A.F.R.
Reserved on 8.7.2020
Delivered on 20.8.2020

Case :- WRIT - A No. - 20793 of 2019

Petitioner :- Prakash Chandra
Respondent :- Sri Ritesh Bhargawa
Counsel for Petitioner :- Pramod Kumar Srivastava,Deepak Singh
Counsel for Respondent :- Krishna Mohan Garg

Hon'ble Neeraj Tiwari,J.

Heard Sri Pramod Kumar Srivastava and Sri Deepak Singh, learned counsel for the petitioner and Sri K.M. Garg, learned counsel for the respondent.

By way of present writ petition, the petitioner is challeging the order dated 24.09.2019 passed by XII Additional District Judge, Kanpur Nagar in Rent Appeal No. 26 of 2017-Prakash Chandra Vs. Ritesh Bhargawa and judgment and order dated 06.04.2017 passed by prescribed Authority/Judge Small Causes Court, Kanpur in Rent Case No. 18 of 2014 (Ritesh Bhargawa Vs. Prakash Chandra), under Section 21(a) of Uttar Pradesh (Urban Buildings (Regulation of Letting, Rent and Eviction Act), 1972 (U.P. Act No. 13 of 1972) (hereinafter referred to as the Act, 1972).

The brief facts of the case are that the landlord-respondent has filed release application under Section 21(a) of the Act, 1972 on the ground of bonafide need for vacation of shop No. 50/05 Naughara, Kanpur Nagar, which was registered as Rent Case No. 19/14 in the court of Prescribed Authority. After issuance of notice, pleadings have been exchanged by fililng written statement, affidavit and rejoinder affidavit. The Prescribed Authority has framed three issues, which are as follows:-

(i) Whether there is a relationship of landlord or tenant betwen the parties?

(ii) Whether the need of landlord of the shop in question is bonafide?

(iii) Whether the comparative hardship of the landlord is greater

than the tenant?

Considering the entire pleadings as well as evidence on record, release application was allowed by the Prescribed Authority vide order dated 6.4.2017 with direction to the tenant-petitioner to vacate the shop in question within 60 days. Against the said order, Rent Appeal No. 26 of 2017 was preferred and after hearing both the parties, same was dismissed by the Appellate Authority vide order dated 24.9.2019 affirming the judgment of the Prescribed Authority with direction to vacate the shop in question within 60 days. Hence, this writ petition.

Sri P.K. Srivastava, learned counsel for the petitioner has assailed both the orders on three grounds; the first ground is the maintainability of release application, second ground is bonafide need and third ground is comparative hardship. The main emphasis is about the maintainaibility of the writ petition.

Learned counsel for the petitioner submitted that original tenant of the disputed shop was Sri Laxmi Chandra, grandfather of the petitioner, who took the shop in tenancy from the grandfather of the landlord-respondent in the year 1960. Sri Laxmi Chandra died in the year 1979 leaving behind surviving two sons including father of the petitioner and three daughters. After death of Laxmi Chandra, shop was inherited to his legal heirs as provided under Section 3 of the Hindu Succession Act, 1956. Father of the petitioner is still alive and petitioner is not tenant, therefore, the Prescribed Authority lacks jurisdiction and release application filed by respondent under Section 21(a) of the Act, 1972 against the petitioner is not maintainable. He next submitted that he has taken specific plea in written statement that the shop in question was let out in tenancy of grandfather of petitioner in the year 1960. Earlier rent was being paid at the rate of Rs. 30/- per month and later on from time to time, rent was increased and lastly it was being paid at the rate of Rs. 1300/- per month. He next submitted that there is no denial of this fact in replica, therefore, under the provisions of Order 8 Rule 5 C.P.C., it is treated to be correct. He next submitted that though this plea of maintainability was not taken either

in the written statement filed in the rent case or rent appeal filed before the appellate authority, but it goes to the gross root of the case, therefore, it was open for him to take this plea at any stage even before the last court. He again submitted that once the release application filed under Section 21(2) of the Act, 1972 is not maintainable, the Prescribed Authority has no jurisdiction to pass the impugned order. Orders of the Prescribed Authority as well as Appellate Authority are nulity and cannot be sustained in the eye of law.

Learned counsel for the petitioner next submitted that the Prescribed Authority has not given correct finding for bonafide need in favour of the landlord-respondent. He further submitted that the release application has been filed on the ground that the shop in question is needed as his business is growing. It is never stated that he wants the disputed shop to grow his business. The courts below made out a new case for the landlord-respondent that he needs the shop in question to grow his business and released the shop for such alleged need. The court below further committed an error in holding the need of the landlord-respondent as bonafide only because the petitioner did not search alternative accommodation during the pendency of the case. The landlord-resdpondent has failed to adduce any documentary evidence with regard to his growing business. He also submitted that there was pleading in the written statement that the landlord do not need the shop in question for growing his bussiness, but the same was not considered and perverse finding has been given. He next submitted that paragraph 32 of the counter affidavit filed by petitioner before Prescribed Authority has not specifically been denied by the respondent in his rejoinder affidavit. He has taken specific plea that the landlord-respondent is having sufficient additional space i.e. big underneath and staircase, which can also be used for storing purposes, which was not denied in written statement, therefore, under the provisions of Order 8 Rule 5 C.P.C. it would be treated as correct.

He next submitted that so far as comparative hardship is concerned, the courts below have decided this issue on the ground that the petitioner

has not made any effort to search any alternative accommodation. This may be one of the circumstance, but not the sole ground to decide the comparative hardship against the tenant. Rule 16(2)(a) & (b) of U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Rules, 1972 (hereinafter referred to as the Rules, 1972) framed under the Act, 1972 provides guidelines to the court for deciding the comparative hardship and finding recorded on the issue of comparative hardhsip is contrary to Rule 16(2) of the Rules, 1972. He also submitted that the petitioner has an alternative accommodation, therefore, under such legal facts, the order dated 6.4.2017 passed by the Prescribed Authority is bad in law and liable to be set aside.

Learned counsel for the petitioner further submitted that the landlord-respondent is not the sole owner of the shop in question and there are other co-owners of the shop in question, therefore, he cannot maintain release application alone without having the consent of other co-owners. In case respondent is co-owner of the shop in question, even then he can not file release application to vacate the shop in question under the settled provisions of law.

