A

GANPAT ROY AND OTHERS ETC.

v.

B

THE ADDITIONAL DISTRICT MAGISTRATE AND OTHERS ETC.

March 19, 1985

C [V.D. TULZAPURKAR, V. BALAKRISHNA ERADI and D.P. MADON, JJ.]

Rent Control and Eviction—

D *U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972, Sections 12(2) and (4), 16, 18, 34(8) and U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules 1972, Rules 8, 12 and 19 —Deemed vacancy — Notification of deemed vacancy — Opportunity of hearing as provided in Rules, must be afforded to the tenant before notifying the vacancy — Statute providing no efficacious relief to tenant of premises in whose case it is found that there is a deemed vacancy — Whether a writ under Articles 226 and 227 by such tenant is maintainable.*

E Under Section 12(2) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short, the Act), a tenant of a non-residential building carrying on business in the said building is deemed to have ceased to occupy the premises on his admitting as a partner or a new partner a person who was not a member of his family. The definition of "family" given in clause (g) of Section 3 of the Act does not expressly include a son-in-law or a daughter-in law.

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In each of the two appeals, the appellant/tenant admitted into his partnership firm his son-in-law and/or daughter-in-law, as the case may be. Thereupon, the landlord/respondent in each appeal filed an application for release of his non-residential buliding in his favour on the ground that there was a deemed vacancy under Section 12(2) of the Act. The Rent controller held that G there were deemed vacancies in respect of the two premises and ordered such deemed vacancies to be notified. The appellants/tenants filed applications to set aside the said orders directing notification of deemed vacancy and for permission to urge their objections and to contest the said applications for release. The Rent Controller negatived the contentions of the appellants and ordered such vacancies to be notified. The appellants/tenants filed writ petitions in the High Court under Article 226 of the Constitution challenging the two orders H notifying deemed vacancies under sub-Section (2) of Section 12 of the Act. The High Court, relying upon a judgment of a two-Judge Bench of the Supreme

Court in *Trilok Singh & Co.* v. *District Magistrate, Lucknow, & Ors.*, (1976) 3 S.C.R. 942 - a decision given prior to the amendment of the Act by Uttar Pradesh Urban Buildings (regulation of Letting, Rent and Eviction) Amendment Act 1976 (for short, the 1976 Amendment Act), dismissed both the petitions as pre-mature holding that where a release of a building is sought, the matter lies only between the District Magistrate and the landlord and no other person has a right to object to the release of the premises to the landlord. Hence these appeals.

Allowing the appeals and directing the High Court to rehear on merits the writ petitions filed by the appellants, the Court,

HELD : 1(i) Under the proviso to Section 16(1), in the case of a vacancy referred to in Section 12(4), the District Magistrate is to give an opportunity to the landlord or the tenant, as the case may be, of showing that the said Section is not attracted to his case before making an order under clause (a) of Section 16(1), that is, before making an alotment order. This proviso was inserted by the 1976 amendment Act. Strangely enough, in the case of release of the premises to the landlord, the proviso does not require any such opportunity to be given to the tenant who would be the person affected by that order. Sub-section (2) of Section 16 sets out the circumstances in which a building or any part thereof may be released to the landlord. Under Sub-section (7) every order made under that Section, subject to any order made under Section 18, is to be final. Under Section 18 as substituted by the 1976 Amendment Act, no appeal lies against any order of allotment, re-allotment or release but any person aggrieved by a final order of allotment, re-allotment or release may, within fifteen days from the date of such order, prefer a revision to the District Judge. On such application being made, the revising authority may confirm or rescind the final order of allotment, re-allotment or release or may remand the case to the District Magistrate for rehearing and, pending revision, may stay the operation of such order on such terms as he thinks fit. Prior to the substitution of Section 18 by the 1976 Amendment Act, that Section provided for an appeal to the District Judge by a person aggrieved by an order of allotment, re-allotment or release and where such order was varied or rescinded in appeal, the District Magistrate had the power, on an application made to him in that behalf, to place the parties back in the position which they would have occupied but for such order or such part thereof as was varied or rescinded and to use or cause to be used for that purpose such force as may be necessary. [393H ; 394A-B ; H ; 395A ; D-F]

1(ii). The Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972, prescribe the procedure for ascertainment of vacancy and for allotment or release of premises. Under Rule 8, before he makes any order of allotment or release in respect of any building which is alleged to be vacant under S.12 or to be otherwise vacant or to be likely to fall vacant, the District Magistrate is required to get the building inspected. The facts mentioned in the inspection report are, wherever practicable, to be elicited from at least two respectable persons in the locality and the conclusion of the inspection report is to be posted on the notice board of the office of the District Magistrate for the information of the general public, and an order of allotment is not to

