AFR
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2025:AHC:225540

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 626 of 2024

Canara Bank Branch Office and 1 other

…..Petitioner(s)

Versus

Sri Ashok Kumar @ Heera Singh

…..Respondent(s)

Counsel for Petitioner(s)	:	Krishna Mohan Asthana
Counsel for Respondent(s)	:	Himanshu Mishra, Punya Sheel Pandey, Suvansit Kumar Jaiswal, Vipul Raj Gautam

With

MATTERS UNDER ARTICLE 227 No. - 5714 of 2024

M/S Tifco & Associates

…..Petitioner(s)

Versus

Rachna Rastogi and another

…..Respondent(s)

Counsel for Petitioner(s)	:	Ravi Anand Agarwal, Shreya Gupta
Counsel for Respondent(s)	:	Atipriya Gautam, Saurabh Patel

With

MATTERS UNDER ARTICLE 227 No. - 6623 of 2024

Rajendar Kumar

…..Petitioner(s)

Versus

Chand Miyan @ Guddu and another

…..Respondent(s)

Counsel for Petitioner(s)	:	Akriti Chaturvedi, Shreya Gupta
Counsel for Respondent(s)	:	

With

S.C.C. REVISION No. - 44 of 2024

Smt. Alimun Nisha

…..Revisionist(s)

Versus

Vinod Kumar Srivastava and 2 others

…..Opposite Party(s)

Counsel for Revisionist(s)	:	Narendra Kumar Chaturvedi
Counsel for Opposite Party(s)	:	Prashant Pandey, Sabya Sachee Rai, Suneel Kumar Rai

With

WRIT - A No. - 5411 of 2024

Sri Kamal Chaurasia

…..Petitioner(s)

Versus

Dr Avneesh Kumar Singh Sengar

…..Respondent(s)

Counsel for Petitioner(s)	:	Rakesh Kumar Singh, Sr. Advocate
Counsel for Respondent(s)	:	Kunal Shah

With

WRIT - A No. - 5413 of 2024

Sri Gairraj Kishore Chaurasia

…..Petitioner(s)

Versus

Dr Avneesh Kumar Singh Sengar

…..Respondent(s)

Counsel for Petitioner(s)	:	Rakesh Kumar Singh, Sr. Advocate
Counsel for Respondent(s)	:	Kunal Shah

Court No. - 36

HON'BLE ROHIT RANJAN AGARWAL, J.

1. Petitioners in these six cases, nominated to this Court by orders of Hon'ble the Chief Justice dated 5th May, 2025, are either tenants or landlords in respect of buildings let out to them for residential or commercial purpose. Five of the writ petitions are under Article 226 and 227 of Constitution of India while the sixth case is S.C.C. Revision filed under Section 25 of Provincial Small Cause Courts Act, 1887 (*hereinafter called as "the Act of 1887"*).

2. The issue raised in all the connected matters, "whether the rent authority, constituted under the provisions of the Act of 2021, has the jurisdiction to entertain application filed by landlord in cases where tenancy agreement has not been executed, if not executed, the landlord having failed to file particulars of tenancy with rent authority" is the same, and with consent of learned counsel for the parties, is being heard and decided together by a common order.

PRELUDE

3. Before adverting to decide the issue in hand, a brief glance of legislative history of both Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (*hereinafter called as "the Act of 1972"*) and Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 (*hereinafter called as "the Act of 2021"*) is necessary for better appreciation of the case.

4. Before enactment of the Act of 1972, the field in regard to control of rent and eviction was guided and controlled by United Provinces (Temporary), Control of Rent and Eviction Act, 1947. With passage of time and in view of continuing increase in urban population and relatively slow pace house building activity, mainly due to shortage of materials, the problem of shortage of accommodation became chronic. To tackle the problem, State Government introduced the Bill in the year 1970 with following statement of objects and reasons:-

*"**STATEMENT OF OBJECTS AND REASONS***

THE United Provinces (Temporary), Control of Rent and Eviction Act, 1947, was passed as a temporary Act with a view mainly to continuing in force provisions relating to control of letting and rent of accommodation similar to those contained in orders which had been issued under the Defence of India Rules, 1939. It was expected that the situation of shortage of accommodation would be tided over after a short period, and accordingly an Ordinance was promulgated in 1946, and it was replaced by a temporary Act in 1947. In view, however, of the continuing increase in urban population and the relatively slow pace of house-building activity due, mainly, to shortage of materials the problem of shortage of accommodation has become chronic, and the life of the Act, has had to be extended from time to time. Various amendments were also made in its provisions as and when problems arose. Some of the provisions attracted criticism on various grounds in Courts of law and also criticism by informed public opinion. Government gave an assurance to the Legislature that they would soon replace the Act by a new comprehensive legislation, and accordingly, this Bill has been prepared.

The salient features of this Bill are as follows:

1. It is proposed to make the new law a permanent one instead of a temporary measure.

2. Instead of fixing a particular date and applying the law only to buildings constructed till that date it is proposed that the new law shall apply to all buildings after a period of 10 years from the date of completion of their construction. Thus the number of buildings that will be brought under regulation shall be rising progressively as time passes. Ten year holiday from regulation is being provided to give incentive for construction of new buildings.

3. Under section 3 of the old Act the powers of the District Magistrate in the matter of grant of permission for institution of a suit for eviction of a tenant were not defined and he had an unfettered discreation to allow eviction on any ground whatsoever. The grounds on which such eviction of a sitting tenant may be permitted or release of a vacant building allowed, have now been restricted. Further in order to reduce multiplicity of proceedings and also to reduce the congestion in civil courts it has been provided that proceedings for eviction shall lie before the prescribed authority instead of in the civil court.

4. The provision for revision to the State Government against allotment and release orders and orders of eviction of unauthorised occupants has been omitted. Instead, appeals against allotment orders and orders of release of vacant buildings that may be passed by the District Magistrate or his delegate shall lie to the Commissioner and appeals against orders of the District Magistrate or his delegate determining or refixing rent and orders of the prescribed authority in release proceedings against siting tenants shall lie to the Distict Judge, and the decision of the Commissioner or the District Judge shall be final.

5. Suits for eviction on the grounds specified in section 3 of the old Act which lay in the Court of Munsif of Civil Judge shall now lie in the courts of Small Causes. This will do away with the multiplicity of appeals, as only a revision will lie against the decision of the Small Cause Court as in other small cause cases. Further, out of the grounds specified in the old Act, some have been modified. As it appears that allegations of causing a nuisance were sometimes made for creating a fictitious ground of eviction, this ground has been omitted. Moreover, mere making of material alterations will not be a valid ground of eviction and only structural alterations in the building will form such ground.

6. Buildings held by educational institutions on charitable societies or buildings built and held by co-operative societies, companies and firms for their own occupation or for the occupation of their employees, etc., shall be exempt from the operation of the new law.

7. Certain provisions have been made with a view to ensuring that buildings are not deliberately got under-assessed, and the local authorities get their due share of taxes according to the correct letting value. Re-fixation of rent on the application of the tenant is also being provided for in such cases.

8. Suits for eviction pending against tenants of buildings brought under regulation for the first time shall not be decreed, and decrease for eviction already obtained shall not be executed except on specified grounds.

9. After the death of a tenant the surviving members of his family shall be entitled to the same protection as the deceased.

10. In the case of such repairs as are essential to keep a building wind-proof and water-proof the tenant is being allowed to deduct two months' rent instead of one month's rent.

11. The tenant's liability to pay enhanced house tax is being reduced from one-third of the amount of enhancement to one-fourth thereof.

12. The provisions regarding allotment, maintenance of the building in wind-proof and water-proof condition and of amenities attached to it, and deposit of rent in Court in certain circumstances have been retained, and certain loop-holes in the various provisions have been sought to be plugged.

This Bill is, accordingly, introduced."

5. The Bill was passed and the Act of 1972 came into force on 15.07.1972. The Act provided for regulation of letting, rent and eviction of tenants from certain class of buildings situated in urban areas. Chapter IV provided for regulation and eviction, and only under Section 20 under the ground specified in sub-section (2), a landlord could get the tenant evicted. However, Section 21 provided for release of building under occupation of tenant under circumstances provided therein. Apart from this, there was no provision under the Act of 1972 which could balance the equity in favour of landlord.

6. As provisions contained in the Act of 1972 had virtually led to freezing of rent determined in the year 1972 for all times to come, a coordinate Bench of this Court in **Milap Chandra Jain vs. State of Uttar Pradesh, 2001 (2) ARC 488** declared unconstitutional the provisions leading to such a consequence after finding the same to be highly unreasonable and violative of Article 14 of Constitution of India. However, the Court directed State Government to consider redefining the expression "standard rent" in accordance with model rent control legislation published by the Government of India in July, 1992, and a proper legislation in this respect to be enacted. The relevant para of the judgment is extracted hereasunder:-

> *"Accordingly, the definition of the "standard rent" under Section 3 (k) of the Act and the corresponding provisions under Sections 4(2), 5, 6, 8 and 9 of the Act are declared ultra vires of the Constitution of India. The respondent No. 1 is directed to consider the matter in the light of observations and to redefine the "standard rent" or "fair rent" in accordance with the model rent control legislation published by the Government of India in July, 1992 at least in respect of the buildings which were in the possession of the tenants at the commencement of U. P. Act No. XIII of 1972 to remove injustice done to a class of landlords. The proper legislation in this respect is expected to be enacted at the earliest."*

7. As the directions given in the above case were not complied, the co-ordinate Bench in another case **Milap Chandra Jain vs. Roop Kishore (2014) 3 AWC 2286** observed as under:-

> *"37. This Court in Milap Chand Jain (supra) way back on 12.9.2001 had struck down certain provisions of the Act in relation to "standard rent' and re-fixation of fair rent with the direction for enactment of proper new legislation on the model rent control legislation published by the Government of India in July, 1992. Another Lordship of this Court in Bal Kishan v. Additional District Judge,2003 (2) ARC 545, had made strong recommendation to consider for providing a general provision enhancement of rent but the people of the State have not seen any amendment in the existing Act and the new legislation is also not in sight.*
>
> *38. The Act is not applicable to buildings constructed on or after 26th April, 1985 for a period of 40 years and to those tenancies having rent of Rs. 2000/- and above. In other words, it covers only old tenancies with meagre rent of less than Rs. 2000/- p.m. The landlord of such buildings are the worst suffers as they are not in a position to increase the rent or to get the building vacated from tenants. They are unable to utilise their property in a more appropriate or beneficial method suiting to its value. Therefore, it is imperative and high time for the legislature to give a re-look to the existing statute as had been directed earlier.*

> *39. The apathy shown by the law makers to the suggestions for improvement in the Act and to the directions of the Courts to come out with proper and better legislation, reminds me the decision of the Supreme Court in Union of India v. Raghubir Singh, AIR 1989 SC 1333, wherein it quoted Lord Reid "There was a time when it was thought almost indecent to suggest that Judges make law. But we do not believe in fairy tales any more", suggesting that time has come when the Courts may under compulsion took over the work of legislation.*
>
> *40. If the lawmakers neglect their duty and do not care to enact proper legislation in time or despite directions of the Court, the people would agitate and force them to make the necessary law and even if this fails a day is not far when the Courts will have to clothe themselves with the power to enact law.*
>
> *41. It would be a grim position causing overlapping of jurisdiction but non the less is a sign of caution to the legislature to wake up and to leave aside governance a little and to serve the people more.*
>
> *42. Let a copy of this judgment be placed before the Chairman, Law Commission, U.P. and the Legal Remembrancer who shall prepare a report on the follow up action on the directions of the Court in Milap Chand Jain (supra) and Bal Kishan (supra) and to oversee the implementation of the above decision. The report shall be submitted by him to the Court within a period of three months of receiving a copy of this judgment."*

8. Another Civil Misc. Writ Petition No. 50870 of 2004 was filed by one Neena Jain before this Court for declaring the Act of 1972 as unconstitutional. On 04.04.2014, the Division Bench dismissed the petition and overruled the judgment rendered in both the cases of **Milap Chandra Jain (supra)**. The Division Bench observed as under:-

> *"45. Before parting with the case we may observe that it is for the State legislature to take into account, after considering the relevant material, which includes collection of data and statistics, and the needs of the society with fair representation of class of persons, who are owners of the building and tenants to make provisions for periodical increase of agreed rent to those buildings, who still continue to enjoy the protection of the U.P. Act No. 13 of 1972. The State Government may consider to appoint a Commission, for such purpose and to consider its recommendations for making appropriate amendments to the Act. The writ petition as well as the transfer application are dismissed."*

9. The said judgment was assailed before Hon'ble Supreme Court through Special Leave Petition, which was converted into Civil Appeal No. 1082 of 2017 (Neena Jain vs. State of U.P. and others). The Hon'ble Supreme Court on 27.02.2020 required State Government to bring on record the steps taken by State in furtherance of directions issued by Division Bench in case of **Neena Jain (supra)**. On 04.03.2020, the State

Government apprised the Apex Court that despite recommendations of various committees, nothing effective had transpired, however, State assured that needful on urgent basis will be done within four months.