In support of his arguments, learned counsel for the petitioner has cited judgments of the Apex Court as well as this Court. He has placed reliance upon the judgment of this Court in the case of ***Ramesh Chandra Yadav Vs. Second Additional District Judge, Jalaun at Orai and others, 2013 (1) AWC, 566.*** Paragraph 7 of the said jujdgment is quoted below:-

> *"7. He, however, could not dispute that the building in question having been constructed and completed in 1977, in 1983, ten years having not passed, Act No. 13 of 1972 was not applicable by virtue of Section 2 (2) of Act, 1972. That being so the Prescribed Authority under Section 21 of Act, 1972 lacked patent jurisdiction. A jurisdiction cannot be conferred even by consent of parties. It is an elementary principle. Where a Court has no jurisdiction over the subject matter of the action in which an order is made, such order is wholly void, for jurisdiction cannot be conferred by consent of parties. No waiver or acquiescence on their part can make up the patent lack or defect of jurisdiction. If the decision/order of Court/authority is void for want of jurisdiction over the subject matter, it cannot operate as res judicata; so as to make that judgment conclusive between the parties, since the essential pre-requisite is that it should be the judgment of a Court of competent jurisdiction within the meaning of Section 11 of the Civil Procedure Code. Something which is wholly without jurisdiction, that is nullity in the eyes of law, no principle of law would come to*

confer any kind of effectiveness to such proceedings so as to have any legal consequences."

Next judgment relied upon by learned counsel for the petitioner is ***Kiran Singh Vs. Chaman Paswan, 1954 AIR (SC) 340.*** Paragraph 6 of the said judgment is quoted below:-

"6. The answer to these contentions must depend on what the position in law is when a Court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of section II of the Suits Valuation Act is on that position. It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be' determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non judice, and that its judgment and decree would be nullities. The question is what is the effect of section 11 of the Suits Valuation Act on this position."

He has placed reliance upon the judgment of the Apex Court in the case of ***Gurucharan Singh Vs. Kamla Singh and others, 1977 AIR, 5.*** Paragraphs 8 and 9 of the said judgment are quoted below:-

"8. Before we examine this quintessential aspect presented before us will complex scholarship by Shri S. C. Misra we Had better make. short shrift of certain other questions raised by him. He has desired ` us, by way of preliminary objection, not to give quarter to the plea, founded on s. 6 of the Act, to non-suit his client, since it was a point raised be nova at Letters Patent state. The High Court have thought to this objection but overruled it, if we may say so rightly. The Court narrated the twists and turns of factual and legal circumstances which served lo extenuate the omission to urge the point earlier but hit the nail on the head when it held that it was well-settled that a pure question of law going to the root of the case and based on undisputed or proven facts could be raised even before the Court of last resort, provided the opposite side was not taken by surprise or otherwise unfairly prejudiced. Lord Watson, in Connecticut Fire Insurance Company v. Kavanach,(1) stated the law thus:

"When a question of law is raised for the first time in a Court of last resort upon the construction of a document or upon facts either admitted or proved beyond controversy, it is not only competent but expedient in the interest of justice to entertain the plea. The expediency of adopting that course may be doubted when the plea cannot be disposed of without deciding nice questions of fact in considering which the Court of ultimate review is placed in a much less advantageous position than the courts below. But their Lordships have no hesitation in holding that the course ought not any case to be followed unless the Court is satisfied that the evidence upon which they are asked to decide establishes beyond doubt that the facts if fully investigated would have supported the new plea." (1) [1892] A. C. 473, 480.

17-L925SupCI /75 We agree with the High Court that the new plea springs

from the common case of the parties, and nothing which may work injustice by allowance of this contention at the late stage of the Letters Patent Appeal has been made out to our satisfaction. Therefore, we proceed to consider the impact and applicability of s.6 of the Act to the circumstances of the present case."

He has also placed reliance upon the judgment of the Apex Court in the case of ***G.M. Contractor Vs. Gujarat Electricity Board, 1972 AIR (SC) 792.*** Paragraph 2 of the said judgment is quoted below:-

> *"2. It is stated that this ground goes to the very root of the matter but was not raised before the High Court. The appellants objected to this fresh ground being allowed to be taken up, but we consider that as this ground goes to very root of the matter it should be allowed after the appellants are compensated by costs."*

He has also placed reliance upon the judgment of this Court in the case of ***Chandra Bhushan Khanna and others Vs. Brij Nandan Singh and another, 1978 AIR (Ald) 459.*** Paragraph 5 of the said judgment is quoted below:-

> *"5. As noticed earlier, the nature of the suit has to be determined on the allegations made in the plaint. In the present case the plaintiff came to the court on the allegation that the relationship of lessor and lessee, which existed between the plaintiff and Ram Ratan Lal Khanna, was terminated by a valid notice before the latter's death. On the termination of his tenancy he could claim only the protection provided by U.P. Act No. 3 of 1947. On his death, however, his heirs did not inherit any right or interest in the property as the statutory tenancy rights which Sri Khanna had after the termination of his contractual tenancy was not inheritable. There is no assertion in the plaint that the plaintiff and the defendants stood in the relationship of lessor and lessee at any stage. On the plaint allegation it is obvious that the suit was not cognizable by the Court of Small Causes as envisaged in Article 4 of the second Sch. The suit was rightly instituted in the court of Munsif and its transfer to the Court of Small Causes on the enforcement of U.P. Act No. 37 of 1972 was illegal. It is true that both the parties submitted to the illegal transfer of the suit to the Court of Small Causes and no objection to the jurisdiction of the court was raised either in the trial court or in the revisional court but since the Court of Small Causes lacked inherent jurisdiction to entertain the suit, the acquiescence or even consent of the parties could not confer jurisdiction on it. Acquiescence waiver or consent of the parties may be relevant in objections relating to the pecuniary or territorial jurisdiction of the court but these factors have no relevance where the court lacks inherent jurisdiction. The Privy Council in Ledgard v. Bull (1886) 1'3 Ind App 134) observed as follows:--*
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> *"When the Judge has no inherent jurisdiction, over the subject matter of a suit, the parties cannot by their mutual consent, convert it into a proper judicial process, ... But there are numerous authorities which establish that when, in a cause which the Judge is competent to try, the parties without objection join issue, and go to trial upon the merits, the defendant cannot subsequently dispute his jurisdiction upon the grounds that there were irregularities in the initial procedure, which if objected to at the time, would have led to the dismissal of the suit."*

Jurisdiction cannot be conferred on a court by consent, acquiescence or waiver where there is none nor can it be ousted where it is. Lack of inherent jurisdiction strikes at the very authority of the court to pass any decree, and renders the decree a nullity. Since: the Judge Small Causes lacked inherent jurisdiction to try the present suit, the decree passed by the courts below must be held to be a nullity."