A be passed before the expiration of three days from the date of such posting, and if in the meantime any objection is received, not before the disposal of such objection. Any objection received is to be decided after consideration of any evidence which the objector or any other person concerned may adduce. [396A-D]

B 2(i) The position under the Act as amended in 1976 is greatly changed and the right of appeal which was granted by S.18 has been substituted by a right of revision on the grounds set out in the substituted Section 18 and which are the same as those on which a revision lies to the High Court under Section 115 of the Code of Civil Procedure, 1908. While in an appeal, findings of fact can also be challenged on the ground that the evidence was not properly appreciated, in revision the only question would be whether the District Magistrate C had exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction vested in him by law or had acted in the exercise of his jurisdiction illegally or with material irregularity. The scope of revision under Section 18 is, therefore, much narrower than in the case of an appeal. [400E-F]

2(ii). Under the proviso to Section 16(1), which was inserted by the D 1976 Amendment Act, the District Magistrate is required in the case of a vacancy referred to in sub—Section (4) which includes a deemed vacany under Section 12(2) to give an opportunity to the landlord or the tenant, as the case may be, of showing that Section 12(4) is not attracted to his case before he makes an order of allotment under clause (a) of Section 16(1). Thus, this proviso gives a right of hearing to the tenant before an order of allotment is made. The proviso, however, does not apply in the case of an order of release made under clause (b) of Section 16(1). Even in the case of an application for allotment, it is doubtful whether a tenant whose objections to notification of a deemed vacancy have been negatived and thereafter the vacancy has been ordered to be notified could be permitted to reagitate the same contentions because such contentions would be barred by principles analogous to *res judicata*. In such an event, it would be difficult to say that he can exercise his right of review on the ground that there was no F vacancy. This would apply equally where an order of release is made. Further, the revision which is provided for under Section 18 is against an order of allotment or release and not against a notification of vacancy and an issue, which was concluded earlier and on the basis of the finding on which the District Magistrate had proceeded to allot or release the premises, cannot be reagitated in revision. Thus, the scheme of the Act would show that a tenant of premises in whose case it is found that there is a deemed vacancy has no G efficacious or adequate remedy under the Act to challenge that finding. A petition under article 226 or 227 of the constitution of India filed by such a tenant in order to challenge that finding cannot, therefore, be said to be premature. Therefore, the appeals are allowed and the writ petitions of the appellants will have to be heard by the High Court on merits. Since the appellants have applied for amendment of their respective writ petitions and the Court feels that the amendments sought to be made are of such a nature H that they require to be considered and dealt with by the High Court, the same are allowed. [400G-H ; 401A-D ; F-H]

3(i). It is difficult to reconcile to the decision in *Trilok Singh & Co.'s case*. The Court's attention was not drawn in that case to Rule 8 of the said Rules. Rule 8 to which the court has adverted earlier is the one as substituted by Notification No. 1995/XXIX-E-55-(A)-75 dated May 25, 1977. The original rule, however, was to the same effect and under it also the conclusion reached by the Rent Control Inspector contained in his report of the inspection of the building was required to be posted on the notice board of the office of the District Magistrate for the information of the general public, and the order of allotment could not be passed before the expiration of three days from the date of such posting and, if in the meantime any objection was received, not before the disposal of such objection. The District Magistrate was, therefore, not justified in immediately directing the vacancy to be notified and this act on his part was a clear violation of the statutory requirements of Rule 8 and had the result of depriving the appellant firm of an opportunity of hearing which Rule 8 conferred upon it. On this ground alone the appellant firm should have succeeded. The observation of this Court in *Trilok Singh & Co.'s Case* that it was unnecessary for the District Magistrate to hear the appellants before notifying the vacancy does not, therefore, appear to be correct. It equally does not appear to be correct to hold that an order notifying the vacancy did not injury and caused no prejudice to the interests of any party because an order notifying the vacancy could be objected to and if any objections were filed, they would have to be decided after considering the evidence that the objector or any other person concerned might adduce and that after an order of allotment or release was passed following upon the notification of vacancy, the aggrieved person could file a review application or an appeal under s.18. In so holding the court appears to have overlooked that the stage for objecting to a vacancy being notified was not after it was notified and that under the said Rule 8 the notification of vacancy could only be after the objections were heard and disposed of. [398H ; 399A-F]

