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RESERVED ON 16.05.2019

DELIVERED ON 23.07.2019

Court No. - 3

Case :- WRIT - A No. - 5646 of 2019

Petitioner :- Sanjay Bhardwaj @ Bablu And Another
Respondent :- Dinesh Chandra Gupta And 12 Others
Counsel for Petitioner :- Rahul Sahai
Counsel for Respondent :- Kshitij Shailendra

Hon'ble Dr. Yogendra Kumar Srivastava,J.

1. Heard Sri Rahul Sahai, learned counsel for the petitioners and Sri Kshitij Shailendra, learned counsel appearing for the respondents.

2. The present petition has been filed to challenge the order dated 13.12.2018 passed by the District Magistrate/Collector, Budaun in Case No.00912 of 2018 (Jugal Kishore Vs. Harish Chandra) rejecting the application dated 09.10.2018 filed by the petitioners seeking recall of the order dated 27.04.2018 whereby the application filed under Rule 25 of the UP Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972[1] for substitution of the respondents as legal heirs/representatives of late Jugal Kishore had been allowed. The petitioners have further sought to challenge the order dated 02.03.2019 passed by the District Magistrate/Collector, Budaun in terms of which the review application filed against the aforementioned order has also been rejected.

3. The brief facts pertaining to the case are being set out herein below.

4. A release application, was filed by the petitioner-landlord under Section 21(1)(b) of the U.P. Act No.13 of 1972[2], registered as P.A. Case No.37 of 1985, in respect of a shop situate at Ticketganj in District Budaun on the ground that the

1 The Rules, 1972
2 The Act, 1972

shop was in a dilapidated condition and was required for purposes of demolition and new constructions. The release application was rejected by the Prescribed Authority/Additional Civil Judge (Senior Division), Budaun vide order dated 27.03.1997. Against the said order Rent Appeal No.39 of 1997 under Section 22 was filed which was allowed by the Additional District Judge, Court No.1, Budaun vide order dated 31.03.2009 and in terms thereof the tenant-respondent was directed to vacate the shop within a period of one month whereafter six months' time was granted to the petitioner-landlord to reconstruct the shop in dispute, thereafter the consequences as provided for under Section 24(2) were to follow.

5. A writ petition, *Civil Misc. Writ Petition No.23517 of 2009* was filed by the respondent-tenant challenging the order dated 31.03.2009 which was dismissed vide order dated 21.05.2009.

6. The contention of the learned counsel for the petitioner-landlord is that the possession of the shop was finally handed over on 05.04.2012 and subsequent thereto new constructions were raised.

7. The respondent-tenant moved an application under Section 31 claiming his right of re-entry in the premises in question, which was allowed by the Prescribed Authority on 20.03.2014 directing the petitioner-landlord to complete the new constructions within one month and to hand over a shop to the tenant. The landlord moved an application before the District Magistrate on 05.05.2014 apprising him that the new constructions had been completed. An order dated 22.09.2015 was thereafter passed by the Prescribed Authority directing the Amin to ensure delivery of possession of one shop to the tenant/predecessor-in-interest of the contesting respondents.

8. Challenging the aforesaid order dated 22.09.2015 an

appeal under Section 22 was filed alongwith an application for interim relief which was rejected vide order dated 07.10.2015. The orders dated 22.09.2015 and 07.10.2015 came to be challenged by the predecessor-in-interest of the petitioner-landlord by filing *Writ-A No.59324 of 2015*, which was allowed vide order dated 30.10.2015 in the following terms:-

> *"...The order dated 22.9.2015 passed by the Prescribed Authority, thus cannot be sustained. The appeal filed by the landlord therefore is of no consequence. The writ petition is allowed.*
>
> *At this stage the learned counsel for the respondent submits that the respondent-tenant proposes to move an application before the District Magistrate within two weeks from the date of getting the certified copy of this order.*
>
> *In case such an application is moved by the tenant within the period of two weeks as stated above, it shall be decided by the District Magistrate on merits keeping in mind the provisions of Sub-Section (2) of Section 24 of the Act without raising any objection to the limitation in filing of the same. An endeavour shall be made to decide the matter as expeditiously as possible preferably within a period of six months from the date of filing of the application."*

9. Consequent to the aforesaid order dated 30.10.2015 in terms of which the tenant-respondent was granted liberty to file an application under Section 24(2) of the Act, 1972 which was to be decided without any objection to the limitation in filing of the same, an application dated 10.11.2015 was filed. During the pendency of the aforementioned application, the original tenant Jugal Kishore died on 23.04.2018, and upon his death an application under Rule 25 of the Rules, 1972 was moved seeking substitution of his legal heirs/representatives which came to be allowed vide order dated 27.04.2018. The petitioner-landlord filed a recall application dated 09.10.2018 which was dismissed vide order dated 13.12.2018. Thereafter a review was filed which has also been rejected vide order dated 02.03.2019, and subsequently the present writ petition has been filed.

10. Contention of the counsel for the petitioners is that upon the demise of the original tenant Jugal Kishore during the

pendency of the application under Section 24(2) his legal heirs/representatives can neither be substituted nor be permitted to pursue the application under Section 24(2) and that upon demise of the original tenant the proceedings at his behest would stand abated. It is sought to be argued that the scheme of the Act No.13 of 1972 does not contemplate that the legal heirs of the original tenant would be allowed to continue to pursue the application for re-entry under Section 24(2) upon the demise of the original tenant. It is submitted that Section 34(4) of the Act, 1972 limits the filing of a substitution application only in cases pertaining to determination of standard rent or for eviction, and that Rule 25 is also exclusively relatable to Section 34(4). Placing reliance upon the judgment of this Court in ***Smt. Ratna Prasad Vs. Additional District Judge-VIII, Allahabad & Ors.***[3] and the judgment in the case of ***Smt. Sabra Begum Vs. District Judge, Meerut & Ors.***[4] it has been submitted that the right of re-entry being personal to the original tenant would fade away with his demise, and hence the pending proceedings would loose their efficacy.

11. *Per contra*, the counsel appearing for the respondents has supported the orders impugned by submitting that the words "original tenant" used under Section 24(2), refer to the stage of making an application for the purposes of re-entry, and the said words do not mean that the heirs/legal representatives of the original tenant cannot move or pursue the application. It is submitted that the words "original tenant" would include the heirs/legal representatives of the deceased-tenant and the same cannot be confined to only the tenant whom the property was let out. It has been argued that intention of the legislature behind using the words "original tenant" is to prevent an unwarranted situation where upon a building having been released, a stranger

3 1978 (4) ALR 306
4 1983 ARC 65

or a third party may enter the fray and assert his right to get entry in a building which has been reconstructed pursuant to orders passed under Section 21(1)(b) of the Act, 1972 after its release and demolition. It has been pointed out that the "option of re-entry by tenant" under Section 24 of the Act, 1972 would mean re-entry by the tenant including his legal representatives. It has also been submitted that in view of the definition of "tenant" as contained under Section 3(a) read with Section 2(11) and Section 146 of the Civil Procedure Code[5] and under Section 34(4) of the Act, 1972, the contesting respondents are entitled to re-entry by pursuing the application under Section 24(2) moved by their predecessor, Jugal Kishore, who had died only some time back on 23.04.2018.

