THE HON'BLE A.K. YOG, J.

Civil Misc. Writ Petition No. 19367 of 2000

Workmen of PEPSICO INDIA Holdings Limited ...Petitioner
Versus
Deputy Labour Commissioner, Kanpur Region and another ...Respondent

Counsel for the Petitioner:
Sri V.K. Sinha
Sri K.P. Agarwal

Counsel for the Respondents:
S.C.

Constitution of India, Article 226- Maintainability- termination of a workman of Pepsico India Holdings Ltd.- can not be challenged under Article 226 of the construction. In view of full Bench decision of Chandrama Singh Case.
Held-
The grievance of the petitioner is that the company has terminated the services of certain employees and is doing unfair labour practices. In our opinion, the petitioner has an alternative remedy of raising an industrial dispute under the U.P. Industrial Disputes Act, and hence this writ petition should not be entertained as held by the Full Bench of this Court in Chandrama Singh versus Managing Director 1991 (2) UPLBEC 898. Also, the writ petition is not maintainable as it is against a purely private body.
(Para 6)

Case law discussed.
1991 (2) UPLBEC 1607
AIR 1993 SC- 2178
AIR 1966 SC-21 AIR1969 SC- 1306
AIR 1952 Cal.-315
1998 (6) Sec- 549

By the Court

Heard Sri K.P. Agarwal learned counsel for petitioner.

The petitioners are workmen of Pepsico India Limited which is a purely private company and is not State under Article 12 of the Constitution.

1. The grievance of the petitioner is that the company has terminated the services of certain employees and is doing

unfair labour practices. In our opinion, the petitioner has an alternative remedy of raising an industrial dispute under the U.P. Industrial Disputes Act, and hence this writ petition should not be entertained as held by the Full Bench of this Court in Chandrama Singh Versus Managing Director1991 (2) UPLBEC 898. Also, the writ petition is not maintainable as it is against a purely private body.

2. Learned counsel for the petitioners has invited our attention to the decisions of the Supreme Court in AIR 1989 SC 1607 Sri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust and others Vs. V.R. Rudani and others, AIR 1993 SC 2178 Unni Krishnan JP V. State of A.P., AIR 1998 SC 295 K. Krishnamacharyulu and others V. Sri Venkateswara Hindu College of Engineering and another, etc. and has submitted that a writ lies even against a private body. It is no doubt true that in certain exceptional cases, a writ against a private body has been held to be maintainable, but in our opinion these are only exceptional cases and it does not create a general rule. Ordinarily no writ lies against a private body (except a writ of habeas corpus) No doubt Article 226 of the Constitution is very widely worded. Article 226 (1) states:

"(1) Notwithstanding anything in article 32 (***) every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority including in appropriate case any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus. Mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purposes."

3. It may be noted that the above provision states that a writ can be issued to "any person or authority" and it further states that a writ can be issued for enforcement of the rights conferred by Part III and" for any other purpose". However although very wide language is used in Article 226, by judicial interpretation a narrower meaning has been given. In our opinion the language of Article 226 can not be read literally. For example Article 226 states that a writ can be issued ' for any other purpose' but this does not mean that a writ can issue for granting a divorce or for deciding criminal trials. The words' for any other purpose' have to be interpreted to mean that a writ shall ordinarily by issued for the purpose for which writs were traditionally issued by the British Courts on well-established principles.

4. Similarly it has been stated in Article 226 that a writ can be issued to 'any person', but once again these words cannot be read literally. A writ can be issued to the persons to whom writs were traditionally issued by British Courts on well established principles and not literally to any person whomsoever. Thus, while the language of Article 226 on the face of it is very wide it does not mean that writ can be issued for any purpose whatsoever and to any person whomsoever. Writs will ordinarily be issued to the persons, and for the purpose, for which writs were traditionally issued by the British Courts on well-established principles. No doubt the powers of the Indian High Court under Article 226 are wider than those of the British Courts, as held in Dwarika Nath Vs. I.T.O., AIR 1966 SC81, but they are not so wide as to empower the Indian High Courts to pass any order whatsoever in

writ jurisdiction. There are well settled limitations on such powers.

5. The decisions that the learned counsel for the petitioner cited were cases where a public duty was involved, and in such exceptional cases a writ was issued to a private body. There is no such public duty involved here.

6. In several decisions it has been held that a writ does not ordinarily lie against private bodies e.g. Praga Tools Corp. Vs. Imannel, AIR 1969 SC 1306, Carlsbad Minerral Water Mfg.Co.Ltd. V. Jagtiani AIR1952 Cal 315, C.M.Khanna V. NCERT, AIR 1992 SC 76 etc. Thus, while exercising writ jurisdiction the Court must keep in mind the history and origin of the high prerogative writs in England and in India, and it cannot be guided by the words used in Article 226 alone. The ordinary principle therefore remains that a writ will not ordinarily be issued to a private body (except a writ of habeas corpus).

7. In Scooter India Versus Vijai Eldred 1998 (6) SCC 549, the Supreme Court held that a writ should not be ordinarily entertained when there is an alternative remedy under industrial law. This has also been held by a Full Bench of this Court in Chandrama Singh Vs. Managing Director (supra).

8. Since admittedly the respondent company is a purely private body and is not instrumentality of the State and since the petitioner has an alternative remedy under industrial law in our opinion, we are not inclined to interfere in this case.

9. Learned counsel for petitioner submitted that in a large number of labour courts/industrial tribunals in U.P. there is no Presiding Officer in view of certain directions given by this Court in certain writ petitions in pursuance of the Supreme Court decision in State of Masarastra versus labour Law Practitioners' Association. AIR 1998 SC 1232. The petitioner may approach the State Government for appointing Presiding Officers to these bodies and we recommend to the State Government to make appointments to fil up the posts ass expeditiously as possible.

Petition is dismissed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.4.2000

BEFORE
THE HON'BLE V.M. SAHAI, J.

Civil Misc. Writ Petition No. 20581 of 1998

Om Pal Singh ...Petitioner
Verses
District Development Officer, Ghaziabad and other ...Respondents

Counsel for the Petitioner:
Shri Vinod Sinha

Counsel for the Respondents:
S.C.
Shri S.N. Srivastava

Constitution of India, Article 311(2)- Dismissal order- charges mentioned in the charge sheet- replied by the employee- or enquiry officer submitted report without examining any witness or fixing any date for departmental proceeding- persuant to the enquiry report dismissal order passed – can not upheld.

Held-

The disciplinary authority too after receiving the report of the enquiry officer neither gave a copy of the enquiry report to the petitioner nor issued any show cause to the petitioner and passed the order of dismissal on 29.5.98. The entire enquiry proceedings and the dismissal order passed by the respondents on the basis of such an enquiry report cannot be upheld.(para 3)

By the Court

1. The petitioner was appointed on a class-IV post in June, 1991 by Principal, Regional Institute of Rural Development, Rampur Maniharan, Saharanpur. In 1992 the petitioner was transferred and posted at Regional Institute of Rural Development, Dadri, Ghaziabad (now District Gautam Budh Nagar). In 1997 the petitioner was given an adverse entry for going on leave. He filed a representation against it making allegations against respondent no. 5. He also resisted his posting at the residence of respondent no.4. On 27.11.1997 the respondent no. 4 issued a notice to petitioner and called for his explanation about reports from office that his work was not satisfactory. It was also mentioned that he misbehaved with employees under influence of liquor. It was also alleged that a sum of Rs.1800/- given to him for distribution to trainees at Bhojpur was not handed over to officer. On 3.12.1997 the petitioner gave his explanation and denied every allegation. The respondent was not satisfied with the explanation and he issued a charge sheet on 27.4.1998. And an enquiry officer was appointed on 1.5.1998. The enquiry officer on 14.5.98 wrote a letter to the petitioner informing him that he has been appointed enquiry officer and if the petitioner wants to say anything he may inform in writing so that enquiry proceedings be completed. The petitioner on 16.5.98 submitted his reply to the letter dated 14.5.98 mentioning that he has already submitted the reply to the charge sheet and it may be treated as his reply and he has nothing further to say. Thereafter, the enquiry officer submitted his report on 4.5.98. The respondents did not give a copy of the enquiry report nor issued any show cause notice to the petitioner. By order dated 29.5.98 passed by respondent no. 2 petitioner has been dismissed from service. It is this order of dismissal dated 29.5.98 annexure-16 to the writ petition, which has been challenged by petitioner in the instant writ petition.

I have heard Shri Vinod Sinha learned counsel for the petitioner and Shri S.N. Srivastava learned standing counsel for the respondents.

2. Learned counsel for the petitioner has urged that no opportunity of hearing was given by the enquiry officer to the petitioner nor any date was fixed by the enquiry officer. Copy of enquiry report was not given to the petitioner. The disciplinary authority did not issue show cause notice to the petitioner after receiving the copy of enquiry report and the impugned dismissal order has been passed by the respondents against the petitioner in violation of principles of natural justice. On the other hand, learned standing counsel has produced the records and has supported the impugned order. He urged that principles of natural justice was complied with. He placed reliance on letter of the petitioner dated 16.5.98 wherein the petitioner has written that since he has already submitted his reply to the charge sheet, nothing more is to be stated by him.

3. The charge sheet was issued to the petitioner on 27.4.98 to which the

petitioner submitted a reply on 29.4.98. Enquiry officer was appointed on 1.5.98. The enquiry officer wrote a letter to the petitioner on 14.5.98 that in case petitioner wants to say anything in defense he may say so in writing so that enquiry proceedings be completed. The petitioner submitted his reply on 16.5.98 stating that he has already submitted his reply to the charge sheet and it may be treated as his reply. He has nothing more to say. Thereafter, the enquiry officer completed the enquiry proceedings without fixing any date for evidence or for examination of witnesses. He submitted his report on 21.5.98. The letter dated 14.5.98 by the enquiry officer any reply of the petitioner dated 16.5.98 did not absolve the enquiry officer from holding the enquiry proceedings, in accordance with the principles of natural justice. The record produced by standing counsel establishes that no date was fixed by the enquiry officer after letter dated 14.5.98 was replied by petitioner on 16.5.98. The charges against the petitioner were factual. They were denied by the petitioner. Therefore, it was incumbent for the enquiry officer to have examined witnesses in support of the charges and record finding that they were proved. It was obligatory to afford opportunity of hearing to petitioner to defend the charges. He was required to fix dates for holding enquiry proceedings. Even if the petitioner would not have appeared the charges could be held proved only after examination of witnesses and production of record to support the allegations. In absence of any date fixed by the enquiry officer for holding enquiry proceedings, the entire enquiry proceedings were vitiated. They were carried out in violation of principles of natural justice. The disciplinary authority too after receiving the report of the enquiry officer neither gave a copy of the enquiry report to the petitioner nor issued any show cause to the petitioner and passed the order of dismissal on 29.5.98. The entire enquiry proceedings and the dismissal order passed by the respondents on the basis of such an enquiry report cannot be upheld.

4. For the reasons stated above, the writ petitioner succeeds and is allowed. The impugned dismissal order dated 29.5.98 passed by respondent no. 2 annexure-16 to the writ petition is quashed with all consequential benefits of service to the petitioner. The respondents are directed to reinstate the petitioner in service and pay his entire arrears of salary within a period of two months from the date a certified copy of this order is produced before respondent no. 2.

The petitioner shall be entitled to his costs.

Petition Allowed.

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APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 22 APRIL, 2000

BEFORE
THE HON'BLE R.R.K. TRIVEDI, J.
THE HON'BLE U.S. TRIPATHI, J.

Criminal Appeal No. 2122 of 1980

Udho and another ...Appellants
Versus
State of U.P. ...Respondents

Counsel for the Appellants;
Shri P.K. Bisaria
Shri N.K. Saxena
Shri S.B. Singh
Shri R.K. Gupta
Shri G.S. Chaturvedi

Counsel for the Respondent:
A.G.A.

Indian Penal Code, 1860, S-302 readwith S.34-Murder- conviction based on oral testimony of a single eye witness who was neither wholly reliable nor wholly unreliable- No corroboration of his testimony either by direct, circumstantial or medical evidence- Conviction, held, illegal.

Held -

From the above material discrepancies in the evidence of Nathu Ram (P.W.2) his presence on the spot becomes doubtful and he cannot be treated as wholly reliable witness. In case his evidence does not fall in second category, he may be treated in third category and corroboration his testimony was required to base conviction of the appellants. But there is no corroboration of his testimony either by direct, circumstantial or medical evidence. The circumstances of the case and medical evidence do not corroborate the testimony of the witness and in these circumstances we are of the view that the sole testimony of Nathu Ram (P.W. 2) was not sufficient to base the conviction of the appellants. (Para 20)
Case Law discussed
AIR 1957 SC 614

By the Court

1. This appeal has been preferred against the judgement and order dated 20.9.1980 passed by 5th Additional Sessions Judge, Hamirpur in Sessions Trial No. 259 of 1979 convicting the appellants Udho and his son Mathura under Section 302 read with Section 34 I.P.C. and sentencing them to undergo imprisonment for life.

2. The prosecution case, briefly narrated was that appellant Udho was real brother of Govind, father of Babulal (P.W.1) and Ballu, father of Nathu Ram (P.W.2). Smt. Genda Rani (25) deceased was the wife of Nathu Ram P.W. 2 . Mathura appellant is the son of Udho appellant. There was some dispute regarding agriculture land in between the appellants and Nathu Ram (P.W.2) Udho appellant wanted to grab the land of Nathu Ram (P.W.2) and he had also taken possession over the entire land of Nathu Ram and Govind, father of Babu Lal (P.W.1). When Nathu Ram demanded his land from Udho appellant he used to threat to kill him. Quarrel often took place between the deceased and wife of Udho appellant. Prior to three days of occurrence again a quarrel had taken place between Genda rani deceased , the wife of Udho appellant and the latter had told that he deceased would get everything settled within three days.

3. In the afternoon of 11.10.1979 Nathu Ram (P.W.2) and his wife Genda Rani deceased had gone to Kachhar near the Bhairo Nala of village Parchha Kachhar, P.S. Jaria, District Hamirpur to collect grass. At about 5.00 P.M. they were scrapping grass on the mend of their field. Babu Lal (P.W.1) was also scrapping grass near them. In the mean time appellant Udho, armed with a Kulhari and appellant Mathura armed with pharsa, came there. Observing them Nathu Ram (P.W.2) and Genda Rani deceased started running. Udho appellant asked Mathura to catch them hold. While Smt. Genda Rani deceased was inside the Nala, Udho and Mathura appellants started inflicting injuries on her with pharsa and Kulhari. Nathu Ram (P.W.2) and babu Lal (P.W.1) raised alarm but the appellants after killing Genda Rani ran away towards village. Nathu Ram (P.W.2) and Babu Lal (P.W.1) came near the deceased and found her

dead. Thereafter, they came to their house, arranged bullock cart and went to P.S. Jaria where Nathu Ram (P.W.2) lodged an oral report (Ext. Ka-9) at 00.30 hrs. Chik report (Ext.Ka-9) was prepared by Head Moharrir Lala Ram who made an endorsement of the same at G.D. report (Ext. Ka-10) and registered a case against the appellants under Section 302 I.P.C..

4. The investigation of the case was taken up by Sri Shaukat Ali (P.W.4) the then Sub-Inspector, P.S. Jaria. He reached the spot on 12.10.1979 at 6.00 A.M. appointed punchas and conducted inquest of the dead body of the deceased and prepared inquest report (Ext.Ka-2) and others relevant papers (Ext. Ka. 3 and Ka-4). He took out the clothes from the body of the deceased and prepared recovery memo (Ext.Ka-5) and Raj Narain for escorting it to the mortuary. The Investigating Officer interrogated Babu Lal (P.W.1) and Nathu Ram (P.W.2) on the spot. He inspected the place of occurrence and prepared site plan (Ext.Ka-6). The I.O. also took into possession blood stained and simple earth from the spot, sealed it in separate containers and prepared recovery memos (Ext. Ka-7 and Ka-8). He also interrogated the witnesses of inquest and searched the accused but they were not available.

5. Autopsy on the dead body of the deceased was conducted on 13.10.1979 on 2.30. P.M. by Dr. A.K. Srivastava (P.W.3) who found incised wounds, abrasions and contusion on the person of deceased and cause of death due to hemorrhage, as a result of ante mortem injuries. The Doctor prepared post morttem report (Ext. Ka-1).

6. The remaining investigation of the case was conducted by Sri Lal Bahadur Verma who on completion of investigation submitted charge sheet (Ext. Ka-11) against the appellants.

7. The prosecution in support of its case examined Babu Lal (P.W.1), Nathu Ram (P.W.2,), Dr. A.K. Srivastava (P.W.3), Shaukat Ali, I.O. (P.W.4), Constable Mohar Lal (P.W.5) and Constable Jawahar Lal (P.W.6). Babu Lal (P.W.1) and Nathu Ram (P.W.2) were witnesses of fact while evidence of remaining witnesses was formal in nature. The appellants did not adduce any evidence.

8. The learned Additional Sessions Judge on considering the evidence of the prosecution held that prosecution had successfully proved the guilt of the appellants and accordingly convicted and sentenced them as mentioned above.

9. We have heard Sri G.S. Chaturvedi, learned counsel for the appellants and the learned A.G.A. and have gone through the evidence on record.