10. In the meantime, Central Government framed Model Tenancy Act, for adoption by State and Union Territories, however, its approval by Central Government remained pending.

11. The State Government apprised the Apex Court on 03.11.2020 regarding approval being pending by Central Government and its inability to issue Ordinance, the Apex Court observed that there was no good reason for State to wait for Model Tenancy law to take its final shape and that it may bring forth its own State Legislation by taking some guidance from the draft legislation.

12. Thus, on the lines of Draft Model Tenancy Act prepared by Central Government, the State of Uttar Pradesh on 09.01.2021 promulgated the Uttar Pradesh Regulation of Urban Premises Tenancy Ordinance, 2021. As the Bill replacing the Ordinance was not passed within a period of six weeks, it lapsed on 31.03.2021. Again, on 09.04.2021, Uttar Pradesh Regulation of Urban Premises Tenancy (Second) Ordinance, 2021 was promulgated. On 02.06.2021, Union Cabinet approved the Draft Model Tenancy Act and it was circulated to all States/Union Territories for its adoption.

13. However, the second ordinance was replaced by the Act of 2021 and it received the assent of Governor on 24.08.2021 and was made applicable in the State of U.P. from 11.01.2021.

DISCUSSION

14. An insight into the facts leading to the enactment of the Act of 2021 reveal that State Legislature intended to enact on the lines of the Model Tenancy Act, 2021 prepared and approved by the State Government. Paragraph 2 of the Statement of Objects and Reasons appended to the Bill reveals that it was considered expedient to introduce the Bill in view of the directions passed by the Hon'ble Supreme Court

as also to bring the law relating to tenancy in urban areas in tune with the Model Tenancy Act prepared by the Central Government. Statement of Object and Reasons of Act of 2021 is reproduced hereasunder:-

> *"**STATEMENT OF OBJECTS AND REASONS***
>
> *The Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act no. 13 of 1972) (hereinafter referred to as the "said Act") has been enacted for the regulation of letting, and rent of, and the eviction of tenants from, certain classes of buildings situated in urban areas, and for matters connected therewith and incidental thereto. It was observed that under the scheme of said Act several difficulties were being faced in settling disputes arising between the tenant and the landlord, a large number of tenancy disputes were also pending in the Courts, and the owners of the building were also not getting proper rent for their property. Apart from the above, certain sections of the said Act had also been declared excessive by the Hon'ble Allahabad High Court. The said order of the Hon'ble High Court has not yet been challenged in any Court and thus this order is still in effect.*
>
> *In view of the directions given by the Supreme Court of India in certain matters; the Draft Model Tenancy Act prepared by the Government of India; and on the basis of the recommendations made by the Uttar Pradesh State Law Commission in this regard, it was decided to repeal the said Act of 1972 and replace it with a new law.*
>
> *Accordingly, the Uttar Pradesh Regulation of Urban Premises Tenancy Ordinance, 2021 (U.P. Ordinance no. 2 of 2021) was promulgated by the Governor on January 9, 2021. Due to the sudden adjournment of the first session of 2021 of the State Legislature on March 4, 2021, proceedings of which was determined from February 18, 2021 to March 10, 2021, replacing Bill of the said Ordinance could not be passed by the Houses of the State Legislature. Therefore, the Ordinance promulgated on January 9, 2021 lapsed on March 31, 2021 as the replacing Bill therefore could not be enacted within six weeks of re-assembly of the State Legislature as required under Article 213 of the Constitution.*
>
> *In view of the aforesaid, it was decided to bring a new tenancy law to keep the provisions of the aforesaid Ordinance in force even after March 31, 2021 to establish Rent Authority and Rent Tribunals to regulate renting of premises, to protect the interests of landlord and tenants, and to provide speedy adjudication mechanism for resolution of disputes and for matters connected therewith or incidental thereto.*
>
> *Since the State Legislature was not in session and immediate legislative action was necessary to Implement the aforesaid decision, the Uttar Pradesh Regulation of Urban Premises Tenancy (Second) Ordinance, 2021 (U.P. Ordinance no. 3 of 2021) was promulgated by the Governor on April 9, 2021.*
>
> *This Bill is introduced to replace the aforesaid Ordinance.*
>
> *By order,*
>
> *ATUL SRIVASTAVA,*
>
> *Pramukh Sachiv"*

15. For composite study, Section 4 and 40 enshrined in Chapter II and VIII of the Model Tenancy Act are reproduced herein-below:-

> *"**4. (1)** Notwithstanding anything contained in this Act or any other law for the time being in force, no person shall, after the commencement of this Act, let or take on rent any premises except by an agreement in writing, which shall be informed to the Rent Authority by the landlord and tenant jointly, in the form specified in the First Schedule within a period of two months from the date of tenancy agreement.*
>
> *(2) Where the landlord and the tenant fail to jointly inform the execution of the tenancy agreement referred to in sub-section (1), the landlord and tenant shall separately inform the execution of tenancy agreement to the Rent Authority within a period of one month from the date of expiry of the period specified in sub-section (1).*
>
> *(3) The Rent Authority shall, within three months from the date of its appointment, put in place a digital platform in the local vernacular language or the language of the State/Union territory for enabling submissions of document in such form and manner as may be prescribed.*
>
> *(4) The Rent Authority shall, after receiving information about the execution of tenancy agreement along with the documents specified in the First Schedule,-*
>
> > *(a) provide a unique identification number to the parties; and*
> >
> > *(b) upload details of the tenancy agreement on its website in local vernacular language or the language of the State/Union territory,*
>
> *within seven working days from the date of receipt of such information, in such manner along with such documents as it may deem fit.*
>
> *(5) The terms of authorisation of the property manager, if any, by the landlord to deal with the tenant shall be such as agreed to by the landlord and tenant in that behalf in the tenancy agreement.*
>
> *(6) The information provided under sub-section (1) and sub-section (2) shall be conclusive proof of the facts relating to tenancy and matters connected therewith, and in the absence of any statement of information, the landlord and the tenant shall not be entitled to any relief under the provisions of this Act.*
>
> ***40. (1)** Save as otherwise provided in this Act, no civil court shall entertain any suit or proceeding in so far as it relates to the provisions of this Act.*
>
> *(2) The jurisdiction of the Rent Court shall be limited to tenancy agreement submitted to it as specified in the First Schedule and shall not extend to the question of title or ownership of premises."*

16. Though, the State Legislature intended to enact law regulating urban tenancies on the lines of Model Tenancy Act prepared by Central Government, however, while enacting Act of 2021, State took a conscious departure from Model Tenancy Act as regards mandatory

nature of execution of tenancy agreement and its intimation to the rent authority in case of execution as also non-execution.

17. Model Tenancy Act is at idem with Act of 2021 in providing that tenancy agreement executed between the landlord and tenant under the Act would serve as conclusive proof of landlord-tenant relationship, there is marked departure regarding the consequences emanating on the ground of the failure of the parties to intimate to rent authority about its execution or non-execution.

18. Sub-section (6) of Section 4 of Model Tenancy Act expressly provides that on ground of failure of parties to intimate about execution or non-execution of tenancy agreement would preclude the landlord and tenant from claiming any relief, while Act of 2021 enacted by State Government has deliberately chosen to omit prescription of such consequences in case of failure of parties to intimate the rent authorities about the execution or non-execution of tenancy agreement.

19. The Act of 2021 in Section 2(c) defines a premise, while sub-section 2(i) provides for "tenancy agreement", which means an agreement in writing executed between the landlord and tenant for the purpose of letting the premises of payable rent.

20. Chapter II of the Act of 2021 in Section 4 provides for tenancy agreement which is as under:-

> *"**4. Tenancy Agreement.** – (1) Notwithstanding anything contained in this Act or any other law for the time being in force, no person shall, after the commencement of this Act, let or take on rent any premises except by an agreement in writing, which shall be informed to the Rent Authority by the landlord and tenant jointly, in the form specified in the First Schedule within a period of two months from the date of tenancy agreement:*
>
> *Provided that in cases of residential tenancies for a period of less than twelve months, the landlord and tenant shall not be required to inform the Rent Authority about such tenancy.*
>
> *(2) Where the landlord and the tenant fail to jointly inform the execution of the tenancy agreement referred to in sub-section (1), the landlord and tenant shall separately inform the execution of tenancy agreement to the Rent Authority within a period of one month from the date of expiry of the period specified in sub-section (1).*
>
> *(3) Where, in relation to a tenancy created before the commencement of this Act,-*
>
> *(a) if an agreement in writing was entered into between the landlord and the tenant, they shall jointly present a copy thereof to the Rent Authority within three months of the commencement of this Act.*
>
> *(b) if no agreement in writing was entered into, the landlord and the tenant shall enter into an agreement in writing with regard to that tenancy and present the same to the Rent Authority within three months of the commencement of this Act:*

Provided that where the landlord or the tenant fail to present jointly a copy of the tenancy agreement or fail to reach an agreement within specified period, such landlord and tenant shall separately file the particulars about such tenancy with the Rent Authority within one month from the date of expiry of period mentioned in clause (b) above, in the form specified in First Schedule. If the landlord has submitted his particulars within the specified period but tenant fails to submit such particulars, the landlord may file an application for eviction on this ground alone:

Provided further that during such eviction proceedings, the Rent Authority shall, notwithstanding anything contained in this Act, decide interim rent payable by the tenant during such adjudication.

(4) The State Government shall, put in place a digital platform in the Hindi or English language for enabling submissions of document in such form and manner as may be prescribed.

(5)The Rent Authority shall, after receiving information about the execution of tenancy agreement along with the documents specified in the First Schedule, provide a unique identification number to the parties.

(6)The terms of authorization of the property manager, if any, by the landlord to deal with the tenant shall be such as agreed to by the landlord and tenant in that behalf in the tenancy agreement.

(7)The information provided under sub-sections (1), (2) and (3) shall be conclusive proof of the facts relating to tenancy and matters connected therewith, and in the absence of any statement of information, the landlord may file an application for eviction on this ground alone."

21. From the reading of above provisions, it is clear that the Legislature was conscious of the fact that provision for fresh tenancy as well as for old tenancy was required.