12. It has also been submitted that the application under Section 24(2) was moved within the time fixed by this Court vide order dated 30.10.2015 passed in *Writ-A No.59324 of 2015*. It has been contended that the proceedings under Section 24(2) are not independent or separate, but they are in continuation of the eviction proceedings under Section 21(1)(b). Reliance has been sought to be placed on the judgments in ***Ram Naresh Tripathi Vs. 2nd Additional Civil Judge, Kanpur & Ors.***[6], ***Smt. Sabra Begum Vs. District Judge, Meerut & Ors.***[4], ***Harish Chandra Tewari & Anr. Vs. 2nd Additional District Judge, Pratapgarh & Ors.***[7], ***Tribhuwan Kumar Sharma Vs. Prescribed Authority/J.S.C.C., Meerut & 3 Ors.***[8], ***S. Gopal Reddy Vs. State of Andhra Pradesh***[9], ***Prakash Kumar Alias Prakash Bhutto Vs. State of Gujarat***[10], ***Union of India & Ors. Vs. Filip Tiago De Gama of Vedem Vasco De Gama***[11], ***Ashish Kumar Vs.***

5 CPC
6 1980 ARC 563
4 1983 ARC 65
7 2004 (56) ALR 601
8 2019 (4) ADJ 790
9 (1996) 4 SCC 596
10 (2005) 2 SCC 409
11 (1990) 1 SCC 277

Additional District Judge, Ayodhya Prakaran Lucknow[12] and ***Wasi Ahmad (Shri) Vs. 2nd Additional District Judge, Gorakhpur & Anr.***[13].

13. Heard the counsel for the parties and perused the record.

14. The core issue which arises in the present case is as to whether the legal heirs and representatives of the deceased "original tenant" are entitled to get themselves substituted to pursue the application moved by the original tenant seeking re-entry under Section 24(2) of the Act, 1972.

15. In order to appreciate the rival contentions, the relevant statutory provisions under the Act, 1972 may be adverted to:-

> "***21. Proceeding for release of building under occupation of tenant.*** *- (1) The prescribed authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists namely-*
>
> *(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust :*
>
> *(b) that the building is in a dilapidated condition and is required for purposes of demolition and new construction :*
>
> *x x x x x*
>
> ***24. Option of re-entry by tenant****.—(1) Where a building is released in favour of the landlord and the tenant is evicted under section 21 or on appeal under section 22, and the landlord either puts or causes to be put into occupation thereof any person different from the person for whose occupation according to the landlord's representation, the building was required, or permits any such person to occupy it, or otherwise puts it to any use other than the one for which it was released, or as the case may be, omits to occupy it within one month or such extended period as the prescribed authority may for sufficient cause allow from the date of his obtaining possession or, in the case a building which was proposed to be occupied after some construction or reconstruction, from the date of completion thereof, or in the case of a building which was proposed to be demolished, omits to*

12 2010 (3) ARC 238
13 2005 (2) ARC 560

demolish it within two months or such extended period as the prescribed authority may for sufficient cause allow from the date of his obtaining possession, then the prescribed authority or, as the case may be, the District Judge. may, on an application in that behalf within three months from the date of such act or omission, order the landlord to place the evicted tenant in occupation of the building on the original terms and conditions, and on such order being made, the landlord and any person who may be in occupation thereof shall give vacant possession of the building to the said tenant, failing which, the prescribed authority shall put him into possession and may for that purpose use or cause to be used such force as may be necessary.

(2) Where the landlord after obtaining a release order under clause (b) of sub-section (1) of section 21 demolishes a building and constructs a new building or buildings on its site, then the District Magistrate may, on an application being made in that behalf by the original tenant within such time as may be prescribed, allot to him the new building or such one of them as the District Magistrate after considering his requirements thinks fit, and thereupon that tenant shall be liable to pay as rent for such building an amount equivalent to one per cent per month of the cost of construction thereof (including the cost of demolition of the old building but not including the value of the land) and the building shall, subject to the tenant's liability to pay rent as aforesaid, be subject to the provisions of this Act, and where the tenant makes no such application or refuses or fails to take that building on lease within the time allowed by the District Magistrate, or subsequently ceases to occupy it or otherwise vacates it, that building shall also be exempt from the operation of this Act for the period or the remaining period, as the case may be, specified in sub-section (2) of section 2.

x x x x x

***34. Powers of various authorities and procedure to be followed by them**.— x x x x x*

(4) Where any party to any proceeding for the determination of standard rent of or for eviction from a building dies during the pendency of the proceeding, such proceeding May be continued after bringing on the record:

(a) in the case of the landlord or tenant, his heirs or; legal representatives

(b) in the case of an unauthorised occupant, any person claiming under him found in occupation of the building."

16. Rule 25 of the Rules, 1972 which provides the procedure for making an application for bringing legal heirs on record and Rule 20 which is in respect of an application for re-allotment as provided under Section 24(4) may also be referred to:-

"***20. Application for re-allotment [Section 24(2)]**.—(1) An*

application by a tenant under sub-section (2) of Section 24 or allotment of a new building or any one of them shall be made within one month from the date on which the construction of the building sought to be allotted is complete.

(2) The application shall also state the extent of the tenant's requirements regarding accommodation.

Explanation.—In this rule, the date of completion of construction has the same meaning as in the Explanation (a) of sub-section (2) of Section 2.

x x x x x

25. Bringing legal representatives on record [Section 34(4)]*. —(1) Every application for substituting the names of the heirs or legal representatives, the claimants or occupants of any person who was a party to any proceedings under the Act and died during the pendency of the proceedings shall be preferred within one month from the date of the death of such person.*

(2) The application shall contain the names and addresses and other details of the heirs or legal representatives and their relationship with the deceased and, be accompanied by any affidavit in its support, and thereupon, the application shall be decided after a summary inquiry by the authority concerned."