10. Dr. A.K. Srivastava (P.W.3) who conducted autopsy on the dead body of the deceased found that the deceased was aged about 25 years and had died two days ago. There were following ante mortem injuries on her person:-

1. Incised wound 17 cm x 4 cm on left side of face, extending from left angle of mouth to left side of neck. Fracture of lower jaw of left side. Clots present.

2. Incised wound 17 cm x3 cm on left side of face extending from left angle of mouth to left side of neck. Fracture of lower jaw of left side and over lapping injury no. 1. Clots present.

3. Contusion 7 cm x3 cm III size on the occipital region. Congestion present on cutting.

4. Incised wound 16.5 cm x 1 cm x skin deep, on back side aspect of left shoulder joint. Clots present.

5. Incised wound 9 cm x 6 cm x skin deep, just below injury no. 4. Congestion present, on cutting.

6. Abrasion 5 cm x 1.2 cm on right side of chin. Congestion present, on cutting.

7. Abrasion 3 cm x 1 cm on right wrist joint on inner aspect, congestion present on cutting.

11. On internal examination the Doctor found membranc slightly congested. Brain was soft and pulpy. Pleura, right lung and left lung were slightly congested. Stomach and small intestine were empty and large intestine full. The cause of death was due to haemorrhage.

12. Nathu Ram (P.W.2) stated that the appellants had taken possession over his land and when he demanded back his land, they became annoyed. But in his cross examination he stated that ancestral land was partitioned and he got 1/3rd share. In consolidation operation separate chaks were allotted to him, Udho and Govind Das. The above chaks were allotted with their consent and all the three brothers were cultivating their own chaks. He further stated that Sumer, brother of his grand father had 8 bighas chak out land, which he had given to Udho. He and Govind Das filed objection before A.C.O. and appeal before S.O.C., but lost. He had no enmity with the appellants and no quarrel had taken place between them within two and half years. It is true that the witness stated that prior to three days of the occurrence quarrel had taken place between the deceased and wife of Udho, appellant. But according to evidence of the witness, appellants had no strong motive to commit the murder of the deceased, as quarrel between two ladies was not of serious nature.

13. On the manner of occurrence and complicity of the appellants in the murder of the deceased, the prosecution had relied on testimony of Babu Lal (P.W.1) and Nathu Ram (P.W.2). It is to be considered whether the prosecution had successfully proved the guilt of the appellants.

14. Babu Lal (P.W.1) had not supported the prosecution case and according to his evidence he had not seen the murder of the deceased and came to know about it at 8.00 P.M. Therefore, his testimony is of no avail. There remains sole testimony of Nathu Ram (P.W. 2) the husband of the deceased. The law regarding admissibility of testimony of single witness is settled and the guilt of an accused person may be proved even by testimony of a single witness.

15. The Supreme Court in the case of Vadively Thevar Vs. State of Madras, A.I.R. 1957, S.C. 614 categorised the oral testimony of a single witness which are as below:-

(1) Wholly reliable, (2) wholly unreliable and (3) neither wholly reliable nor wholly unreliable and further held that in the first category of proof, the Court should have no difficulty in coming to its conclusion either way – It may convict or may acquit on the testimony of a single

witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subordination. In the second category, the Court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.

16. In view of the above settled law we have to consider whether the sole witness Nathu Ram (P.W.2) is wholly reliable, wholly unreliable or neither wholly reliable nor wholly unreliable.

17. Nathu Ram (P.W.2) stated that at the time of occurrence he and his wife Smt. Genda Rani, deceased were scrapping grass on the mend of their Juar field situated towards north of Bhairo nala. In his cross examination he stated that his wife was scrapping grass with a Khurpi and had also taken a chaddar for collecting grass. She had scrapped one bundle of grass and had tied it in chaddar. He was also having Khurpi and a net for collecting gross. That he had also scrapped one bundle grass. On arrival of appellants he and his wife started running leaving Khurpi and bundles of grass on the spot and the I.O. had taken into possession the above articles. But the I.O. stated that he did not find above things on the spot. There is no explanation from the side of prosecution as to how the abovearticles i.e. Khurpi and bundles of grass were removed from the spot.

18. Nathu Ram (P.W.2) further stated that when the appellants came near his juar field where he and the deceased were scrapping gross, both started running towards village. He managed to cross the nala but the deceased was surrounded by the appellants and he was observing from a distance of 40 paces that appellants were inflicting Kulhari and Pharsa blows on the deceased. His above conduct appears highly improbable as he did not attempt to save his wife and in case he had attempted to save his wife he must have sustained some sort of injuries. It appears that in order to explain the absence of injuries on his person the witness developed a story that he ran ahead and crossed the nala.

19. According to evidence of Nathu Ram (P.W.2) Udho appellant was inflicting Kulhari blows and Mathura appellant was inflicting Pharsa blows on the deceased. The medical evidence shows that the deceased had sustained four incised wounds of the dimensions of (1) 17 cm x4 cm.(2017 cm x3 cm. (3) 16.5 cm x 1 cm and (4) 9 cm x 6 cm. The dimensions of above incised wounds show that all were caused by one weapon. No doubt dimension of injury no. 5 was 9 cm x 6 cm but the above dimension differed from injuries no. 1,2 and 4 because it was on bonny part of left shoulder joint. The difference in the dimension was due to its seat i.e. part of the body which it hit and not due to weapon. Thus, it is clear that all the incised sounds were caused by one person and not by two persons as stated by Nathu Ram (P.W.2).

20. From the above material discrepancies in the evidence of Nathu Ram (P.W. 2) his presence on the spot becomes doubtful and he cannot treated as wholly reliable witness. In case his evidence does not fall in second category, he may be treated in third category and corroboration of his testimony was required to base conviction of the appellants. But there is no corroboration of

his testimony either by direct, circumstantial or medical evidence. The circumstances of the case and medical evidence do not corroborate the testimony of the witness and in these circumstances we are of the view that the sole testimony of Nathu Ram (P.W.2) was not sufficient to base the conviction of the appellants.

21. The learned Sessions Judge, thus, erred in placing reliance on the sole testimony of the Nathu Ram (P.W.2). There being no reliable evidence on record, the appellants were wrongly convicted. The appeal, therefore, succeeds.

22. The appeal is, accordingly, allowed. Conviction and sentence of the appellants under section 302 read with Section 34 I.P.C. is set aside and they are acquitted of the said offence. The appellants are on bail granted by this court. Their bail bonds are cancelled and sureties are discharged. They need not surrender.

Appeal Allowed

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.5.2000

BEFORE
THE HON'BLE SUDHIR NARAIN, J.

Civil Misc Writ Petition No. 17105 of 2000

Lachman Deo, son of Sri Kundan Lal
...Petitioner
Versus
District Judge, Nainital
& others ...Respondents

Counsel for the Petitioner:
Shri Rajesh Tandon

Counsel for the Respondent:
S.C.

U.P. Urban building (regulation of letting, rent and eviction) Act,1972 – section – 2 (1) (bb)- charitable Institution – Gandhi Ashram – exempted from octrai, terminal, House Tax. Bonus, Income and Sale Tax – Ashram established for wellfare of the public at large-
Held-
Plaintiff;s is a registered society. Its Memorandum of association does not provide that it has been established for the benefit of its members or its activities are confined to give any profit to the members of the Gandhi Ashram. Its object, character and activities clearly point out that it is a public charitable institution. In view of the ememption granted by Section 2 (1) (bb) if Act No.13 of 1972, the petitioner cannot claim that the provisions of the said Act is applicable to the building in question. (para 11)
Case law discussed
(1891) AC-531 (574)
(1923) 1 ch. 237
AIR 1990 SC 816
AIR 1992 SC 1456
AIR 1980 SC 387

By the Court

1. This Writ petition is directed against the judgment of respondent no.1 whereby the revision was allowed and the suit filed by the plaintiff respondent no.3 been decreed.

2. Briefly stated the facts are that the plaintiff. Sri Gandhi Ashram, a registered society, filed Suit No.11 of 1996 in the court of Judge Small Causes for recovery of arrears of rent, ejectment and damages against the petitioner with the allegations that the plaintiff is a public charitable institution and the provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act,1972 (in short 'the Act') were not applicable. The petitioner was a tenant of the premises in dispute at Rs.24.50 per month. A notice dated

16.4.1996 was sent terminating his tenancy but inspite of service of notice he has not vacated the disputed premises. The petitioner contested the suit and denied that the plaintiff is a public charitable institution but the petitioner cannot be evicted as he had deposited the entire arrears of rent during the pendency of the case and was entitled to the protection of Section 114 of the Transfer of Property Act. The plaintiff-respondent filed revision against this order. Respondent no.1 has allowed the revision by the impugned order dated 18.2.2000 taking the views that the suit was not filed on the basis of forfeiture of the lease and as such the provision of Section 144 of the Transfer of Property Act was inapplicable.

3. The main thrust of the submission of the learned counsel for the petitioner is that the plaintiff is not a public charitable institution and therefore it is not exempt from the operation of U.P. Act No.13 of 1972,Section 2 (1) (bb)provides that the Act shall not apply to any building belonging to or vested in a public charitable or public religious institution. Section 3 (r) defines charitable institution as under:-

> "charitable institution" means any establishment, undertaking organisation or association formed for a charitable purpose and includes a specific endowment;
>
> Explanation.- For the purposes of the clause, the words "includes relief of poverty, education, medical relief and advancement of any other object of utility or welfare to the general pubic or any section thereof, not being an object of an exclusively religious nature."

4. The explanation added to the definition clause of "charitable purpose" is of wider amplitude. The word "charity" can be used in a restricted sense synonymous with relief of poverty, education and medical relief but in a wider sense it includes and activity by which the general public or any section thereof is benefited. The explanation covers both the aspects. Lord Macnaghten in his celebrated judgment in Commissioner of Income Tax v. John Fredrick Pemsel (1891) AC 531 (574),laid down that charitable purpose which comes in the language or trade of statute of Elizabeth could be grouped under four heads', namely, (1) relief of poverty', (2) education; (3) advancement of religion; and (4) other purposes beneficial to the community not coming under any of the precedent headings .

5. Lord Russel, J. in Re Hummeltenberg (1923) 1 Ch 237 commenting on the definition formulated by Lord Macnaghten observed "no matter under which the four cases of gift may prima facie fall, it is still in my opinion necessary (in order to establish that it is charitable in the legal sense)to show (1) that the gift will or may be operative for the public benefit, and (2) that the trust is one, the administration of which the Court itself could. If necessary, undertake and control."

6. The Court has to examine the object of any activity for activity for which a charity is established. The object of any activity is a predominant factor to be predominant to find out as to whether the institution is a charitable or commercial. An educational institution e.g. may be treated as a charitable as well as commercial. In P.C. Rajratnam Institution

v. Municipal Corporation of Delhi and others, AIR 1090 SC 816 SC 816, it was held that impating education by a society can be held 'charitable purpose' and such society can be granted exemption under Section 115 (4) (a) of Delhi Municipal Corporation Act as it imparts education and the fact that some of fee is charged from the students is also lnot decisive as to society has to incur expenditure for running institution and may further be supported either wholly or in part by voluntary contributions.In Municipal Corporation of Delhi v. Children Book Trust, AIR 1992 SC 1456, it was held that merely because education is imparted in the school, that by itself, cannot be regard as charitable object. An element of public benefit or philanthropy has to be present. If education is imparted with a profit motive, it will not be a charitable purpose. The decisive factor is object of the institution. The same activity may be charitable if it is done for the welfare of public or a part thereof and if it is done with the motive to earn profit, it cannot be termed as charitable. In Additional Commissioner of Income Tax v. Surat Art Silk Cloth Association, AIR 1980 SC 387, it was observed:

> "Where an activity is carried on as a matter of advancement of the charitable purpose or for the purpose of carrying; out the charitable purpose, it would not be incorrect to say as a matter of plan English grammar that the charitable purpose involves the carrying on of such activity, but the predominant object of such activity must be to sub serve the charitable purpose and not to earn profit. The charitable purpose should not be submerged by the profit-making motive; the latter should not masquerade under the guize of the former."

7. The plaintiff-respondent was registered as society in the year 1988. It has branches all over India. The plaintiff has filed a booklet containing Gandhi Ashram Service Rules. The objects of the Ashram, according to its Memorandum of Association, are to serve people of the Ashram, according to its Memorandum of Association, are to served people of India by popularising hand woven cloth to ameliorate the4 condition of the people, especially in the rural lareas by giving them medical help, training them to sanitary habits, imparting education to them in day and night schools, establishing libraries, museums. Model farms, to raise necessary funds by means of donations and loans and by acquiring moveable properties and to accept and administer trusts.

8. The Manager of the Gandhi Ashram, Sheo Murti Misra, stated on oath that the entire income is spent on charitable purposes. The Ashram is also maintaining a Gaushala and it is also providing financial help. In various decisions rendered either by the Court or Tribunal it was held that the plaintiff-respondent is a charitable institution. In Civil Appeal No.432 of 1975, Gandhi Ashram V. State of U.P. the Ist Additional Civil Judge, Nainital the plaintiff was held to be a charitable institution. The Labour Tribunal, Meerut held the plaintiff, Gandhi Ashram as a charitable institution because it did not reserve any profit for itself and it was supported either by donation or profit by sale which goes in charity. The Commissioner of Income Tax in its order dated 13.1.1945 held that the Gandhi Ashram is charitable institution. The

plaintiff also filed several Government Orders wherein Gandhi Ashram has been exempted from octroi, terminal, house tax, bonus, income and sales tax. It is contended in these case, the petitioner was not a party and therefore any finding recorded in these judgments/orders will not operate as resjudicata against the petitioner but they are relevant documents and admissible under Section 13 of the Evidence Act to prove that the plaintiff was held in various decisions as public charitable institution. The petitioner, on the other hand, did not lead evidence to show that the object of the Gandhi Ashram is profit-making. The object for which it has been established is for welfare of the public at large. Its object is to served the people of India by prpularising hand spun and hand woven cloth and other hand made products. It has to help the people in various ways. There is no element of profit-making in any of its activities. The Courts below rightly held that it is pubic charitable institution.

9. Learned counsel for the petitioner then contended that it may a charitable institution but it may be a private charitable institution. The distinction between public purpose and a purpose which is not a public purpose, depends upon as to who are to receive the benefit. If the object is that certain person or association of persons alone to get the profit from the activities of the institution then it is not a public purpose but if the benefit is to be given to the public or part of public or part of public, it is a public purpose. Tudor in the 5th edition of his book on 'Charities' (page 12) summed up the principle in the following words :-

> "If the intention of the donor is merely to benefit specific individuals, the gift is not charitable, even though the motive of the gift may be to relieve their poverty or accomplish some other purpose with reference to those particular individuals which would be charitable if not so confined; on the other hand, if the donor's object is to accomplish the abstract purpose of relieving poverty, advancing education or religion or other purpose charitable within the meaning of the Statute of Elizabeth without giving to any particular individuals the right to claim the funds, the gift is charitable."

10. In Radhakanta Deb and another v. The Commissioner of Hindu Religious Endowments, Orissa, AIR 1981 SC 798, the Court considered the line of distinction between private trust and public trust in the following words:-

> "In other words, the beneficiaries in a public trust are the general public or a section of the same and not a determinate body of individuals as a result of which the remedies for enforcement of charitable trust are somewhat different from those which can be availed of by beneficiaries in a private trust. The members of the public may not be debarred from entering the temple and worshipping the deity but their entry into the temple is not as of right. This is one of the cardinal tests of a private endowment."

11. The plaintiff is a registered society. Its Memorandum of Association does not provide that it has been established for the benefit of its Members or its activities are confined to give any profit to the members of is the Gandhi Ashram. Its object, character and activities clearly point out that it is a public charitable institution. In view of the

exemption granted by Section 2 (1) (bb) if Act No.13 of 1972,the petitioner cannot claim that the provisions of the said Act is applicable to the building in question.

12. It has been found that the petitioner is not entitled to the benefit of Section 114 of the Act as the lease was not determined on the ground that it has a right to re-enter the premlise4s under the forfeiture clause under the tenancy. Respondent no.1 rightly decreed the suit.

There is no merit in the writ petition. It is accordingly dismissed.

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ORIGINAL JURISDICTION
CIVIL SIDE
DATED : ALLAHABAD 10.5.2000

BEFORE
THE HON'BLE SLUDHIR NARAIN, J.

Civil Misc. Writ Petition No.10743 of 1984

Ramji Lal Varshney & another..Petitioners
Versus
Additional District Judge, Aligarh & others ...Respondents

Counsel for the Petitioners:
Shri Prakash Gupta

Counsel for the Respondents:
Shri A.N. Bhargava
Shri G.P.Bhargava
S.C.

U.P. Urban Buildings (Regulation, Letting rent and Eviction) Act 1972 -.-16 (5) (b) – Deemed vacancy earstwhile Land lord after ejecting the tenant obtained possession in excution of Decree- Subsequently sold through registered sale deed in the meantime application before D.M. for release of the rented accommodation- can not be treated as Deemed vacancy.
Held--
The possession of the land lord will be lawful but if he wants to continue in possession, he is to apply for release of the said accommodation under section 16 (1) (b) of the Act. The previous land lord had not filed any application for release of the disputed house and in the meantime respondent no. 3 had filed application for allotment. In these circumstances, the accommodation vacated by Har Prasad in pursuance to the decree passed in suit no. 98 of 1975 will be treated as vacant under law. (Para 5)

By the Court

1. This writ petition is directed against the order passed by the Rent Control and Eviction Officer declaring the disputed accommodation as vacant on 30.4.1981 and thereafter rejecting the application of the landlord-petitioners for the release of the disputed accommodation on 10.10.1983 and allotting the same to respondent No.3 on 19.10.1983 and the order of the revisional authority dated 20.07.1984 affirming the said order in revision.