22. Section 4 starts with a *non obstante* clause, the Legislature in sub-section (1) provided for those tenancies for which agreement was required in writing between landlord and the tenant for the premises to be let out by landlord or taken on rent by the tenant. It provided for written agreement to be forwarded to rent authority within two months from the date of agreement.

23. However, in respect of tenancy for residential purpose which was for less than twelve months, the information to the rent authority was dispensed with. Sub-section (2) provides for joint information about the execution of agreement to the rent authority, but in case of failure, any of the parties, i.e. landlord or tenant, could inform within one month after expiry of the period provided under sub-section (1).

24. Sub-section (3) of Section 4 is of great relevance. It deals with the tenancy created before the commencement of the Act. Clause (a) of sub-section (3) deals with a situation wherein an agreement in writing was entered between the landlord and tenant, and they have to jointly present a copy to the rent authority within three months from the commencement

of the Act. While, clause (b) deals with another situation where no agreement in writing was entered between the parties, the landlord and tenant will now have an opportunity to enter into an agreement in writing in regard to tenancy and intimate it to the rent authority within three months from the commencement of Act.

25. Proviso to Section 3 envisages a situation where tenancy agreement is not placed jointly or they fail to reach an agreement within a time limit prescribed therein, then the landlord or tenant may file particulars of such tenancy with rent authority within one month from the date of expiry of period mentioned in clause (b), in the forms specified in the first schedule. The proviso further provides opportunity to landlord for initiating proceedings in case particulars are submitted by him and not by tenant.

26. Sub-section (4) mandates State Government to place a digital platform for the submission of documents, and once they are placed in prescribed manner, the rent authority after receiving such information will allot a unique identification number to the parties. Sub-section (4) and (5) had been enacted to give a legal status to both landlord and tenant in regard to the tenancy which is recorded with the rent authority and unique number is allotted.

27. Sub-section (7) of Section 4 records that information provided under sub-sections (1), (2) and (3) shall be the conclusive proof of the fact relating to tenancy and matter connected therewith. It further clarifies that in absence of any statement of information which is required under sub-section (1), (2) and (3), the landlord may file an application for eviction on this ground alone.

28. It seems that the the Legislature was well conscious that in case of tenancy created prior to the commencement of Act, where no written agreement being entered between the parties, and information also not sent to rent authority, then it will not disable the landlord from seeking remedy under the Act. Consciously, Legislature added the word “the landlord may file an application for eviction on this ground alone”.

29. This part of sub-section (7) of Section 4 is missing in the Model Tenancy Act. It is trite law that where omissions in a statute are conscious, Legislative intendment are not accidental, the omissions made by the Legislature in its wisdom are to be respected and same cannot be filled up by judicial interpretive process. The Hon'ble Apex Court in **Babita Lila vs. Union of India, (2016) 9 SCC 647** held as under:-

> *"**64.** More recently, this Court amongst others in Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Ltd. [Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Ltd., (2015) 9 SCC 209] had propounded that when the legislative intention is absolutely clear and simple and any omission inter alia either in conferment of power or in the ambit or expanse of any expression used is deliberate and not accidental, filling up of the lacuna as perceived by a judicial interpretative process is impermissible. This was in reiteration of the proposition in Sree Balaji Nagar Residential Assn. v. State of T.N. [Sree Balaji Nagar Residential Assn. v. State of T.N., (2015) 3 SCC 353 : (2015) 2 SCC (Civ) 298] to the effect that casus omissus cannot be supplied by the court in situations where omissions otherwise noticed in a statute or in a provision thereof had been a conscious legislative intendment."*

30. Thus, conscious omission on the part of State Legislature would not provide fatal consequences like nature as envisaged under sub-section (6) of Section 4 of draft Model Tenancy Act, 2021, which makes manifestly clear that Legislature did not intend to deprive the landlord of his right to seek expedient eviction under Act of 2021.

31. The use of expression "shall" in sub-section (3) of Section 4 is only for the purpose of requiring landlord and tenant to submit the particulars of tenancy as envisaged under sub-section (3) of Section 4 only to serve as the conclusive proof of the fact relating to tenancy.

32. It caters to this limited purpose that Act of 2021 provides intimation about the tenancy to rent authority. In case where there is no dispute as to the landlord-tenant relationship, no mileage can be drawn out of the expression "shall" employed in sub-section (3) of Section 4 as well as its first proviso to intend that non-intimation by landlord would divest him of all the right under the Act of 2021.

33. Moreover, the said provision does not envisage a penal consequence *vis-a-vis* the landlord in case of failure to intimate the

particulars of tenancy to rent authority, and thus, requirement of intimation by landlord as regards particulars of tenancy cannot be characterised as a mandatory requirement, despite the use of expression "shall" in sub-section (3) of Section 4 of the Act of 2021.

34. In **Kailash vs. Nanhku, (2005) 4 SCC 480**, Hon'ble Apex Court while dealing with question whether the provision is a mandatory or directory held that "language" alone is not always decisive. Regard must be given to the context, subject matter and the object of the provision. It further held that for ascertaining real intention of Legislature, the Court may consider the nature and design of the statute, and the consequences which would follow from construing it to the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances namely that the statute provides for contingency of non-compliance with the provisions; fact that non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered. If object of the enactment is defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory. Relevant paragraph 28 is reproduced hereasunder:-

> *"**28.** All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the bprovisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in Sushil Kumar Sen v. State of Bihar10 are pertinent: (SCC p. 777, paras 5-6)*
>
> > *"The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer.*

> *The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence much as substantive."*

35. In **Administrator, Municipal Committee Charkhi Dadri v. Ramji Lal Bagla AIR 1995 SC 2329** as well as in **State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti, (2018) 9 SCC 472,** the Hon'ble Apex Court held that absence of provision for consequence in case of non-compliance with the requirements prescribed would indicate directory nature despite use of word "shall". Relevant paragraphs 14 and 18 respectively are extracted hereasunder:-

> *"**14.** In our considered opinion, Section 44-A cannot be held to be mandatory in the sense that non-compliance with it leads to nullification of the acquisition which has already become final. Such non-compliance cannot also result in divesting of title of the trust nor is there any obligation to restore the unutilised portion(s) of land to its erstwhile owners/persons interested. The reasons are the following:*
>
> *(a) The section while using the expression 'shall' does not provide the consequence of non-compliance with its requirement. One of the well-accepted tests for determining whether a provision is directory or mandatory is to see whether the enactment provides for the consequence flowing from non-compliance with the requirement prescribed. (State of U.P. v. Manbodhan Lal Srivastava. The proviso to Section 44-A empowers the Government to extend the said period. The proviso does not prescribe the outer limit beyond which extension cannot be granted. Nor does it indicate in any manner that the said power can be exercised by the Government only once and no more.*
>
> *A question may then arise, why was the proviso put in at all? What is the purpose it seeks to achieve, if not to give a mandatory character to the requirement in the main limb of Section 44-A? Having regard to the totality of circumstances [including those mentioned under (b) and (c) occurring hereinafter] we are of the opinion that it appears to be a form of governmental control over those statutory bodies. If the trust does not execute the scheme within the period of five years — and the Government does not see sufficient reason to extend time therefore — the Government may take any of the steps contemplated by Chapter V-A, which chapter was introduced by the Haryana Legislature by the very same Amendment Act (17 of 1973) which introduced Section 44-A. Chapter V-A vests in the Deputy Commissioner the power of control over the trusts. Section 55-A empowers the Deputy Commissioner to call for information, statements, accounts and reports from the trusts and to enquire generally into their working and affairs. Section 55-B confers upon the Deputy Commissioner the power to suspend any resolution or order of the trust. More important, Section 55-C empowers the Deputy Commissioner to provide for performance of duties in case of*

default of the trust in performing its duties. Section 55-C reads as follows:

"55-C. Power to provide for performance of duties in case of default of trust.— (1) When the Deputy Commissioner after due enquiry, is satisfied that a trust has made default in performing any duty imposed on it by this Act, or by any order or rule made under this Act, he may, by an order in writing duly supported with reasons fix a period for the performance of the duty; and should it not be performed within the period so fixed, he may appoint some person to perform it, and may direct that the expenses thereof shall be paid, within such time as he may fix, by the Trust.

(2) Should the expense be not so paid, the Deputy Commissioner may make an order directing the person having the custody of the balance of the trust fund to pay the expense, or so much thereof, as may from time to time be possible, from that balance in priority to all other charges against the same.

The section is self-explanatory and needs no elaboration at our hands. Section 44-A has to be read and understood along with this section which means that the Deputy Commissioner will have to take action under Section 55-C, in case of the failure of the trust to execute the scheme within the period of five years. If the time is extended under the proviso and yet the trust fails to execute the scheme within the extended time, the Deputy Commissioner can — ought to — resort to Section 55-C. Sections 55-D and 55-E make the acts and orders of the Deputy Commissioner subject to Government's order. It, therefore, cannot be said that Section 44-A or its proviso have no purpose behind them or that they are a mere surplusage.

(b) The more important and substantial reason, of course, is that Section 44-A does not provide expressly or by necessary implication that non-compliance therewith results in nullification of the acquisition or in the divesting of title of the trust or that on such non-compliance, the land acquired has to be restored to its erstwhile owners/claimants. It does not also provide, what should happen to the compensation already received by them. Evidently all these aspects could not have been left to be inferred. These are very vital matters and not matters of mere procedure. The divesting of title is a matter of substance and not a formality. So is the restoration of land, return of compensation received, interest, if any, to be paid on such returned amount, compensation for any development and improvements, if any, made on the land by the trust within the period aforesaid. Absence of any provision for the above matters, in our opinion, shows conclusively that the provision in Section 44-A is only directory notwithstanding the use of expression 'shall' therein. The said provision is meant to impress upon the trust and its authorities, the desirability of the time-frame within which the schemes should ordinarily be executed. But to construe the said admonition as leading to the consequences suggested by the respondents' counsel would amount not only to reading words into the section which are not there but to reading a whole lot of substantive and procedural provisions into it which the legislature has not thought fit to provide for. Acceptance of the contention urged by the learned counsel for the respondents would entail several complications and situations for which there is no provision in the Act. According to the learned counsel only the land which has not been utilised for the scheme is liable to be restored to its erstwhile owners, but not the land which has already been utilised. A question arises what is 'utilisation'?