3(ii). It is also difficult to understand how a party who has no right to appear at the original hearing of an application could be said to have a right of review or an appeal against an order passed on that application. From the very nature of things, a right to defend an application in the first instance is a very different matter from a right to seek a review of the order on that application or a right of appeal against that order. In its very nature and scope, an original hearing differs substantially from a review or an appeal. A party applying for review or an appellant cannot as of right lead evidence. Further, it is he who comes before the authority challenging an order passed to his prejudice and is not in the same position as the party against whom an order is sought in the first instance. The correctness of *Trilok Singh & Co.'s case* is, therefore, open to doubt. [400 B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3552 of 1983

From the Judgment and order dated 5.10.1982 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 14310 of 1981.

A Civil Appeal No. 8553 of 1983

From the Judgment and order dated 5.10.82 of the High Court of Allahabad in Civil Misc. Writ No. 1058 of 1982.

Shanti Bhushan, R.K. Jain, R.P. Singh, Advs. with him for the B Appellants in C. A. No. 8552/83.

Mr. S.N. Kacker, Sr. Adv., Mr. R.B. Mahrotra, Adv. with him for the Respondents in C. A. No. 8552/83.

C *Mr. Soli J. Sorabjee, Sr. Adv., Mr. E.C. Agarwala,* Adv. with him for the Appellants in C. A. No. 8553/83.

Mr. Anwar Ahmed, Sr. Adv., Mr. Ali Ahmed & Miss Halida Khatoon, Advs. with him for the Respondents in C. A. No. 8553/83.

D The following Judgment of the Court was delivered by

MADON, J. The Appellants in each of the above two Appeals by Special Leave granted by this Court filed in the High Court of Allahabad a writ petition under Article 226 of the Constitution of E India challenging an order notifying a deemed vacancy under sub-section (2) of section 12 of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. 13 of 1972). This Act will hereinafter be referred to in short as "the Act". The High Court dismissed both these petitions holding that they were premature. In coming to this conclusion the High F Court relied upon a judgment of a two-Judge Bench of this Court in *Trilok Singh & Co.* v. *District Magistrate, Lucknow, & Ors.*(1) The said decision of this Court was given prior to the amendment of the Act by the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976 (U.P. Act No. 28 of 1976) (hereinafter in short referred to as "the 1976 Amend-G ment Act"). The 1976 Amendment Act came into force on July 5, 1976.

It is unnecessary for the purpose of deciding these Appeals to set out the facts in great detail. The subject-matter of Civil Appeal

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(1) [1976] 3 S.C.R. 942.

No. 8552 of 1983 is a shop bearing Municipal No. 24/34, situate at Mahatma Gandhi Marg, Civil Lines Market, Allahabad. According to the Appellants in this Appeal, the premises were let out to their father, Sheobux Roy, in 1937 and the Appellants' father commenced carrying on business in the said premises in the name and style of Messrs B.N. Rama & Co. The Appellants' father died on or about February 3, 1941, and according to these Appellants the tenancy was inherited by them being his sons. Thereafter, there was a partition amongst the Appellants but in spite of it all the three brothers continued to carry on their businesses separately in the same premises though under different names. While according to the Appellants the tenancy continued jointly with all of them, according to the contesting Respondents, who are the landlords, the tenancy rights belonged to the First Appellant, Ganpat Roy, alone, who is carrying on business in the said premises as Messrs B.N. Rama & Co. (Stores) and who paid the rent and used to recover rent from his other brothers in respect of the businesses carried on by them in the said premises.

Under section 12(2) of the Act, a tenant of a non-residential building carrying on business in the said building is deemed to have ceased to occupy the premises on his admitting as a partner or a new partner a person who was not a member of his family. The definition of "family" given in clause (g) of section 3 of the Act does not include a son-in-law or a daughter-in-law. By a Deed of Partnership dated August 10, 1976, the First Appellant entered into a partnership with his son, Ramesh Roy, and his son-in-law, Swarup Kailash, to carry on business as authorized retail dealer of the Mafatlal Group of Mills under the firm name and style of Messrs B.N. Rama & Co. (Textiles). According to the Appellants, the said partnership is occupying less than one-seventh area of the said premises. Thereafter in 1979, the landlords filed a suit for eviction against the First Appellant on the ground that he had sublet the said premises to his son-in-law. For some reason not apparent on record, the First Appellant's defence in the suit was struck out. The First Appellant filed a revision application to the Allahabad High Court and further proceedings in that suit were stayed by an interim order. That suit was withdrawn some time before the hearing of these Appeals. On or about March 19, 1981, one Ramesh Nath Kapoor and Radhey Shyam Kapoor, who are related to the landlords, filed an application for allotment of the said premises to them on the ground that there was a deemed vacancy under section 12 (2) of the