The next judgment relied upon by learned counsel for the petitioner is ***Chiranjilal Shrilal Goenka (Deceased) Through Lrs. Vs. Jasjit Singh, 1993 (2) SCC 507.*** Paragraph 18 of the said judgment is quoted below:-

"18. It is settled law that a decree passed by a court without jurisdiction on the subject matter or on the grounds on which the decree made which goes to the root to its jurisdiction of lacks inherent jurisdiction is a corum non judice. A decree passed by such a court in a nullity and is nonest. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the very authority of the court to pass decree which cannot be cured by consent or waiver of the party. In ***Bahadur Singh & Anr. v. Muni Subrat Dass & Anr., [1969] 2 SCR 432*** *an eviction petition was filed under the Rent Control Act on the ground of nuisance. The dispute was referred to the arbitration. An award was made directing the tenant to run the workshop upto a specified time and thereafter to remove the machinery and to deliver vacant possession to the landlord. The award was signed by the arbitrators, the tenant and the landlord. It was filed in the court. A judgment and decree were passed in terms of the award. On expiry of the time and when the tenant did not remove the machinery nor delivered vacant possession, execution was levied under Delhi and Ajmer Rent Control Act. It was held that a decree passed in contravention of Delhi and Ajmer Rent Control Act was void and the landlord could not execute the decree. The same view was reiterated in* ***Smt. Kaushalya Devi and Ors. v. KL. Bansal, AIR 1970 SC 838****. In* ***Ferozi Lal Jain v. Man Mal & Anr., AIR 1979 SC 794*** *a compromise dehore grounds for eviction was arrived at between the parties under section 13 of the Delhi and Ajmer Rent Control Act. A decree in terms thereof was passed. The possession was not delivered and execution was laid. It was held that the decree was nullity and, therefore, the tenant could not be evicted. In* ***Sushil Kumar Mehta v. Gobind Ram Bohra (dead) through his Lrs. JT 1989 (SUPPI.) SC.329*** *the Civil Court decreed eviction but the building was governed by Haryana Urban (Control of Rent & Eviction Act 11 of 1973. It was held that the decree was without jurisdiction and its nullity can be raised in execution. In* ***Union of India v. M/S. Ajit Mehta and Associates****.* ***Pune and Ors., AIR 1990 Bombay 45*** *a Division Bench to which Sawant, J. as he then was, a member was to consider whether the validity of the award could be questioned on jurisdictional issue under section 30 of the Arbitration Act. The Division Bench held that Clause 70 of the, Contract provided that the Chief Engineer shall appoint an engineer officer to be sole arbitrator and unless both parties agree in writing such a reference shall not take place until after completion of the works or termination or determination of the Contract. Pursuant to this contract under section 8 of the Act, an Arbitrator was appointed and award was made, Its validity was questioned under section 30 thereof. The Division Bench considering the scope of Sections 8 and 20(4) of the Act and on review of the case law held that Section 8 cannot be invoked for appointment of an Arbitrator unilaterally but be available only under section 20(4) of the Act. Therefore, the very appointment of the Arbitrator without consent of both parties was*

> *held void being without jurisdiction. The Arbitrator so appointed inherently lacked jurisdiction and hence the award made by such Arbitrator is nonest. In* ***Chellan Bhai's case Sir C. Farran, Kt., C.J. of Bombay High Court*** *held that the Probate Court alone is to determine whether probate of an alleged will shall issue to the executor named in it and that the executor has no power to refer the question of execution of Will to arbitration. It was also held that the executor having propounded a Will, and applied for probate, a caveat was filed denying the execution of the alleged Will, and the matter was duly registered as a suit, the executor and the caveatrix subsequently cannot refer the dispute to arbitration, signing a submission paper, but such an award made pursuant thereto was held to be without jurisdiction."*

Sri K.M. Garg, learned counsel for the respondent has vehemently opposed the submission raised by learned counsel for the petitioner and submitted that so far as maintainability of the release application is concerned, in the written statement, petitioner has admitted that he is tenant in the aforesaid shop at the rate of Rs. 1300/- per month and in subsequent paragraph of the written statement, it is also stated that he is paying rent continuously and regularly to the landlord-respondent. He is not defaulter in payment of rent and no rent is due against the tenant. In the written statement, it is also stated that there are other co-owners of the shop in question, therefore, as tenant he has filed Misc. Case No. 672/70/2014 (Prakash Chandra Gupta Vs. Ritesh Bhargav), under Section 30 of the Act, 1972, which is pending for disposal. He next submitted that the petitioer can not go beyond his pleadings taken in written statement. No application at any point of time has been filed by petitioner to amend the written statement and even before the appellate authority, he has not taken this ground. Now at this stage, the ground taken by the petitioner contrary to his pleadings in the written statement, is not acceptable. In fact, he is taking a new plea after specifically accepting himself to be a tenant before the Prescribed Authority and Appellate Authority and taking entirely a new ground before the writ Court cananot be accepted at this stage.

He further submitted that even assuming it without admitting that the petitioner-tenant is not a tenant, then he has no locus standi to maintain this writ petition as he is not the person aggrieved with the order passed by the courts below. Therefore, this writ petition is liable to be dismissed on the ground of maintainability and no relief can be granted in his favour.

He also submitted that in case the respondent being co-owner of the shop in question is not the exclusive owner, even though he can file the release application to release the shop in question under the settled provisions of law.

He next submitted that admissions in the pleadings are admissible under Section 58 of the Indian Evidence Act and the same is binding on the party that makes them waiver of provision. It is not required to be proved.

So far as bonafide need is concerned, he submitted that the respondent has space in his shop which is below the stairs and the landlord-respondent is using this space to keep the goods relating to the packaging. The courts below after considering the evidence on record have categorically recorded finding that the shop in question is required bonafidely to the landlord-respondent. He next submitted that undisputedly the petitioner-tenant is having alternative accommodation for doing his business at 49/99 Naughara, Kanpur Nagar, therefore, the courts below have rightly decided the issue of bonafide need in favour of the landlord-respondent. He next submitted that in light of law laid down by the Apex Court as well as this Court, landlord is best judge of his need and the Court may not interfere in the matter. The courts below have also considered that the petitioner has not made any effort to search the alternative space and recorded finding in favour of the landlord while deciding the bonafide need.

He further submitted that so far as comparative hardship is concerned, as per finding recorded by the prescribed Authority, it is undisputed fact that the petitioner has not made any effort to search alternative space coupled with the fact that the landlord is owner of another accommodation at 49/99 Naughara, Kanpur Nagar. Therefore, courts below have rightly decided this issue in favour of landlord-tenant.

He next submitted that writ of certiorari can only be issued for correcting the errors of jurisdiction committed by inferior court or tribunal. Writ of certiorari is not supervisory jurisdiction and the Court cannot be

treated to act an appellate court.

He also submitted that while deciding the comparative hardship , the courts below have considered the Rule 16(2)(b) of Rules, 1972 provides for considering the need of landlord also and order of the Prescribed Authority is in accordance with same. Once the petitioner is having alternative accommodation, Rule 16 of the Rules, 1972 would not be applicable.

In support of this contention, he has placed reliance upon several judgments of the Apex Court as well as this Court.