2. The dispute relates to House No.1886, Mendu Gate, Hathras, district Aligarh. One Ram Bablu and Smt. Bhu Devi were owners of this property. Har Prasad was a tenant of two rooms of first floor of the disputed house. Ram Babu and Smt. Bhu Devi filed Suit No.98 of 1975 for recovery of arrears of rent, ejectment and damages against their tenant Har Prasad. The suit was decreed on 3.4.1979 and thereafter the landlords obtained possession of the portion in occupation of their tenant Har Prasad. Kishan Singh, respondent No.3 filed an

application for allotment of the said portion of the disputed house on 19.11 1979. The Rent Control and Eviction Officer asked the Rent Control Inspector to submit a report. He submitted a report on 10.12.1979 stating that the landlords had obtained the possession of the disputed house from Har Prasad and the same be treated as a vacant. The Rent Control land Eviction Officer issued notice to Ram Babu and Smt. Bhu Devi but as they were not served, he directed the service by publication. Ram Babu and Smt. Bhu Devi, the erstwhile owners of the property, sold the disputed house to Ramji Lal Varshney, and his wife Smt. Bahuti Devi alias Laxmi Devi, petitioner Nos. 1 and 2 respectively by registered sale deed on 294.1981 and delivered the possession of the said house to them.

3. The Rent Control land Eviction Officer declared the disputed accommodation as vacant on 30.43.1981. Respondent No.3 fled an application on 13.5.1981 stating that the erstwhile owners of the property had sold the property to the petitioners and notices may be issued to them. The petitioners, on coming to know the order of vacancy, filed objection on 5.6.1981 stating that the previous landlords had sold the property to them and they were in its possession. The house was never vacant. On 24.6.1081 they filed another application again taking the objection against the vacancy and further praying that the disputed house be released in their favour. The Rent Control land Eviction Officer maintained the order declaring the vacancy and rejected the application filed by the petitioners for release on 10.10.1983 and, thereafter, passed an order directing for allotment of the disputed house to respondent No.3 on 9.10.1983. The petitioners, aggrieved against these two orders, filed two separated revisions before the District Judge. Respondent No.1 has dismissed the revisions by the impugned order dated 20.7.1984.

4. The disputed between the parties involved two questions. Firstly, as to whether there was any vacancy and secondly whether the Rent Control land Eviction Officer was justified in rejecting the release application filed by the petitioners in case he found the disputed accommodation as vacant.

5. The main thrust of the submission of the learned counsel for the petitioners is that the erstwhile owners Ram Babu and Smt. Bhu Devi were in possession of the disputed house and after they having executed the sale deed in their favour on 29.4.1981, delivered possession to them and a person obtaining possession from the previous as owner of the property and the said accommodation cannot be treated as vacant under law. He has placed reliance upon the decision Smt. Parmeshwari and another Vs. Jagdish Sharma and others,1976 AWC 703 wherein it has been held that if an owner executes sale deed of his house belonging to him and delivers possession to the purchaser, the possession of such purchaser will be as of owner and the house in his possession cannot be deemed as vacant. This case has to be examined on the facts of the present case. The erstwhile owners of the property had filed Suit No.98 of 1975 for recovery of arrears of rent and ejectment against their tenant Har Prasad. The suit was decreed on 3.4.1979. They had executed the decree and obtained possession from the tenant. Respondent NO.3 on coming to know of this fact filed application for allotment on 19.11.1979. The Rent Control land

Eviction Officer asked the Rent Control inspector to submit a report. He submitted a report that the tenant had vacated the accommodation and handed over its possession to the landlords and accommodation was vacant. It was incumbent upon the previous landlord to have obtained an order of release from the District Magistrate /Rent control and Eviction Officer under section 16 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short the Act). The landlord is entitled to obtain possession from his tenant when he vacates it voluntarily or under the orders of the Court of any other authority. The possession ;of the landlord will be lawful but if he wants to continue in possession, he is to apply for release of the said accommodation under section 16(1)(b) of the Act. The previous landlord had not filed any application for release of the disputed house and in the meantime respondent No.3 had filed application for allotment, In these circumstances, the accommodation vacated by Har Prasad in pursuance to the decree passed in Suit NO.98 of 1975 will be treated as vacant under law.

6. There is, however, a disputed as to the extent of the accommodation in possession of Har Prasad. The version of the petitioners was that Har Prasad was a tenant of two rooms on the first floor of the house in question. The Rent Control and Eviction Officer has declared the entire house as vacant without examining this question. Petitioner No.1 had filed an affidavit dated 4010182 and in para 4 of the affidavit he had categorically stated that Har Prasad was tenant of only two rooms on the first floor of the house. The Rent Control land Eviction Officer had appointed Naib Tehsildar to submit a report. He submitted a report wherein he had given the details of the accommodation in the entire house. It was found that on the ground floor there were six rooms besides bathroom etc. and on the second floor there were five rooms. The entire house was constructed in an area of 115 sq. meters. The Rent Control land Eviction Officer did not record any finding as to what was the portion in occupation of Har Prasad. The accommodation obtained by the previous landlord from Har Prasad can only be treated as vacant under law but in respect of other portions which were either in possession of the landlord or was never under the tenancy of any person, could not be treated as vacant under law as held in Smt. Parmeshwari's case (supra).

There is another controversy that the petitioners had let out one room 'baithak' to one Dr. R.P. Misra after they obtained the possession from the previous landlord after purchasing the house in the year 1981. The Rent Control and Eviction Officer had declared the vacancy on 30.4.1981 while the petitioners had purchased the property on 29.4.1981.The Rent Control land Eviction Officer had not passed order of declaring vacancy on 30.4.1981 on the ground that any portion was let out by the petitioners to Dr. R.P. Misra Dr. R.P. Misra had filed affidavits stating that in fact he had his own clinic at another place but while he had gone out to take part in 13th ceremony on the death of his father, Hir Lal and others broke open lock of the shop and took forcible possession and in the situation petitioner No.1 permitted him to open his clinic in his 'baithak' for about a month. He never paid any rent but lived only for a short time as a licensee. The Rent Control land Eviction Officer had appointed Commissioner from time to time and it

was found that Dr.R.P. Misra was there. Dr.R.P. Misra made a statement before the Commissioner to this effect. It appears that he filed an affidavit subsequently stating that he was a tenant but later on he was examined as a witness on 10.3.1983 and again he made it clear that he was never a tenant but only a licensee for a short time. The Rent Control and Eviction Officer held that Dr. R.P. Misra was in possession and, therefore, the accommodation should be treated as vacant. Firstly he did not record as to the extent of the accommodation which was in possession of Dr. R.P. Misra and secondly whether his status was that of a licensee for a short time. Admittedly Dr. R.P. Misra had left the accommodation subsequently and the petitioners were in possession. The disputed accommodation cannot be treated as vacant of which Dr. R.P>Misra was occupying as a licensee for a short time.

Another question is whether the Rent Control land Eviction Officer was justified in rejecting the application of the petitioners for the release of the disputed accommodation even if the accommodation was treated as a vacant. Respondent no.2 rejected the application without examining the need set up by the petitioners. He look the view that the landlords had purchased the property on 29.4.1981 but they had filed an application for release on 20.12.1982 after about 18 months and that indicated that they did not need the disputed house. Secondly, they did not disclose as to what they did in respect to the accommodation, which they were occupying prior to the purchase of the property by them on 29.4.1981.

I have examined the record and found that the respondent Nos. 1 and 2 totally failed to consider the material evidence produced on the record. The petitioners had filled an application on 24.6.1981 challenging the vacancy and also prayed for release of the disputed house, a copy of such application in Annexure '2' to the writ petition. The petitioners had also filed affidavit on 19.8.1981 and 4.1.1982 (Annexures '3' and '5' respectively to the writ petition) and they categorically stated about their need. They again filled another formal application on 20.12.1982 praying for release of the disputed house. It was their second application to avoid any further technicality in respect of filing an application under section 16(1)(b) of the Act. The observation of respondent no.2 that the application was filed for release after 18 months is not correct. The petitioners further had categorically stated in para 6 of their affidavit dated 4.1.1982 (Annexure '5' to the writ petition) that they were living with their family in a rented house and after the purchase, they are living in the disputed house. They had categorically stated that they do not own and possess any other house except the disputed house and it was purchased only for their personal need. Similar assertion was mad in the affidavit filed by petitioner No.1 on 19.8.1981 (Annexure '3' to the writ petition). Respondent No.1 totally ignored to consider the averments made in the affidavit. The petitioners had further stated that there were nine members in their family and they were living in the disputed house. The Rent Control land Eviction Officer had asked a report from the Naib Tehsildar. He submitted a report on 26.1.1983 and in his report he indicated the total numbers of the rooms in the house and the members of the family of the petitioners. He disclosed the names of 9 family members of the petitioners but this report has been totally ignored by

respondent no.2 while considering the release application filed by the petitioners.

Lastly it may be noted that he was considering the objection of the prospective allottee in regard to the application filed by the petitioners for the release of the disputed house. In Talilb Hasan and another Vs.1st additional District Judge. Naintal and others, 1986(1)ARC, it has been held that the prospective allottee has no right to participate in the proceedings and contest the release application filed by the landlord. Respondent No.1 dismissed the revision without examining the record of the case.

In view of the above the writ petition is allowed and the orders dated 30.4.1981,10.10.1983,19.10.1983 and 20.7.1984 are hereby quashed. The Rent Control and Eviction Officer, respondent No.2 is directed to decide to decide the matter afresh in accordance with law keeping in view the observations made above.

Considering the facts and circumstances of the case , the parties shall bear their own costs.

Petition Allowed.

ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: THE ALLAHABAD 25.5.2000

BEFORE
THE HON'BLE S.R.SINGH, J.
THE HON'BLE R.K.SINGH, J.

Civil Misc. Writ Petition No. 2314 of 2000

Dr. Abhijit Das & others ...Petitioners.
Versus
State of Uttar Pradesh & others ...Respondents.

Counsel for Petitioners:
Sri Ravi Kiran Jain,
Sri R.K. Awasthi

Counsel for Respondents:
Standing Counsel
Sri Sudhanshu Dhulia
Sri L.P.Naithani
Sri Amarjeet Singh

Constitution of India, Article 226-Alternative Remedy-Petition for quashing the FIR pending-application for Bail whether can be considered-even of specific provision u/s 439 Cr.P.C.- when main relief for quashing the FIR can be granted by the Division Bench grant of Ancillary relief is proper.
Held – .
The question whether a case is made out is a question, which has to be determined in the main petition but in the fact-situation of the case, we do not feel that it would be inappropriate for us to consider the petitioners' prayer for bail pending disposal of the writ petition. It brooks no doubt that application for bail under section 439 Cr.P.C. is to be decided by a Single Judge but as stated supra, since relief has been sought for quashing the F.I.R. the ancillary relief of bail can be decided by a Division Bench. (para 8)

By the Court

1. In this writ petition under Article 226 of the Const., the petitioners who are incriminated in case crime No.286 of 2000 under section 292,293 and 505 I.P.C. Police Station Baramandal District Almorah have pressed into service the following reliefs.

" (i) Issue an order or direction in the nature of certiorari quashing the F.I.R. dated 20.04.2000 contained in Annexure no.1 to the writ petition.

(ii) Issue a writ order or direction to initiate the C.B.I. Investigation into the

whole matter including the activity of Sahyog upto the stage of lodging of F.I.R. and thereafter.

(iii) Issue a writ, order or direction in the nature of certiorari quashing the show cause notice dated 22.04.2000 (Annexure no.10) issued by District Magistrate, Almora.

(iv) Issue an appropriate writ order or direction to the respondent to enlarge the petitioners nos. 1 to 6 on bail and to set them at liberty.

(v) pass such other and further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(vi) award costs.

(vii) Issue a writ, order or direction commanding the State of U.P. to pay a compensation which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, which according to the petitioners appear to be not less than Rs.20,0000/- for each petitioner.

(viii) To punish the Police officer/officers found guilty of the contempt of the Hon'ble Supreme Court."

2. Petitioners 1 to 5 are associated with **'Sahyog'**, a Non-Government Organisation registered under the Indian Societies Registration Act 1860 and the Foreign contribution Regulation Act, 1976. It is stated that the said Organisation was constituted to work for the larger cause of the Society in as much as it imparts education on health and education with special focus on women's health'. The aforesaid Society betook a research to explore the possibility of spread of HIV/AIDS in Uttrakhand Region. With the avowed objects of creating awareness of AIDS, the society published a study report captioned as 'Aids Aur Hum'-(Uttrakhand Me Aids Ki Sambhawana).

3. On 20th April 2000, at about 3 p.m. it is alleged, the local goons barged into the Sahyog Head Office and gate-crashed into the Secretary's i.e. Ms Joshdhara Dasgupta's room uttered profanities and broke the window panes etc. At about 4.30 p.m., the local police materialised at the secne, seized all copies of the report accusing the organisation of printing filthy and pornographic materials and rounded up Ms Jashodhara Das Gupta and the others. A first information report was lodged the very day. Thereupon, they were made that they had been taken into custody because atmosphere in the area was surcharged with frayed tempers and hostility. This incident enjoyed great media hype in different National Newspapers playing an incediary role to work up the sentiments of the people which led to frayed tempers. As a sequel, some more proceedings in the nature of preventive action under section 107/116 and 151 Cr.P.C. and also under section 133 Cr.P.C. were initiated. The further case of the petitioners is that after they were arrested, no legal assistance was provided so as to enable them to move the Court for bail. It is specifically stated that Ms Tulika Srivastava, a practising Advocate and Human Rights Activities, was not permitted to meet the petitioners and/or to move bail application on their behalf owing to hostile resistance of the members of the local bar police officials besides the local people of Almora. It is further alleged that entire atmosphere was vitiated due to misreading of bits of information publishes by Sahyog in their report-'Aids – Aur-Hum'. In the Supplementary affidavit, credence has been placed on the clipping of news item published in Amar Ujala dated 5.5.2000 to prop up the case that the petitioners were handcuffed and brought bare-footed from the District Jail Almora

to the Court of Chief Judl. Magistrate on 4.5.2000 parading them through main market. An application for bail moved on behalf of the petitioners before the Chief Judicial Magistrate, Almora. A contention was raised on behalf of the prosecution that the report has impaired and diminished the status of the people residing in the hill area in the eye of the whole world culminating in agitation and movement in the Uttrakhand Region. The Chief Judl. Magistrate rejected the bail application without assigning any reason whatsoever. Since the petitioners have moved this Court in the present petition seeking quashing of the F.I.R. and other ancillary relief's as excerpted above, including prayer for bail in the present proceedings instead of moving the Sessions Judge, stemming from the ground that the atmosphere there is antithetical to fair hearing.

4. We have heard Sri Ravi Kiran Jain, Senior Counsel appearing for the petitioners, Sri Amar Jeet Singh, learned A.G.A. representing the State authorities, Sri L.P.Naithani Senior Advocate, assisted by Sri Sudhanshu Dhuliya, counsel appearing for the respondents at a prolix length particularly on the question of bail, for in our opinion, the matter commends full dressed hearing after exchange of affidavits between the parties.

5. Sri Ravi Kiran Jain for the petitioners has contended that except the offence under section 505 I.P.C., other offences are bailable and so far as section 505 I.P.C. is concerned, no offence whatsoever is made out and to cap it all, the maximum punishment provided therein is 3 years R.I. and by now the petitioners have already suffered incarceration for more than a month and therefore, in the facts and circumstances of the case, the petitioners' prayer for bail should be allowed. Sri Jain further canvassed that some fundamentalists made the situation worse inasmuch as they entered the courtroom of the Chief Judl. Magistrate Almora and provoked furore as a result of which the learned Magistrate rejected the bail application fearing a fundamentalist backlash.

6. Learned A.G.A. Amarjeet Singh and Sri Naithani appearing for the respondents, opposed the prayer for bail and strenuously contended that though there is no dearth of power under Art. 226 of the Const to grant interim bail pending writ petition, the petitioners should have availed of the forum under section 439 Cr.P.C.; further that no prima facie case for quashing the F.I.R. is made out and besides the situation in the area being surcharged with emotions, they should not be admitted to bail. Sri Naithani has specifically urged that the report published by Sahyog in its report 'Aids-Aur-Hum' has offered the sentiments of the people of entire Uttrakhand and this should be reckoned with the petitioners' prayer for interim bail.

7. Since the issue is emotively sensitive, we have heard the counsel for the parties at prolix length and scrupulously scanned the materials available on the record. Before delving into the contentions raised at the bar, we feel called to dwell on duties of a Judges while dealing with law matters. We call in aid certain Latin apophthegms/maxims. Concientia Legalise Lege Fundature which signifies that legal conscience must be founded upon law; Concientia Legi, Nunquam contravenit which gives out that legal conscince never contravenes law;

Concscientious Legis ex legi Pendet which connotes that conscience of a Judge in law court depends upon law. We have brought to bear the aforesaid legal maxim because a contention has been raised by Sri Naithani that the courts should bear in mind the public sentiments while determining the petitioners' prayer for bail. Since the petitioners have prayed for quashing of the F.I.R. and other ancillary relief's which may entail full fledged hearing, we propose to take up the matter in the month of July and hence we forbear from pronouncing upon the merit as to whether prima facie case under the relevant provision of the I.P.C. is made out as it would amount to prejudging the issue.