> *Suppose, a road is laid and other amenities provided but the construction of buildings contemplated by the scheme has not taken place. Is it a case of utilisation or not? It may also happen that the nature and character of the land has been changed after acquisition. If so, the question arises whether the land has to be restored to its original owners in the condition in which it was acquired or in the condition in which it is on the expiry of the prescribed period or in the condition in which it is at the time of restoration. What about refund of compensation already received by the erstwhile owners? Whether they are liable to pay any interest thereon or whether they are entitled to any damages for the deprivation for the period they have been kept out of possession? These are only a few problems which may arise and are mentioned only to emphasise that not providing for all these matters is a sure indication of the provision in Section 44-A not being mandatory in the sense it is sought to be understood by the respondents.*
>
> *(c) Yet another feature to be noticed is the placement of the Section 44-A. It occurs in Chapter IV which provides for preparation and publication of the schemes under the Act. Chapter V speaks of powers and duties of the Trust where a scheme has been sanctioned and Chapter VI contains provisions relating to acquisition of land required for execution of the scheme and other incidental matters. If the legislature intended to say that failure to execute the scheme within the time prescribed in Section 44-A leads to nullification of acquisition with all the attendant consequences, the section should have found its place in Chapter VI — and with specific and clearer language."*

36. Somewhat similar view has been taken by the Karnataka High Court while considering provisions under the Karnataka Rent Act, 1999 requiring the execution of tenancy agreement and in case of failure of execution to intimate about the particulars to the rent authority as also the non-prescription of consequences qua the filing of application by landlord for the eviction of the tenant. In **Sri Mohammed Aslam Khan vs. Sri Saravana Eswar P Kumar, House Rent Revision Petition No. 5 of 2021,** the Court held as under:-

> *"6. It is the submission of learned counsel for the petitioners that the execution of an agreement or submission of the particulars about such tenancy before the prescribed authority is a condition precedent or sine quo non without which no relief could be granted to the landlord under the Rent Act, 1999. Referring to the term "Landlord" as defined under section 3(e) read with section 4 of the Rent Act, 1999, learned counsel would submit that in the absence of a written agreement of lease, the provisions of the Rent Act, 1999 cannot be invoked by the landlord to seek eviction of the tenant and therefore, the impugned order passed by the Small Causes Court, Bengaluru solely relying on the decision of the Rent Controller and the documents of title relating to the eviction petitioners cannot be sustained.*
>
> *8. Insofar as the compliance of the requirements of section 4 of the Rent Act, 1999 is concerned, it is relevant to note that section 4 does not provide for any legal consequence for non filing of the a*

declaration by 'tenant' or 'landlord'. Failure to comply with the said requirement does not take the petition premises outside the purview of the Rent Act, 1999 nor does it take away the right of the landlord to seek eviction of the tenant on proof of the grounds enumerated in Section 27 of the Rent Act, 1999. In that view of the matter, the impugned order passed by the Small Causes court being in conformity with the provisions of Rent Act, 1999, does not warrant any interference by this Court. Viewed from another angle, the term "Landlord" is defined in section 3(e) of the Rent Act, 1999 as under:-

> *"Landlord" means a person who for the time being is receiving or is entitled to receive, the rent of any premises, whether on his own account or on account of or on behalf of or for the benefit of any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or to be entitled to receive the rent, if the premises were let to a tenant."*

The term 'tenant' is defined in section 3(n) as under:-

> *"Tenant" means any person by whom or on whose account or behalf the rent of any premises, is or but for a special contract would be, payable and includes.-*
>
> *(1) a subtenant;*
>
> *(2) any person continuing in possession after the termination of his tenancy but does not include any person to whom a licence as defined in Section 52 of the Indian Easements Act, 1882 has been granted.*

9. A plain reading of the above definitions indicate that a person qualifies to be a "landlord" as and when he is entitled to receive the rent in respect of the premises falling under the Rent Act, 1999.

10. Moreover in the instant case, the records of the previous proceedings between the parties clearly disclose that right from the inception, there was no dispute with regard to the jural relationship between the parties. Both the parties claim their right and title through their predecessors. The previous proceedings initiated by the ancestors of the petitioners/tenants clearly indicate that the predecessors of the petitioners has admitted to be the tenants in respect of the petition schedule premises under the predecessors of the eviction petitioners. Rent Act, 1999 does not require any attornment unlike the provisions of the Transfer of Property Act, 1882. Under section 5 of the Rent Act, 1999, the tenancy is heritable subject to the terms and conditions provided therein. Under the said circumstances, there being clear material as evidenced in Exs. P10, P11 and P12 to show that the petitioners were the tenants of the petition schedule premises, the contention urged by the petitioners that for want of lease agreement, the eviction ordered by the Small Cause Judge is without jurisdiction cannot be sustained. There being clear material to show that the premises in question is a residential premises fetching a rent of Rs. 1,500/- as determined under Section 7 of the Rent Act, 1999 and there being clear and cogent material to show that the petitioners are occupying the schedule premises as tenants in succession to late Alkar Mohammed Khan who was inducted as a tenant, in my view, the learned Small Causes Judge had jurisdiction to entertain the petition and to order eviction of the petitioners on satisfying of the grounds under section 27(2)(r) of the Rent Act, 1999. As such, I do not find any justifiable reason to interfere with the impugned order.

> *Consequently, the petition falls and the same is liable to be dismissed."*

37. The Constitution Bench of Hon'ble Apex Court in **State of U.P. vs. Manbodhan Lal Srivastava, AIR 1957 SC 912**, held that word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid. Relevant para 11 is extracted hereasunder:-

> ***"11.*** *An examination of the terms of Article 320 shows that the word "shall" appears in almost every paragraph and every clause or sub-clause of that article. If it were held that the provisions of Article 320(3)(c) are mandatory in terms, the other clauses or sub-clauses of that article, will have to be equally held to be mandatory. If they are so held, any appointments made to the public services of the Union or a State, without observing strictly, the terms of these sub-clauses in clause (3) of Article 320, would adversely affect the person so appointed to a public service, without any fault on his part and without his having any say in the matter. This result could not have been contemplated by the makers of the Constitution. Hence, the use of the word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid. On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid. In that connection, the following quotation from Crawford on Statutory Construction — Article 261 at p. 516, is pertinent:*
>
> > *"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other…."*

38. In another Constitution Bench of Apex Court in **State of U.P. vs. Babu Ram Upadhya, AIR 1961 SC 751**, the majority view was that when a statute uses the word "shall", *prima facie*, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute.

> ***"29.*** *The relevant rules of interpretation may be briefly stated thus : When a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by*

carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

39. Another Constitution Bench of Apex Court in case of **M/s. Sainik Motors, Jodhpur and others vs. State of Rajasthan, AIR 1961 SC 1480** also held that ordinarily though the word "shall" is mandatory, it can be interpreted as directory if context or intention otherwise demands.

40. It is thus clear that Act of 2021 unlike draft Model Tenancy Act provides for no penal consequences qua the failure of the landlord to intimate about the particulars of the tenancy to the Rent Authority, the requirement of intimation as envisaged under sub-section (3) of Section 4 of the Act of 2021, which is ordained by the expression "shall" must be held directory and consequent failure on part of the landlord to intimate about the particulars of the tenancy to the Rent Authority would not divest him of his rights to seek eviction on ground of personal need under the Act of 2021.

41. Chapter III of the Act of 2021 deals with rent. Section 8 provides for the rent payable in respect of the premise let out. While, Section 9 provides for the revision of rent. Sub-section (5) provides for the revision of rent in cases of tenancy which were entered prior to commencement of Act, and landlord by giving notice of 30 days, can ask for enhanced rate of rent as payable under sub-section (3) and the tenancy agreement would be deemed to be amended and enhanced rent shall be payable as rent payable under Section 8.

42. Proviso to sub-section (5) provides for the contingencies where no tenancy agreement was executed between the parties prior to the commencement of Act, the landlord and tenant may mutually agree to execute tenancy agreement for enhanced rate of rent, failing which rent authority shall determine the enhanced rent subject to the provision of

Section 10. Thus, proviso to sub-section (5) of Section 9 envisages for a tenancy which is unwritten between the landlord and tenant prior to the commencement of Act and also no written agreement executed subsequent to the enactment.

43. The entire thrust of the enactment is the relationship between the landlord and tenant in respect of the premises let out though the Act mandates for written agreement in respect of the premises let out post enactment. While, it visualises two situations for tenancy which is in existence prior to the commencement of Act.

44. Chapter V provides for the protection for tenant against the eviction and recovery of possession of premises by landlord. Section 21(1) deals with protection of tenant against eviction. While sub-section (2) provides for rent authority to pass an order for eviction and recovery of possession on application made by the landlord on the ground provided from (a) to (m). Chapter VI deals with rent authority, rent tribunal, their power and appeal.

45. Chapter VII provides misc. provisions and Section 38 is of great relevance, which bars jurisdiction of Civil Court in respect of certain matter. The said provision is extracted hereas under:-

> *"**38.** (1) The Rent Court shall, on an application filed by any party. execute an order of a Rent Court or a Rent Tribunal or any other order made under this Act, in such manner as may be prescribed, by-*
>
> *(a) delivering possession of the premises to the person in whose favour the decision has been made; or*
>
> *(b) attaching one or more bank accounts of the opposite party for the purpose of recovering the amount specified in such order; or*
>
> *(c) appointing any advocate or any other competent person including officers of the Rent Court or local administration or local body for the execution of such order.*
>
> *(2) The Rent Court may take the help from the Local Government or local body or the local police for the execution of the final orders:*
>
> *Provided that no applicant shall obtain police help unless he pays such costs as may be decided by the Rent Court.*
>
> *(3) The Rent Court shall conduct the execution proceedings, in relation to its order or an order of a Rent Tribunal or any other order passed under this Act, in a summary manner and dispose of the application for execution made under this section within a period of thirty days from the date of service of notice on opposite party."*

46. Sub-section (1) provides that no Civil Court shall entertain any proceedings insofar as it relates to the provisions of Act, while sub-section (2) provides for the jurisdiction of rent authority to tenancy agreement submitted to it as specified in first schedule and not to dwell into question of title or ownership of the premises.

47. Section 38 is not a provision which confers jurisdiction, rather it limits the jurisdiction of rent authority to decide such disputes as may have arisen between the landlord and tenant under the tenancy agreement submitted to it. It is clearly evident that provision limits jurisdiction of rent authority and not confers any jurisdiction.

48. Sub-section (2) of Section 38 does not provide that rent authority shall exercise its jurisdiction in cases where there may be no tenancy agreement executed between the parties, but intimation in this regard has been given by both the landlord and tenant or the landlord alone.

49. Sub-section (1) and (2) of Section 4 deals with new tenancy created after Act of 2021, while sub-section (3) deals with old tenancy which includes written and unwritten agreements. Proviso to sub-section (3) provides that in case of failure to jointly place the tenancy agreement or failed to reach an agreement, the landlord and tenant shall separately file particulars with the rent authority in form specified in first schedule.

50. In case landlord and tenant failed to enter into written tenancy agreement, but both of them submit particulars of tenancy agreement with rent authority, it would still be a case where there would be no tenancy agreement governing relationship between the landlord and tenant.

51. Moreover, proviso to sub-section (1) of Section 4 provides that in case of residential tenancy of less than 12 months, there shall be no requirement on the part of the landlord and tenant to inform rent authority about the tenancy, meaning thereby that with respect to such tenancy, parties have not executed tenancy agreement.

52. Dispute between such classes of landlord and tenant who are not governed by written agreement may still arise with respect to eviction

which are specifically envisaged under the Act to be addressed by rent authority.

53. Thus, sub-section (2) of Section 38 is not a provision conferring jurisdiction, but rather is a provision that circumscribes the jurisdiction of rent authority proscribing it to not venture into adjudication of dispute of title or ownership and keeping itself to be convenient to the dispute that may arise under the tenancy agreement. Sub-section (2) of Section 38 therefore does not make jurisdiction of rent authority dependent upon execution of tenancy agreement. It shall however have jurisdiction of such tenancies also where no tenancy agreement is entered between the parties, but are still covered under the Act of 2021.

54. As tenancy agreement contains host of conditions governing the relationship between landlord and tenant. It may consist of provisions like the responsibility on either parties to pay Municipal taxes, time within which the rent would be payable, interest on delayed payment of rent, time at which the tenant should enter the premise, the maximum number of persons he may keep along with him, and so and so forth. With different conditions being envisaged under the tenancy agreement, it is obvious that disputes relating to such conditions would also arise warranting its remedy.

55. All that sub-section (2) of Section 38 does is that it sets the contours within which the disputes arising between the landlord and the tenant is to be decided. In doing so, the rent authority would keep itself confined to the tenancy agreement and would not transgress to the issue touching the title and ownership.