A Act in respect of the said premises. Thereupon the Rent Control and Eviction Officer got the said premises inspected by a Rent Control Inspector who made his report on May 23, 1981, to the effect that as the matter relating to the said premises was pending in the High Court and a stay order had been granted by the High Court, there was no need to take any action. It thereafter appears B that in order to clarify the position with respect to the stay order, the Rent Controller issued notices to the parties. The Appellants did not appear on the date fixed for hearing and the Rent Controller by his order dated August 13, 1981, held that there was a deemed vacancy in respect of the said premises and ordered C such deemed vacancy to be notified and fixed the hearing of the application for allotment on September 2, 1981. Thereafter a fresh inspection report was made on September 1, 1981, by the Rent Control Inspector to the effect that the requirement of the applicants for allotment of the said premises was genuine. It further appears that an application for release of the said premises was D also made by the landlords. On September 2, 1981, the Rent Controller fixed September 11, 1981, for the hearing of the said application for allotment as also of the said application for release. On September 11, the said order directing natification of deemed vacany and for permission to urge their objections and to contest the said application for release. By an order dated September 30, E 1981, the Rent Controller set aside the order notifying the deemed vacancy but refused permission to the Appellants to contest the said application for release of the said premises on the ground that if it were held that there was no vacancy, the question of release would not arise and if it were held that there was a vacancy, F the occupant would go out of the picture and thereafter the matter would lie between the District Magistrate and the landlord and that no other person could contest the release of the premises to the landlord according to a judgment of the Allahabad High Court. Thereafter, by his order dated November 11, 1981, the Rent Controller negatived the contentions of the Appellant and held that there G was a deemed vacancy in respect of the said premises and ordered such vacancy to be notified. The Appellants thereupon filed the said writ petitions in the High Court which, as mentioned earlier, was dismissed. During the pendency of this Appeal, further proceedings with respect to the release or allotment of the said premises have been stayed by this Court.

H The subject-matter of Civil Appeal No. 8553 of 1985 is also

non-residential premises consisting of a house bearing Nos. 51 and 52, known as West Mount and West View Estates situate on Survey No. 256 in Santhat Cantonment, Ranikhet, District Almora, Uttar Pradesh. By a registered Indenture of Lease dated November 10, 1964, the said property was leased to the First Appellant in this Appeal, Smt. Kaushal Rekhi, for a period of five years with two options for renewal for a like period. The First Appellant has been conducting a hotel in the said premises known as "West View Hotel". Respondents Nos. 2 to 4 to the said Appeals are the present landlords of the said property. On or about June 1, 1968, the First Appellant entered into a deed of partnership with her son. Thereafter the First Appellant exercised two options given to her. According to the First Appellant, as her son went to the United States for advanced training in hotel management, the said partnership was dissolved and she took her daughter-in law, Smt. Sunita Rekhi, the Second Appellant in this Appeal, as a partner in the said business by a Deed of Partnership dated October 22, 1975. According to the First Appellant, she had intimated the fact of this partnership to the District Magistrate who is the prescribed authority under the Act. On October 4, 1980, the landlords made an application to the prescribed authority for release of the said property in their favour on the ground that there was a deemed vacancy in respect thereof. By his ordor dated May 6, 1981, the Rent Controller and Eviction Officer held that there was a deemed vacancy in respect of the said premises. According to the Appellants, the Rent Controller had earlier by his order dated January 20, 1981, held that there was no deemed vacancy in respect of the said premises but had thereafter without any jurisdiction *suo moto* held a fresh inquiry and passed the said order dated May 6, 1981. According to the contesting Respondents, the earlier order was passed on some of the objections raised by the Appellants on the said application for release and the other objections were disposed of by the said order dated May 6, 1981. The Appellants thereafter filed their said writ petition in the High Court which, as aforesaid, was dismissed.