17. For ease of reference the definition of the word "tenant", in terms of Section 3(a) of the Act, 1972 is also being extracted below:-

"***3. Definitions****.—In this Act, unless the context otherwise requires—*

(a) "tenant", in relation to a building, means a person by whom its rent is payable, and on the tenant's death—

(1) in the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death;

(2) in the case of a non-residential building, his heirs;"

18. A plain reading of the aforementioned statutory provisions indicates that sub-section (2) of Section 24 confers a right of re-entry on a tenant who has been evicted in pursuance of an order of eviction passed against him under Section 21(1)(b) on the ground that the building in question was in a dilapidated condition and was required for the purposes of demolition and new construction. The right is in respect of a new building or buildings, reconstructed on the site of the dilapidated structure after demolition thereof. This right consists of making an

application for allotment of the newly constructed building or any of such buildings, by the tenant within the time prescribed, and the District Magistrate after considering the requirements of such a tenant is empowered to make allotment in his favour with a liability to pay rent at an amount equivalent to one per cent per month of the cost of construction thereof (including the cost of demolition of the old building but not including the value of land). This right to seek allotment of a new construction is notwithstanding the provisions contained under Section 2(2) of the Act, 1972.

19. As per the procedure prescribed under Section 24(2) the original tenant is required to make an application for allotment of the new building or any of the new buildings to the District Magistrate, which is the usual condition for initiating proceedings for allotment of buildings. The time for making the application has been provided under Rule 20 of the Rules, 1972 in terms of which one month's time from the date of completion of the construction of the building sought to be allotted, has been prescribed. The original tenant has been granted a right of seeking allotment in accordance with his requirement of the new building or any of the new buildings constructed on the site of the dilapidated building from which he was evicted under Section 21(1)(b).

20. The liability of the tenant to pay rent is to be at an amount equivalent to one per cent per month of the cost of construction thereof (including the cost of demolition of the old building but not including the value of the land). It is noticeable that sub-section (2) of Section 24 is in the nature of an exception to the provisions contained under Section 2(2) wherein it is provided that nothing under the Act shall apply to a building during the period of ten years or fifteen years or forty years, as the case may be, from the date on which its construction is completed. The

exception in respect of the cases covered under sub-section (2) of Section 24 has been provided in terms of the language of Section 24(2) as also Section 2(2).

21. It is therefore seen that though the provisions of the Act are inapplicable to a new building constructed for a period of ten years or fifteen years or forty years, as the case may be, as provided under Section 2(2), yet considering the hardship which is implied in the eviction of a tenant under Section 21(1)(b) particularly where the tenant is evicted without the *bona fide* need of the landlord being considered or the assessment of his comparative hardship *vis-a-vis* the landlord, the legislature has conferred upon such tenant a right to have the newly constructed building allotted to him.

22. It is also seen that existence of an order of release under Section 21(1)(b) on the ground that the building is in a dilapidated condition and is required for the purposes of demolition and new construction is clearly a must for attracting the provisions of Section 24(2) to a case or in other words the provisions under Section 24(2) would come into play only upon an order of release having been passed under Section 21(1)(b).

23. The provisions of Section 21(1)(b) and Section 24(2) are thus required to be read conjointly in order to give effect to the scheme under the Act wherein the legislature has conferred a special privilege or a sort of a lien to the original tenant who has been evicted from the building on the ground that it was in a dilapidated condition, and at the site of which a new building or several new buildings have been constructed.

24. Considering the scheme of the Act, 1972 the expression "original tenant" as used under Section 24(2) would therefore be referable to the "evicted tenant", who has been evicted from the building in proceedings under Section 21(1)(b) of the Act, 1972.

25. In the case of ***K. Srinivasa Rao Vs. K.M. Narasimhaiah & Anr.***[14], while considering similar provisions under the Karnataka Rent Control Act, 1961 it was held that a tenant who had been evicted on the ground of the building being required for immediate demolition or reconstruction was entitled for re-induction in a premises reasonably comparable or corresponding to the premises occupied by him in the old building. The relevant observations made in the judgment are as follows:-

> "*8. ...There is nothing specific in this connection in the language of sub-section (1) of Section 28. However, a fair commonsense reading of the provisions of sub-section (1) of Section 28 would show that a tenant against whom eviction decree has been passed under Section 21(1)(j) and who has given notice as contemplated under Section 27 of that Act would be entitled to a tenement in the new building which could be said to be reasonably comparable to or to reasonably correspond to the tenement in respect of which the decree was passed...*"

26. Much reliance has been placed by the counsel for the petitioner on the judgment in the case of ***Smt. Ratna Prasad*** (supra) for the proposition that the provisions relating to substitution of heirs under Section 34(4) do not contemplate substitution of heirs of a person who makes an application for allotment of a building. It is submitted that the right of the person who applies for allotment is a personal right and does not survive to the legal heirs. Paras 6 to 12 of the judgment, on which reliance has been sought to be placed, are being extracted below:-

> *"6. The learned counsel for the petitioner has impugned the validity of the allotment order dated February 13, 1975 (Annexure IV). On a number of grounds. The first contention is that the allotment order could not be passed unless heirs of Sri Prasad were substituted. In this connection reliance has been placed on certain provisions of the Act and the rules framed thereunder. I have carefully gone through them and in my judgment they do not assist the petitioner at all. Section 34(4) is the only provision in the entire Act which relates to substitution of heirs. It reads:*
>
> > *"where any party to any proceeding for the determination of standard rent of or for eviction from a building dies*

14 (1989) 1 SCC 667

> *during the pendency of the proceeding, such proceeding may be continued after bring on record:*
>
> *(a) in the case of the landlord or tenant, his heirs or legal representatives;*
>
> *(b) in the case of an unauthorised occupant, in any person claiming under him or found in occupation of the building."*

7. The provision makes it clear that substitution of heirs is permitted only in two cases, viz., in proceedings for the determination of standard rent or for eviction of Sri Prasad from any building. Therefore, substitution of heirs could not be claimed under Section 34(4).

8. Reliance has also been placed on Section 34(8) which says;

> *"For the purposes of any proceedings under this Act and for purposes connected therewith the said authority shall have such other powers and shall follow such procedure, principles of proof, rules of limitation and guiding principles as may be prescribed."*

9. The words 'any proceedings' no doubt include allotment proceedings also but the sub-section itself makes it clear that in this connection only such procedure or guiding principles will be followed 'as may be prescribed'. The words 'other powers' used in this sub-section clearly mean powers other than those given in Section 34 but those powers must be prescribed under the Act or the rules. These powers are given in rule 22 of the Act and nowhere contemplate substitution of heirs of a person who makes an application for allotment of a building. Although Section 151, C.P.C. applies to these proceedings but substitution cannot be done under it because there is a special provision in Section 34(4) of the Act for substitution of heirs and the established principle is that aid of Section 151. C.P.C. cannot be taken where there is any specific provision for any purpose. Even if it be said that there is no provision for substitution for heir of a person who applies for allotment aid of Section 151 cannot he invoked because it is a personal right and does not survive to the heirs. If the scope of Section 151 was so wide there was no necessity to enact. Section 34(4) for this purpose because substitution in every case could be done under Section 151, C.P.C.