56. Once the parties to the dispute are falling within the definition of landlord and tenant and there is no dispute to the said relationship, and once there is legislative intendment in omitting prescription of fatal consequence of divesting of rights of the landlord under the Act in case of his failure to intimate about the particulars of tenancy, the legislative purpose of which otherwise is to conclusively establish the relationship of landlord and tenant and once there is no provision that makes the

jurisdiction of the tribunal dependent upon information being furnished by the landlord in case of non-execution, it logically follows that in situation of non-execution of tenancy agreement, filing of particulars of tenancy by the landlord with the rent authority is not a *sine qua non* for maintaining an Application for release of the tenant under Section 21(2) of the Act of 2021.

57. The issue in hand was placed before this Court due to different views being taken by the courts below in respect of non execution of written agreement between the landlord and tenant, and proceedings being initiated before the rent authority under the Act of 2021. Rent authorities are relying and interpreting the orders passed by the coordinate Benches of this Court as per their convenience which is leading to filing of petitions on large numbers before this Court on daily basis.

58. A coordinate Bench of this Court, for the first time, in case of **Amit Gupta vs. Gulab Chandra Kanodia, 2023 (10) ADJ 23**, had the occasion to consider two questions posed before it as to the maintainability of small cause suit (SCC) already instituted prior to enactment of the Act of 2021 and also the SCC revision arising therefrom. The second question raised was whether the bar created under Section 38 of the Act of 2021 is an absolute bar or not and SCC suit for arrears of recovery of rent and eviction would still be maintainable. The Court framed two legal questions for consideration which are as under:-

> *"(a). Whether a Small Cause Suit already instituted, since prior to coming into force of the new Tenancy Act, 2021 and so also such SCC revision arising therefrom would stand saved or the SCC suit and SCC Revision being not mentioned in the repeal and saving clause of Section 46, the proceedings of such suit and revision would stand abated; and*
>
> *(b). Whether the bar created under Section 38 of the Tenancy Act is not an absolute one and so Small Cause Suit for arrears of recovery of Rent and Eviction (SCC Suit) and SCC Revision arising therefrom would still be maintainable even after the enforcement of the New Tenancy Act, 2021 qua the of tenancies not covered by tenancy agreements provided for under Tenancy Act, 2021."*

59. While deciding question (a) the coordinate Bench not only examined the provisions of the Act of 2021 but also the Act of 1887 and the Transfer of Property Act, 1882 and held as under;

> *"79. Looking at and examining all the provisions of the new Tenancy Act, 2021, I find that in the entire regime of the Act the written tenancy agreement has been made the only recognized mode of tenancy except for eleven months tenancy and even the old tenancies are made to survive but for written agreement. The Legislature in its wisdom seems to have given go by to unwritten tenancy agreements but no mechanism was laid down to meet claims arising out of such tenancy, possibly because the SCC suits were taken to be still maintainable as Amendment Act, 1972 was already in force. Thus by no cannon of construction Section 38 and 42 can be taken to have made SCC suits not maintainable any further more even in respect of unwritten existing tenancies.*
>
> *80. While it is true that finding a defect in an enactment a judge should not sit back to find fault with the draftsman and should endeavour for an interpretation to find real intention of the Parliament but then he can not do violence to a provision in the zeal of achieving a law by substituting words or placing words in between the words, moreso when issue is of legislative competence. It was rightly held "we can not aid the Legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there (Crawford v. Spooner (1846) Moore PC 1 pp 8,9)"📄. "It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so (Renula Bose (Smt.) v. Rai Manmathnath Bose, AIR 1945 PC 108, p.110). Similarly it is wrong and dangerous to proceed by substituting some other words for words of the statute (Pinner v. Everett, (1969) 3 All ER 257, p. 259) Speaking briefly the court cannot reframe the legislation for the very good reason that it has no power to legislate (State of Keralav. Mathai Verghese, (1986) 4 SCC 746. (Statutory Interpretation by Justice G.P.Singh, 14th Edition pp 68,69)*
>
> *81. So entire scheme of the new Tenancy Act if is minutely scrutinised, the legislative intent appears to be to enact a comprehensive law embracing every aspect of tenancy law relating to urban buildings viz a viz tenant-landlord relationship referable to entry 18 of the state list of the VIIth schedule of the constitution. However, still certain grey areas have remained unattended and in my view willingly by the lawmakers looking to the existing central enactments.*
>
> *82. This above view of mine is for rule of harmonious construction in interpreting the provisions of the new Tenancy Act 2021, Amendment Act, 1972 and Transfer of Property Act 1882. The courts while they examine scope and ambit of an enactment must assume that lawmakers have surely held deliberations while enacting law covering a particular field and so also must have given due consideration to the existing law touching the field and if still some areas have been left untouched, the legislative intent to permit interplay of existing law not expressly repealed, must be assumed. This assumption is based on sound principle that wisdom of Parliament is unquestionable and all that courts do is to interpret a provision in synthesis with the other to draw a meaning in context with the object with which the law is enacted. Any interpretation that makes a*

provision redundant or any over zealous approach to place in a word so as to enlarge the scope of a provision, would amount to substituting court's wisdom to that of law makers and that must be avoided. Courts interpret provisions of an Act to ensure that objectivity with which such law must have been enacted, is not lost and any effort of court beyond that would be intruding the field of legislation which is definitely beyond the competence of law courts.

83. In the present case the literal constructions leads to no apparent absurdity and therefore, there can be no compelling reason for departing from that golden rule of construction.

84. Thus to sum up on first question "(a)"📄, I hold that pending SCC suits and SCC revisions on the date of enforcement of the new Tenancy Act, 2021, shall not abate notwithstanding the provisions as contained under Section 42 of the New Tenancy Act, 2021 as no such intendment can be drawn inasmuch as, Section 6 of General Clauses Act would apply. Still further SCC suits would stand saved as where conceived of under old Rent Control Act, proceedings whereof have been saved under sub section 2 of Section 46 of the new Tenancy Act, 2021."

60. Further, while deciding the question (b), the Court held as under;

"96. In earlier part of this judgment, I have already referred to scope and ambit of the provisions of the new Tenancy Act, 2021 with reference to individual sections therein and I have also discussed the tenancy agreement referrable to Section 4 of the new Act. During discussion in respect of point no. (a) above, I found, while 11 months unwritten agreement tenancy was conceived under the new Act but the remedial aspects so as to enable land lord to seek eviction of tenant had not been touched by the legislature. Section 38(2) defines jurisdiction of Rent Authority and limits it to dispute relating to tenancy agreement submitted to it as specified in the first schedule. First schedule agreements are there that create tenancy after new Tenancy Act has come into existence and also the written tenancy agreements that were in existence when the new Act came into force, provided such agreements were submitted to the Rent Authority as per Section 4(3) of the new Act. The word "tenant"📄 though includes old tenant at the time of enforcement of the new Act vide Section 2(j) but only for agreement in writing as per Rule 4 (3) and if there is no agreement in writing as per Rule 4(3), such tenant can be evicted only in one condition that is where land lord has submitted details as per first schedule but tenant has failed to discharge his part of obligation vide proviso to Section 4(3) of the new Tenancy Act. However, if land lord also fails and so also the tenant to comply with Section 4(3), no eviction of tenant has been provided for.

97. Thus the tenant has a narrow escape as noticed above and that is sufficient for him but the land lord cannot be left remediless. So if section 21 of the new Tenancy Act is found to be unworkable, a SCC suit would be the only remedy available. Section 21(2)(j) which provides for land lord to apply for eviction "where the tenancy stands determined by efflux of time"📄 would be referrable to such tenancy that are by written agreements and such agreements expired or 11 months unwritten agreement tenancy and would not apply to tenancies, not conceptualized under Section 4 but are in existence.

.....

103. Upon bare reading of the above provisions, I find that Transfer of Property Act No. 1882 defines lease vide Section 105 and refers to duration of lease, rights and obligations vide Section 106 and 108, but both these Sections save contracts, operation of local law and usage. Section 107 provides how lease could be made. It refers to oral agreement if accompanied by delivery of possession, such contracts once stand saved under Section 107, in my considered view would not be rendered bad just for there being no agreement in writing and so right and obligation under Section 108 would be enforceable .

104. Entry 18 of the State list provides for States to make law related to land tenures including relationship of landlord and tenant. This being subject matter in the State list and it is the State that enacts laws relating to that, it would not be said to be in conflict with any power of Central Legislature but of course in the areas not covered under the Central Act.

105. The new Tenancy Act, 2021 having not covered the unwritten tenancies and rights and obligations in respect thereof, the existing law under the Transfer of Property Act, 1882 and the forum of SCC Suits, even in respect of buildings situate in areas covered under the Tenancy Act, 2021, therefore shall apply.

106. In my considered view when entry 18 of the State list provides for the State to enact law in matters of land tenure including land lord - tenants relationship, this power is exclusive to that extent, moreso in the face of the fact that contracts, local laws and usages have been saved under Section 105 and 108 of Transfer of Property Act in matters of Rent leases/ agreements. The Transfer of Property Act is pre-constitutional law saved under Article 272 and so power of State under entry 18 of the State list stands only protected to the extent of consistency. However, the areas of rent agreement that are left untouched in the State enactment, the Central Act would continue to prevail as per the constitutional scheme.

107. To sum up on question "(b)"📄 I am of the view and so hold that Small Cause Suits would still be maintainable in cases of tenancies not covered under Section 4 and relating to rights accrued, if any under the Transfer Property Act, 1882 where a tenancy is unwritten, and a tenancy is on month to month basis. Overriding effect of Section 42 will give way to the Central Act, and there could be no doubt about that if the Central Act has occupied the field to certain extent."

61. Thus, both the questions, so framed, were answered holding that though there was no written agreement between the parties, the suit instituted before the Judge, Small Cause Court, would be maintainable in view of the Central Act and the proceedings would not abate.

62. Another coordinate Bench of this Court in case of **Alok Gupta vs. District Judge/Rent Tribunal and others, 2024 0 Supreme (All) 360**, while dealing with bunch of matters where there were no written agreement executed between the parties and proceedings were initiated under Section 21 (2) of the Act of 2021, held that no information was

required under Section 4 and the proceedings were maintainable and held as under;

> *"23. A conjoint reading of the various sub-sections of Section 4 of the Act reveals that the intention of legislature for requiring both the landlord and the tenant to inform to the Rent Authority in the form specified in the First Schedule within a certain time frame is to treat the information as conclusive proof of the facts relating to the tenancy and matters connected with it. It does not appear to be the sine qua non for maintaining an application under Section 21 (2) of the Act. Where the tenancy is admitted, in the opinion of the Court, no such information as contemplated under Section 4 of the Act is warranted. Where the tenancy or its terms are disputed, it is always open for the parties to adduce evidence in support of their respective cases before the respective authorities."*

63. The same coordinate Bench, thereafter, in case of **Amarjeet Singh vs. Smt. Shiv Kumari Yadav, 2024 (4) ADJ 380**, when faced with the similar question, held that Section 4 (7) of the Act of 2021 permit for initiating proceedings under Section 21 (2) in case the information is not supplied by the landlord or the tenant, which is not a *sine qua non*, the Court held as under;