He has placed reliance upon a judgment of Apex Court in the case of ***Rajsthjan State Road Transport Corporation and another Vs. Bajrang Lal, (2014) 4 Supreme Court Cases 693.*** Paragraphs 14 and 15 of the said judgment are quoted below:-

> *"14. It is settled proposition of law that a party has to plead the case and produce/adduce sufficient evidence to substantiate his submissions made in the plaint and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas. (Vide: M/s. Larsen & Tourbo Ltd. & Ors. v. State of Gujarat & Ors., AIR 1998 SC 1608; National Building Construction Corporation v. S. Raghunathan & Ors., AIR 1998 SC 2779; Ram Narain Arora v. Asha Rani & Ors., (1999) 1 SCC 141; Smt. Chitra Kumari v. Union of India & Ors., AIR 2001 SC 1237; and State of U.P. v. Chandra Prakash Pandey, AIR 2001 SC 1298.)*
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> *15. In M/s. Atul Castings Ltd. v. Bawa Gurvachan Singh, AIR 2001 SC 1684, this Court observed as under:–*
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> *"12. The findings in the absence of necessary pleadings and supporting evidence cannot be sustained in law."*
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> *(See also: Vithal N. Shetti & Anr. v. Prakash N. Rudrakar & Ors., (2003) 1 SCC 18; Devasahayam (Dead) by L. Rs. v. P. Savithramma & Ors., (2005) 7 SCC 653; Sait Nagjee Purushotam & Co. Ltd. v. Vimalabai Prabhulal & Ors., (2005) 8 SCC 252, Rajasthan Pradesh V.S. Sardarshahar & Anr. v. Union of India & Ors., AIR 2010 SC 2221; Ritesh Tiwari & Anr. v. State of U.P. & Ors., AIR 2010 SC 3823; and Union of India v. Ibrahim Uddin & Anr. (2012) 8 SCC 148)."*

Next judgment relied upon by learneada counsel for the respondent is ***S.U. Ashram Vs. ADJ, [2016 (1) ARC 861.*** Paragraphs 14, 15, 17 and 18 are quoted below:-

> *"14. Second ground of challenge to the maintainability of the release application urged by the learned counsel for the petitioner is that the release application has been filed against an unknown entity i.e. the petitioner no. 2. The necessary party is the petitioner no. 1 who has not been impleaded in the release application. The petitioner no. 1 is a registered society which has opened its Branch Office namely Shri Gandhi Ashram, Mandawar. The release*

application against Shri Gandhi Ashram, Mandawar was not maintainable and the order of eviction passed against it can not be executed against the petitioner no. 1 which is a legal entity being a registered co-operative society.

15. This objection of the learned counsel for the petitioner is not acceptable for the simple reason that in paragraph 1 of the written statement filed by the petitioner nos. 2 had admitted the landlord-tenant relationship.

16. Now on the merits of the release application, the application has been filed for the need setup by the landlord therein that he required the shop in question for his business. The tenant contested the release application on the ground that the landlord had another shop at Chandak which is a near by place but has not been able to establish that the landlord was in vacant possession of any other shop at Mandawar where the landlord wanted to do his business.

17. It is well-settled that it is choice of the landlord to do his business at a particular place. The tenant or the Court for that matter cannot be a guide to instruct the landlord to do his business at Chandak itself. Moreover the finding of fact is that there is categorical refusal of the landlord that he was doing grocery business in a shop at Chandak which could not be rebutted by the tenant by leading cogent evidence.

18. On the comparative hardship, the categorical finding is that the opposite party had failed to establish that it had made an effort to get an alternative place. The record proves that other shops were available in the vicinity which could have been taken on rent by the opposite party/tenant."

Next judgment relied upon by learned counsel for the respondent is ***Heeralal Vs. Kalyan Mal and others, AIR 1998 Supreme Court, 618.*** Paragraphs 9 and 10 of the said judgment are quoted below:-

"9. Now it is easy to visualize on the facts before this Court in the said case that the defendant did not seek to go behind his admission that there was an agreement of 25th January 1991 between the parties but the nature of agreement was sought to be explained by him by amending the written statement by submitting that it was not agreement of sale as such but it was an agreement for development of land. The facts of the present case are entirely different and consequently the said decision also cannot be of any help for the learned counsel for the respondents. Even that apart the said decision of two learned judges of this Court runs counter to a decision of a Bench of three learned judges of this court in the case of Modi Spinning & Weaving Mills Co. Ltd. & Anr. v. Ladha Ram & Co. [(1977) 1 SCR 728: (AIR 1977 SC 680). In that case Ray, CJ., Speaking for the Bench had to consider the question whether the defendant can be allowed to amend his written statement by taking an inconsistent plea as compared to the earlier plea which contained an admission in favour of the plaintiff. It was held that such an inconsistent plea which would displace the plaintiff complete from the admissions made by the defendants in the written statements cannot be allowed. If such amendments are allowed in the written statement plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. In that case a suit was filed by the plaintiff for claiming a decree for Rs. 1,30,000/- against the defendants. The defendants in their written statement admitted that by virtue of an agreement dated 07th April 1967 the plaintiff worked as their stockist-cum-distributor. After three years the defendants by application under order Vi Rule 17 sought amendment of written statement by substituting paragraphs 25 and 26 with a new paragraph in which they took the fresh plea that plaintiff was mercantile agent cum-purchaser, meaning thereby they sought to go behind their earlier admission that plaintiff was stockist- cum-distributor. Such

amendment was rejected by the Trial Court and the said rejection was affirmed by the High Court in Revision. The said decision of the High Court was upheld by this Court by observing as aforesaid. This decision of a Bench of three learned judges of this the written statement contains an admission in favour of the plaintiff, by amendment such admission of the defendants cannot be allowed to be withdrawn if such withdrawal would amount to totally displacing the case of the plaintiff and which would cause him irretrievable prejudice. Unfortunately the aforesaid decision of three member Bench of this Court was not brought to the notice of the Bench of two learned judges that decided the case in Akshaya Restaurant (supra). In the latter case it was observed by the Bench of two learned judges that it was settled law that even the admission can be explained and even inconsistent pleas could be taken in the pleadings. The aforesaid observations in the decision in Akshaya Restaurant (1995 AIR SCW 2277) (supra) proceed on an assumption tat it was the settled law that even the admission can be explained and even inconsistent pleas could be taken in the pleadings. However the aforesaid decision of the three member Bench of this Court in Modi Spinning (AIR 1977 SC 680) (supra) is to the effect that while granting such amendments to written statement no inconsistent or alternative plea can be allowed which would displace the plaintiff's case and cause him irretrievable prejudice.