10. The learned counsel for the petitioner has also invoked the aid of rule 25 but in vain. This rule states: "Bringing legal representatives on record: [Section 34(4)]

> *"(1) Every application for substituting the names of the heirs or legal representatives, the claimants or occupants) of any persons who was a party to any proceedings under the Act and died during the pendency of the proceedings shall be preferred within one month from the date of death of such person.*
>
> *(2) The application shall contain the names and addressed and other details of the heirs or legal representatives and their relationship with the deceased and be accompanied by an affidavit in its support, and thereupon, the application*

> *shall be decided after a summary inquiry by the authority concerned."*
>
> *11. As the marginal note indicates, this rule has its connection with substitution of heirs contemplated by Section 34(4) of the Act. It prescribes period of limitation of presenting an application for substitution. Therefore, even on the basis of this rule heirs of late Sri Prasad could not be brought on the record.*
>
> *12. I am fortified in the aforesaid view for one more reason. Section 16 of the Act relates to allotment and release of vacant buildings. Sub-clause (a) of Section 16(1) says that subject to the provisions of this Act the District Magistrate may by an order require the landlord to let any building which is, or has fallen vacant or is about to fall vacant or a part of such building, to any person specified in the order. Obviously the words 'any person' in this section refer to the applicant for allotment. S.-sec. (8) of this sedation says that the allottee shall be deemed to become tenant of the building from the date of allotment. It means that till he is only an applicant for allotment of a building it is his personal right and the moment an allotment order is passed in his favour becomes a tenant as defined in Section 3(8). It is only after allotment that an applicant becomes tenant and can claim the rights of such a person. Before that, it is purely his personal right which dies with him and the question of substitution of his heirs does not arise. In this connection reference may be made to the case of V. Devaru v. State of Mysore [A.I.R. 1958 S.C. 253.] in which claim with which the plaintiff came to the court was that he was wrongly excommunicated and that was an action personal to him, on the principle of actio personalis Moritar cum persona. When he died the suit was held to abate. In the instant case also it was personal right of Sri Prasad to apply for allotment and on his death the application became non est. Even if he had applied for allotment of the premises in order to live with his wife and children, the nature of his right could not change. If the allotment order was passed in his favour and he had entered into possession of the building, the position would have been different because in that case he would have acquired the status of a tenant as defined in the Act. In the instant case he died before the allotment order was passed and his application lapsed."*

27. It may be pertinent to notice that in the aforementioned case of ***Smt. Ratna Prasad*** (supra) the husband of the petitioner had applied for allotment of the premises in question under Section 16 and before the allotment order could be passed or possession could be delivered he died. It was in the said circumstances that it was held that the allotment order having not been made and the possession having not been delivered the applicant had not yet achieved the status of a "tenant" as defined

under Section 3(a) of the Act. He was only an applicant for allotment of the building and it was purely his personal right which died with him and the question of substitution of his heirs did not arise. It was pointed out that it is only after the allotment order has been made that an applicant acquires the status of a "tenant" and can claim his rights in the said capacity.

28. The present case arises out of an application filed by the original evicted tenant seeking his re-entry on the basis of the statutory right conferred upon him under Section 24(2) on the ground of his being evicted under Section 21(1)(b) for the reason that the building was in a dilapidated condition and was required for demolition and reconstruction.

29. As against the case of ***Smt. Ratna Prasad*** (supra) wherein the substitution was being sought in respect of the death of an applicant seeking allotment under Section 16(1)(a), who had yet not achieved the status of a tenant, in the present case substitution is being sought by the legal heirs and representatives of a person who was a statutory tenant and who had been evicted in proceedings under Section 21(1)(b), and who had already applied for allotment exercising the statutory right of re-entry under Section 24(2) conferred upon him in his capacity as the "original tenant".

30. The case of ***Smt. Ratna Prasad*** (supra) is thus distinguishable on facts and would not be applicable in the present case.

31. In a similar set of facts in the case of ***Ashish Kumar Vs. Additional District Judge, Ayodhya Prakaran, Lucknow***[12], where substitution of the legal heirs of a person applying for re-entry was being sought, the judgment in the case of ***Smt. Ratna Prasad Vs. Additional District Judge-VIII, Allahabad & Ors.***[3]

12 2010 (3) ARC 238
3 1978 (4) ALR 306

was considered and distinguished in the following terms:-

> *"3. The deceased moved application for re-entry, which was adjudicated upon by the prescribed authority and rejected by means of order dated 29.2.2008. The deceased challenging the said order filed rent appeal. During the pendency of the said application the deceased Horilal died leaving behind opposite parties 2 to 4. Opposite party no. 2 is employed in Sahara India, Lucknow and opposite party no.3 in Sonalika Tractor Company. It is further submitted that substitution of legal representative under section 34 (4) of the U.P. Act No. 13 of 1972 is permitted only two proceedings- (i) Proceeding for the determination of standard rent (ii) Proceeding for eviction from a building; whereas the present proceeding does not belong to the aforesaid proceeding, therefore, the application for substitution is not maintainable.*
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> *4. In support of his contentions the learned counsel for the petitioner cited a decision of this Court rendered in the case of 1978 ARC 233, Mrs. Ratna Prasad Vs. The VIIIth Additional District Judge, Allahabad and others.*
>
> *5. Upon perusal of the aforesaid decision, I find that the facts of the aforesaid case are quite different to the present case. In the aforesaid case though the allotment order was passed but the possession was not delivered. In the said case it has been held that applicant had not acquired status of tenant. In the said case the application for allotment was moved but the house was not allotted. However, since the application for substitution was put up for order, Rent Control and Eviction Officer allotted the house in favour of the applicant who had already died, therefore his wife and children moved application for substitution which was rejected. This court has held that the possession of house was not delivered to the applicant. In the meantime, he died, therefore, his legal heirs have not achieved the status of the tenant, accordingly rejected his application.*
>
> *6. Under the strength of the aforesaid decision, the learned counsel for the petitioner submits that in the present case also the tenant has already been evicted from the house in question and his application for re-entry has also been rejected. His legal heirs have no status of tenancy, therefore, the order passed by the Special Judge (Ayodhya Prakaran)/Additional District Judge, Lucknow on the application for substitution suffers from error and is liable to be quashed.*
>
> *7. He also cited decisions of this Court rendered in the cases of Keshav Dwivedi and others Vs. Prescribed Authority, Lucknow, 1975 ALJ , 75 and Smt. Sabra Begum Vs. District Judge Meerut and others, ALJ 1983 65 : 1982 (1) ARC 65 on the point that the provisions of substitutions are not applicable in the present case.*
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> *8. In the case of Ghannu Mal and others Vs. Additional District Magistrate (C.S) R.C.E.O., Lucknow and others (writ petition no. 92 of 2001) this Court has considered the provisions of Rule 25 of the U.P. Urban Building (Regulation of Letting, Rent and*

Eviction) Rules, 1972 and held that legislature has protected the right of the legal heirs under Rule 25 of the Rules, 1972. Rule 25 of the Rules is as follows:-

> *"(1) Every application for substituting the name of (the heirs or legal representatives, the claimants or occupants) of any person who was a party to any proceedings under the Act and died during the pendency of the proceedings shall be preferred within one month from the date of the death of such persons.*
>
> *(2) The application shall contain the names and addresses and other details of the heirs or legal representatives and their relationship with the deceased and be accompanied by any affidavit in its support, and thereupon, the application shall be decided after a summary inquiry by the authority concerned."*

9. Upon perusal of the record it is evident that deceased Horilal in eviction proceeding through written statement has mentioned the names of his family members, in which opposite parties 2 to 4 were included.