> *"13. I have gone through the observation made by the co-ordinate Bench in the decision cited by Ms. Shalini Goel. In the case cited, the issue before the Court were:-*
>
> *"(a). Whether a Small Cause Suit already instituted, since prior to coming into force of the new Tenancy Act, 2021 and so also such SCC revision arising therefrom would stand saved or the SCC suit and SCC Revision being not mentioned in the repeal and saving clause of Section 46, the proceedings of such suit and revision would stand abated; and*
>
> *(b). Whether the bar created under Section 38 of the Tenancy Act is not an absolute one and so Small Cause Suit for arrears of recovery of Rent and Eviction (SCC Suit) and SCC Revision arising therefrom would still be maintainable even after the enforcement of the New Tenancy Act, 2021 qua the of tenancies not covered by tenancy agreements provided for under Tenancy Act, 2021."*
>
> *14. The issued urged in this petition is as to whether information to the Rent Authority in form specified in the First Schedule by the landlord is a sine qua non for maintaining an application under Section 21 (2) of the Act. The observation made by the co-ordinate Bench reproduced hereinabove does not help the petitioner inasmuch as, it ignores the import of Section 4 (7) of the Act. The import of the Section 4 has been explained in the preceding paras of this order."*

64. Another coordinate Bench of this Court in case of **Vishal Rastogi vs. Rent Controller/Additional District Magistrate (Judicial) And Another, 2025 (168) ALR 473**, took a similar view and held as under;

> *"35. So a tenancy agreement can be in writing or oral, and there is no express Provision in the U.P. Act No.16 of 2021 or it follows by necessary implication by reading the Provision of U.P. Act No.16 of 2021 that it excludes and does not recognize oral tenancy agreement between the parties.*
>
> *36. The expression 'tenancy agreement' submitted to it as specified in the First Schedule in Section 38(2) of U.P. Act No.16 of 2021 must be construed to include the oral tenancy agreement and does not oust the jurisdiction of the Rent Authority if the tenancy agreement has not been reduced into writing and there is an oral tenancy agreement between the parties. The jurisdiction of Rent Authority is not barred to decide the application of landlord for eviction even in cases where the landlord or tenant failed to reach an agreement and particulars of the tenancy has not been submitted either by the landlord or by the tenant.*
>
> *37. Thus, it can be safely said that the legislature by incorporating term "tenancy agreement submitted to it as specified in the First Schedule" Section 38(2) of the U.P.Act No.16 of 2021 did not bar the jurisdiction of the Rent Authority to entertain the application under Section 21(2) of the U.P.Act No.16 of 2021 in case information specified in the Schedule-I relating to tenancy agreement has not been submitted to the Rent Authority. Therefore, this Court is of the view that the Rent Authority is vested with the jurisdiction to consider the application under Section 21 even in cases where no intimation as specified in the Schedule-I in respect to tenancy agreement is given to the Rent Authority as there is no tenancy agreement between the landlord or the tenant.*
>
> *38. The only rider or limitation on the power of the Rent Authority is that it cannot enter into the question of title or ownership of the premises and its jurisdiction is limited only to the extent of determination of the rights of the parties in relation to tenant and landlord. Therefore, this Court is of the view that the submissions advanced by the learned counsel for the petitioner is devoid of merit."*

65. It appears that in a subsequent dispute in case of **Raman Arora vs. Susheel Kumar (Deceased) and others, SCC Revision No. 95 of 2023**, decided on 23.1.2025, the counsel for the revisionist had placed reliance on the decision rendered in case of **Amarjeet Singh (supra)**, while the respondent had relied upon the decision rendered in case of **Amit Gupta (supra)**. From the reading of the judgment, it appears that the counsel for the respondent had given impression to the Court that after the decision in case of **Amit Gupta (supra)** the matter should have been referred to Larger Bench, while dealing the case of **Amarjeet Singh (supra),** the coordinate Bench proceeded to observe about the binding precedent and the propriety demanded the matter to be referred to Larger Bench. However, the Court in the said case proceeded to set

aside the order passed by the court below regarding the applicability of the Act of 2021 and held the SCC suit to be maintainable.

66. Sri Vishnu Gupta, learned Senior Counsel, Ms. Shreya Gupta, Sri Narendra Kumar Chaturvedi and Sri Kunal Shah, learned counsels appearing in connected matters, submitted that there was no overlapping in the judgments of coordinate Benches of this Court, nor there was any conflict in the judgment of **Amit Gupta (supra)**, **Amarjeet Singh (supra)**, **Vishal Rastogi (supra)** and **Raman Arora (supra)**. According to them, the question posed before the Court in Amit Gupta's case was entirely different to the issue decided by the coordinate Bench in case of **Alok Gupta (supra)** and **Amarjeet Singh (supra)**.

67. The question as to the applicability of the Act of 2021 in case of unwritten agreement and non supply of information by the landlord or the tenant to the rent authority would not outcast the proceedings at the behest of a landlord, was the issue in case of **Alok Gupta (supra)** and **Amarjeet Singh (supra)**. While the question answered by the Court in case of **Amit Gupta (supra)** was to the maintainability of SCC suit under the Act of 1887 and proceedings not to abate after the enforcement of the Act of 2021.

68. In case of **Amit Gupta (supra)** the Court had taken into note the unwritten agreement and non supply of information by the parties as provided under Section 4 (3) but the issue was not decided as to whether proceedings before the rent authority was maintainable by a landlord in case of non execution of the document between the parties and its information.

69. There is no conflict between two judgments which could be referred to a Larger Bench as has been suggested by Sri P.K. Jain, learned Senior Counsel, appearing in one of the matter on behalf of tenant. The judgments of coordinate Benches, placed before this Court, dealt and operate in different areas, as the Act of 2021 was enforced on 24.8.2021 w.e.f. 11.1.2021. Matters have come before this Court in regard to certain provisions for clarification especially as to the

applicability of the Act of 2021 and proceedings pending before the courts below prior to the enactment. Coordinate Benches have only clarified as to the saving and repeal clause and also the jurisdiction in case of dispute. In case of **Amit Gupta (supra)**, His Lordship had observed in paragraph no. 81 that *"still certain grey areas have remained unattended"*. Thus, submission made that it decided lis as to unwritten agreement cannot be accepted.

70. The judgment rendered by coordinate Bench in case of **Alok Gupta (supra)** was challenged before the Apex Court in case of **Ankit Nanda vs. Anjali Gupta, Special Leave to Appeal (C) No. 10671 of 2024**, which was dismissed on 13.5.2024, confirming the said order. Thus, I find that there is no conflict or overlapping in the judgments rendered by coordinate Benches of this Court and the matter does not need to be referred to Larger Bench for consideration.

71. In case of **Balaji Vs. Principal Secretary and others, Writ Petition No. 3985 and 7400 of 2020**, the Division Bench of Madras High Court had the occasion to consider the constitutional validity of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017. The Court, after hearing the counsel for the parties, framed the questions for consideration which are as under;

> *"(1) Whether the legislative power of the impugned enactment in pith and substance is traceable to Entry-18 of the State List or to Entries 6,7 and 13 of the Concurrent list?*
>
> *(2) Whether the impugned enactment is repugnant to the Central legislations viz., the Transfer of Property Act, 1882 (Act 4 of 1882); the Specific Relief Act, 1963 (Act 37 of 1963) and the Registration Act, 1908 (Act 16 of 1908), Hindu Succession Act, 1984 etc.?*
>
> *(3) Whether the provisions of the impugned enactment are unconstitutional on the grounds of manifest arbitrariness and for violation of the fundamental rights under Articles 14, 19 and 21 of the Constitution of India?*
>
> *(4) To what other reliefs, the parties are entitled to?"*

72. While answering the question no. (1) as to whether the enactment is traceable to Entry-18 of the State List or to Entries 6, 7 and 13 of the Concurrent List of VIIth Schedule of the Constitution of India, the Court relied upon the judgment of Constitutional Bench of Apex Court in case

of **Indu Bhusan Bose vs. Rama Sundari Debi, 1969 (2) SCC 289**, wherein the Apex Court had opined that the expression 'land tenure' in Entry 18 of List II would not cover the tenancy of building or of house accommodation and would only relate to vacant lands and the law governing the tenancy and leases of buildings would be within the scope of Entries 6, 7 and 13 of List III. Relevant paragraph no. 13 of the said judgment is extracted hereasunder;

> *"13. On behalf of the appellant, reliance was placed on some decisions of some of the High Courts in support of the proposition that the power of Parliament under Entry 3 of List I does not extend to regulating the relationship between landlord and tenant which power vests in the State Legislature under Entry 18 of List II. The first of these cases is A.C. Patel v. Vishwanath Chada [ILR 1954 Bom 434] where the Bombay High Court was dealing with Entry 2 of List I of the Seventh Schedule to the Government of India Act, 1935 and Entry 21 of List II of that Act. The Court was concerned with the applicability of the Bombay Rent Restriction Act No. 57 of 1947 to cantonment areas. Opinion was first expressed that the Rent Restriction Act had been passed by the Provincial Legislature under Entry 21 of List II and reliance was placed on the English interpretation Act to hold that land in that entry would include buildings so as to confer jurisdiction on the Provincial Legislature to legislate in respect of house accommodation. Then, in considering the effect of Act 57 of 1947, the Court said:*
>
> *"As the preamble of the Act sets out, the Act was passed with a view to the control of rents and repairs of certain premises, of rates of hotels and lodging houses, and of evictions. Therefore, the pith and substance of Act 57 of 1947, is to regulate the relation between landlord and tenant by controlling rents which the tenant has got to pay to the landlord and by controlling the right of the landlord to evict his tenant. Can it be said that when the Provincial Legislature was dealing with these relations between landlord and tenant, it was regulating house accommodation in cantonment areas? In our opinion, the regulation contemplated by Entry 2 in List I is regulation by the State or by Government. Requisitioning of property, acquiring of property allocation of property, all that would be regulation of house accommodation, but when the Legislature merely deals with relations of landlord and tenant, it is not in any way legislating with regard to house accommodation. The house accommodation remains the same, but the tenant is protected quoa his landlord."*

73. The said view was reiterated by the Apex Court in case of **Accountant and Secretarial Services Pvt. Ltd. and another Vs. Union of India, 1988 (4) SCC 324**. Another Constitution Bench of Supreme Court in case of **Ashoka Marketing Ltd. and others Vs. Punjab National Bank and another, 1990 (4) SCC 406** held that rent control legislation enacted by the State Legislatures would fall within the

ambit of Entries 6, 7 and 13 of List III of the VIIth Schedule of the Constitution of India. Relevant paragraph no. 46 of the said judgment is extracted hereasunder:-

> *"46. As regards rent control legislation enacted by the State legislatures the position is well settled that such legislation falls within the ambit of Entries 6, 7 and 13 of List III of the Seventh Schedule to the Constitution (See : Indu Bhushan Bose v. Rama Sundari Devi [(1969) 2 SCC 289 : (1970) 1 SCR 443] ; V. Dhanpal Chettiar case [(1979) 4 SCC 214 : (1980) 1 SCR 334] ; Jai Singh Jairam Tyagi v. Mamanchand Ratilal Agarwal [(1980) 3 SCC 162 : (1980) 3 SCR 224] and Accountant and Secretarial Services Pvt. Ltd. v. Union of India [(1988) 4 SCC 324] ."*

74. In case of **Rajendra Diwan Vs. Pradeep Kumar Ranibala, 2019 (2) SCC 143** a Constitution Bench of the Apex Court while considering the validity of Section 13 (2) of the Chhattisgarh Rent Control Act, 2011 held that Entry 18 of the State List enables the State Legislature to enact the said law, however, both the Constitutional Bench judgments rendered in cases of **Indu Bhusan Bose (supra)** and **Ashoka Marketing (supra)** were not brought to the notice of the Court while deciding the said case. The Constitutional Bench of the Apex Court in case of **Shah Faesal and others vs. Union of India and another, 2020 (4) SCC 1** while considering the importance of law of precedents, elucidated the nature of a binding precedent and held as under:-