8. So far as ball is concerned, both the High Court and the Sessions Judge have concurrent powers under section 439 Cr.P.C. to deal with the prayer for bail and in the present fact scenario, the question that crops up is whether the petitioner will be allowed by the people of this region to have their bail application considered in a judicious atmosphere, if they are relegated to the Sessions Court for bail? Even according to Sri Naithani the tempers are running high in the entire Uttar Khand region due to publication of the controversial report in 'Aids-Aur-Hum' published by Sahyog and in the situation when the entire region is said to be in fermentation, we feel inclined to entertain the prayer for interim nail. The question whether a case is made out is a question, which has to be determined in the main petition but in the fact-situation of the case, we do not bail pending disposal of the writ petition. It brooks no doubt that application for bail under section 439 Cr.P.C. is to be decided by a Single Judge but as stated supra, since relief has been sought for quashing the F.I.R., the ancillary relief of bail can decided by a Division Bench.

It is worthwhile to quip hare that during the pendency of the writ petition, the District Magistrate Almora, passed an order of preventive detention in exercise of power under sub-section 3 (3) read with sub sec.(2) of section 3 of National Security Act, 1980. The said order even according to Sri Naithani was totally uncalled for and has been rightly recalled.

Accordingly, it is ordered that the petitioners 1 to 6 be enlarged on bail on condition that they with two sureties will enter into bond in a sum of Rs.20,000/- each. The bonds and sureties will be subject to the satisfaction of the C.J.M. Almora.

ORIGIANAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.5.2000

BEFORE
THE HON'BLE SUDHIR NARAIN, J.

Civil Misc. Writ Petition No. 3980 of 1984

Smt. Sarvati Devi ...Petitioner
Versus
The 8th Additional District Judge, Agra & others ...Respondents

Counsel for the Petitioner:
Shri Prakash Gupta

Counsel for the respondents:
Shri B.D.Mandhyan
S.C.

U.P. Urban Buildings (Regulation of letting, rent and eviction, Rule-r.9(3)-allotment order passed by the Rent Control and Eviction Officer without following the procedure prescribed under the Rule with the collussion of allotee-

earstwhile land lord has no right to file such application after selling the house in question-even the deemed vacancy can presumed only after expiry of atleast one week and not in the same day – direction issued to hand over the vacant possession to the present land lord within 24 hours.
Held-
the order indicates to deliver the possession on or before 16.4.1983 in violation of Rule 14 which prescribes that minimum one week's time shall be given to the occupier to vacate the accommodation. Respondent No.3 took possession on the same date. It is clear from the facts and circumstances of the case, that the Rent Control and Eviction Officer colluded with the allottee, the respondent no.3, and he, in violation of the statutory law, passed the allotment order and also got evicted the petitioner who was a lawful occupant as owner of the house in question. (Para 12)

By the Court

1. This writ petition is directed against the order of allotment dated 16.4.1983 and the order of respondent No.1 dated 20.1.1984 dismissing the revision against the said order.

2. The petitioner is owner and landlady of the house in question situate in Mohalla Satta, Tehsil Etmadpur, district Agra. She purchased it from its previous owner Satya Prakash Kulshrestha, respondent No.4 by a registered sale-deed dated 21.3.1983 and was put in possession as owner of the said house.

3. Her version is that on 16.4.1983 there was a marriage of the son of one Bhagwan Das in the town of Etmadpur. She had gone with her entire family to attend the marriage at the house of Bhagwan Das after locking the house in question. She with her family stayed at the house of Bhagwan Das in that night on 16.4.1983. She along with her family returned to the house in the next morning, she found that the locks have been broken open and Uday Dhiraj, respondent No.3 was in its occupation. The petitioner requested him to vacate the said house but he mishandled females and males and informed her that the house in question has been allotted in his favour on 16.4.1983 and he was in its possessions in pursuance to the said order.

4. The petitioner made enquiry from the office of the Rent Control and Eviction Officer and the record revealed that respondent No.3 had filed an application for allotment on which Rent Control Inspector submitted a report on 2.4.1983 mentioning that Satya Prakash Kulshrestha, respondent No.4 was owner of the property in house. He was in service outside Agra. The house was locked for 10 years and it appeared to him that it was vacant. The Rent Control and Eviction Officer on 6.4.1983, directed that the file be placed on 15.4.1983. On 15.4.1983 he passed an order that as no objection was filed, the application be put up on 16.4.1983. On 16.4.1983 he passed allotment order in favour of respondent No.3 and on the same day he issued form B and Form C prescribed in the Rules for delivery of possession and on the same day respondent No.3 took the possession of the disputed house.

5. The petitioner filed an application for review of the said order under section 16(5) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short the Act) before the Rent Control and Eviction Officer. She also filed a revision against that order. Respondent No.1 dismissed the revision on 20.1.1984.

These orders have been challenged in the present writ petition.

I have heard Sri Prakash Gupta, learned counsel for the petitioner and Sri B.D. Mandhayan, learned counsel for the contesting respondent No.3.

6. The core question is whether there was any vacancy of the disputed accommodation either in law or on facts. There is no dispute that Satya Prakash Kulshrestha, respondent No.4 was owner of the property. He had sold the property to the petitioner by a registered sale-deed dated 21.3.1983, a copy of the sale-deed has been annexed as Annexure '1' to the petition. In the sale-deed it is mentioned that the possession has been delivered to the petitioner in pursuance to the execution of the sale deed. The petitioner having obtained possession, the previous owner could not be held to be in possession of the property. The Rent Control and Eviction Officer had passed the order on the basis of the report submitted by the Rent Control Inspector that the house in question had remained locked for 10years and it should be treated as vacant and Satya Prakash Kulshrestha was its owner but he was in service out side Agra. The Rent Control Inspector did not give any notice either to the petitioner or its previous owner respondent No.4 before inspecting the disputed house. It was necessary for him to issue notice under Rule 8(2) of the Rules framed under the Act before making local inspection of the building in question. There is nothing to show that the rent control Inspector gave any notice to the owner of the property or made any effort to give such notice. He is alleged to have elicited the fact from two persons, namely, Babu Ram and Rais. Satya Prakash Kulshrestha had already sold the property to the petitioner by registered sale-deed dated 21.3.1983 and there was no occasion that Satya Prakash Kulshrestha, its previous owner would have been in its occupation.

7. Respondent No.1 took the view that Satya Prakash Kulshrestha, the previous owner had given an application to the Rent Control and Eviction Officer for allotment on 4.1.1983 stating that the house was vacant and as he himself had given the application that the house may be allotted to any person, the accommodation should be treated as vacant and the previous landlord was not required any notice to be given. The contention of the petitioner is that such an application on the record was a forged document. It was the duty of the Rent Control and Eviction Officer to examine that the application dated 4.3.1983 addressed to Tehsildar was a genuine application by the landlord. It was incumbent upon to him notice to such owner if he wanted to rely upon such document. A Photostat copy of the application has been annexed as Annexure '3' to the writ petition. The application is of dated 4.3.1983 alleged to have by post and on 6.4.1983 an order was passed on it 'keep on file'. If any one sends application by post, it cannot be assumed that such named person has given application unless the person who is alleged to have sent the papers is summoned and enquiry is made from him. Secondly on 21.3.1983 he had already sold the property to the petitioner and the Rent Control Inspector had submitted a report 2.4.1983. The Rent Control Inspector did not given any notice to the previous owner, who is alleged to have given the application to the Rent Control and Eviction Officer intimating that the house in question was vacant and

may be allotted to any one. Thirdly, the allotment order has not been passed on the basis that the previous landlord himself had filed an application intimating about the vacancy and the allotment order may be passed on the basis of such application.

8. Respondent No.1 has further taken the view that the petitioner was a tenant of the premises in question before the property was purchased and it shall be taken that the tenant had vacated the house after its purchase by such tenant. This view is manifestly illegal. If a tenant, who was already in possession of the property as a tenant and subsequently purchased the property, status is changed from tenant to owner. He does not vacate the house but continues to occupy the house. Section 15 of the Act, contemplates physical vacancy and Section 12 of the Act contemplates deemed vacancy though in fact there is no physical vacancy. The tenant, who occupies the house, had not vacated nor it was a case covered by Section 12 of the Act. There cannot be any vacancy if a tenant purchases the property under his tenancy.

9. Respondent No.1 further observed that the petitioner should have filed objection before the Rent Control and Eviction Officer in this respect. The petitioner was never given notice by him. The entire proceedings were behind her back and surreptitiously the possession was also taken by the respondent no3 on the date the allotment order itself was passed.

10. The landlord is also entitled to a notice by the Rent Control and Eviction Officer before the application for allotment are to be considered. Rule 9(3) of the Rules provides that the Rent Control and Eviction Officer shall issue a notice to the landlord intimating him the date fixed for considering the allotment applications. The Rent Control and Eviction Officer did not issue any such notice. Respondent No.1 has substituted his own reason that as the landlord himself had intimated the vacancy and expressed his intention that it may be allotted to any one, it was not necessary to issue a notice to him. The Rent Control and Eviction Officer had not taken this view. He was, in fact, in haste to pass the allotment order. Respondent No.1 has substituted his own reason without considering the fact that the Rent Control and Eviction Officer had not passed the allotment order on the basis of the said application. He passed the allotment order on the basis of the report of the Inspector that the house was found locked and, therefore, it should be deemed as vacant. Secondly, there cannot be any presumption that any application received in the office purporting to have been given by a person, is of the same person. The Rent Control and Eviction Officer has to make an enquiry as to whether the application has been given by the same person. There was no reason that the previous owner would have intimated the vacancy with a further prayer that it may be allotted to any one when he was selling the property to the petitioner.

11. There is another aspect that the allotment order was passed on 16.4.1983 directing the respondent No.4 to let it out to respondent No.3. Respondent No.4 was not owner on the said date. He had already sold the property to the petitioner by a registered sale-deed on 21.3.1983 and, therefore, no direction could have been given to respondent No.4 who was then neither owner nor landlord of the property in question.

12. Respondent No.3, in a high handed manner, illegally dispossessed the petitioner on 16.4.1983, the date on which the allotment order was passed. The Rent Control and Eviction Officer had issued two different forms on the same date. Form B was issued directing the previous owner, respondent No.4 to let to let the premises in question to respondent. No.3. He further issued form C under Rule 14 of the Rule directing respondent No.4 to deliver possession to the allottee-respondent No.3 Rule 14 provides that an order in form 'C' shall be served upon the person who is in unauthorized occupation of the building directing him to vacate the same and deliver vacant possession thereof to the person named in the order within such period as may be specified in the order, which shall in no case be less than a week from the date of service of the order upon him. The order in form C was issued in the name of respondent No.4 who was then not the owner of the property. Secondly, the order indicates to deliver the possession on or before 16.4.1983 in violation of Rule 14 which prescribes minimum one week's time shall be given to the occupier to vacate the accommodation. Respondent No.3 took possession on the same date. It is clear from the facts and circumstances of the case, that the Rent Control and Eviction Officer colluded with the allottee, the respondent No.3, and he, in violation of the statutory law, passed the allotment order and also got evicted the petitioner who was a lawful occupant as owner of the house in question. Respondent No.1 also while disposing the revision clearly misdirected himself and dismissed the revision filed by the petitioner.

13. In view of the above, the writ petition is allowed and the orders dated 16.4.1983 and 20.1.1984 are hereby quashed. Respondent Nos. 2 and 3 are directed to restore the possession to the petitioner within 24 hours from the date of production of a certified copy of this order.

14. The Senior Superintendent of Police, Agra shall take steps for restoration of the petition to the petitioner within 24 hours from the date, the order is produced before him.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 2.5.2000

BEFORE
THE HON'BLE D.K. SETH, J.

Civil Misc. Writ Petition No. 16510 of 2000

Committee of Management Chaudhary C.R.P.G. College through its Secretary Ved Pal Singh and another ... Petitioner
Versus
District Inspector of Schools, Muzaffarnagar and others...Respondents

Counsel for the Petitioner:
Shri Ramesh Upadhyaya

Counsel for the Respondents:
S.C

Meerut University Statute, Statute 23 amended by Ist Amendment Statute, 1977 and 4th Amendemtn Statute 1979 Disciplinary action by the Disciplinary Authority (Management) against non-teaching staff of affiliated college – No. approval of D.I.O.S. obtained as required by amended statute 23.02- Order remains ineffective-against order of approval by D.I.O.S. under statute 23.03 appeal lies before Regional Deputy Director of Education under statute 23.04- appeal held not maintainable without hearing .

Held-

It is clear and unambiguous that exercise of power under Statute 23.02 by the Management is subject to approval of the District Inspector of Schools under statute 23.03, without which the order of the Managemnt remains in effective. In as much as, the order passed by the Management would not take effect until it is approved by the District Inspector of Schools in writing. Thus as, soon, the order of the Management is approved by the District Insspector of Schools which has since been made appellable by virtue of Statute 23.04 before the Regional Deputy Director of Education as the forum or appellate authority for such appeal .

Thus on the face of the proviso of the Meerut University Statute as discussed above, the appeal appears to be maintainable before the Regional deputy Director of Education. (Para 7 and 8)

By the Court.

1. By an order dated 28th March 2000, the petitioner's appeal was returned on the ground that the Regional Deputy Director of Education had no jurisdiction to hear the appeal. Mr. Ramesh Upadhyaya, learned counsel for the petitioner contends that this order was passed without hearing the petitioner. Relying on Statute 23.04 of the Meerjut University Statute he contends that against the order passed under clause (2) of Statute 23 an appeal lies to the Regional Deputy Director of Education after the order passed under Statute 23.02 is approved under Statute 23.03 of the Meerut University Statute.

2. I have heard Mr. Upadhyaya and the learned Standing Counsel at length

3. The Meerut University Statute in Chapter XXII while prescribing conditions of the service of non-teaching staff of the affiliated colleges in Statute 23.02 prescribes that the appointing authority referred to in Statute 23.01 shall have the power to disciplinary action and award punishment against the class of employee of which he is the appointing authority. By reason of Statute 23.03 every decision of the appointing authority with regard to the disciplinary proceeding as contemplated in Statute 23.02 shall be reported to the District Inspector of Schools before it is communicated to the employee. Such decision shall take effect only when it is approved by the District Inspector of Schools in writing with certain exceptions provided in the two proviso appended thereto with which we are not concerned now. Against the order the approval by the District Inspector of Schools in terms of Statute 23.03 the appeal is provided in statute 23.04 prescribing that such appeal shall lie to the regional deputy director of education.

4. The whole chapter XXII was added by the Meerut University (1st Amendment statute, 1977 which came into force on 11th May, 1977 namely, the date of publication in the Gazette,. Subsequently certain changes were incorporated in the statute with effect from 12th June, 1979 by Meerut University (4th Amendment) statute, 1979 The learned counsel for the petitioner contends that there has not been any further change in the statute till date. The statute as amended in 1979 by the 4th Amendment is still surviving.

5. Originally, the appeal was provided in statute 23.03 providing that against an order passed by the

Management, the appeal would lie to the Regional Deputy Director of Education. If such order is passed by the Principal then the appeal would lie with District Inspector of Schools. This provision has now been substituted by statute 23.04. whereas a new provision has been incorporated in statute 23.03 with the requirement of approval of the District Inspector of Schools. Thus the order the Management was subjected to the approval of the District Inspector of Schools in writing. After the order of the Management is approved by the District Inspector of Schools, it becomes an order of District Inspector of Schools which has since been made appealable by virtue of statute 23.04 prescribing the forum as the Regional Deputy Director of Education.

6. In the impugned order, the appeal was held to be not maintainable before the Regional Deputy of Education on the ground that there has been some changes in the statute. Under the changed statute, the regional deputy director of education has been divested of its jurisdiction to hear the appeal. But in the said order, nothing has been mentioned about the changes that had been made in the statute. On the other hand Mr. Upadhyay contends that there has been no change in the statute after 1979 and 4th Amendment of statute 23.03 and 23.04 is still surviving the statute.

7. From the above discussion, it is clear and unambiguous that exercise of power under statute 23.02 by the Management is subject to approval of the district inspector of schools under statute 23.03, without which the order the management remains ineffective. In as much as, the order passed by the Management would not take effect until it is approved by the district inspector of schools in writing. Thus as soon, the order of the management is approved by the district inspector of schools, it becomes an order the district inspector of schools which has since been made appellable by virtue of statute 23.04 before the regional deputy director of education as the forum or appellate authority for such appeal.

8. Thus on the face of the proviso of the Meerut University statute as discussed above, the appeal appears to be maintainable before the Regional Deputy Director of Education.

9. If there has been any change in the statute, the same has not been brought to my notice. At the same time, the order does not disclose as to under which provision the jurisdiction of the Regional Deputy Director of Education as appellate authority has ceased. In that view of the matter, this question requires fresh determination about the maintainability of the appeal before the Regional Deputy Director of Education provided there has been no change in the situation by reason of any amendment in the statute as discussed above after the 4th Amendment.