10. In the light of Rules 25 of the Rules, 1972 the Additional District Judge, Lucknow has allowed the application for substitution on the ground that applicants have been shown as family members of the deceased and since Rule 25 protects their right, they have right to continue with the appeal after the death of deceased Horilal. So far as the consideration of their employment is concerned, this is not the stage of the same as only after bringing on record their need can be considered on the application for re-entry in the premises."

32. Reference may also be had to the judgment in the case of ***Smt. Sabra Begum Vs. District Judge, Meerut & Ors.***[4], which has been relied upon by the counsel for the petitioners in support of his contention that Section 34(4) limits the filing of substitution application only in cases pertaining to determination of standard rent or for eviction. The relevant observations made in the judgment are being extracted below:-

> *"11. Section 34(4) of the Act provides that where any party to any proceeding for the determination of standard rent of or for eviction from a building dies during the pendency of the proceedings, such proceeding may be continued after bringing on the record, in the case of the landlord or tenant, his heirs or legal representatives. It is under this provision that Rule 25 has been framed.*
>
> *12. A bare perusal of Section 34(4) read with Rule 25 clearly leads to the conclusion that Rule 25 lays down the period of*

4 1983 ARC 65

> *limitation of 30 days for substitution only in the case of a proceeding for the determination of standard rent of or for eviction from a building which are contemplated under the Act. The present, however, is not a case of a proceedings for eviction under the Act, but of a regulas suit for ejectment filed by the petitioner. The proceedings for eviction which are referred to in sub-section (4) of section 34 are proceedings such as those contemplated under section 21 or elsewhere in the Act."*
>
> *(Emphasis added)*

33. The observations referred to above take note of the provisions under Section 34(4) which provides that where any party to any proceeding for the determination of standard rent of or for eviction from a building dies during the pendency of the proceedings, such proceedings may be continued after bringing on record in the case of the landlord or tenant, his heirs or legal representatives. It has further been clarified that proceedings for eviction which are referred to in Section 34(4) are proceedings such as those contemplated under Section 21 or elsewhere in the Act, 1972. It is therefore seen that Section 34(4) would be applicable to proceedings for eviction under Section 21 or elsewhere in the Act such as proceedings under Section 24(2), which are a continuation of the proceedings under Section 21(1)(b). The judgment in the case of ***Smt. Sabra Begum*** (supra) thus lends support to the stand taken by the respondents with regard to applicability of Section 34(4) to proceedings under Section 24(2), and it is for this reason that the said judgment has been relied upon by the counsel for the respondents also.

34. On the question as to whether there is any provision under the Act, 1972 for abatement due to non-substitution in any proceedings arising out of Section 21, this Court in the case of ***Harish Chandra Tewari & Anr. Vs. 2nd Additional District Judge, Pratapgarh & Ors.***[7] held that there was no provision for abatement in the Act as under the CPC. The observations made in the judgment in this regard are as follows:-

> *"14. From a careful examination the aforesaid relevant provisions*

7 2004 (56) ALR 601

relating to substitution it is clear that there is no provision for abatement in the Act like Order XXII, Rules 3(2) & 4(2) of the CPC. Even if an application for substitution has been filed beyond time as prescribed under the provisions aforestated, the Court has power to condone delay, if materials available on record makes out a case for condonation of delay, and proceed on merits of the case."

35. Further, in the aforementioned case of ***Harish Chandra Tewari*** (supra) the expression "legal representative" as defined under Section 2(11) of the CPC was taken into consideration and in view of the provisions contained under Section 38 of the Act No.13 the same was held to be applicable. Accordingly, it was held that any person who represents the tenancy or intermeddles would be a legal representative and could be substituted in place of the deceased-tenant. The relevant observations made in the judgment are as follows:-

"14. Under the Act heirs and legal representatives have not been defined. The legal representative has been defined in section 2(11) of the CPC, which reads as follows:—

Section 2(11) of the CPC

(11) "legal representative" means a person who in law represents the estate of a deceased and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

15. Section 38 of the Act makes it clear if any thing is contrary to the provisions of this Act, the provisions of CPC, or Transfer of Property Act shall not apply. As this definition is not contrary to the Act and supports the intention of legislature while making provision for substitution under the Act, a person who represents the estate is legal representative. In the present case petitioners are claiming themselves to be representing the tenancy after death of their father and claim themselves to be a tenant residing alongwith their father at the time of his death as defined under section 2-A of the Act. If they establish that they could represent tenancy they may be substituted as legal representatives. Definition of legal representative as defined in section 2(11) of CPC, read with U.P. Act No. 13 of 1972 makes it clear that if any person represents tenancy in law or intermeddles he is a legal representative and should be substituted in place of deceased tenant."

36. To a similar effect are the observations made by a Division Bench of this Court in ***Ram Naresh Tripathi Vs. 2nd Additional***

Civil Judge, Kanpur & Ors.[5] wherein the principles under Order XXII Rule 6 of CPC were held to be applicable to proceedings under the Act, 1972 after noticing that there was nothing in Section 34(4) which may be inconsistent with the same. The observations made in the judgment are as follows:-