In their respective writ petitions, the Appellants had raised various contentions. Several of them were contentions of law relating to the interpretation of the definition of the word "family" in clause (g) of Section 2 and of other Sections of the Act. The Appellants in Civil Appeal No. 8552 of 1983 had also contended that sub-sections (1) and (2) of Section 12 of the Act were discrimi-

natory and unconstitutional as infringing Articles 14 and 19 of the Constitution of India. None of these contentions were dealt with by the High Court because, as mentioned earlier, it held that the writ petitions were premature. It was urged on behalf of the Appellants in Civil Appeal No. 8552 of 1983 that in any event the point of constitutionality raised by them ought to have been decided by the High Court because an authority constituted by an Act has no power to determine the constitutionalty of that Act or of any provision thereof. This does not appear to be a just criticism of the judgment of the High Court. Apart from stating that the said sub-sections were unreasonable, discriminatory and unconstitutional and, therefore, violated Articles 14 and 19 of the Constitution, no, reason was given nor any ground set out in support of the said contention and most probably either the attention of the High Court was not drawn to this ground or it was not urged before the High Court at the hearing of the writ petition. At the hearing of these Appeals, the said Appellants have made an application to amend their writ petition setting out elaborately their grounds and reasons in support of the said contention and have applied for leave to amend their said writ petition in case their Appeal succeeds and their writ petition is sent back to the High Court for reconsideration. They have also prayed for the State of Uttar Pradesh to be added as Respondent No. 5 to the said writ petition.

The Appellants in the other Appeal have also similarly prayed for the amendment of their writ petition in case they succeed in their Appeal. The question whether these applications should be granted or not falls to be considered only if these Appeals are allowed.

It will be convenient to see the relevant provisions of the Act before we turn to the *Trilok Singh & Co.'s Case.* Clause (g) of Section 3 defines "family" as follows :

"(g) 'family', in relation to a landlord or tenant of a building, means, his or her

(i) spouse,

(ii) male lineal descendants,

(iii) such parents, grand parents and any unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant, as may have been normally residing with him or her.

and includes, in relation to a landlord, any female having a legal right of residence in that builning".

What is pertinent to note about this definition is that a son-in-law and a daughter-in-law are not expressly included in this definition.

Section 11 of the Act prohibits a person from letting any building except in pursuance of an allotment order issued under Section 16. Sub-Sections 2 and 4 of Section 12 provid as follows :

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

"(4) Any building or part which a landlord or tenant has ceased to occupy within the meaning of sub-section (1), or sub-section (2), or sub-section (3), sub-section (3—A) or sub-section (3—B), shall, for the purporses of this Chapter, be deemed to be vacant."

Section 13 provides that where a landlord or tenant ceases to occupy a building or part thereof, no person is to occupy it in any capacity on his behalf or otherwise than under an order of allotment or release under Section 16. Section 15 casts a duty on every landlord or tenant to give intimation of vacancy to the District Magistrate. Under Section 16, 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 (called the allotment order) or may release the whole or any part of such building in favour of the landlord. Under the proviso to Section 16(1), in the case of a vacancy referred to in section 12(4), the District Magistrate is to

give an opportunity to the landlord or the tenant, as the case may be, of showing that the said section is not attracted to his case before making an order under clause (a) of section 16(1), that is before making an allotment order. This proviso was inserted by the 1976 Amendment Act. Strangely enough, in the case of release of the premises to the landlord the proviso does not require any such opportunity to be given to the tenant who would be the person affected by that order. Sub-section (2) of section 16 sets out the circumstances in which a building or any part thereof may be released to the landlord. Under sub-section (4) of section 16, where the allottee or the landlord has not been able to obtain possession of the building allotted or released to him, as the case may be, the District Magistrate, on an application made to him in that behalf, may by order evict or cause to be evicted any person named in that order as well as every other person claiming under him or found in occupation, and may for that purpose use or cause to be used such force as may be necessary and put or cause to be put the allottee or the landlord in possession of the building or part thereof. Sub-section (5) of Section 16 provides as follows :

"(5) (a) Where the landlord or any other person claiming to be a lawful occupant of the building or any part thereof comprised in the allotment or release order satisfies the District Magistrate that such order was not made in accordance with clause (a) or clause (b), as the case may be, of sub-section (1), the District Magistrate may review the order :

Provided that no application under this clause shall be entertained later than seven days after the eviction of such person.

(b) Where the District Magistrate on review under this sub-section sets aside or modifies his order of allotment or release, he shall put or cause to be put the applicant, if already evicted, back into possession of the building, and may for that purpose use or cause to be used such force as may be necessary."

Under sub-section (7) of Section 16, every order made under that Section, subject to any order made under Section 18, is to be final. Under Section 18, as substituted by the 1976 Amendment

Act, no appeal lies against any order of allotment, reallotment or release but any person aggrieved by a final order of allotment, re-allotment or release may, within fifteen days from the date of such order, prefer a revision to the District Judge on any one or more of the following grounds, namely :

(a) that the District Magistrate has exercised a jurisdiction not vested in him by law :

(b) that the District Magistrate has failed to exercise a jurisdiction vested in him by law ;

(c) that the District Magistrate acted in the exercise of his jurisdiction illegally or with material irregularity.