10. It is contended by Mr. Upadhyay that the impugned order was passed without hearing the appellant. In such circumstances, in case the Regional Deputy Director of Education is still of the opinion that the appeal is not maintainable for him in that event, he may decide the question as to the maintainability of the appeal after giving opportunity too the appellant and then pass appropriate order.

11. In such circumstances the impugned order dated 28th March 2000 is hereby quashed.

12. Let the appeal be treated as to have been filed before the said authority who may pass appropriate order with regard to the jurisdiction and maintainability of the appeal before him after giving opportunity to the petitioner as directed above within one month from the date of production of a certified copy of this order. The appeal shall be treated to have been restored until the decision in terms of this order is arrived at by the Appellate Authority concerned.

With these observations, this writ petition is disposed of. However, there will be no order as to costs.

13. Let a certified copy of this order be given to the learned counsel for the parties on payment of usual charges.

Petition disposed of.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.5.2000

BEFORE
THE HON'BLE SUDHIR NARAIN J.

Civil Misc. Writ Petition No. 23843 of 1996

Chandra Pal Singh ...Petitioner.
Versus
Prescribed Authority/Ist Additional Civil Judge and others ...Respondents.

Counsel for the Petitioner:
Shri S.U. Khan

Counsel for the Respondents:
S.C.

U.P. Urban Buildings (Regulation of Letting rent and Eviction Act) 1972 – Section 23 – Execution of Decree based on compromise – disputed question of facts raised either by the tenant or by a third person can be decided by the Prescribed Authority after affording opportunity of hearing and to lead evidence if so needed.

Held –

An order passed by the Prescribed Authority under Section 21 of the Act can be enforced by him under section 23 of the Act. If any person has any objection he can raise objection before the Prescribed Authority and he is to consider it judicially after giving opportunity of hearing and to lead evidence in support of the objection. The objection may be by the tenant against whom the order was passed by the Prescribed Authority or by any third person whose right may be affected if the order is enforced against such person. (para 5)
Case law discussed.
1993(2) ARC – 548
1977(UP) RCC – 39
AIR 1996 SC – 1985

By the Court

1. This writ petition is directed against the order dated 22.7.1996 passed by the Prescribed authority, respondent No. 1 allowing the application filed by the landlord-respondent No. 2 for delivery of possession of the disputed shop.

2. Priya Dutt, respondent No. 2 the landlord of the shop in dispute filed an application under section 21 (1) (a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short the Act) for release of the disputed shop against the petitioner tenant with the allegations that the required the disputed shop bona fide. The petitioner entered into compromise on 16.2.1985 wherein he admitted that the landlord-respondent no.2 bona fide needs the disputed shop for the purpose of business but he stated that he

may be permitted to continue to carry on business for life as he was aged about 62 years and was a patient of diabetes and blood pressure. There was a further clause in the compromise that in case the tenant sub-lets it or accepts any person as a partner, it will be open to the landlord to take immediate possession of the shop in question. The Prescribed Authority decided the application in terms of the compromise on 26.7.1985.

3. Respondent no. 2 filed application under section 23 of the Act on 29.9.1993 with the allegations that the petitioner had sub let the shop in question to respondent no. 3. And he was entitled to obtain possession from him in terms of the compromise as accepted by the Court vide its order dated 16.2.1985. The petitioner-submitted objection taking the plea that the application was not maintainable. He further denied that he had sub let the shop in question to respondent no. 3. The application has been allowed by the Prescribed Authority by the impugned order dated 22.7.1996 directing the petitioner to hand over the possession on the finding that the petitioner had passed on possession of the disputed shop to respondent no. 3 exclusively.

Sri S.U. Khan, learned counsel for the petitioner has made three submissions challenging the said order passed by the Prescribed Authority.

4. His first submission is that the order passed by the Prescribed Authority releasing the disputed accommodation in favour of respondent no. 2 on the basis of the compromise between the parties was invalid and void under law. It is contended that the application under section 21(1)(a) of the Act can be allowed only when the Prescribed Authority finds that the need of the landlord is bona fide and genuine. He has placed reliance upon the decision K.N. Bhargave Vs. District Judge. Kanpur and others, 1984 (2) ARC 588 wherein it was held that it is the duty of the Prescribed Authority to consider the question of bona fide need before deciding the application on the basis of compromise. If the tenant himself admits in the compromise that the need of the landlord of the premises in question bona fide, it shall be taken that the Prescribed authority has accepted the version of the parties. A fact which is admitted by the parties is not to be proved. Section 58 of the Evidence Act provides that no fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings. The petitioner had admitted that the need of the landlord-respondent no. 2 was bona fide and genuine. In these circumstances, it shall be taken that the Prescribed Authority applied its mind in respect to the pleadings of the parties and allowed the application for release on the ground that need of the landlord was bona fide and genuine. The petitioner only wanted time to vacate the premises and that time was granted to him. In Rama Shankar Tewari Vs. Ram Raghubir Jaiswal and others 1993(2) ARC 548 it has been held that if by a compromise a tenant was permitted about two years time for searching accommodation and thereafter vacating the premises, he cannot turn-round after taking advantage of the compromise and challenge the order of compromise when it was sought to be executed by the landlord on tenant's

regusal to vacate. The petitioner having taken advantage under the compromise and continued to occupy the accommodation accepted for about 10 years, now cannot urge that the order passed on the compromise was invalid .

5. It is next contended that the objection raised in the execution proceedings involves disputed questions of fact and the same cannot be decided in an application filed under section 23 of the Act. An order passed by the Prescribed Authoritym under section 21 of the Act can be enforced by him under section 23 of the Act. If any person has any objection he can raise objection before the Prescribed Authority and he is to consider it judicially after giving opportunity of hearing and to lead evidence in support of the objection. The objection may be by the tenant against whom the order was passed by the Prescribed authority or by any third person whose right may be affected if the order is enforced against such person. In Chhakki Lal Vs III Additional District Judge, Mainpuri and others 1977 (UP) RCC 39 it was held that the Prescribed Authority has jurisdiction to make enquiry in respect to the objections raised before him before he enforces the order passed by him under section 23 of the Act.

6. Learned counsel for the petitioner has placed reliance upon the decision Bibekananda Bhowal (Dead) by L.Rs. Vs. Satindra Mohan Deb (Dead) by L. Rs. AIR 1996 SC 1985 wherein it was held that where the compromise decree between the parties provided that the defendants would be liable to be evicted from suit land after expiry of 10 years "by appropriate action in court of law" the plaintiffs can eject the defendants from the suit land in their possession by taking appropriate legal action by filing a suit for ejectment or in any other manner as may be permissible in law but not by applying for execution of the compromise decree. In this case the compromise itself provided that the eviction can be done by appropriate action in court of law. Secondly this was a compromise decree in a suit and if there is a dispute on the question of facts, the compromise decree can be decreed only by filing a fresh suit as non compliance of the terms of decree gives a fresh cause of action and the facts stated by a party is to be decided in the suit. This principle will not be applicable when the parties enforce an order passed by the Prescribed Authority under section 21 of the Act by the filing an application before the said authority under section 23 of the Act. The Prescribed Authority will have jurisdiction to consider the objections raised by the parties before it.

7. The last submission is that the respondent no. 2 failed to prove that the disputed shop was sub-let by the petitioner to respondent no.3. The Prescribed Authority, on consideration of the evidence on record, came to the conclusion that the petitioner has given exclusive possession of the disputed shop to respondent no. 3 Respondent is carrying on business in the name of "Kaveri Emporium". It is registered with the authority concerned. It was not proved by the petitioner that it was being run by him. On the other hand, the documentary evidence established that it was run by respondent no. 3. Respondent no. 3 had deposited requisite fee for registration in the name of M/s Kaveri Emporium before the Labour Commissioner. Secondly, in Suit No. 16 of 1992 (Anand Pal Vs. Chandra Pal Singh and another) it was

held that Jugul Kishore was sub tenant of the petitioner. Thirdly the respondent no. 3 filed suit against respondent no. 2 for injunction alleging that he was tenant of the shop in question. The contention of the petitioner was that the said suit was a collusive one but on examining the entire fact, it has been found that the petitioner has transferred possession of the shop in question to respondent no. 3. It is a finding based on assessment of evident. I do not find that there is any legal infirmity in this finding.

In view of the above, there is no merit in the writ petition. It is, accordingly, dismissed.

However, in the facts and circumstances of the case, the parties shall bear their own costs.

Petition dismissed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22 MAY, 2000

BEFORE
THE HON'BLE M. KATJU, J.
THE HON'BLE D.R. CHAUDHARY, J.

Civil Misc. Writ Petition No. 6036 of 2000

Virendra Singh ...Petitioner
Versus
The State of U.P. through the Chief Secretary and others ...Respondents

Counsel for Petitioner:
Shri A.K. Srivastava
Shri T. P. Singh

Counsel for the Respondents:
S.C.

Constitution of India, Article- 226- correction of date of birth- Petitioner working as Executive Engineer- obtained collusive decree from civil court by altering his date of birth mentioned in High School certificate- while rule 3 of U.P. Recruitment to services determination of date of birth Rules 1974 strictly prohibits from enteraining any representation in service record- Court can not approve such type of malafide and collusive practice.

Held- Para 10

It is settled law that writ jurisdiction is discretionary jurisdiction and we are not inclined to exercise our discretion under Article 226 of the Constitution in this case. It seems evident that a collusive decree was obtained by the petitioner to reduce his age by as much as six years. This Court cannot approve of such type of collusive and malafide practice.

Case law discussed
AIR 1997 SC 2055
AIR 1984 Alld. 216
AIR 1995 SC 1440
1969(1) Sec-59

By the Court

1. This writ petition has been filed praying for a writ of certiorari to quash the impugned order dated 5.1.2000 Annexure 1 to the writ petition and for a mandamus directing the respondents to treat the petitioner's date of birth as 6.7.1948 instead of 6.7.1942 for the purpose of superannuation and hence not to retire the petitioner from 31.7.2000.

Heard learned counsel for the parties.

2. The petitioner is working as an Executive Engineer in the Irrigation Department in the State of U.P. When he entered in service his date of birth as recorded in the High School Certificate was 6.7.1942. However, he filed a civil suit being O.S. No. 63 of 1994 Virendra

Singh vs. State of U.P. before the Civil Judge, Roorki, district Harwar and that suit was decreed and it was directed that his date of birth should be treated as 6.7.1948. True copy of the judgement of the learned Civil Judge is Annexure 2 to the writ petition. Against that judgment the respondent filed an appeal being Appeal No. 1 of 1995 which was dismissed by the learned Additional District Judge vide Annexure 3 to the writ petition. Against that judgment a second appeal was filed in this Court alongwith an application under Section 5 of the Limitation Act and it is stated in paragraph 9 of the writ petition that judgment has been reserved on 31.8.1999 in that case. However, no stay order was passed by this Court against the judgment of the learned Additional District Judge.

3. It is alleged in paragraph 11 of the writ petition that despite the judgment of the learned Additional District Judge the respondent has proposed to retire the petitioner on 31.7.2000 treating the date of birth of the petitioner as 6.7.1948 instead of 6.7.1942.

4. Sri T.P. Singh learned counsel for the petitioner submitted that in view of the judgment of the learned Additional District Judge, the petitioner's date of birth should be treated as 6.7.1948. We do not agree with this submission. It may be mentioned that the U.P. RECRUITMENT TO SERVICES DETERMINATION OF DATE OF BIRTH RULES, 1974 have been framed by the State Government under Article 309 of the Constitution. Rule 3 of the aforesaid Rules states as follows:

The date of birth of a government servant as recorded in the certificate of his having passed the High School or equivalent examination, or where a government servant has not passed any such examination as aforesaid, the date of birth or the age recorded in his service book at the time of his entry into government service, shall be deemed to be his correct date of birth or age, as the case may be for all purposes in relation to his service including eligibility for promotion superannuation, premature retirement or retirement benefits and no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever."

Rule 4 states as follows:

"These rule shall have effect, notwithstanding anything contrary contained in the relevant service rules or orders."

5. A perusal of the above rules shows that the legal position is settled, namely that if a person has passed High School examination when he entered in service then the date of birth recorded in the High School certificate shall be treated as correct, and when he had not passed High School then the date of birth recorded in his service book at the time of his entry in government service shall be deemed to be his correct date of birth and no application or representation shall be entertained for correction of such date of birth in any circumstances. This rule has overriding effect over any other existing rule.

6. In Union of India vs. Rama Swamy and others A.I.R. 1997 S.C. 2055 which was a case coming from Andhra Pradesh it was held by the Supreme Court that the date of birth can be changed only if there was a bona fide mistake. It was also held that the principle of estoppel will

apply and hence when the government servant had indicated a particular date of birth in his application form or any other document at the time of employment the court should not change that date of birth. The ratio of the above decision shall apply with greater rigduty in U.P. because here the 1974 Rules specifically provide that no application or representation shall be entertained regarding change of date of birth in any circumstances whatsoever vide rule 3 quoted above.

7. The use of the words in any circumstances whatsoever' indicate that the date of birth recorded in the High School certificate (or in the service book at the time of entry into government service, if the person had not passed High School) is not merely a presumption but conclusive proof of the date of birth. In other words, no evidence can be led in rebuttal of such date. The reason for this rule was obviously because a lot of fraud was being played by many government servants who did not want to retire and hence they were getting their date of birth changed by various fraudulent means e.g. manufacturing a false date of birth in the 'kutumb register, or a false doctor's certificate or a collusive decree. Hence it was decided to put an end to these fraudulent techniques by adopting a rule of concusive proof.

8. It is very unfortunate that a practice has arisen in U.P. and also in many other States to change the date of birth which was recorded in the service book or in the High School certificate by some fraudulent method so that a person can continue in service even after he has crossed the age of retirement. This has become a very wide spread practice in the State of U.P. and even collusive suit are being unfortunately filed and decreed in this connection. The present appears to be a case where the petitioner has sought to reduce his age by six years by obtaining a collusive decree. This is in gross violation of the 1974 rules.

9. Learned counsel for the petitioner submitted that the decree of the civil court has become res judicata. He submitted that the correct date of birth is 1948 as recorded in the 'kutumb' register and not that recorded in the High School certificate. We cannot agree. The 1974 Rules make the date of birth recorded in the High School certificate conclusive of the matter as is evident from a perusal of the said rules. The kutumb register or other material is wholly irrelevant for this purpose. The judgment of the court below appears to be collusive. It is settled law that a collusive decree can be ignored by the High Court in view of Section 44 of the Evidence Act, vide Ibne Hasan Vs. Smt. Hasini Bibi A.I.R. 1984 All. 216, Asharfi Lal vs. Smt. Kali, A.I.R. 1995 SC 1440, etc. In Smt. Kaushilya Devi v. K.L. Bansal, 1969 (1) SCC 59 the Supreme Court relied on its own decision in Bahadur Singh's case in which Bachawat, J. observed:

> "On the plain wording of Section 13(1) the Court was forbidden to pass the decree" and held the decree to be a nullity."

10. It is settled law that writ jurisdiction is discretionary jurisdiction and we are not inclined to exercise our discretion under Article 226 of the Constitution in this case. It seems evident that a collusive decree was obtained by the petitioner to reduce his age by as much as six years. This Court cannot approve of

such type of collusive and malafide practice.

The petition is dismissed.

Petition Dismissed.

APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD MAY 25, 2000

BEFORE
THE HON'BLE G.P. MATHUR, J.
THE HON'BLE A.K. YOG, J.

Special Appeal No. 40 of 2000

District Inspector of Schools, Kanpur Nagar & another ...Appellants/ Respondents

Versus

Diwakar Lal & others ...Opp. parties/ Writ Petitioners

Counsel for the Appellants:
S.C.

Counsel for the Respondent:
Sri P.N. Saksena

Constitution of India, Article 226- Short term vacancy of L.T. grade teacher prior to 13.1.94- Post not advertised to local news paper- can not be held fatel.

Held- Para 9

Second removal of difficulties order power was conferred on management of a recognised college under law with the object that educational institutions do not suffer irreparably by resorting to the procedure prescribed for regular selection, teaching in the college will be completely paralyzed.

Case law discussed.
AIR 1978 SC 851
1994 (I) UPLBE – 1551
1996 (7) SC 577
1984 UPLBEC –84

By the Court

1. This Special Appeal by the District Inspector of Schools, Kanpur Nagar and another has been filed against the judgment and order dated April 16, 1999 passed by learned single Judge in Writ Petition No. 9767 of 1994 (Diwakar Lal and 3others versus District Inspector of Schools, Kanpur Nagar and others).

2. P.N.N. Inter College, Kanpur (called 'College') is, admittedly, a recognised Intermediate College governed by the provisions of the U.P. Intermediate Education Act, 1921 Payment of Salaries Act, 1971 and U.P. Secondary Education Services Commission Act, 1981. Four posts of Lecturers in the College fell vacant. Requisition was sent to the Commission. Still the posts remained vacant for more than two months as the Commission failed to select and recommend candidates. Hence four Assistant Teachers in L.T. grade were promoted on the posts of Lecturer in the College- purely on ad hoc basis as follows:-

1. S.K. Srivastava, L.T. Grade Teacher- given ad hoc promotion- on post of Lecturer Chemistry.
2. S.K. Tiwari, L.T. Grade Teacher- given ad hoc promotion- on post of Lecturer Economics.
3. Ram Surat Misra, L.T. Grade Teacher promoted ad hoc on – post of Lecturer Sanskrit.
4. Mohan Lal Yadav, L.T. Grade Teacher, promoted ad hoc- on the post of Lectuer Geography.