> *"10. Again, the purpose of substitution of the heirs of a deceased party is that it may continue the proceedings from the stage at which it was left by the deceased party and may produce the relevant material before the authority/Court. If the legal representatives of the deceased party did not have that right they would be deprived of an opportunity to produce their evidence and make their submission which could clearly prejudice them. However, in a case where the evidence has been led and arguments have been heard, nothing is left to be done by any party, or on his death by his heirs or legal representatives. All that remains to be done is Court's job, namely, that of preparing and pronouncing the judgment after taking into consideration the evidence adduced and submissions made by either party. In such a case it would be little more than an idle formality to require substitution of the legal representatives of the deceased party. That could merely delay the proceedings without any benefit to either party. It was with this end in view that the Legislature incorporated rule 6 in Order 22, C.P.C., which specifically states that if the death of a party occurs between the conclusion of the hearing and the pronouncement of the judgment, there shall be no abatement. It is true that Order 22, rule 6 C.P.C. has not been made applicable to the proceedings under Act 13 of 1972. We have, however, already referred to the principle behind Order 22, Rule 6 C.P.C. and we see no reason why that principle cannot be applied to the proceedings under Act 13 of 1972. We are fortified in taking this view by the decision of Patna High Court in case of Ram Charan Ram Keshari v. Sri Ambika Rao.[15] In that case the Patna High Court relied on a decision of the Supreme Court in the case of Ebrahim Aboo Bakar v. Custodian General of Evacuee Property[16], in which the Supreme Court held that the principle contained in Order 22, Rule 6 C.P.C. could apply to the proceedings under Administrative of Evacuee Property Act. The Patna High Court said that if the principle contained in Order 22, Rule 6 can apply to proceedings under the Administrative of Evacuee Property Act, there is no reason why that principle should not apply to the proceedings under Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947. We are in agreement with that reasoning.*
>
> *11. We may also added here that there is nothing in Section 34(4) which may be inconsistent with the application of the principle contained in Order 22, Rule 6. Sub-section (4) of*

5 1980 ARC 563
15 1979 (1) RCJ 553
16 AIR 1962 SC 319

> *Section 34 merely states that in the event of the death of any party the proceedings may be continued after bringing on record the heirs and legal representatives of the deceased party. We may stress on the words 'continue the proceedings'. In a case where proceedings are already over and all that remains to be done is the delivery of judgment, there is nothing to be continued by the heirs and legal representatives of the deceased party and, consequently, it is not mandatory to bring on record the heirs and legal representatives."*

37. The question with regard to heritability of a statutory tenancy of commercial premises came up for consideration in the case of ***Gian Devi Anand Vs. Jeevan Kumar & Ors.***[17], and it was held, in the context of Delhi Rent Control Act, 1815, that the rule of heritability extends to statutory tenancy of commercial premises as much as to residential premises, and that the same rule was to apply in other States where there was no explicit provision to the contrary. It was held that tenancy rights would devolve according to the ordinary law of succession unless otherwise provided in the statute. The relevant observations made in the judgment are as follows:-

> *"2. ...'Statutory tenant' is not an expression to be found in any provision of the Delhi Rent Control Act, 1958 or the rent control legislation of any other State. It is an expression coined by the judges in England and, like many other concepts in English law, it has been imported into the jurisprudence of this country and has become an expression of common use to denote a tenant whose contractual tenancy has been determined but who is continuing in possession of the premises by virtue of the protection against eviction afforded to him by the rent control legislation. Though the expression 'statutory tenant' has not been used in any rent control legislation the concept of statutory tenant finds recognition in almost every rent control legislation.*
>
> *x x x x x*
>
> *15. ...It is also important to note that notwithstanding the termination of the contractual tenancy by the landlord, the tenant is afforded protection against eviction and is permitted to continue to remain in possession even after the termination of the contractual tenancy by the Act in question and invariably by all the Rent Acts in force in various States so long as an order or decree for evictions against the tenant on any of the grounds specified in such Acts on the basis of which an order or decree for eviction against the tenant can be passed, is not passed.*
>
> *x x x x x*

17 (1985) 2 SCC 683

31. We now proceed to deal with the further argument advanced on behalf of the landlords that the amendment to the definition of `tenant' with retrospective effect introduced by the Delhi Rent Control Amendment Act (Act 18 of 1976) to give personal protection and personal right of continuing in possession to the heirs of the deceased statutory tenant in respect of residential premises only and not with regard to the heirs of the `so called statutory tenant' in respect of commercial premises, indicates that the heirs of so-called statutory tenants, therefore, do not enjoy any protection under the Act. This argument proceeds on the basis that in the absence of any specific right created in favour of the `so-called statutory tenant' in respect of his tenancy, the heirs of the statutory tenant who do not acquire any interest or estate in the tenanted premises, become liable to be evicted as a matter of course. The very premise on the basis of which the argument is advanced, is, in our opinion, unsound. The termination of the contractual tenancy in view of the definition of tenant in the Act does not bring about any change in the status and legal position of the tenant, unless there are contrary provisions in the Act; and, the tenant notwithstanding the termination of tenancy does enjoy an estate or interest in the tenanted premises. This interest or estate which the tenant under the Act despite termination of the contractual tenancy continues to enjoy creates a heritable interest in the absence of any provision to the contrary. We have earlier noticed the decision of this Court in Damadilal's case (supra). This view has been taken by this Court in Damadilal's case and in our opinion this decision represents the correct position in law. The observations of this Court in the decision of the Seven Judge Bench in the case of V. Dhanapal Chettiar v. Yesodai Ammal (supra) which we have earlier quoted appear to conclude the question. The amendment of the definition of tenant by the Act 18 of 1976 introducing particularly 2(l)(iii) does not in any way mitigate against this view. The said sub-section (iii) with all the three Explanations thereto is not in any way inconsistent with or contrary to sub-clause (ii) of Section 2(l) which unequivocally states that tenant includes any person continuing in possession after the termination of his tenancy. In the absence of the provision contained in subsection 2(l)(iii), the heritable interest of the heirs of the statutory tenant would devolve on all the heirs of the `so-called statutory tenant' on his death and the heirs of such tenant would in law step into his position. This sub-clause (iii) of Section 2(l) seeks to restrict this right insofar as the residential premises are concerned. The heritability of the statutory tenancy which otherwise flows from the Act is restricted in case of residential premises only to the heirs mentioned in Section 2(l)(iii) and the heirs therein are entitled to remain in possession and to enjoy the protection under the Act in the manner and to the extent indicated in sub-section 2(l)(iii). The Legislature, which under the Rent Act affords protection against eviction to tenants whose tenancies have been terminated and who continue to remain in possession and who are generally termed as statutory tenants, is perfectly competent to lay down

the manner and extent of the protection and the rights and obligations of such tenants and their heirs. Section 2(l)(iii) of the Act does not create any additional or special right in favour of the heirs of the `so-called statutory tenant' on his death, but seeks to restrict the right of the heirs of such tenant in respect of residential premises. As the status and rights of a contractual tenant even after determination of his tenancy when the tenant is at times described as the statutory tenant, are fully protected by the Act and the heirs of such tenants become entitled by virtue of the provisions of the Act to inherit the status and position of the statutory tenant on his death, the Legislature which has created this right has thought it fit in the case of residential premises to limit the rights of the heirs in the manner and to the extent provided in Section 2(l)(iii). It appears that the Legislature has not thought it fit to put any such restrictions with regard to tenants in respect of commercial premises in this Act.

x x x x x

36. ...The heirs of the deceased tenant in the absence of any provision in the Rent Act to the contrary will step into the position of the decreased tenant and all the rights and obligations of the deceased tenant including the protection afforded to the deceased tenant under the Act will devolve on the heirs of the deceased tenant. As the protection afforded by the Rent Act to a tenant after determination of the tenancy and to his heirs on the death of such tenant is a creation of the Act for the benefit of the tenants, it is open to the Legislature which provides for such protection to make appropriate provisions in the Act with regard to the nature and extent of the benefit and protection to be enjoyed and the manner in which the same is to be enjoyed..."