10. Consequently it must be held that when the amendment sought in the written statement was of such a nature as to displace the plaintiff's case it could not be allowed as ruled by a three member Bench of this Court. This aspect was unfortunately not considered by latter Bench of two learned Judges and to the extent to which the latter decision took a contrary view qua such admission in written statement, it must be held that it was per incuriam being rendered without being given an opportunity to consider the binding decision of a three member Bench of this Court taking a diametrically opposite view."

Next judgment relied upon by learned counsel for the respondent is ***Nagindas Ramdas Vs. Dalpatram Iccharam alias Brijram and others, AIR 1974 Supreme Court 471***. Paragraph 26 of the said judgment is quoted below:-

"26. From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the. foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong."

He has also relied upon the judgment of the Apex Court in the case of ***Thimmappa Rai Vs. Ramanna Rai and others, (2007) 14 Suupreme***

Court Cases 63. Paragraph 23 of the said judgment is quoted below:-

> *"23. An admission made by a party to the suit in an earlier proceedings is admissible as against him. Such an admission being a relevant fact, the courts below in our opinion were entitled to take notice thereof for arriving at a decision relying on or on the basis thereof together with other materials brought on records by the parties. Once a party to the suit makes an admission, the same can be taken in aid, for determination of the issue having regard to the provisions of Section 58 of the Indian Evidence Act."*

He has also placed reliance upon a judgment of the Apex Court in the case of ***Rishi Kumar Govil Vs. Maqsoodan and others, (2007) 4 Supreme Court Cases, 465.*** Paragraph 19 of the said judgment is being quoted below:-

> *"19. In Ragavendra Kumar v. Firm Prem Machinary and C0., it was held that it is the choice of the landlord to choose the place for the business which is most suitable for him. He has complete freedom in the matter. In Gaya Prasad v. Pradeep Shrivastava, it was held that the need of the landlord is to be seen on the date of application for release. In Prativa Devi (Smt.) v. T.V. Krishnan, it was held that the landlord is the best Judge of his requirement and Courts have no concern to dictate the landlord as to how and in what manner he should live. The bona fide personal need is a question of fact and should not be normally interfered with. The High Court noted that when the Prescribed Authority passed the order son of the respondent-landlady was 20 years old and the shop was sought to be released for the purpose of settling him in business. More than 20 years have elapsed and the son has become more than 40 years of age and she has not been able to establish him as she has still to get the possession of the shop and the litigation of the dispute is still subsisting. The licence for repairing fire arms can only be obtained when there is a vacant shop available and in the absence of any vacant shop, licence cannot be obtained by him. Therefore, the High Court came to the conclusion concurring with that of the Prescribed Authority and Appellate Authority that the need of the landlady is bona fide and genuine. Considering the factual findings recorded by the Prescribed Authority, Appellate Authority and analysed by the High Court, there is no scope for any interference in this appeal which is accordingly dismissed. However, considering the period for which the premises in question was in the occupation of the appellant time is granted till 31st December, 2007 to vacate the premises subject to filing of an undertaking before the Prescribed Authority within a period of 2 weeks to deliver the vacant possession on or before the stipulated date. There will be no order as to costs."*

Next judgment relied upon by learned counsel for the respondent is ***Arvind Kumar Mishra Vs. Jitendra Kumar Gupta and others, [2016 (1) ARC 634.*** Paragraphs 20 to 25 of the judgment are quoted below:-

> *"20. In the present case, courts below have given categorical finding of fact that the tenant did not make any effort to search an alternative accommodation immediately after filing of the release application and even during the pendency of appeal, so the said facts were sufficient to tilt the balance of the comparative hardship against the tenant, in view of the law as laid down by Hon'ble Supreme Court in the case of* ***B.C. Bhutada V. G.R. Mundada, A.I.R. 2003 SC 2713; 2003 SCFBRC 167*** *wherein it was held that bona fide requirement*

implies an element of necessity. The necessity is a necessity without regard to the degree to which it may be. For the purpose of comparing the hardship the degree of urgency or intensity of felt need assumed significance.

21. In the above authority it has also been held in para 13, that tenant must show as to what efforts he made to purchase or take on rent other accommodation after filing of the release application which is quoted below:-

> *" In **Piper V. Harvey, 1958(1) All ER 454**, the issue as to comparative hardship arose for the consideration of Court of appeals under the Rent Act, 1975. Lord Denning opined; "when I look at all the evidence in his case and see the strong case of hardship which the landlord put forward, and when I see that the tenant did not give any evidence of any attempts made by him to find other accommodation, to look for another house, either to but or to rent, it seems to me that there is only one reasonable conclusion to be arrived at, and that is that the tenant did not prove (and the burden is on him to prove) the case of greater hardship." Hudson, L.J. ,opined: " the tenant has not been able to say any thing more than the minimum which every tenant can say, namely, that he was in fact been in occupation of the bungalow, and that he has not at the moment any other place to go to. He has not , however, sought to prove any thing additional to that by way of hardship such as unsuccessful attempts to find other accommodation, or, indeed, to raise the question of his relative financial incompetence as compared with the landlord." On such state of the case, the Court answered the issue as to comparative hardship against the tenant and ordered his eviction."*

*22. In the case of **Salim Khan V. IVth Additional District Judge, Jhansi and others , 2006(1) ARC 588** has held that in respect of comparative hardship, tenant did not show what efforts they made to search alternative accommodation after filing of release application. This case sufficient to tilt the balance of hardship against them Vide **Bhutada V. G.R. Mundada 2003 Supreme Court 2713; 2005(2) ARC 899**. Moreover, rent of Rs. 6/- per month which the tenants are paying is virtually as well as actually no rent. By paying such insignificant rent they must have saved a lot of money. Money saved is money earned. They must, therefore, be in a position to take another house on good rent. Further, they did not file any allotment application for allotment of another house. Under Rule 10(3) of the Rules framed under the Act, a tenant, against whom release application has been filed, is entitled to apply for allotment of another house immediately. Naturally such person is to be given preference in the matter of allotment. Respondents did not file any such allotment application. Thus, the question of comparative hardship has also to be decided against the tenants. (See. also **Raj Kumar Vs. Lal Khan, 2009 (2) ARC 740 and Ashis Sonar and other Vs. Prescribed Authority and others 2009 (3) ARC 269.)***

*23. In the case of **Jagdish Chandra Vs. District Judge, Kanpur Nagar and others 2008 2 ARC 756** this Court after relying on the judgment given by the Apex Court in the case of **Bega Begam and others Vs. Abdul Ahad Khan 1979 AIR SC 272 : 1986 SCFBRC 346** held as under:-*

> *"In every case where an order of eviction is passed the tenant*

will come on the street. The fact that all tenants will come on street if eviction is ordered, is not at all relevant for consideration of a comparative hardship of the respective parties. It is for the tenant to find out alternative accommodation. In absence of any material to show that any attempt was made by the such tenant to find out alternative accommodation release application cannot be rejected on ground that such tenant would suffer greater hardship if the release application is allowed."