3. Consequently, 'short term vacancies' occurred on four posts of Assistant Teachers in L.T. Grade under

Removal of Difficulties Second 1981 Order. The Management sought to fill up the resultant short term vacancies by making short term ad hoc appointments of the Petitioners- Diwakar Lal, Deepak Kumar Shukla, Surendra Mohan Srivastava and Lal Bahadur and appointment letters (Annexures-1,2,3 and 4 to the Writ Petition) were issued. Papers were sent to the District Inspector of Schools and they were allowed to join the posts. In paragraph 10 of the Writ Petition, it is stated that these Petitioners actually joined the College and started discharging their duties to the full satisfaction of the Management. The District Inspector of Schools refused to approve these appointments and withheld financial sanction. The Petitioners made representations until the District Inspector of Schools officially passed order dated 09th February 1994 (Annexure-10 to the Writ Petition) informing the Manager of the College that resultant vacancies could not be filled up under Removal of Difficulties Order, 1981.

4. Feeling aggrieved Petitioners filed above mentioned Writ Petition No. 9767 of 1994 and an interim order dated 09th March 1994 was passed, relevant extract is reproduced below:-

"……..meanwhile respondents are directed to pay salary to the petitioner with effect from 2.7.93 in accordance with law or show cause ….."
Parties exchanged Counter and Rejoinder Affidavits.

This Writ Petition has been finally disposed by the Learned Single Judge vide judgement and order dated 16th April 1999, which has given rise to the present Second Appeal..

5. The learned single Judge observed that Respondents, apart from the ground mentioned in the impugned order of the District Inspector of Schools dated 09th February1994 (Annexure-10 to the Writ Petition), made an attempt to support their defence by offering an additional ground in the Counter Affidavit to the effect that the posts were not properly advertised.

The learned single Judge held that by adding a ground in the Counter affidavit, which did not find mention in the impugned order passed by the District Inspector of Schools, the Respondents cannot be permitted to support the impugned order by carving out a new case or raise a new ground for the first time before the Appellate/higher authority or Court to make the order valid. In support, reference was made to the case of Mohinder Singh Gill versus Chief Election Commissioner-AIR1978 SC 851.

6. The learned single Judge in the alternative considered that assuming the post was not advertised, the appointment in question shall not be rendered invalid relying upon the judgement in the case of Ashika Prasad Shukla versus District Inspector of Schools, Allahabad- 1998 (3) UPLBEC 1722 (DB)- Pr. 14- wherein this Court observed that if an appointment of Assistant Teacher for short term vacancy is made prior to the judgement dated 13th January 1994 in the case of K.N. Dwivedi versus District Inspector of Schools, 1994 (1) UPLBEC 461 and that of Radha Raizada without advertisement in two newspapers of wide circulation, the appointment will not be invalid. This observation was made by the Division Bench in the case of Ashika Prasad Shukla (supra) after the decision in the case of Radha Raizada versus Committee of

Management-1994 (3) UPLBEC 1551 (FB). The learned single Judge, in the present case, found that the Petitioners in the instant case were appointed as ad hoc teachers in terms of short term vacancies on 01st July 1993, i.e. prior to the Full Bench decision of Radha Raizada (supra) and also the judgment in the case of K.N. Diwvedi (supra) and held that the appointments in question on ad hoc vacancies could not be faulted if advertisement was not made in two newspapers since the then existing requirement of law to notify the vacancy on the notice board was duly fulfilled.

7. The judgment of the learned single Judge cannot be faulted on any ground and the learned counsel for the Appellant has failed to show otherwise.

8. The view taken by the learned single Judge on the question of absence of advertisement is otherwise not bad. Appointments in question also not rendered void ab initio as held in AIR 1998 SC 331 (Pr.7,19 and 20). Arun Tiwari versus Zila Mansan Shikshak Sangh, Supreme Court held that it is now well settled that statutory provision requiring advertisement in procedural in nature. Rules may, in order to meet at emergent situation and when appointment is not substantive but by way of stop gap temporary arrangement, dispense with public notice/advertisement in newspaper. Also See 1996 (7) SCC 577 (Pr.66 and 67), 1982 UPLBEC 695 Pr 7 (DB) Education Cases, 1983 Education Cases 51 (DB) and 1984 UPLBEC 484. If the condition of giving advertisement, akin to the requirement of advertisement in the case of regular selection/substantive appointment is to be followed then it will frustrate the whole purpose to ect. an unexpected or emergent situation to avoid larger harm. Even otherwise this Court takes notice of the fact that candidates from outside places or other remote corner of the States of the Country are not likely to come forward for short term/temporary or stop gap appointments and normally the local candidates or the candidate in the adjoining areas alone will be willing to take up such appointments.

9. Therefore, apart from endorsing the view taken by learned single Judge, rejecting additional ground taken in the Counter Affidavit by the Respondents in the Writ Petition for countenancing the claim of the Petitioners does not help the case of the Respondents (present appellants). With respect to the validity of the ground disclosed by the District Inspector of Schools in the impugned order, the learned single Judge observed that the objection raised by the District Inspector of Schools was not sustainable in law. It is held that under Removal of Difficulties Orders, 1981 and second Removal of Difficulties Order power was conferred on management of a recognised college under law with the object that educational institutions do not suffer irreparably by resorting to the procedure prescribed for regular selection., teaching in the college will be completely paralyzed. In the result, the learned single Judge, allowed the Writ Petition, issued a writ in the nature of certiorari quashing the order dated 19th February 1994 passed by District Inspector of Schools (Annexure-10 to the Writ Petition) and also issued a writ of mandamus directing that in case the Petitioners have been working in the institution as ad hoc teachers and no regular appointment were made against these posts, the Petitioners will be allowed to work and shall be paid salary till

regularly selected candidate sent by the Commission joins the post in question.

10. In Appeal the learned Standing Counsel has submitted that in view of the decision in the case of Smt. Pramila Misra-1997 (2) UPLBEC 1329 (Pr 4) the appointment of ad hoc teachers made against resultant short term vacancies (Phalit Riktiyan) will come to an an end automatically when such a resultant short term vacancy became substantive.

11. We find that learned Standing Counsel has not laid foundation for his argument sought to be developed in Special Appeal as the relevant details regarding vacancies and the specific period of working of the respective incumbents (who were promoted as Lecturers) has not come on record with precision and clarity. In absence of relevant details, the submission of the Appellants could not be properly appreciated. A Supplementary Affidavit has been filed on behalf of the Respondents (Petitioners in the Writ Petition) to overcome the shortcoming. Perusal of the Supplementary Affidavit and Supplementary Counter Affidavit go to show that the facts mentioned therein will require this Court to adjudicate on questions of fact. This Court is neither competent nor willing to enter into disputed questions of fact or adjudicate the same at this stage, particularly on the basis of the facts brought before this Court for the first time through Supplementary Affidavit at appellate stage.

12. On merit, it may be noted that the order passed by the District Inspector of Schools dated 10th February1994 (Annexure-10 to the writ petition) clearly mentions that appointments were made against the resultant short-term vacancies (Phalit Riktiyan). However, on the other hand, Appellants have filed a Photostat copy of this very order as Annexure to the affidavit sworn by Dr.K.L. Verma, District Inspector of Schools, Kanpur Nagar (PP 16). In the said Annexure word "Phalit" has been changed by making addition so as to read it as "Phaltoo", i.e. surplus. Learned Standing Counsel being confronted with the same failed to explain the interpolation. We have perused the record as well as original copy of the order received by the Manger (produced before us by Sri Ashok Khare, Advocate) and it is found that the correct word used is 'Phalit' in the original order dated 10th February 1994 passed by District Inspector of Schools. In view of this discrepancy, we are of the opinion that the documents filed by the authority cannot be safely relied upon.

Consequently, this Court refuses to go into factual dispute.

13. The learned counsel for the Appellant states that Deepak Kumar Shukla has already left the College and joined another college elsewhere as such he is not interested in the relief's in present proceedings. In view of the judgement, reported in 1992 (2) UPLBEC 1420, we are of the opinion that the incumbents working on adhoc basis against short term vacancies should not be automatically thrown out of service- in view of ;the decision in; the case of Pramila Misra (supra) when 'short term' vacancy became 'substantive vacancy'. In such a situation an ad hoc appointee should normally be allowed to continue (if there is no complaint about his working), till a regular ad hoc appointment is made against substantive vacancy as contemplated under Removal of Difficulties Orders.

14. In the instant case we find that Petitioners- Respondents were appointed in the year 1993. There is no complaint about their working as teachers in the college. Nothing has been brought on record to otherwise disqualify and/or discontinue them in service. Management and authorities appear to have no complaint about their performance as teacher and seems satisfied with their functioning, From the Supplementary Affidavit, it transpires that some of the vacancies became substantively vacant in August 1993 itself. There is nothing on record to show that District Inspector of Schools took any step to make regular ad hoc appointment when 'short term vacancy' became 'substantive vacancy' in accordance with Removal of Difficulties Order even though several years have passed.

15. Taking a pragmatic view as well as interest of the educational institution, we have no doubt that the direction given by the learned single Judge requires no interference.

The Appeal lacks merit and it is accordingly, dismissed.

No costs.

Special Appeal Dismissed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: THE ALLAHABAD MAY 22,2000.
BEFORE
THE HON'BLE M.KATJU, J.
THE HON'BLE D.R.CHAUDHARY, J.

Civil Misc. Writ Petition No.21940 of 2000.

Narendra Nath Sinha ...Petitioner
Versus
The State of U.P. ...Respondent

Counsel for the Petitioner:
Sri T.P. Singh
Sri Ashotosh Srivastava

Counsel for the Respondent:
S.C.

Constitution of India, Article226, - Downgrading the Character Roll Entries- No opportunity of hearing given- entails civil consequences- order quashed.
Held- Para 5
A large number of grounds have been taken in this writ petition but in our opinion this writ petition deserves to be allowed on a short point that before downgrading the character roll entries no reasons have been recorded and no show cause notice was given to the petitioner. In our opinion the downgrading of the character roll entries has civil consequences. Hence opportunity of hearing should have been given to the petitioner and reasons should have been recorded for downgrading the entries but that was not done, and hence the rules of natural justice as well as the G.O. dated 28.3.84 and 5.3.93 have been violated. As held by the Supreme Court in State of Orissa versus Binapani Dei AIR 1967 SC 1269 any order, which ;has civil consequences must be passed after giving opportunity of hearing. The impugned orders certainly have civil consequences as they affect the petitioner's chances of promotion and future prospects. In S.N. Mukherjee Vs. Union of India AIR 1990 SC 1984, the

Supreme Court held that reasons should be recorded. The Supreme Court in that decision observed that recording the reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and assures a degree of fairness in the process of decision making. The decision of the Supreme Court in U.P. Jal Nigam's case (Supra) also supports this view.
In Breen v. AEU, (1971)1 ALL ER 1148 Lord Denning observed that giving of reasons is one of the fundamentals of good administration.
Case law discussed.
1996 (2) SC-363, AAIR 1967 SC-1269, AIR 1990 SC-1984, 1AIIER-1148, (1964)2 QB 467

By the Court

1. This writ petition has been filed for quashing the impugned order dated 2.5.2000 Annexure 6 to the writ petition and for quashing the downgraded entries of the petitioner pertaining to the years 1984-85 to 1989-1990, 1993-94 and 1994-95 in the petitioner's A.C.R. and to consider the case of the petitioner for promotion to the post of Chief Engineer Level-against the vacancy of; the year 1994-95 ignoring the downgrading entries given by the Receiving Officer and Accepting Officer.

We have heard learned counsel for the parties and perused the record.

2. The petitioner is presently working as Superintending Engineer in P.W.D., U.P. The U.P. Public Service Commission selected him as Assistant Engineer and thereafter he was appointed. He was promoted as Executive Engineer from 12./7.79 and further as Superintending Engineer initially on adhoc basis and later on regular basis on which post he is working since 30.5.81. He is seeking promotion as Chief Engineer Level-II(Electrical and Mechanical) under the U.P. Public Works Department Services of Engineers (Higher) Rules, 1990, Rule 5 (iii) of the said Rule provides that the post of Chief Engineer Level-II shall be filled in by promotion from substantively appointed Superintending Engineers. True copy of the Rules isAnnexure1 to the petition. A vacancy on that post arose on account of retirement of one Sri D.M. Gupta in 1994. Thereafter when he retired one A.N. Tiwari who was junior to the petitioner was promoted on 4.12.98 and when A.N. Tiwari retired one Harish Kumar who was also junior to the petitioner was promoted on 28.1.1999 as Chief Engineer Level-II. The petitioner filed a claim petition before the U.P. Public Services Tribunal and the Tribunal by judgement dated 30.8,.99 allowed the petition vide Annexure 2 to the petition. The Tribunal quashed the appointment of Sri A.N. Tewari and Sri Harish Kumar and directed that fresh appointment shall be made after selection by the Selection Committee and the petitioner shall also be considered. In para 10 of the petition it is alleged that the petitioner is not being considered as the entries given by the Reporting Officer have been downgraded in the character roll by the Reviewing Authority and Accepting Authority without giving opportunity of hearing and without showing any reason. Though the Reporting Officer had given entries 'very good' and 'excellent' but the Reviewing Authority had downgraded such entries. In para 11 of the petition it is alleged that promotion from Superintending Engineer to Chief Engineer is determined on the basis of merit taking into consideration entries for the last 10 years. In para 13 of the petition it is stated that the State Government by government order dated

28.3.84 laid down the procedure by which A.C.R. was to be recorded. Clause 4 (2) of the government order dated 28.3.84 provides that in case of difference of opinion between the Reporting Officer and the Reviewing Officer, the Reviewing Officer shall record reasons for the same and similarly the Accepting Officer must also record reasons. True copy of the government order dated 28.3.84 is Annexure 3. The G.O. dated 5./3.93, Annexure 4 to the petition, also required recording of reasons for down grading entries. The petitioner has relied on the decision of the Supreme Court in U.P. Jal Nigam versus Prabhat Chandra Jain and others reported in 1996 (2) SC 363 which laid down that reasons must be recorded for down grading the entries. True copy of the judgement of the Supreme Court is Annexure 5 to the petition.

3. In Para 19 of the writ petition it is alleged that the petitioner was not given any notice before downgrading the entries. Aggrieved the petitioner filed a representation dated 28.10.99 to the State Govt. vide Annexure 6 to the petition and he made a supplementary representation dated 5.2.2000, which is Annexure 7 to the petition. Thereafter, he filed writ petition no. 1799 of 1999 in this Court which was disposed of by judgement dated 3.11.99 vide Annexure 8. By that judgement this Court directed that the petitioner's representation shall be decided by the Principal Secretary before the meeting of the Departmental Promotion Committee by a speaking order. The representation of the petitioner was disposed of by means of the impugned order dated 2.5.2000 vide Annexure 9. Aggrieved the petitioner filed this writ petition in this Court.

4. In this case on 9.5.2000 learned Standing Counsel gave an undertaking that he will seek instructions or file counter affidavit but no counter affidavit has been filed although the record has been produced before us.

5. A large number of grounds have been taken in this writ petition but in our opinion this writ petition deserves to be allowed on a short point that before downgrading the character roll entries no reasons have been recorded and no show cause notice was given to the petitioner. In our opinion the downgrading of the character roll entries has civil consequences. Hence opportunity of hearing should have been given to the petitioner and reasons should have been recorded for downgrading the entries but that was not done, and hence the rules of natural justice as well as the G.O. dated 28.3.84 and 5.3.93 have been violated. As held by the Supreme Court in State of Orissa versus Binapani Dei AIR 1967 SC 1269 any order, which has civil consequences must be passed after giving opportunity of hearing. The impugned orders certainly7 have civil consequences as they affect the petitioner's chances of promotion and future prospects. In S.N. Mukherjee vs. Union of India AIR 1990 SC 1984, the Supreme Court held that reasons should be recorded. The Supreme Court in that decision observed that recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and assures a degree of fairness in the process of decision making. The decision of the Supreme Court in U.P. Jal Nigam's case (supra) also supports this view.

In Breen v. AEU, (1971) 1 All ER 1148 Lord Denning observed that giving of reasons is one of the fundamental of good administration.'

6. The rationale for the requirement to give reasons for administrative decisions are several (1) Reasons help to control the exercise of discretion, for it requires the authority to explain the relevant factors which he has taken into consideration, and thus it reduces the possibility of whim and caprice, (2) Reasons satisfy the desire of the affected person to know why the decision was reached (particularly when it is against him). As held in In re Poyser and Mills Arbitration (1964) 2 QB 467' The decision might be perfectly right, but the person against whom it was made was left with the real grievance that he was not told why the decision had been made.' (3) Rational criticism of a decision can be made only when its reasons are known.

7. As De Smith, Woolf and Jowell remark in 'Judicial Review of Administrative Action'. "The individual cannot be left to receive an unreasoned decision, as if the distant oracle has spoken."

8. The requirement to give reasons even for administrative decisions is being emphasized by Courts all over the world in view of the forward march of democracy, which implies transparency and open-mindedness, e.g. in Ireland vide State of McGeough v.Lough Country Council ILTR 107, and in South Africa vide Nkondo v. Minister of law and Order (1986) 2 SA 756, and Jeffrey v. President, South African Medical and Dental Council, (1987). S 887.