> *"25.In this line, further enquiry requires us to examine, to what extent does a ruling of coordinate Bench bind the subsequent Bench. A judgment of this Court can be distinguished into two parts : ratio decidendi and the obiter dictum. The ratio is the basic essence of the judgment, and the same must be understood in the context of the relevant facts of the case. The principal difference between the ratio of a case, and the obiter, has been elucidated by a three-Judge Bench decision of this Court in Union of India v. Dhanwanti Devi [Union of India v. Dhanwanti Devi, (1996) 6 SCC 44] wherein this Court held that : (SCC pp. 51-52, para 9 Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. ... A decision is only an authority for what it actually decides. ... The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution."*

75. Recently, in case of **Ram Krishan Grover and others Vs. Union of India and others, 2020 (12) SCC 506**, the Apex Court reiterated the position taken in case of **Ashoka Marketing (supra)** and held that the powers would traceable only to Entries 6, 7 and 13 of the Concurrent List and the expression 'land' in Entry 18 cannot be read to mean the building and housing within its ambit. The relevant paragraph no.28 is extracted as under:-

> *"28. In Accountant & Secretarial Services (P) Ltd. v. Union of India [Accountant & Secretarial Services (P) Ltd. v. Union of India, (1988) 4 SCC 324] , this Court had examined the question of repugnancy and interplay between the Central enactment viz. the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 based on the pattern of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 and the West Bengal Premises Tenancy Act, 1956 and the question which of these enactments would prevail. The Court had interpreted Entries 3, 32, 43 and 44 of List I, Entry 18 of List II and Entries 5, 6 and 7 of the List III and the corresponding entries in the Government of India Act, 1935 to hold that all the three legislations were passed in exercise of powers conferred with respect to matters contained in the Concurrent List. In view of the repugnancy and conflict between the Central enactment on one hand and the State law on the other, in terms of Article 254, the Central enactment shall prevail. Further, notwithstanding the earlier precedents, the Court had examined the question of the relevant entry applicable to the tenancy legislation and rejected the contention that Entry 18 of List II should be interpreted as encompassing within its ambit legislation on the relationship of landlord and tenant in regard to housing and buildings. Setting out several reasons it was observed that the power to legislate in respect of tenanted premises would fall within the ambit and scope of Entries 6, 7 and 13 of the Concurrent List and would not be referable to Entry 18 of List II. The expression "land" in Entry 18 of List II should be given as wide a construction as possible, but has to be read with the relevant entries in other Lists to give meaning and content to all of them. Inclusion of buildings and housing in the Concurrent List is appropriate and to place buildings and housing within the ambit of the expression "land" in Entry 18 of List II would denude other entries in Lists I and III concerning transfer of property, devolution and succession of land and buildings, etc. of their vigour and would render them otiose."*

76. The Madras High Court in case of **Balaji (supra)**, relying upon the judgment of Constitutional Bench of Apex Court, proceeded to answer the first question and held as under;

> *"11.14. Thus, we answer the question that the legislative power of the state in enacting the impugned legislation, in pith and substance, is traceable to Entries 6,7 and 13 of List-III of the Seventh Schedule of the Constitution of India."*

77. While dealing with the second question the Madras High Court held as under;

> *"18. Thus, we hold that the impugned enactment is not repugnant to any of the provisions of the Central Legislations as contended and operates in its field and as stated supra and we had already read down Sections 4 and 4-A to operate only for the purposes of this Act and not beyond."*

78. Thus, dealing with the questions posed under the Tamil Nadu Rent Control Act, the Division Bench had taken a clear view that the legislative power of the State in enacting the legislations in respect of rent control matters, in pith and substance is traceable to Entries 6, 7, 13 of List III of the VIIth Schedule of the Constitution of India. Simultaneously, it also held that the State Rent Control Act was not repugnant to any of the provisions of the Central Act such as the Transfer of Property Act, Specific Relief Act, Registration Act, Hindu Succession Act etc. as it operates in its field.

79. Now, I proceed to take up the matters individually.

Matters under Article 227 No. 624 of 2024

80. In the instant case, on 18.05.2013, a registered lease deed was executed between the landlord and petitioner (tenant) for letting the premises at Plot No. 2, Carpet Area 1125 square feet, ground floor at VPO-Farah, Tehsil & District, Mathura for a period of 20 years w.e.f. 01.12.2012 to 31.11.2032, at a monthly rent of Rs.15,000/- for first 10 years and, thereafter, Rs.18,000/- per month for next 10 years. On 31.05.2022, the landlord filed S.C.C. Suit No. 9 of 2022 for ejectment and arrears of rent. In the plaint, it was alleged that material alteration has been done by tenant and further there was default of rent. On 19.10.2022, tenant denying the plaint allegation filed his written statement. A replication was filed by landlord on 11.05.2023. The petitioner on 28.07.2023 filed an application under Order VII Rule 11(d) of Code of Civil Procedure (CPC) on the ground that after the enforcement of the Act of 2021, the suit stood barred by Section 38. The application was opposed by landlord who filed his reply. The court

below on 02.12.2023 rejected the application. The order rejecting the application of tenant is under challenge in the instant writ petition.

Writ Petition No. 5714 of 2024

81. In this case, petitioner is landlord of shop bearing Municipal No. 132-A, Civil Lines near Chowki Crossing, Bareilly. Respondents are tenant at monthly rent of Rs.400/- plus taxes since 1984. As default in rent was committed, a notice was given by landlord for payment of rent and vacating the premises. As notice remained unreplied, proceeding for eviction was initiated under the Act of 2021 which was registered as Application No. 1127 of 2022. The rent authority allowed the application and passed order for eviction and arrears of rent on 23.06.2023. The tenant-respondent filed appeal before rent tribunal which was registered as Rent Appeal No. 60 of 2023. The rent tribunal allowed the appeal vide judgment impugned dated 18.01.2024 and held that proceeding before rent authority was not maintainable under the Act of 2021 as there was no written agreement as per Section 4(3). Hence, this writ petition.

Writ Petition No. 6623 of 2024

82. This writ petition has been preferred by owner/landlord of shop bearing Municipal No. 127 situated at Civil Lines, Chaupala-Ayyub Khan Chauraha Road, near Hanuman Mandir, Bareilly. The shop in question was let out to respondent-tenant on 12.11.2009 at monthly rent of Rs.1440/-. Since petitioner retired from service on 31.07.2021, he wanted the shop to be vacated for running his own business. A notice was served upon respondent-tenant who denied the *bona fide* need of landlord. A release application under Section 21 and 22 of the Act of 2021 was filed before rent authority which was registered as Application No. 509 of 2022. Proceedings were contested by respondent-tenant. The application was allowed by rent authority on 31.05.2023, against which an appeal under Section 35 of the Act was preferred being Rent Control Appeal No. 54 of 2023. By the judgment impugned dated 25.01.2024, the rent tribunal had allowed the appeal and set aside the order of rent authority. Hence, the present writ petition.

Writ Petition No. 5411 of 2024

83. This is tenant's petition. The dispute relates to shop situated in House No. 6/212, Mohalla Dakhnai Gate, Taj Ganj, Agra. According to petitioner, the rate of rent is Rs.600/- per month and an application under Section 21(2)(m) of the Act of 2021 was filed by respondent-landlord on the ground that after retiring from Government job, he wants to start his medical practice from the shop in question. The application of landlord was dismissed on 08.11.2023 against which an appeal under Section 35 of the Act was filed before rent tribunal which has been allowed on 16.03.2024. Hence, the present petition.

Writ Petition No. 5413 of 2024

84. This is also tenant's petition. The dispute relates to shop situated in House No. 6/212, Mohalla Dakhnai Gate, Taj Ganj, Agra. According to petitioner, the rate of rent is Rs.1500/- per month and an application under Section 21(2)(m) of the Act of 2021 was filed by the respondent-landlord on the ground that after retiring from the Government job, he wants to start his medical practice from the shop in question. The application of landlord was dismissed on 08.11.2023 against which an appeal under Section 35 of the Act was filed before rent tribunal which has been allowed on 16.03.2024. Hence, the present petition.

S.C.C. Revision No. 44 of 2024

85. The respondent-landlord filed S.C.C. Suit No. 10 of 2022 for eviction and arrears of rent in respect of accommodation let out to revisionist. In the written statement filed by revisionist, ground was taken that S.C.C. suit was not maintainable in the light of provisions of the Act of 2021. The trial court framed preliminary issue no. 9 that whether suit is barred by Section 38 of the Act of 2021 or not. The said preliminary issue was decided in favour of landlord on 05.10.2023 against which the present revision has been preferred.

SUBMISSIONS

86. Sri Krishna Mohan Asthana, learned counsel appearing for petitioner in Writ Petition No. 626 of 2024 submitted that plaintiff-landlord had filed S.C.C. suit before Judge Small Cause Court on 31.05.2022 while the Act of 2021 had come into effect from 11.01.2021, thus, it was barred under Section 38 of the Act of 2021. He further submitted that the judgment rendered in case of **Amit Gupta (supra)** was not applicable and the court below had wrongly proceeded to dismiss the application filed under Order VII Rule 11(d) CPC.

87. Counsel for the respondent submitted that in view of judgment of **Amit Gupta (supra)**, any agreement arrived prior to enforcement of the Act of 2021, S.C.C suit would be maintainable. He then contended that there is no conflict between the judgment of **Amit Gupta (supra)** and **Amarjeet Singh (supra)** passed by co-ordinate Bench as they operate in different areas. He also contended that there are two views in case rent agreement is not submitted to rent authority, firstly, as per **Amit Gupta's case (supra)** that a S.C.C. suit is not barred and as per **Amarjeet Singh's case (supra)**, it has been held that submission of rent agreement before rent authority is not *sine qua non*, thus, rent authority has jurisdiction to entertain an application for eviction of a tenant. He further laid stress that **Amarjeet Singh's case (supra)** nowhere holds that a S.C.C. suit is barred. He also contended that Section 38(2) only limits jurisdiction of rent authority to dispute relating to tenancy agreement submitted as per Section 4. The bar would operate to that extent, the agreement referred to rent authority as per mandate of Section 4 in form provided in Schedule I of the Act and in matters where tenancy agreement has not been submitted before rent authority, a S.C.C. suit would lie to evict a tenant and such tenancy dispute would stand covered under Transfer of Property Act to attract small cause case suit.

88. In respect of Section 42, he submitted that Act does not provide overriding effect for Union while as it only confers overriding effect over the State Laws. He further contended that when a bench of coequal

strength is faced with conflicting judgments of other coequal benches, the judgment delivered earlier will continue to govern the field of law, till such time, the same is overturned or in case the question of law, if referred to the larger bench is answered. Reliance has been placed upon a decision of this Court in case of **M/s. Geo Miller and Company Pvt. Ltd. vs. U.P. Jal Nigam and others (Civil Misc. Arbitration Application No. 4 of 2024)**, decided on 17.05.2024.

89. Lastly, it was contended that for preferring an application for eviction of tenant under the Act of 2021, the same has to be submitted in Form 7 as per Rule 7 of Uttar Pradesh Regulation of Urban Premises Tenancy Rules, 2021 which mandates the unique identification number to be provided under Section 4(5) of the Act. Once the number has not been provided, the application before rent authority was not maintainable and landlord was left with no option but to approach Judge Small Cause Court.