24. Further, Under Rule 16 of the Rules framed under the Act, various parameters have been provided while considering the comparative hardship of the landlord qua the tenant. The Apex Court in the case of ***Ganga Devi Vs. District Judge, Nainital and others, 2008(2) ARC 584*** *while considering the said scheme provided in Rule 16 has held that :-*

"The Court would not determine a question only on the basis of sympathy or sentiment. Stricto sensu equity as such may not have any role to play."

25. In the instant case as stated above, the appellate court had held that the tenant has not made any effort for search of alternative accommodation and it is settled proposition of law that the equity follows law and so does sympathy. If the factors mentioned in Rule 16 are considered, taking into consideration the facts of this case, no doubt it is an old tenancy but there is nothing to show that any real efforts were made by the tenant to find another accommodation, since the date of moving of release application. (See also ***Govind Narain Vs. 7th Additional District Judge, Allahabad and others [2008(1) ARC 526]*** *and* ***Rani Devi Jain Vs. Badloo and another[2008 (3) ARC 351])*** *and he has already got a shop in his possession during the pendency of litigation. So the argument as raised by learned counsel for petitioner on the basis of the Rules 16 (2) (A) of the Rules has got no force, rejected."*

He has also placed reliance upon the judgment of this Court in the case of ***Sarju Prasad Vs. VIIIth Additional District Judge, Faizabad and others, 2007 (2) AWC 1068 (L.B.)*** Paragraphs 9 to 14 of the said judgment are quoted below:-

"9. In the present case, both the courts below have recorded concurrent findings of facts and have arrived at the conclusion that the need of the landlady was bona fide and genuine. The landlady had a large family consisting of six sons and their dependents. As far as the jurisdiction of the prescribed authority is concerned, the same stood cured as an appeal was filed before the appellate authority, i.e., Additional District Judge, Faizabad. The appellate court has also appreciated the material on record and was of the same opinion that the landlady's need was bona fide, genuine and

pressing. The tenant would not suffer greater hardship than the landlady who was having a large family consisting of six grown-up sons. The case of the landlady is squarely covered by the judgment of this Court as in Atma Ram v. Vith Additional District Judge and Ors. 2006 (1) ARC 168.

10. There is force in the submission made by the learned Counsel for the respondent landlady that on the basis of de facto doctrine and the appellate authority's order, now it cannot be said that the release of the shop was not justified. The above submission is strengthened by the judgments as in Gokaraju Rangaraju v. State of Andra Pradesh; (1981) 3 SCC 132, M/s. Beopar Sahayak (Pvt.) Ltd. and Ors. v. Vishwa Nath and Ors. 1987 (2) ARC 145 : 1987 (2) AWC 1219 (SC) and Union of India and Anr. v. Charanjit S. Gill and Ors., (2000) 5 SCC 742.

11. It is well-settled that the landlord is the best Judge to assess his residential requirement. He has complete freedom in this matter. Neither the tenant, nor the Court can suggest to the landlord other means to satisfy his need so that the tenant may continue in possession unless those means are equally viable. It is unnecessary to make an endeavour as to how the landlord could have adjusted himself (vide Vishnu Kant Goswami v. IInd A.D.J., Allahabad and Ors. 2006 (1) ARC 282 ; Braham Kumar and Ors. v. Raja Ram and Ors. 2006 (1) ARC 93 and Kaushal Kumar Gupta v. Bishun Prasad and Ors. 2006 (1) ARC 73).

12. Both the learned courts below have rightly held that the landlady's need was quite bona fide as she required the shop for establishing some of her sons, who were six in number. A son cannot be compelled to join his father, uncle or other family members in their business in other shops. The landlady's one son or two sons could start business of their own choice from the shop in question independently. Certainly her need was greater than that of the petitioner-tenant. Her case finds support from the judgments as in Hari Narain (Sri) v. VIth A.D.J., Kanpur and Ors. 2006 (1) ARC 81 ; Sushila v. Iind Addtional District Judge, Banda and Ors. 2003 (1) ARC 156 (SC) ; Kafeel Ahmad v. Smt. Satvindra Kaur 2006 (1) ARC 459 : 2006 (2) AWC 1299; Nandani Devi (Smt.) v. 1st Additional District Judge, Varanasi and Ors. 2005 (1) ARC 58 ; Kelawati (Smt.) v. Special Judge (E.C. Act), Moradabad and Ors. 2006 (1) ARC 78 and Abdul Naim Quraishi v. Masi Uddin Khan 2005 (1) ARC 316 : 2005 (2) AWC 1260.

13. It is also evident that the tenant did not make any effort to search an alternative accommodation. This was sufficient to tilt the balance of comparative hardship against the tenant, (vide B. C. Bhutada v. G.R. Mundada AIR 2003 SC 2713 and Hashmat Ali v. VIth A.D.J. Kanpur Nagar and Ors. 2006 (1) ARC 65).

14. Learned counsel for the petitioner has failed to persuade this Court to take a different view from what has been taken by the

learned courts below. It is well-settled that in exercise of power under Article 226 of the Constitution of India, the High Court will not sit in appeal over the findings arrived at by the prescribed authority and affirmed by the appellate authority, as has been held by the Apex Court in Ranjit Singh v. Ravi Prakash 2004 (1) ARC 613 (SC) : 2004 (2) AWC 1721 (SC).”

He has also placed reliance upon the judgment of this Court in the case of ***Bachchu Lal Vs. IXth A.D.J. Kanpur and others, 2006 (4) AWC 3467.*** Paragraph 6 of the said judgment is quoted below:-

“6. In respect of comparative hardship tenant did not show that he made any efforts to search alternative accommodation after filing of the release application. This was sufficient to tilt the balance of comparative hardship against the tenant. The appellate court while allowing the appeal was very much impressed by the fact that for about 65 years the shop in dispute was in tenancy occupation of tenant. Mere long possession is not sufficient to reject the release application. The rent is Rs. 31.25/- per month. For a shop in Kanpur Nagar such rent is rather ridiculous. It is virtually as well as actually no rent. By paying such highly inadequate rent, tenant must have saved lot of money, which he might have been required to pay as proper rent. Money saved is money earned. Moreover, the tenant was doing business from the shop in Kanpur for 65 years. Accordingly he must be in a position either to purchase the shop or to take on good rent another shop. In this direction no efforts were made by the tenant. It is admitted that Radhey Shyam is doing business from another shop. In view of this his hardship is nil. This is an additional ground to allow the release application.”