9. As observed by Mr. Soli Sorabji, Attorney General of India, in his article 'The Duty to give reasons in Administrative Law'. ' The apprehension that giving reasons will place an unbearable burden on the administration is both exaggerated and misplaced. What is needed is not a detailed and elaborate judgement, but a brief and pithy statement of reasons for the decision.' (vide 'Democracy, Human rights and the Rulejof Law' Essays in Honour of Nani Palkhivala).

10. In the circumstances the writ petition is allowed and the impugned order dated2/5/2000 as well as the impugned downgrading entries are quashed. The respondents are directed to consider the petitioner for promotion to the post of Chief Engineer level-II ignoring the impugned order dated 2.5.2000 and the impugned downgrading entries given by the Reviewing Officer and Accepting Officer. No order as to costs.

Petition Allowed.

ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 9.5.2000

BEFORE
THE HON'BLE B.K. RATHI, J.

Criminal Misc. Application No. 722 of 2000

Smt. Anisa wife of Shaukat and others ...Applicants
Versus
State of U.P. and another...Respondents

Counsel for the Applicants:
Shri Sunil Kumar

Counsel for the Respondents:
Shri R.P. Singh and
A.G.A.

Code of Criminal Procedure- S.156 (3)- application seeking direction to direct the Police to Register and investigate the case- only the Magistrate has power under section 190 Cr.P.C.- Session Judge by exercising its Revisional Power can direct the Magistrate to issue such direction but can not itself direct the police authorities to Register and investigate the case.

Held-

The result therefore, is that the order of the learned Sessions Judge allowing the application under Section 156 (3) Cr.P.C. and directing the police to register the case on the basis of the application and to investigate the same is without jurisdiction and is liable to be quashed. The only course upon to the learned Sessions Judge was to issue necessary directions to the Magistrate for passing an order under Section 156 (3) Cr. P.C. (para 5)

By the Court

1. The opposite party no. 2 moved an application under Section 156(3) Cr.P.C. before the Additional Chief Judicial Magistrate, Khurja to direct the police of police station Pahene to register the case for offences under Section 323, 498-A I.P.C. and ¾ D.P. Act against the applicants. That application was rejected by Additional Chief Judicial Magistrate, Khurja by order dated 28.08.1999. The opposite party no.2 preferred Criminal Revision No. 458 of 1999 against that order, which have been allowed by the Sessions Judge, Bulandshahr by order dated 17.12.1999. Against that order the present revision has been preferred by the accused persons nominated in the F.I.R.

2. I have heard Sri Sunil Kumar, learned counsel for the applicants, Sri R.P. Singh for the opposite party no.2 and the learned A.G.A.

3. It has been contended by the learned counsel for the applicants that the order of the Sessions Judge, Bulandshahr is without jurisdiction. Section 156 Cr.P.C. is in Chapter XII which relates to information to the police and their powers to investigate. Section 156 Cr.P.C. deals with police officer's powers to investigate cognizable cases. Clause (3) of Section 156 Cr.P.C. reads as follows:

"Any Magistrate empowered under Section 190 may order such an investigation as mentioned above."

4. Section 190 Cr.P.C. provide that taking of cognizance of offences by the Magistrate. In such matters where cognizance can be taken by the Magistrate under Section 190 Cr.P.C. he had power to pass an order under Section 156(3) Cr.P.C. Sessions Judge who has no power to take cognizance of offence under Section 190 Cr.P.C. has also no power to pass an order under clause (3) of Section 156(3) Cr.P.C.

5. The result therefore, is that the order of the learned Sessions Judge allowing the application under Section 156(3) Cr.P.C. and directing the police to register the case on the basis of the application and to investigate the same is without jurisdiction and is liable to be quashed. The proper course upon to the learned Session Judge was to issue necessary directions to the Magistrate for passing an order under Section 156(3) Cr.P.C.

6. In view of the above discussion, the application is allowed and the impugned order of the Session Judge,

Bulandshahr dated 17.12.1999 is quashed. However, the matter is sent back to learned Sessions Judge, Bulandshahr, who may pass proper order in the Criminal Revision No.458 of 1999 in the light of the discussions made in the body of the judgment.

Application Allowed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED:ALLAHABD 15.5.2000

BEFORE
THE HON'BLE R.R.K. TRIVEDI, J.
THE HON'BLE U.S. TRIPATHI, J.

Civil Misc. Habeas Corpus Petition No. 42309 of 1999

Dilip Kumar ...Petitioner
Versus
Union of India through the Secretary ...Respondents

Counsel for the Petitioner:
Shri Nasiruzzaman
Shri Jophan Pd. Yadav
Shri J.P. Misra

Counsel for the Respondents:
A.G.A.
Shri A.N. Pandey
S.C.

National Security Act 1980 S-3 (2) read with Drugs and Cosmetics Act 1940 – Section 3 (2)- the authorities during raid and search in the shop recorded 38 different kinds of medicine spurions in nature – whether can be justified grounds for detention ? No order quashed.

Held (Para 6)
From a close reading of the Explanation to subsection (1) of Section 3 of prevention of black-marketing and maintenance of supplies of essential commodities act, 1980, it is clear that the nature of the drugs whether spurious, misbranded , or adulterated is not the basis for passing the order but the requirement is that the trade and commerce or indulgence in the production , supply and distribution of the alleged drugs should be with a view of making gain in the any manager which may directly or indirectly defeat or tend to defeat the provisions of that act or other law, which, in the present case, may Drugs and cosmetics Act, 1940 and the Essential Commodities act, 1955. Allegation against petitioner is that he stored the spurious medicines for making gain which, if permitted, would defeat provisions of aforesaid acts. In view of the aforesaid legal position, in our opinion, the detaining authority was not competent to pass an order to detention against petitioner in view of the clear prohibition contained in the Explanation to section 3 (2) of the Act.

By the Court

1. This writ petition has been filed challenging order dated 4th August, 1999 by District Magistrate, Agra under section 3(2) of the National Security Act, 1980 here-in-after referred to 'Act' under which petitioner has been detained. Counter and rejoinder affidavits have been exchanged between the parties.

2. We have heard Sri Nasiruzzaman alongwith Sri Jokhan Prasad Yadav, learned counsel for petitioner, Sri Mahendra Pratap, learned A.G.A. for respondents no.2 to 4 and Sri K.N. Pandey for respondent no.1.

3. Learned counsel for petitioner has challenged the legality of the order on a short ground that in view of the Explanation appended to sub-section (2) of section 3 of the act the impugned order of detention could not be legally passed by detaining authority. Learned counsel has

submitted that as in the present case the recovery of drugs allegedly spurious is involved, the action can only be taken under the prevention of black marketing and maintenance of supplies of essential commodities act, 1980.

4. Sri Mahendra Pratap learned A.G.A., on the other hand has submitted that misbranded, adulterated or spurious, drugs cannot be treated as drugs as defined in the Drugs and Cosmetics Act, 1940 and section 2(a)(iv-a) of the essential commodities act, 1955, prohibition contained in explanation has no application in the present case.

5. We have carefully considered the submissions of the learned counsel for the parties. In the present case, allegations against the petitioner are that on 6th July, 1999, authorities conducted a raid and search in the shop of the petitioner and recovered 38 different kinds of medicines, which, according to the Drug Inspector, were spurious and not genuine and could be harmful to the patients. Sample of 19 medicines was taken and sent to public Analyst for his report as to whether the drugs are genuine or not. It is not disputed that the report of the Public Analyst is still awaited. Explanation appended to sub-section (2) of section 3 of the act reads as under:

> "Explanation for the purposes of this sub-section, "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in the Explanation to sub-section (1) of section 3 of the Prevention of Black marketing and Maintenance of Supplies of essential commodities act, 1980 (7 of 1980), and accordingly, no order of detention shall be made under This Act."

Explanation appended to sub-section (1) of section 3 of the prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act, 1980 reads as under :

> "Explanation for the purposes of this sub-section the expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" means –

(a) committing or instigating any person to commit any offence punishable under the essential commodities Act, 1955 (10 of 1955), or under any other law for the time being in force relating to the control of the production, supply or distribution of, or trade and commerce in, any commodity essential to the community; or

(b) dealing in any commodity-

(i) which is an essential commodity as defined in the essential commodities Act,1955 (10 of 1955), or

(ii) with respect to which provisions have been made in any such other law as is referred to in clause (a) ;

with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions or that act or other law aforesaid."

6. It is not disputed that the drugs as defined, has been included as one of the essential commodities under section 2(a) (vi-a) of the essential Commodities Act, 1955. As drugs are essential commodities and their production, supply and distribution and trade and commerce is controlled by the Drugs and Cosmetics Act, 1940 and the Rules framed thereunder, there remains to no doubt that the explanation appended to sub-section (2) of section 3 of the Act is attracted to the present case and the order of detention could not be legally passed. From a close reading of the explanation to sub-section (1) of section 3 of Prevention of Black-marketing and Maintenance f supplies of essential Commodities Act, 1980, it is clear that the nature of the drugs whether spurious misbranded, or adulterated is not the basis for passing the order but the requirement is that the trade and commerce or indulgence in the production, supply and distribution of the alleged drugs should with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of that Act or other law, which, in the present case, may drugs and Cosmetics Act, 1940 and the Essential Commodities Act, 1955. Allegation against petitioner is that he stored the spurious medicines for making gain which, if permitted, would defeat provisions of aforesaid Acts. In view of the aforesaid legal position, in our opinion, the detaining authority was not competent to pass an order of detention against petitioner is view of the clear prohibition contained in the explanation to Section 3 (2) of the Act.

7. For the reasons stated above, the writ petition is allowed. The impugned order dated 4.8.1999 (Annexure-2) is hereby quashed. The respondents are directed to set petitioner at liberty forthwith if his detention is not required in any other case.

Petition Allowed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED : ALLAHABAD 10.5.2000

BEFORE
THE HON'BLE M. KATJU, J.
THE HON'BLE D.R. CHAUDHARY, J.

Civil Misc. Writ Petition No. 22095 of 2000

Anoop Baranwal Thekma ....Petitioner
Versus
U.P. Public Service Commission
...Respondents

Counsel for the (In Person):
Shri Anoop Baranwal

Counsel for the Respondent:
S.C.

Constitution of India, Article, 226
P.C.S.J. Examination – advertisement challenged on the grounds so that many candidates doing L.L.M., have been permitted to appear in the said examination without possessing three years practice as lawyers – three years from Registration date from U.P. Bar Council- he shall be deemed as practicing lawyer possessing three years experience.

By the Court

The petitioner is challenging the advertisement for P.C.S.(J) examination of the U.P.. The main ground which he has alleged is that several persons who are doing LL.M. are also being permitted to appear in the aforesaid examination although they have not attended Courts for three years as lawyer. In our opinion, once a person is enrolled as a lawyer by the U.P.

Bar council, is should be deemed that he is practising from that date and three years' period will be counted from that date. It can not expected that for each person enquiry should be conducted to ascertain whether a particular person is doing practice and attending the court regularly as an Advocate. The only practicable view can be that the person should be enrolled by the Bar Council as an Advocate and as such it will be deemed that he has attended the Court as practising lawyer from that date.

With the aforesaid observations, the writ petition is dismissed.

Petition Dismissed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.5.2000

BEFORE
THE HON'BLE SHITLA PD. SRIVASTAVA, J.

Civil Misc. Writ Petition No. 12291 of 1991

Ram Pujan son of Sudhu
& others ...Petitioners
Versus
Dy. Director of Consolidation, Ghazipur & others ...Respondents

Counsel for Petitioners:
Shri Shree Prakash Singh
Shri Sankatha Rai

Counsel for Respondent:
S.C.
Shri S.K.Verma

U.P. Consolidation of Holdings Rule- 109-A-readwith section 48 of the Consolidation of Holdings Act 1953- Power of Revisional Court- order passed by S.O.C. after denotification u/s 52 challenged before D.D.C.- Dismissal of Revision as not maintainable- held-illegal –order quashed.
Held – Para 12
There is nothing on record to prove that the Settlement Officer Consolidation was not appointed by the State Government, therefore, he was sub-ordinate to the Deputy Director of Consolidation and in view of Section 48 of the aforesaid Act, as amended, the Deputy Director of Consolidation has jurisdiction to entertain the revision and decided the same.
Case law discussed :-
1972 RD –228,
AIR 1957 S.C.-18,
1989 RD-281
AIR 1973 Alld. 41

By the Court

1. This petition, under Article 226 of the Constitution of India, has been filed, by the petitioners for quashing the order dated 8.1.1991 and 1.3.1988, passed by the Deputy Director of Consolidation and Settlement Officer Consolidation respectively. Further prayer has been made for issue of writ in the nature of mandamus commanding the respondent no.1 (Deputy Director of Consolidation) to reconsider the case on merit and finally decide it.

2. The brief facts as stated in the writ petition are that the petitioners were recorded in the basic year Khatauni and the respondents were given joint chak over plot nos. 7, 22 and 108. Respondents moved an application under Rule 109-A (I) of the U.P. Consolidation of Holdings Rules for partition before the consolidation court and the same was decided in their favour. On the basis of the orders darted 25.8.1976 and 12.1.1979 passed by the Deputy Director of Consolidation and Consolidation officer respectively the respondents 3 to 6 move an application for partition under Rule 109 of U.P.

Consolidation of Holdings Act. The application was allowed on 1.3.1979 in the absence of the petitioners. The petitioners on 27.4.1979 filed a restoration application recalling the order dated 1.3.1979, which was allowed on 27.6.1979. Against the order dated 27.6.1979 nos. 3 to 6 moved an application dated 20.7.1979 on the ground that ex parte order has been recalled by the court concerned without giving opportunity of hearing to the respondents. On 11.10.1979 the Consolidation Officer allowed the application 27.4.1979 came for hearing again. It was rejected and dismissed in default of the petitioners by the Consolidation Officer on 7.10.1982. Therefore, the order dated 27.4.1979 was upheld which was in favour of the respondents. In paragraph 5 of the writ petition it is stated that in the aforesaid case 6.10.1982 was the date fixe in the Court but on account of holiday the court was closed. On 7.10.1982 the petitioners could not appear and the case was dismissed in default. The petitioners again filed time barred restoration application along with affidavit to condone the delay. The Consolidation Officer on 22.8.1985 recalled the ex parte order dated 1.3.1979 and 7.10.1982 on payment of Rs.50/- as cost. The respondent nos. 3 to 6 filed appeal before the respondent no.2, Settlement Officer Consolidation, who on 1.3.1988 quashed the order dated 22.8.1985 and restored the application dated 27.4.1979. A revision was filed by the petitioners against the order dated 1.3.1988 passed by the Settlement Officer Consolidation on the ground that the Settlement Officer Consolidation has misinterpreted Rule 109-A of the aforesaid Rules. The Deputy Director of Consolidation decided the question of maintainability of the revision and held that the order passed by the appellate court under Rule 109-A of the aforesaid Rule was final and dismissed the revision as not maintainable. The petitioners have challenged this order by means of the present writ petition in this Court.

3. Heard learned counsel for the parties, perused the record. From a perusal of the order passed by the Deputy Director of Consolidation it is apparent that he dismissed the revision as not maintainable, firstly, on the ground that the order passed in appeal against the decision in proceedings under Rule 109-A is final and, secondly, the village has been notified under Section 52 of the aforesaid Act, therefore, no revision is maintainable under Section 48 of the U.P. Consolidation of Holdings Act

4. Before discussing the argument of the learned counsel for the parties it is necessary to see the relevant Rule 109-A of the aforesaid Rules, which is quoted herein below :-

> "109. Orders passed in cases covered by sub-section (2) of Section 52 shall be given effect by the consolidation authorities authorised in this behalf under sub-section (2) of Section 42. In case there be no such authority the Assistant Collector, in-charge of the sub-division, the Tehsildar, the Naib Tehsildar the Supervisor, Kanungo, ad the Lekhpal of the area to which the case relates shall, respectively, perform the functions and discharge the duties of the Settlement Officer Consolidation, Consolidation Officer, the Assistant Consolidation Officer, the Consolidation and the Consolidation Lekhpal respectively

for the purpose of giving effect to the orders aforesaid.

(2). If for the purpose of giving effect to any order referred to in sub-rule (1) it becomes necessary to reallocate affected chaks, necessary orders may be passed to the Consolidation Officer, or the Tehsildar, as the case may be after affording proper opportunity of hearing to the parties concerned.

(3) Any person aggrieved by the order of the Consolidation Officer, or the Tehsildar, as the case may be, within 15 days of the order passed under sub-rule (2), file an appeal before the Settlement Officer Consolidation, or the Assistant Collector in-charge of the sub-division, as the came may be, who shall decide the appeal after affording reasonable opportunity of being heard to the parties concerned, which shall be final.

(4) In case delivery of possession becomes necessary as a result of orders passed under sub-rule (2) or sub-rule (3), as the case may be, the provisions of Rules 55 and 56 shall, mutatis mutandis, be followed."

5. Sub-rule (3) of this Rule is relevant which says that the order passed by the Settlement Officer Consolidation in appeal shall be final. Section 48 of the U.P. Consolidation of Holdings Act is also relevant which is quoted below :-

"48. Revision and reference:- (1) Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order (other than an interlocutory order) passed by such authority in the case of proceedings, may, after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he think fit.

(2) Powers under sub-section (1) may be exercised by the Director of Consolidation also on a reference under sub-section (3).