On such application being made, the revising authority may confirm or rescind the final order of allotment, re-allotment or release or may remand the case to the District Magistrate for rehearing and, pending revision, may stay the operation of such order on such terms as he thinks fit. Sub-section (3) of section 18 provides that where an order of allotment or reallotment or release is rescinded, the District Magistrate shall, on an application made to him in that behalf, place the parties back in the position which they would have occupied but for such order or such part thereof as has been rescinded, and may for that purpose use or cause to be used such force as may be necessary. Prior to the substitution of section 18 by the 1976 Amendment Act, that section provided for an appeal to the District Judge by a person aggrieved by an order of allotment, reallotment or release and where such order was varied or rescinded in appeal, the District Magistrate had the power, on an application made to him in that behalf, to place the parties back in the position which they would have occupied but for such order or such part thereof as was varied or rescinded and to use or cause to be used for that purpose such force as may be necessary.

Under section 34(8), for the purpose of any proceedings under the Act and for purposes connected therewith the authorities under the Act are to have such power and follows such procedure, principles of proof, rules of limitation and guiding principles as may be prescribed by rules made under the Act.

The Uttar Pradesh Urban Buildings (Regulation of Letting,

Rent and Eviction) Rules, 1972, prescribe the procedure for ascertainment of vacancy and for allotment or release of permises. Under Rule 8, before he makes any order of allotment or release in respect of any building which is alleged to be vacant under section 12 or to be otherwise vacant or to be likely to fall vacant, the District Magistrate is required to get the building inspected. The inspection of the building, so far as possible, is to be made in the presence of the landlord and the tenant or any other occupant. The facts mentioned in the inspection report are, wherever practicable, to be elicited from at least two respectable persons in the locality and the conclusion of the inspection report is to be posted on the notice board of the office of the District Magistrate for the information of the general public, and an order of allotment is not to be passed before the expiration of three days from the date of such posting, and if in the meantime any objection is received, not before the disposal of such objection. Any objection received is to be decided after consideration of any evidence which the objector or any other person concerned may adduce. Rule 10 prescribes the procedure for allotment of a building where an application for allotment is made. The material portion of sub-rule (6) and of proviso (a) to that sub-rule are relevant and may be reproduced. These provisions are as follows :

> "(6).....a person who is deemed to have ceased to occupy a building within the meaning of Section 12(2), shall not be allotted that or any other non-residential building for a period of two years from the date of such.....deemed cessation :
>
> Provided that —
>
> (a) If the District Magistrate is satisfied in a case referred to in Section 12(2) that the admission of partner or new partner is *bona fide* transaction and not a mere cover for subletting, he shall, if any application had been made in that behalf before the admission of such partner or new partner, allot the non-residential building in question afresh to the newly constituted or reconstituted firm ;
>
> X X X X ."

Under Rule 19, where an allotment or release of a building or part thereof is ordered under section 16(1) on the ground *inter alia* of deemed vacancy within the meaning of section 12, no such order is to be executed until after the expiration of fifteen days from the service upon the occupant of a notice to vacate that building or part thereof, as the case may be.

We will now turn to *Trilok Singh & Co.'s.* case. The facts in in that case were that an application for release was made by the landlords in respect of certain residential premises of which the appellant firm claimed to be the tenant. A Senior Inspector was directed to inspect the premises and make a report. According to the report, the premises were in occupation of three persons, two of whom claimed to be the partners of the appellant firm. The report stated, "After hearing the parties it would be proper to take further action". On receipt of the report, the Rent Controller passed an order "Let the vacancy be notified" without granting any hearing to the appellant firm. The appellant firm thereupon filed a writ petition in the High Court of Allahabad challenging the said order on the ground that it was passed in violation of the principles of natural justice. The said writ petition was rejected summarily on the ground that it was premature and the proper remedy for the appellant firm was to approach the Rent Controller under section 16(5) (a) of the Act for review of the said order. In appeal, this Court upheld the order of the Allahabad High Court. This Court held that by reason of section 16(2) no order of release could be passed under clause (b) of section 16(1) unless the District Magistrate was satisfied that the building was required by the landlord *bona fide* for occupation by himself or any member of his family or for any of the purposes specified in sub-section (2) of section 16. The Court further stated that under clause (a) of section 16(5), where the landlord or any other person claiming to be a lawful occupant of the building comprised in the order of allotment or release satisfied the District Magistrate that such an order was not made in accordance with clause (a) or clause (b) of section 16(1), the District Magistrate could review his order and if on review he set aside or modified the order of allotment or realease, he was empowered to put the applicant, if already evicted back into possession. The Court further observed that section 18 gave a right of appeal against an order of allotment or release and that any person aggrieved by such an order could prefer an appeal to the District Judge and if the order of allotment or release was varied or rescinded by the District Judge in appeal, the