90. Ms. Shreya Gupta, learned counsel appearing in Writ Petition No. 5714 and 6623 of 2024 submitted that there was no conflict between judgments of **Amit Gupta (supra)** and **Amarjeet Singh (supra)**, and they operate in different fields. In both cases, the Court had proceeded to decide the question framed therein. In **Amit Gupta (supra)**, the questions framed were whether S.C.C. suit instituted prior to coming into Tenancy Act, 2021 and revision arising therefrom would stand saved or they being not mentioned in the repeal and saving clause of Section 46 would stand abated. Further, whether bar created under Section 38 of the Act of 2021 is not absolute one and so S.C.C. suit for arrears of rent and eviction and S.C.C. revision would still be maintainable even after enforcement of the Act of 2021 qua the tenancies not covered by tenancy agreement provided under the Act of 2021. While in **Amarjeet Singh (supra)**, the question was whether information to rent authority in form specified in first Shedule by landlord is *sine qua non* for maintaining an application under Section 21(2) of the Act of 2021.

91. Both these questions were decided by respective Benches which are not overlapping and, thus, do not need consideration of a larger Bench. She then contended that intention of Legislature in Section 4 is only for intimation to the rent authority about the agreement entered between the parties, and in case it was not provided, still the proceeding under Section 21 was maintainable, as it does not lay down any embargo for maintaining the application for eviction proceeding. According to her, the rent tribunal was not correct in setting aside the order of rent authority holding the application to be not maintainable on the ground of non execution of the document and information required to be provided to the authority.

92. Sri N.K. Chaturvedi, learned counsel appearing in S.C.C. Revision No. 4 of 2024 submitted that after enforcement of the Act of 2021, it would encompass the dispute related to written tenancy which has been filed before the rent authority. According to him, the court below was not correct to hold that S.C.C. suit was maintainable as no new agreement was executed after its enforcement and on the basis of earlier agreement, the court proceeded to decide the issue as to maintainability of S.C.C. suit. The court below had wrongly relied upon the judgment of **Amit Gupta's case (supra)**.

93. Sri P.K. Jain, learned Senior Counsel appearing in Writ Petition No. 5411 and 5413 of 2024 submitted that rent authority had rightly rejected the application filed under Section 21(2)(m) of the Act of 2021 but the rent tribunal has wrongly allowed the same holding the need of landlord to be *bona fide* while no documentary evidence was filed in support of the claim of the landlord. He further submitted that as no written agreement was executed between the parties, proceedings under the Act of 2021 was barred in view of Section 38. The application has not been filed under Rule 7 of Rules of 2021. He lastly contended that in case petitions are dismissed, some breathing time may be granted to tenant to vacate the premises in question.

94. Sri Kunal Shah, learned counsel appearing for landlord submitted that entire scheme of Section 4 does not provide for ouster of proceedings for eviction at the behest of landlord in case of unwritten agreement. Once it is an admitted case of relationship of landlord and tenant, proceedings under Section 21(2) can be initiated on the ground provided under sub-clause (a) to (m).

95. The entire thrust of argument was that the very object of enacting the Act of 2021 was to balance the equity between landlord and tenant in regard to tenancy as the earlier Act tilted in favour of tenant. He then contended that Model Tenancy Act provided that in case of failure on the part of parties to intimate about execution or non execution of tenancy agreement would preclude the landlord and tenant from claiming any relief. While enacting the Act of 2021, the Legislature has deliberately chosen to omit prescription of such consequences. Thus, it cannot be presumed that non-execution of tenancy agreement would disentitle the landlord from approaching the rent authority under the Act of 2021. He also contended that sub-section (2) of Section 38 is not conferring any jurisdiction on the rent authority but is rather a provision that circumscribes the jurisdiction of rent authority prescribing it to not venture into adjudicating dispute of title or ownership and keeping itself confined to the disputes that may arise under tenancy agreement. He also contended that sub-section (7) of Section 4 should be read in continuation with sub-section (3) of Section 4 requiring information to be provided by parties to tenancy under sub-section (1), (2) and (3) and further in absence of such information, the landlord may file an application of eviction on this ground alone.

96. According to him, none of the provisions are restricting the landlord from approaching rent authority for redressal of his grievance under Section 21(2) in case of unwritten tenancy and information having not being supplied. According to him, if such hyper technical view is taken, then the very object of the Act would be frustrated.

CONCLUSION

97. I have heard counsel representing different parties as well as many counsel addressing the Court on the question framed, "whether the rent authority, constituted under the provisions of the Act of 2021, has the jurisdiction to entertain the application filed by landlord in cases where tenancy agreement has not been executed, if not executed, the landlord having failed to file particulars of tenancy with rent authority".

98. In earlier paragraphs while considering Model Tenancy Act prepared by Central Government, and the Act of 2021 enacted by State Legislature, I found that there is a conscious departure as to mandatory character of tenancy agreement and its intimation to rent authority in case of execution and also non execution.

99. On the one hand, Model Tenancy Act expressly provides in sub-section (6) of Section 4 that on ground of failure of parties to intimate about execution or non execution of tenancy agreement, would both preclude landlord and tenant from claiming any relief. While on the other hand, State Legislature while adopting Model Tenancy Act to certain extent has chosen to omit prescription of such consequences, debarring failure of parties to intimate about execution or non execution of tenancy agreement to rent authority.

100. Tenancy agreement as envisaged in Section 4 under the Act of 2021 is divided into two parts, firstly, mandatory nature in regard to fresh tenancy entered after enforcement of the Act. While Legislature being conscious of the fact that old tenancy consists of both written and non written agreement, it thus provided that in case of written agreement, it was to be jointly presented to rent authority, while in case no agreement was entered, parties were required to enter into an agreement and intimate the rent authority. The proviso further clarified the position to extent that in case of failure to present the agreement jointly or failing to reach an agreement, only particulars submitted separately with the rent authority by the parties would suffice as to tenancy.

101. The Legislature further visualised contingencies where only landlords submit particulars with the authority, then in that case he could file an application for eviction against the tenant.

102. The Legislature in sub-section (7) further went to the extent that in absence of information provided under sub-section (1), (2) and (3), the landlord may file an application for eviction on this ground alone, meaning thereby that intention was not to restrict for proceeding of eviction in case of an admitted tenancy between the parties.

103. Section 4 only envisages different types of situation in which a tenancy agreement is arrived between the landlord and tenant. It nowhere restricts any right of the parties who admit the status of landlord and tenant. Had the intention of Legislature was to restrict the parties to only approach rent authority in case of execution of agreement or intimation, then it would have adopted sub-section (6) of Section 4 of Model Tenancy Act.

104. The conscious omission on part of State Legislature would not provide fatal consequences depriving the right of landlord to expedient eviction under the Act of 2021. I have already in previous paragraph nos. 31 to 39 dealt with expression “shall” occurring in sub-section (3) of Section 4, as it caters to limited purpose regarding providing for information of tenancy to rent authority. Once there is no dispute as to landlord-tenant relationship, no mileage could be drawn out of the expression “shall” employed therein.

105. The Legislature for revision of rent under Section 9 has visualised a situation for unwritten tenancy prior to commencement of the Act, where agreement is not arrived between the landlord and tenant, then the rent authority, shall have jurisdiction to determine the enhanced rent. This provision clarifies the position that in cases in which no written agreement was existing prior to commencement of the Act and parties thereafter also failed to enter into an agreement, then the rent authority would intervene and enhance rent under Section 10.

106. This provision leads to conclusion that jurisdiction of rent authority under the Act of 2021 cannot be narrowed down only in cases of written agreement and its intimation to rent authority. Had the Legislature thought of giving limited access to landlord or tenant to approach rent authority only in cases of written agreement or its intimation, then proviso to sub-section (5) of Section 9 would not have been there in the Statute Book.

107. The intention of Legislature cannot be ascertained merely on the basis of single provision, and regard must be given to other sections as well as the context, subject-matter and the object of the provision.

108. The Court has to ascertain real intention of Legislature i.e. the nature and design of the Statute, and consequences which would follow from construing it to the one way or the other.

109. Much emphasis has been laid on sub-section (2) of Section 38 so as to interpret Section 4 of the Act.

110. I have already dealt with scope of sub-section (2) of Section 38 in the above paragraph nos. 47 to 55. Sub-section (2) of Section 38 is not a provision conferring jurisdiction upon rent authority, rather it circumscribes jurisdiction prescribing it to not venture into adjudication of dispute regarding title or ownership and only confines to dispute arising under tenancy agreement. It does not make jurisdiction dependent upon the execution of tenancy agreement, rather it shall have jurisdiction of such tenancies also where no agreement was entered between the parties but are still covered under the Act of 2021.

111. The section sets contours within which dispute arising between the landlord and tenant is to be decided. It cannot transgress to the issue touching the title and ownership between the parties and remain confined to tenancy agreement.

112. Thus, I find that there is no conflict or overlapping between the judgments rendered by co-ordinate Benches in cases of **Amit Gupta (supra)**, **Alok Gupta (supra), Amarjeet Singh (supra)** and **Vishal**

Rastogi (supra). They were decided by co-ordinate Benches on the issue raised before the Court.

113. Thus, the question which has been posed stands answered that rent authority constituted under the provisions of the Act of 2021 has jurisdiction to entertain application filed by landlord in cases where tenancy agreement has not been executed, and landlord having failed to intimate particulars of tenancy to the authority.

114. Considering the facts and circumstances of cases referred to this Court, I find that in Matters under Article 227 No. 626 of 2024, the court below had rightly rejected the application filed under Order VII Rule 11(d) CPC holding that S.C.C. Suit No. 9 of 2022 was not barred by enforcement of the Act of 2021. The challenge made by tenant-petitioner fails and the writ petition stands dismissed.

115. Writ Petition No. 5714 of 2024 and Writ Petition No. 6623 of 2024 stand decided on the basis of conclusion arrived above and proceedings initiated by landlord-petitioner in both writ petitions under Section 21(2) of the Act of 2021 was maintainable despite there being no written agreement. Both the orders dated 18.01.2024 and 25.01.2024 are hereby set aside.

116. In view of above, both the writ petitions are partly allowed and matters are remanded back to rent tribunal to decide the same, within a period of two months, from the date of production of certified copy of this order in view of finding recorded above.

117. Writ Petition No. 5411 of 2024 and Writ Petition No. 5413 of 2024 raise similar issue and application moved under Section 21(2)(m) of the Act of 2021 was dismissed by rent authority against which appeal of the landlord was allowed holding that proceedings were maintainable despite there being no written agreement. It has also been held that proceeding under the Act of 2021 is maintainable despite there being no written agreement between the parties nor any particular having been submitted to rent authority. Both the writ petitions filed by tenant need no interference and stand dismissed. However, six months' time is

granted to petitioners to vacate the premises in question by 30.06.2026 subject to following conditions:-

> "(a) Tenants-petitioners shall file an undertaking before court below that they shall hand over peaceful possession of the premises in question to the landlord-respondent on or before 30.06.2026;
>
> (b) The said undertaking shall be filed before the court below within two weeks from today;
>
> (c) Tenants-petitioners shall pay entire decretal amount within a period of one month from today;
>
> (d) In the undertaking, tenants-petitioners shall also state that they will not create any interest in favour of the third party of the premises in dispute;
>
> (e) It is made clear that in case of default of any of the conditions mentioned herein-above, the protection granted by this Court shall stand vacated automatically.
>
> (f) In case the premises is not vacated as per the undertaking given by tenants-petitioners, they shall also be liable for contempt."

118. Lastly, S.C.C. Revision No. 44 of 2024 also fails and stands dismissed on the ground that suit filed by landlord is not barred under Section 38 of the Act of 2021. The court below to proceed with S.C.C. Suit No. 10 of 2022 and decide the same, within next six months.

119. Before parting with the judgment, the Court records word of appreciation for the valuable assistance provided by Sri Vishnu Gupta, learned Senior Counsel and young counsel, Sri Kunal Shah.

(Rohit Ranjan Agarwal,J.)

December 16, 2025
(SHEKHAR/V.S.SINGH/S.K. GOSWAMI)