38. The aforementioned legal position has been reiterated in a recent judgment in the case of ***R.S. Grewal & Ors. Vs. Chander Parkash Soni & Anr.***[18].

39. In the context of the Act, 1972 it may be noticed that the word "tenant" has been defined under Section 3(a) in relation to a building, as meaning a person by whom its rent is payable. Upon the tenant's death, in the case of a non-residential building, in terms of sub-clause (2) of sub-section (a) of Section 3, the expression tenant has been defined to be his heirs. It is thus seen that the expression “tenant” has been defined under the Act in such a way that on death of the tenant, in the case of a non-residential building, his tenancy rights would devolve upon his legal heirs. This devolution of the legal rights

18 (2019) 6 SCC 216

on the heirs of a tenant, upon his death, is automatic and by operation of law.

40. The provisions contained under Section 3(a)(ii) of the Act, 1972 were considered in the case of ***Bimal Kumar Garg Vs. District Judge, Dehradun & Ors.***[19] wherein it was held that in a case of a non-residential building after the death of the tenant it will go automatically to his heirs. The relevant observations made in the judgment are as follows:-

> "*3. ...Section 3(a)(ii) of the Act clearly provide that the tenant in relation to a building would mean the person by whom rent is payable and in case of tenant's death, his heirs the building in dispute is a shop, and as such, a non-residential building and therefore, after the death of Kishan Chand it will go automatically to his heirs.*"

41. Reference may also be had to a recent judgment of this Court in the case of ***Tribhuwan Kumar Sharma Vs. Prescribed Authority/J.S.C.C., Meerut & 3 Ors.***[8] which was a case where the release order having been put to execution by the original landlord himself the objection raised by the petitioner-tenant for dismissal of the execution proceedings as infructuous, was repelled by holding that the heirs of the deceased-landlord, upon his death had stepped into his shoes and were competent to take the execution proceedings to its logical conclusion:-

> *"3. ...in the facts of the instant case, indisputably the release order was put to execution by the original landlord himself. The execution application was filed long back in the year 1986. The petitioner tenant, somehow or the other succeeded in delaying the execution proceedings and in the meantime, the landlord died on 21.3.2010. The execution proceedings was thereafter, prosecuted by his legal heirs and at which stage, the petitioner prayed for dismissal of the same as infructuous. The heirs of the deceased landlord, upon his death have stepped into the shoes of the original landlord and are competent to take the execution proceedings to its logical conclusion..."*

42. The mandatory nature of the provisions contained under Section 24(2) with regard to the option of re-entry of the evicted

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19 1979 ARC 384
8 2019(4) ADJ 790

tenant was emphasized in the case of ***Wasi Ahmad (Shri) Vs. 2nd Additional District Judge, Gorakhpur & Anr.***[13] wherein referring to an earlier judgment in the case of ***Karamat Ullah Vs. District Judge, Kanpur & Ors.***[20] it was held as follows:-

> *"10. Therefore, it is mandatory for the landlord to raise such new constructions as may meet the ends of justice by providing the option of re-entry to the tenant. The authorities before allowing an application under Section 21(1)(b) of the Act must satisfy themselves in this regard. The appellate authority therefore, rightly directed for construction of a new shop so that the law is not frustrated.*
>
> *11. The view taken by the appellate authority finds support from the judgment of this Court in case of Karamat Ullah Vs. District Judge, Kanpur and others reported in 2000(2) ARC Page 212 wherein this Court has held as follows:*
>
> > *"If we examine the provisions of Section 21(1) (b) along with Section 24(2) and Rule 17, under the Scheme of the Act the only harmonial (sic. harmonious) construction will be that the requirement of conditions of Rule 17 has been made essential with an object to ensure that the tenant's right of re-entry as enshrined in Section 24(2) is not frustrated. Therefore, before an application under Section 21 (1)(b) is to be allowed it becomes the duty of the authority concerned to examine minutely the sanctioned plan submitted by the landlord for the construction of new building in order to ensure that the tenant's option of reentry as safeguarded under sub-section (2) of Section 24 will not be defeated or frustrated. Wherein a given case if no such provision is made in the plan submitted by the landlord for reconstruction, it would follow that the tenant's right of reentry as guaranteed to him under Section 24(2) of the Act has not been secured and where he is deprived of that valuable right which he could exercise on completion of new building, no order under Section 21(1) (b) of the Act can lawfully be made."*

43. The right of re-entry of a tenant under Section 24(2) is therefore clearly a consequence of the order of release having been passed under Section 21(1)(b), and the proceedings under Section 24(2) are to be seen in continuation of the proceedings for eviction under Section 21(1)(b), as per the scheme of the Act.

44. In this regard reference may be had to the judgment in the

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13 2005 (2) ARC 560
20 2000 (2) ARC 212

case of ***Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. & Ors.***[21] wherein it was held as follows:-

> *"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place..."*

45. Following the aforementioned judgment a similar observation was made in the case ***S. Gopal Reddy Vs. State of Andhra Pradesh***[9] which reads thus:-

> *"12. It is a well-known rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute. The courts must look to the object which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary..."*

46. In the context of adopting a purposive approach to interpretation of a statutory provision reference may be had to the observations made by *Lord Denning* in the judgment in the case of ***Seaford Court Estates Ltd. Vs. Asher***[22], which are as follows:-

> *"The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly*

21 (1987) 1 SCC 424
9 (1996) 4 SCC 596
22 (1949) 2 All ER 155 (CA)

> *save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature…. A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."*

47. The principle of reading a statute as a whole was reiterated in the case of ***Prakash Kumar Alias Prakash Bhutto Vs. State of Gujarat***[10] wherein it was observed as follows:-

> "*30. By now it is well settled Principle of law that no part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is also trite that the statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved.*
>
> *x x x x x*
>
> *34. A conjoint reading of two sections as a whole leaves no manner of doubt that one provision is to be construed with reference to the other provision and vice versa so as to make the provision consistent with the object sought to be achieved. The scheme and object of the Act being the admissibility of the confession recorded under Section 15 of the Act in the trial of a person or co-accused, abettor or conspirator charged and tried in the same case together with the accused, as provided under Section 12 of the Act.*"