A District Magistrate had under section 18(2) the power to place the parties back in the position which they would have occupied but for such order. The Court further pointed out that the Act did not provide for a hearing at the stage when the District Magistrate passed an order of allotment or release but any person aggrieved by such an order was entitled to ask the District Magistrate to review B his order and if in the meanwhile any person in possession of the building had been evicted, the District Magistrate had the power, if he set aside or modified the order of allotment or release, to put the applicant back in possession. The Court held (at page 945) : —

C "Thus, in the first place, it was unnecessary for respondent 1 to hear the appellants before notifying the vacancy because under the scheme of the U.P. Rent Act, an order notifying the vacancy does no injury and causes no prejudice to the interests of any party. A notification of the vacancy is a step-in-aid of an order of allotment or release and it is D only when such an order of allotment or release is passed that the landlord or the tenant, as the case may be, can have a grievance. Orders of allotment and release are, in the first instance, reviewable by the District Magistrate himself and an order passed by the District Magistrate under section 16 is appealable under section 18."

E

The Court then summarized the conclusion it had reached as follows :

F "The Act thus contemplates successive opportunities being afforded to persons whose interests are likely to be affected by any order passed by the District Magistrate. Putting it briefly, an order notifying the vacancy can be objected to and the objection has to be decided after considering the evidence that the objector or any other person G concerned may adduce. Secondly, if an order of allotment or release is passed under section 16, following upon the notification of a vacancy, the aggrieved person can file a review application. Thirdly, as against an order passed under section 16, there is a right of appeal under section 18."

H We find it difficult to reconcile ourselves to the decision in *Trilok Singh & Co.'s* Case. The Court's attention was not drawn

in that case to Rule 8 of the said Rules. Rule 8 to which we have adverted earlier is the one as substituted by Notification No. 1995/XXIX-E-55-(A) 75 dated May 25, 1977. The original rule, however, was to the same effect and under it also the conclusion reached by the Rent Control Inspector contained in his report of the inspection of the building was required to be posted on the notice board of the office of the District Magistrate for the information of the general public, and the order of allotment could not be passed before the expiration of three days from the date of such posting and, if in the meantime any objection was received, not before the disposal of such objection. The District Magistrate was, therefore, not justified in immediately directing the vacancy to be notified and this act on his part was a clear violation of the statutory requirements of Rule 8 and had the result of depriving the appellant firm of an opportunity of hearing which Rule 8 conferred upon it. On this ground alone the appellant firm should have succeeded. The observation of this Court in *Trilok Singh & Co's* case that it was unnecessary for the District Magistrate to hear the Appellants before notifying the vacancy does not, therefore, appear to be correct. It equally does not appear to be correct to hold that an order notifying the vacancy did no injury and caused no prejudice to the interests of any party because an order notifying the vacancy could be objected to and if any objections were filed, they would have to be decided after considering the evidence that the objector or any other preson concerned might adduce and that after an order of allotment or release was passed following upon the notification of vacancy, the aggrieved person could file a review application or an appeal under section 18. In so holding the Court appears to have overlooked that the stage for objecting to a vacancy being notified was not after it was notified but, as provided by Rule 8, before it was notified and that under the said Rule 8 the notification of vacancy could only be after the objections were heard and disposed of. This Court itself pointed out in that case that the Act did not provide for a hearing at the stage when the District Magistrate passed an order of allotment or release. In such an event, it can hardly be said that a review or an appeal against an order of allotment or release was an adequate remedy. As the very provisions for review and appeal show, if the order appealed against or sought to be reviewed is varied or rescinded, the appellant or the person seeking review, if evicted in the meanwhile, is to be restored back in possession. How the fact of being evicted or even the danger of

A it can cause no prejudice, particularly in these days of acute shortage of accommodation, is something we are not able to appreciate. It is also difficult to understand how a party who has no right to appear at the original hearing of an application could be said to have a right of review or an appeal against an order passed on that application. From the very nature of things, a right to defend an B application in the first instance is a very different matter from a right to seek a review of the order on that application or a right of appeal against that order. In its very nature and scope, an original hearing differs substantially from a review or an appeal. A party applying for review or an appellant cannot as of right lead C evidence. Further, it is he who comes before the authority challenging an order passed to his prejudice and is not in the same position as the party against whom an order is sought in the first instance. The correctness of *Trilok Singh & Co.'s* case is, therefore, open to doubt.