(3) Any authority subordinate to the Director of Consolidation may, after allowing the parties concerned an opportunity of being heard, refer the record of any case or proceedings to the Director of Consolidation for action under sub-section (1).

"[Explanation-[(1)]- For the purpose of this section, Settlement Officer Consolidation, Consolidation Officers, Assistant Consolidation officer, Consolidation and Consolation Lekhpals shall be subordinate to the Director of Consolidation.]"

"[Explanation-(2)- For the purpose of this Section the expression interlocutory order in relation to a case or proceedings, means such order deciding any matter arising in such case for proceeding or collateral thereto as does not have the effect to finally disposing of such case or proceeding.]"

6. Sri Sankatha Rai, learned counsel for the petitioners urged that though it is mentioned that the order of the Settlement Officer Consolidation shall become final but it does not mean that no revision lies. He interpreted Section 48 of the aforesaid Act quoted above and submitted that revision is maintainable against the order passed by the Settlement Officer Consolidation. He placed before the Court Sections 11 and 21 of the aforesaid U.P. Consolidation of Holdings Act which is quoted below:-

> "**11. Appeals-(1)** Any party to the proceedings under Section 9-A, aggrieved by an order of the Assistant Consolidation Officer or the Consolidation Officer under that section, may, within 21 days of the date of the order, file an appeal before the Settlement Officer Consolidation, who shall after affording opportunity of being heard to the parties concerned, give his decision thereon which, except as otherwise provided by or under this Act, shall be final and not be questioned in any court of law."

Section 21 (2) also says that the appeal filed before the Settlement Officer Consolidation shall be decided by him and his decision shall, except as otherwise provided by or under this Act shall be final.

7. Sri Sankatha Rai, learned counsel for the petitioners has submitted that in both sections finality has been attached to the judgement of the Settlement Officer Consolidation while exercising power of the appellate court and here also the Settlement Officer Consolidation decides the appeal arising out of the proceeding under section 109 of the Act as appellate court, therefore, when revision was maintainable against the order passed by the Settlement Officer Consolidation while deciding the appeal under section 11 or 21 the revision is also maintainable against the order passed arising out of section 109-A proceeding. He has submitted that "final" means final for the purpose of appeal but never the less revision is maintainable. For that purpose he has placed reliance in a case reported in AIR 1938, Allahabad, page 47- Ashraf versus L. Saith Mal. It was a case under the provisions of U.P. Encumbered Estates Act in which the Court interpreted the word "final". Head Note (a) is relevant which says that word "final" in Section 45 (5) of U.P Encumbered Estates Act only means "not subject to appeal". It does not mean final in the sense that power of revision of the High Court under Section 115 of Civil Procedure Code is also shut out. He has further placed reliance in a case reported in 1972. R.D., page 228- Smt. Krishna Devi versus Board of Revenue, U.P. at Allahabad and others for the purpose that revision lies.

8. Sri S.K. Verma, learned counsel for the respondent has vehemently urged that when there is specific provisions in the special Act then the provisions of other Act cannot be taken into consideration. His submission is that under Section 11 and 21 of the U.P. Consolidation of Holdings Act it has been stated that the order shall become final unless otherwise specially provided under the Act but the same word has not been used in Rule 109-A of the aforesaid Rules. Therefore, revision was not maintainable. He has placed reliance upon a case reported in AIR 1957, Supreme Court, page 18- Ram Narain versus State of U.P. and others. Relevant

paragraph 10 of the aforesaid judgement is quoted herein below:-

> "(10). In the 1948 Allahabad decision, the main question was whether the provisions of S. 2, Professions Tax Limited Act (20 of 1941) affected the powers conferred upon the District board by S. 108, U.P. District Boards Act, to levy a tax on 'circumstances and property'. A subsidiary question was also raised, whether S. 131, U.P. District Boards Act, barred out that the name given to a tax did not matter, what had to be considered was the pith and substance of it. It was held that in pith and substance the tax was one, which attracted the provisions of S. 2, Professions Tax Limitation Act (20 of 1941).
>
> A tax on 'circumstances and property' is a composite tax and the word 'circumstances' means a man's financial position, his status as a whole depending, among other things, on his income from trade or business. Far from militating against the principle that in considering the circumstances of a person his income from trade or business within the Town Area may be taken into consideration, the decision approves of the principle. In the course of his judgement, Bind Basni Prasad J., referred to S. 128, U.P. Municipalities Act, 1916, where 'taxes on circumstances and property' appear as a head district from the 'taxes on trades, callings and vocations and employments' and the agreement was that the taxes being under different heads should be treated as being entirely different, one from the other.
>
> It was rightly pointed out that it is no sound principle of construction to interpret expressions used in one Act with reference to their use in another Act. The meanings of words and expressions used in an Act must take their colour from the context in which they appear. It is true that in the Act under our consideration the taxes which the Town Area Committee may impose appear under different heads in sub-s.(1) of S. 14. We have already stated that though the clauses are different, the words used in the section show that there may be over-lapping between the different clauses, and to prevent the same person being subjected to multiple taxation, a proviso was incorporated in cl. (f)."

9. He has further submitted that after notification under Section 52 of the Act revision was not maintainable. For that purpose he has placed reliance in a case reported in 1989. R.D., page 281-Hari Ram versus D.D.C., Azamgarh and others. Relevant portion of the judgement is quoted below:-

> "We find that on October 29, 1987 an objection was preferred by the petitioner before the Deputy Director of Consolidation. The position of law is well settled. The Deputy Director of Consolidation has no jurisdiction to exercise power under Section 48(3) of the Act, if a de-notification has already taken place under Section 52 of the Act. The Deputy Director of Consolidation, therefore, will first record a finding as to whether a Notification under Section 52 of the Act had, in fact, been issued on February 13, 1982. If he finds that

> such a notification exists and if he also finds that the land which is the subject matter of dispute is covered by the said Notification, he shall desist from exercising any power under Section 48(3) of the Act. With this direction the petition is disposed of finally."

10. His submission is that under Section 42 of the aforesaid Act the officers and authorities under the Act have been described but while hearing the appeal arising out of proceedings under section 109-A of the aforesaid Act the Settlement Officer Consolidation was not exercising power of the Settlement Officer Consolidation and he was not subordinate to the Deputy Director of Consolidation and he was not subordinate to the Deputy Director of Consolidation but he was a tribunal. He has submitted that the case reported in AIR 1938, Allahabad, and page 47(supra) is not applicable as it was arising out of U.P. Encumbered Estates Act.

Sri Sankatha Rai in reply to the argument of Sri S.K. Verma has submitted that appeal was filed after notification under section 52(2) of the aforesaid Act, therefore, the word used except otherwise of the Act under Sections 11 and 21 of the aforesaid Act will not take away the right of the petitioners to file revision. He has placed reliance in a case reported in AIR 1973. Allahabad, page 411- Dilawar Singh versus The Gram Samaj and others. Paragraph 6 of the aforesaid judgement is quoted herein below :-

> "6. The principle of a vested right of a litigant to take a proceeding to the superior court by an appeal would be equally applicable in case of a revision. It is true that a revision is a power conferred on a Court or authority to be exercised at discretion but it does not mean that the litigant does not possess the right to approach the superior Court through a petition for revision. The only basic difference between an appeal and a revision is that in case of an appeal, the appellant is entitled to a relief if he succeeds in establishing that the order of the subordinate Court or authority was unsound or contrary to law. In case of a revision the Court has discretion to refuse the relief if for example, in its opinion substantial justice had been done between the parties although the order sought to be revised suffered from infirmities which could justify an interference by the revising Court."

11. After hearing learned counsel for the parties at length and going through the record of the case and perusing the relevant provisions of the Act I am of the view that in view of the amended provisions of Section 48 of the aforesaid Act when Deputy Director of Consolidation has been given vide power to summon the record and see the propriety etc. of the order of the sub-ordinate authorities and revision was maintainable against any order passed by the Settlement Officer Consolidation. Section 44-A of the aforesaid Act says that where powers are to be exercised or duties to be performed by any authority under this Act made thereunder, such powers or duties may also be exercised or performed by an authority superior to it. Section 42 of the aforesaid Act mentions the officers and authorities and had said that the State Government may appoint such authorities and had said that the State Government may appoint such authorities and officers,

and for such areas, as may be necessary, to give effect to the provisions of this Act. Sub-section (9) of Section 3 of the aforesaid Act defines the Settlement Officer Consolidation, which is as under :-

> **"(9)-'Settlement Officer Consolidation means the person appointed as such by the State Government to exercise the powers and perform the duties of a Settlement Officer Consolidation under this Act or the rules made thereunder and shall include an Additional Settlement Officer Consolidation and Assistant Settlement Officer Consolidation."**

12. There is nothing on record to prove that the Settlement Officer Consolidation was not appointed by the State Government, therefore, he was sub-ordinate to the Deputy Director of Consolidation and in view of Section 48 of the aforesaid Act, as amended, the Deputy Director of Consolidation has jurisdiction to entertain the revision and decided the same.

13. In the result, the writ petition succeeds and is allowed. The order passed by the Deputy Director of Consolidation, Ghazipur dated 8.1.1991 is, hereby, set aside and the matter is sent back to the Deputy Director of Consolidation with a direction to restore the revision to its original number and decide the same afresh on merit. There will be no orders as to cost.

Petition Allowed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED ALLAHABAD : 22.5.2000.

BEFORE
HON'BLE M.KATJU, J.
HON'BLE D.R.CHAUDHARY,J.

Civil Misc. Writ Petition No. 24802 of 2000.

Ajai Kumar ...Petitioner.
Versus
U.P. Public Service Commission & another ...Respondents.

Counsels for the Petitioner:
Sri Neeraj Tiwari
Sri Umesh Narain Sharma

Counsel for the Respondents:
S.C.

Constitution of India- Article 226 Application to participate in combined State Subordinate Service (Pre.) Examination 2000 – Rejected by Commission on ground that Qualification as B.Com. was not mentioned- these are the cases of human error- candidate should not be penalized- Commission should ask the candidate to remove the errors.

Held- Para 2

We are of the opinion that the U.P. Public Service Commission should not reject forms on such technicalities Several petitioners are coming up before this Court where forms are rejected due to technical omissions e.g. that the candidate did not fill in his date of birth or his qualification etc. Obviously, these are cases of human error and a person should not be penalized for this. All humans can commit errors. The proper course of action for the Commission is that in such cases the Commission should call and ask the candidate to fill in the omission, and it should not reject his Application Form on such technicalities.

By the Court

Heard learned counsel for the parties.

1. The petitioner applied for Combined/State Subordinate Service (Preliminary) Examination, 2000. According to him, inadvertently he could not mention in the Application Form his qualification as B.Com. and on that ground his application was rejected.

2. We are of the opinion that the U.P. Public Service Commission should not reject forms on such technicalities. Several petitions are coming up before this Court where forms are rejected due to technical omissions e.g. that the candidate did not fill in his date of birth or his qualification etc. Obviously, these are cases of human error and a person should not be penalized for this. All humans can commit errors. The proper course of action for the Commission is that in such cases the Commission should call and ask the candidate to fill in the omission, and it is should not reject his Application Form on such technicalities.

3. A division bench of this Court in Writ Petition No. 20650 of 1999 (Rana Pratap Singh vs. U.P. Public Service Commission and Another) decided on 19.5.1999 allowed a similar petition.

4. Accordingly, this petition is also allowed. The petitioner is permitted to fill in, in his Application Form his qualification as B.Com. etc. after producing the original Certificate etc. as required by the Commission.

Petition Allowed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.5.2000

BEFORE
THE HON'BLE D.S. SINHA, J.
THE HON'BLE BHAGWAN DIN, J.

Civil Misc. Writ Petition No.25189 of 2000

Smt. Saroj Jaiswal Wife of Sri M.L. Jaiswal and another ...Petitioners
Versus
District Magistrate, Kanpur Nagar and others ...Respondents

Counsel for the Petitioners:
Shri A.N. Sinha

Counsel for the Respondents:
S.C.

U.P.Z.A. 8 C L R Act, 1950- Section 282 and 341- Applicability of the provisions of C.P.C. including the Provisions of Order 21 C.P.C.- objection against attachment- authorities are under legal obligation to decide- court expressed its great concern regarding deplorable situation standing counsel assured that the authority shall obey the provisions of law.

(Para 4)

It is stated at Bar that the petitioners have filed objection but the concerned authority has not disposed of the same and is proceeding further in the matter. If it is really so, the situation is deplorable.

By the Court

1. Heard Shri A.N. Sinha, learned counsel appearing for the petitioners, Shri Sanjay Goswami, learned Standing Counsel of the State of U.P. representing the respondents No. 1 and 2, and Shri Chandra Prakash, learned counsel who has

accepted notice on behalf of the respondent No.3.

2. Petitioner are aggrieved by the attachment of their properties in connection with the realisation of alleged due of respondent No. 3 against respondent No.4. The attachment has been effected under the provisions of Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950, hereinafter called the Act. In pursuance of the attachment properties under attachment are also notified for auction.

3. The provisions contained under Sections 282 and 341 of the Act clearly indicate that the provisions of Code of Civil Procedure, 1908, hereinafter called the Code, including the provisions contained in Order XXI of the code, are applicable. If any objection is filed against the attachment by any objector, the authority effecting the attachment is under obligation to decide the objection before proceeding further in the matter in pursuance of the attachment. Neither Shri Chandra Prakash, learned counsel appearing for the respondent No.3 nor Shri Sanjay Goswami, learned Standing Counsel of the State of U.P. representing the respondents No.1 and to has been able to dispute this position of law.

4. It is stated at bar that the petitioners have filed objection but the concerned authority has not disposed of the same and is proceeding further in the matter. If it is really so, the situation is deplorable.

5. The court expects that the concerned authority shall adhere to and obey the provisions of law by deciding the objection of the petitioners against the attachment before proceeding in the matter further. Indeed, Shri Sanjay Goswami, learned Standing Counsel of the State of U.P. representing the respondents No. 1 and 2, assures that law shall be strictly adhered to by the authority concerned.

Subject to what has been said above, the petition is disposed of finally.

A certified copy this order may be given to the learned counsel for the parties within 24 hours on payment of usual changes.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD JULY 3, 2000

BEFORE
THE HON'BLE BINOD KUMAR ROY, J..
THE HON'BLE S.K. JAIN, J.

Civil Misc. Writ. Petition No. 1379 of 1994

Har Gopal Jaiswal ...Petitioner.
Versus
District Excise Officer
& others ...Respondents.

Counsel for the Petitioner:
Shri Tarun Agarwal
Shri Sudhir Chandra

Counsel for the Respondents:
S.C.
Shri Prabodh Gaur
Shri H.R. Misra
Shri P.K. Bisaria

Constitution of India, Article 226 – Recovery Proceedings initiated at the life time of the father of Petitioner – after death without substituting the Petitioner or without amendment in Recovery Proceeding- can not be enforced against the hairs.

By the Court

1. With consent of the parties this writ petition is disposed of on merits at its admissions stage.

The prayer of the petitioner is to quash the recovery order dated 28th May, 1993 issued by Respondent No.2 the Addl. Collector (F & R), Kanpur (as contained in Annexure-3), the attachment order dated 30th October, 1993 issued by Respondent No. 2(as contained in Annexure-4) and the sale proclamation order dated 31st December, 1993 issued by Respondent No.3 (as contained in Annexure-5) respectively.

2. Sri Tarun Agarwala, learned counsel appearing on behalf of the petitioner, submitted a solitary point for our consideration, namely, that the recovery proceedings were initiated against Sri Har Prasad Jaiswal, the father of the petitioner, despite the fact that he had died on 4th May, 1976 which is evident from the death certificate, a X-rox copy of which is Annexure-2 which fact has not been denied in the counter affidavit and consequently the proceedings are nullity in the eyes of law.

3. Sri P.K. Bisaria, learned Standing Counsel appearing in opposition to the prayers made by the petitioner, contended that from the averments made in the counter affidavit it is clear that a notice was issued to the father of the petitioner when he was alive though it is a fact that he had died subsequently but in view of the fact that having inherited the interest of his father and thus the petitioner was/is liable to discharge his liabilities and thus this Court may not exercise its discretionary jurisdiction in his favour.

4. Sri Agarwala in reply contended that in any view of the matter after the death of the petitioner's father the petitioner has not been substituted nor has proceeding been amended and thus the reliefs prayed are fit to be granted.

5. Having heard the learned counsel for the parties and perused their pleadings we are of the view that any proceeding against a dead man should not continue and in the peculiar facts and circumstances the best course was to substitute the petitioner as well as his brother and/or any other heir and legal representative of the deceased who had inherited/succeeded his properties to avoid any future complication on grounds of technicality.

6. Accordingly, we dispose of this writ petition with this direction to the Respondents that they are required to suitably amend the proceedings in the light of the observations made as above and till then not to proceed further.

7. In the peculiar facts and circumstances we make no order as to cost.

8. Before parting it is clarified that this order shall not be interpreted to mean accepted of the other grounds raised in the writ petition which were also not pressed before us but it will be open for the petitioner to raise them in the proceedings after its amendment.

9. The office is directed to hand-over a copy of this order to Sri P.K. Bisaria, learned Standing Counsel within two weeks for its intimation to and follow up action by the Respondents in accordance with law, if they intend to proceed in the matter.

Petition Disposed of.