He also placed reliance upon the judgment of Apex Court in the case of ***India Umbrella Manufacturing Co. and others Vs. Bhaganamdei Agarwalla (Dead) by Lrs. Savitri Agarwalla (Smt) and others, (2004) 3 Supreme Court Cases, 178.*** Paragraph 6 of the said judgment is quoted below:-

“6. *Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co- owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See: Sri Ram Pasricha Vs. Jagannath & Ors., Dhannalal Vs. Kalawatibai (SCC para 25). This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co- owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co- owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law.”*

Learned counsel for the respondent has again relied upon a judgment of this Court in the case of ***Shabbir Ahmed Vs. Syed Mohammad Ali Ahmed Kabir, 2016 (1) ARC 275.*** Paragraph 15 of the said judgment is quoted below:-

> "15. *In view of the above discussion, on the facts of the present case, it is held that the petitioner's status in the property in dispute will not change with the purchase of a portion of the property from one of the co-owner. His status, vis-a-vis the applicant-landlord, will remain that of the tenant and there would be no question of obtaining his consent as against him. Further, as the other co-owner was not available, there was no question of taking his consent. The release application was perfectly maintainable even in the absence of the consent of the other co-owner. There is no merger of the interest of the lessee/petitioner with that of the interest of lessor/respondent-landlord in the whole of the property and hence, the tenancy cannot be said to have been determined under Section 111(d) of the Transfer of Property Act. The release application was perfertly maintainable and was rightly decided by both the Courts below on its merit."*

He has also placed reliance upon the judgment of the Apex Court in the case of ***K.V.S. Ram Vs. Bangalore Metropolitan Transport Corporation, (2015) 12 Supreme Court Cases 39.*** Paragraph 11 of the said judgment is quoted below:-

> *"11. In Syed Yakoob vs. K.S. Radhakrishnan, the Constitution Bench of this Court considered the scope of the High Court's jurisdiction to issue a writ of certiorari in cases involving challenge to the orders passed by the authorities entrusted with quasi-judicial functions under the Motor Vehicles Act, 1939. Speaking for the majority of the Constitution Bench, Gajendragadkar, J. observed as under: (AIR pp. 479- 80, para 7) "7. ...A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be*

> *challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised."*

Learned counsel for the petitioner in rejoinder submitted that the petitioner has alternative accommodation of 25% area for shop in house no. 49/49, Naughara, Kanpur, but the courts below have failed to consider that the said shop is not in ownership of the petitioner, but in ownership of his father and uncle. Further Rule 16(2)(b) of the Rules, 1972 States that the alternative accommodation must be suitable accommodation to which the tenant can shift his business without substantial loss. Both the above condiions have not been considered by the courts below, hence the finding recorded by them on the comparative hardship is illegal and unsustainable in law.

I have considered the rival submissions of the learned counsel for the parties, judgment of the courts below and also judgments of Apex Court and this Court relied upon by the counsels for the parties.

The main emphasis of learned counsel for the petitioner is upon the maintainability of the writ petition. To proceed with to decide this issue, it is necessary to record here that it is undisputed that the petitioner has accepted his tenancy before the prescribed authority as well as appellate authority. It is also undisputed that in capacity of tenant, he has also filed Misc. Case No. 672/70/2014 (Prakash Chandra Gupta Vs. Ritesh Bhargav) under Section 30 of the Act, 1972, which is still pending.

Basic submission of the learned counsel for the petitioner is that jurisdiction cannot be conferred upon the court by consent, acquiescence or waiver and further if new ground goes to the very root of the matter, the same can be raised at any point of time even before the last court though it has not been raised earlier. In support of his contention, he has placed reliance upon the different judgments of the Apex Court as well as this Court. I have perused the aforesaid judgments and none of the judgment is

having the similar or near to similar facts as involved in the present controversy. In fact, in the judgment relied upon by learned counsel for the petitioner, it is not the case that after filing the written statement before the prescribed authority accepting the tenancy and also before appellate court, a new plea was taken before the High Court or last court.

In the matter of **Ramesh Chandra Yadav (supra),** fact of the case was entirely different, where the release application was filed under Section 21 of the Act, 1972, which was partly allowed directing the defendant nos. 1 and 2 to handover possession of vacant premises to plaintiff no. 1 i.e. respondent no. 3. Later on, respondent no. 3 filed another suit seeking eviction on the ground that the Act, 1972 shall not be applicable upon the premises in question since it was completed in the year 1977. The court held that in such circumstances, there would be no resjudicata. In this case, fact was not disputed and further there was nothing like filing of written statement admitting the fact and later on denying the same. In the case of **Kiran Singh (supra)**, the fact is having no similarity with present case. In this matter, the Court was lacking jurisdcition due to incorrect valuation of suit in light of Suits Valuation Act, therefore, it is not relevant in the case of the petitioner. In the case of **Gurucharan Singh (supra)**, the Court has held that it is well settled that a pure question of law going to the root of the case and based on undisputed or proven facts could be raised even before the Court of last resort. Here the issue is entirely different. **Emphasis of the Court is upon undisputed and proven fact.** It is not undisputed or proved that petitioner was not tenant, contrary to that, it is undisputed before the prescribed authority and appellate authority that the petitioner is tenant. In fact denial of tenancy is disputed fact which is not proved either before the prescribed authority or appellate authority as it has never been raised. In the matter of **G.M. Contractor (supra)**, the facts are altogether different, which were arsing out of a contract and certain undertaking, therefore, the same would not be applicable in the present case. Similarly, in the case of **Chandra Bhushan Khanna (supra)**, the fact was altogether different as earlier the case was

filed before the Court of Munsif, later on, it was transferred to the Court of Small Causes, which was having no jurisdiction. Both the parties have contested under the bonafide belief that the Small Causes Court is having jurisdiction and they have no occasion to take objection on the ground of maintainbility. Apart from that, in that case it was undisputed that there was no relationship of tenant and landlord, but here tenancy is being disputed by petitioner first time before High Court earlier accepting it. Denial of tenancy is highly disputed by landlord-respodent before this Court. Therefore, this judgment would not help the petitioner. Here, it cannot be said that by consent of parties, jurisdiction was conferred upon the Court. In fact, it is required upon the petitioner to raise issue before the Court to enable it to record finding of fact about tenancy upon the objection raised by landlord-respondent. Again in the case of **Chiranjilal Shrilal Goenka (supra)**, the fact was entirely different in which an arbitrator was appoined with the consent of parties, which was ultimately found contrary to law. Therefore, this judgment relied bupon by learned counsel for the petitioner would also not come to help the petitioner.