D Apart from this, the position under the Act as amended in 1976 is greatly changed and the right of appeal which was granted by section 18 has been substituted by a right of revision on the grounds set out in the substituted section 18 and which are the same as those on which a revision lies to the High Court under E section 115 of the Code of Civil Procedure, 1908. While in an appeal, findings of fact can also be challenged on the ground that the evidence was not properly appreciated, in revision the only question would be whether the District Magistrate had exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction vested in him by law or had acted in the exercise of F his jurisdiction illegally or with material irregularity. The scope of revision under section 18 is, therefore, much narrower than in the case of an appeal.

Under the proviso to section 16(1), which was inserted by the G 1976 Amendment Act, the District Magistrate is required in the case of a vacancy referred to in sub-section (4) which includes a deemed vacancy under section 12(2) to give an opportunity to the landlord or the tenant, as the case may be, of showing that section 12(4) is not attracted to his case before he makes an order of allotment under clause (a) of section 16(1). Thus, this proviso H gives a right of hearing to the tenant before an order of allotment is made. The proviso, however, does not apply in the case of an

order of release made under clause (b) of section 16(1). Even in the case of an application for allotment, it is doubtful whether a tenant whose objections to notification of a deemed vacancy have been negatived and thereafter the vacancy has been ordered to be notified could be permitted to reagitate the same contentions because such contentions would be barred by principles analogous to *res judicata*. In such an event, it would be difficult to say that he can exercise his right of review on the ground that there was no vacancy. This would apply equally where an order of release is made. Further, the revision which is provided for under section 18 is against an order of allotment or release and not against a notification of vacancy and an issue, which was concluded earlier and on the basis of the finding on which the District Magistrate had proceeded to allot or release the premises, cannot be reagitated in revision. In fact, as would appear from the order dated September 30, 1981, of the Rent Control and Eviction Officer in Civil Appeal No. 8552 of 1983, the Allahabad High Court has held that where a release of a building is sought, the matter lies only between the District Magistrate and the landlord and no other person has a right to object to the release of the premises to the landlord. The tenant has thus no adequate or effective remedy against an order notifying a vacancy. Further, it should be borne in mind that under Rule 10 (6) a tenant who is deemed to have ceased to occupy a building under section 12(2) is not entitled for a period of two years from the date of such deemed vacancy to the allotment of the same or any other non-residential building.

In our opinion, the scheme of the Act would show that a tenant of premises in whose case it is found that there is a deemed vacancy has no efficacious or adequate remedy under the Act to challenge that finding. A petition under Article 226 or 227 of the Constitution of India filed by such a tenant in order to challenge that finding cannot, therefore, be said to be premature. In the view that we take, those Appeals will have to be allowed and the writ petitions of the Appellants will have to be heard by the High Court on merits. As mentioned earlier, the Appellants have applied for amendment of their respective writ petitions. Without expressing any opinion on the merits of the contentions sought to be raised in the proposed amendments, we feel that the amendments sought to be made are of such a nature that they require to be considered and dealt with by the High Court.

A In the result, we allow both these Appeals and reverse the judgment and set aside the order passed by the High Court. We further direct the High Court to rehear on merits the writ petitions filed by the Appellants. We also allow the application for amendment of both these writ petitions. The Appellants will amend their respective writ petitions in terms of the applications for amendment B made by them within one month of the receipt by the High Court of the order of this Court. The High Court will thereupon issue notice in each of these two writ petitions to the newly added State of Uttar Pradesh. The State of Uttar Pradesh will be at liberty to file a counter affidavit within four weeks of the receipt of such C notice. The original respondents to the writ petitions will also be at liberty to file a supplementary counter affidavit within four weeks from the date of receipt by them of the notice that the writ petitions have been amended. The High Court will thereafter endeavour to dispose of these writ petitions as expeditiously as possible. Pending disposal of the writ petitions by the High Court, there will D be a stay of further proceedings for allotment or release of the concerned premises and the Appellants will not be dispossessed from the premises they are occupying.

In the circumstances of the case, there will be no order as to E the cost of these Appeals.

M.L.A. *Appeals allowed.*