48. In the case of ***Anwar Hasan Khan Vs. Mohd. Shafi & Ors.***[23] the cardinal principle of construction of a statute by reading it as a whole and construing one provision with reference to the other provision so as to make the provision consistent with the object sought to be achieved, was emphasized and it was held as follows:-

> *"8. …It is a cardinal principle of construction of a statute that*

10 (2005) 2 SCC 409
23 (2001) 8 SCC 540

> *effort should be made in construing its provisions by avoiding a conflict and adopting a harmonious construction. The statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved..."*

49. To a similar effect are the observations made in the case of ***Union of India & Ors. Vs. Filip Tiago De Gama of Vedem Vasco De Gama***[11] wherein referring to the judgment in the case of ***Towne Vs. Eisner, Collector of United States Internal Revenue for the Third District of the State of New York***[24] and ***Lenigh Valley Coal Co. Vs. Yensavage***[25], it was held as follows:-

> "*16. The paramount object in statutory interpretation is to discover what the legislature intended. This intention is primarily to be ascertained from the text of enactment in question. That does not mean the text is to be construed merely as a piece of prose, without reference to its nature or purpose. A statute is neither a literary text nor a divine revelation. "Words are certainly not crystals, transparent and unchanged" as Mr Justice Holmes has wisely and properly warned. (Towne v. Eisner*[26]*) Learned Hand, J., was equally emphatic when he said: "Statutes should be construed, not as theorems of Euclid, but with some imagination of the purposes which lie behind them." (Lenigh Valley Coal Co. v. Yensavage*[27]*)*"

50. The principle of reading a statute as a whole has been emphasized in ***Maxwell on the Interpretation of Statutes***[28] wherein it has been stated as follows:-

> *"It was resolved in the Case of Lincoln College [(1595) 3 Co.Rep. 58B, at p. 59b] that the good expositor of an Act of Parliament should "make construction on all the parts together, and not of one part only by itself." Every clause of a statute is to "be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute. (Canada Sugar Refining Co., Ltd. v. R. [1898] A.C. 735, per Lord Davey at p. 741.)*"

51. Reference may also be had to the judgment in ***R (on the application of Quintavalle) Vs. Secretary of State for Health***[29]

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11 (1990) 1 SCC 277
24 (1918) 245 US 418
25 218 FR 547
26 245 US 418, 425 (1918)
27 218 FR 547, 553
28 Maxwell on the Interpretation of Statutes (12th Edition by P. St. J. Langan)
29 (2003) UKHL 13, (2003) 2 AC 687, (2003) 2 All ER 113 (UK House of Lords)

for the proposition that in construing an enactment effort should be made to give effect to the legislative purpose. The observations made in the judgment are as follows:-

> *"8. The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. … Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."*

52. Similar observations were made in ***Stock Vs. Frank Jones (Tipton) Ltd.***[30] wherein it was held as follows:-

> *"Words and phrases of the English language have an extraordinary range of meaning. This has been a rich resource in English poetry (which makes fruitful use of the resonances, overtones and ambiguities), but it has a concomitant disadvantage in English law (which seeks unambiguous precision, with the aim that every citizen shall know, as exactly as possible, where he stands under the law). The first way says Lord Blackburn, of eliminating legally irrelevant meanings is to look to the statutory objective. This is the well-known canon of construction . . . which goes by the name of "the rule in Heydon's Case" (1584) 3 Co. Rep. 7b. (Nowadays we speak of the "purposive" or "functional" construction of a statute.)"*

53. The Court's function, in view of the foregoing discussion, would thus be to construe the words used in an enactment, so far as possible, in a way which best gives effect to the purpose of the enactment.

54. In the present case the legislative intent in granting a special privilege or a lien to the evicted tenant by way of a right to re-entry under Section 24(2) is clear from a plain reading of the provision which indicates that the right under Section 24(2) flows from the proceedings initiated under Section 21(1)(b) in terms of which the tenant had been evicted from the building on the ground of the same was in a dilapidated condition and was

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30 (1978) 1 WLR 231 (UK House of Lords)

required for the purpose of demolition and new construction.

55. The provisions of Section 24(2) and 21(1)(b) are thus required to be read conjointly and have to be construed with reference to one another so as to make the same consistent with the object sought to be achieved i.e. providing a protection to the original tenant who had been evicted solely for the reason that the building was in a dilapidated condition and was required to be demolished and reconstructed without either the *bona fide* need of the landlord being considered or the comparative hardship of the landlord *vis-a-vis* the tenant being tested.

56. A combined reading of the provisions under Section 24(2) with Section 21(1)(b) would clearly show that the proceedings under Section 24(2) are a continuation of the proceedings for eviction under Section 21(1)(b) and provide a logical culmination to the said proceedings.

57. As a logical corollary the provisions contained under Section 34(4) which provide for substitution of the heirs or legal representatives of the deceased-tenant in proceedings for eviction would be applicable to proceedings under Section 24(2).

58. While using the expression "original tenant" under Section 24(2), the term "tenant" is qualified by the word "original". Looking to the context the expression “original tenant” would be referable to the “evicted tenant” who has been evicted in proceedings initiated under Section 21(1)(b) for release of the building on the ground that the same is in a dilapidated condition and is required to be demolished and reconstructed.

59. The scheme of the Act clearly indicates that under Section 24(2) a right is conferred on the evicted tenant to be placed in occupation of the building from which he was evicted in proceedings under Section 21(1)(b), and it is not merely the discretion of the Collector to order the landlord to place him in

occupation of the building. The right of re-entry under Section 24(2) is to be seen as a statutory right flowing from the legislative mandate. Any other construction would, in my view, defeat the purpose of the statutory provision itself.

60. In view of the foregoing discussion, the order dated 13.12.2018 passed by the District Magistrate/Collector, Budaun rejecting the objections raised by the petitioner-landlord on the ground that the provisions contained under Section 34(4) did not contain any bar with regard to substitution of the legal heirs and representatives of the deceased-tenant, cannot be faulted with. The District Magistrate while passing the order has clearly held that the landlord could not substantiate their arguments with regard to the substitution application being barred by the provisions contained under Section 34(4) of the Act, 1972 and Rule 25 of the Rules, 1972 by placing any authority so as to demonstrate that the substitution of the legal heirs of the deceased-tenant was barred under the provisions of the Act, 1972.

61. Counsel for the petitioners has not been able to point out any material error or irregularity in the orders passed by respondent no.1/District Magistrate, Budaun rejecting their objections/application for recall in respect of the substitution of the legal heirs of the deceased-tenant, so as to warrant interference in exercise of powers in writ jurisdiction under Article 226 of the Constitution of India.

62. The petition lacks merit and is accordingly dismissed.

Order Date :- 23.07.2019
Shahroz

(Dr. Y.K. Srivastava,J.)