It is not the case that petitioner has raised a pure legal issue before the Court. In fact, he had taken a plea accepting the tenancy and contested the case, but after loosing the same before the Prescribed Authority and Appellate Authority taking U-turn, he has taken entirely different plea which was earlier never raised. Apart from that, undisputedly, he is enjoying privilage of tenant by filing Misc. Case No. 672/70/2014 (Prakash Chandra Gupta Vs. Ritesh Bhargav) under Section 30 of the Act, 1972, which is still pending. Therefore, in light of such facts, conduct of the petitioner cannot be appreciated and he can not be permitted to take benefit of his own wrong.

In the case of **Rajasthan State Road Transport Corporation (supra)**, it was clearly held that it is required on the part of a party to plead the case and produce/adduce the sufficient evidence to substantiate its submission made in the plaint and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas.

In the matter of **S.U. Ashram (supra**), the Court was also of the same view and held that the objection of the learned counsel for the petitioner is not acceptable only for the reason that he has admitted landlord-tenant relationship in his written statement. The Apex Court in the case of **Heeralal (supra)** has stated that amendment sought in the written statement was of such nature as to displace the plaintiff's case could not be allowed. In the matter of **Nagindas Ramdas (supra)**, the Apex Court has again taken very same view and held that admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleading or judicial admissions, admissible under Section 58 of the Evidence Act, 1872 made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The Court again in the matter of ***Thimmappa Rai (supra)*** has taken the same view relying upon the Section 58 of the Evidence Act, 1872 and held that any admissions made by the party to the suit in earilier proceeding are also admissible against him.

Section 58 of the Evidence Act is quoted below:-

> "58 Facts admitted need not be proved. —No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:
> Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

After going through the facts of the case and law laid down by the Apex Court as well as this Court, it is very much clear that the petitioner tenant has never disputed tenancy and also filed Misc. Case No. 672/70/2014 (Prakash Chandra Gupta Vs. Ritesh Bhargav), under Section 30 of the Act, 1972 in the capacity of tenant, therefore, he cannot be permitted to take new plea in light of law discussed above and further no denial of tenancy is required by the landlord-respondent in light of Section 58 of the Evidence Act, 1872.

Considering the judgments of Apex Court as well as this Court, it is very much clear that petitoner has never raised this issue before the Prescribed Authority or Appellate Authority, where it could be proved by

placing evidence whether he is tenant or not, therefore, he cannot be permitted to raise this issue before the High Court in the writ petition. The contention of the learned counsel for the petitioner is also not acceptable that he has raised the issue in the written statement that tenancy is continued from 1960, which was not denied by landlord-respondent in light of Section 58 of Evidence Act. Once the tenancy is accepted, there was no need to landlord to deny the same as the facts admitted need not be proved.

Alternative argument of learned counsel for the landlord-respondent is also having force where he has stated that in case petitioner is not the tenant, then he has no authority to maintain this writ petition as he is not the aggreived person. There is no doubt that once the petitioner is accepting that he is not tenant and his father is tenant then, he has no right to file this writ petition, only his father could invoke this remedy or any other remedy available under the law. Therefore, in that case, this writ petition would not be maintinable in light of law laid down by the Apex Court as well as this Court and the Court cannot grant any relief in favour of petitioner.

So far as bonafide need is concerned, there is specific finding of fact about the need of shop in question in favour of landlord-respondent, which cannot be normally interfered by this Court. The landlord-respondent has taken specific plea that his business is growing, therefore, he is in need of shop in question coupled with the fact that undisputedly petitioner is having alternative accomodation i.e., 49/99 Naughara, Kanpur Nagar. The Apex Court as well as this Court has repeatedly held that landlord-respondent is best judge of his need and Court may not interfere in the matter. This Court in the matter of **S.U. Ashram (supra)** has rejected the plea of tenant that landlord is having another shop on the ground that he could not establish that landlord was in possession of any other shop at the place in dispute and landlord is wanted to do his business on his own choice at a particular place. In the present case, undisputedly landlord is not having any another accomodation whereas petitioner is having

alternative accomodation at 49/99 Naughara, Kanpur Nagar.

In the case of **Rishi Kumar Govil (supra),** the Apex Court relying upon the different judgments has held that it is the choice of the landlord to choose the place for the business, which is most suitable for him.

This Court in the case of **Sarju Prasad (supra)** has clearly held that both the Courts below have recorded concurrent finding of fact and have arrived at the conclusion that need of shop of landlord was bonafide and genuine, which cannot normally be interfered considering the settled position of law. In exercise of power under Article 226 of the Constitution, the High Court will not sit in appeal against the finding arrived at by the Prescribed Authority and confirmed by the Appellate Authority. The Appellate Authority after considering the evidence available on record made it clear that alternative shop is not available to landlord-respondent. The petitioner before this Court could not bring any such fact or law which intend this Court to exercise jurisdiction under Article 226 of the Constitution for bonafide need in his favour.

Thereafter, in light of facts of the present case and law laid down by the Apex Court as well as this Court, this Court cannot exercise the power under Article 226 of the Constitution of India in favour of petitioner for bonafide need, which is not getting support by findings of the Prescribed Authority as well as Apeallate Authority .

So far as comparative hardship is concerned, it is undisputed fact that the petitioner has never attempted to search alternative space for shifting his business and law is very well settled on this point. The Apex Court as well as this Court has repeatedly held that it is necessarily required on the part of tenant to make full endeavour to search alternative accomodation to prove his comparative hardship after receiving copy of release application. In the matter of **Rajasthan State Road Transport Corporation (supra)**, the Court has clearly held that it is required on the part of tenant to make effort for searching alternative accomodation. Again in the matter of **Salim Khan (supra),** this Court, relying upon the judgments of the Apex Court as well as this Court, was of the view that it is required on the part of petitioner to search accomodation after filing the

release application and in the present case there is no dispute that the petitioner had never made any effort to search alternative accomodation. Not only this, the Court has also considered the Rule 16 of the Rules, 1972 and considering the another judgment of **Ganga Devi (supra),** Court has taken the view that Rule 16 of Rules, 1972 would not come in the rescue of petitioner, in case, petitioner-tenant has not made any effort to search another accomodation. Here in the present case, there is no dispute on the point that petitioner has not made any effort to search alternative accomodation.

In the matter of **Sarju Prasad (supra),** this Court has again taken the same view and held that in case effort was not made for alternative accomodation, this would be sufficient to tilt the balance of comparative hardship against the tenant. This view was again repeated by this Court in the case of **Bachchu Lal (supra)** and held that to prove the comparative hardship, it is necessarily required to make effort to search alternative accomodation, which is absolutely missing in the present case.

Therefore, in light of fact that petitioner has never made any effort for searching alternative accomodation coupled with law laid down by the Apex Court as well as this Court, no relief can be granted to the petitioner on the ground of comparative hardship.

Learned counsel for the petitioner has also raised this issue that the landlord is only co-owner of the shop in question, therefore, he cannot file release application, which is not acceptable in light of judgment of Apex Court in the case of **India Umbrella Manufacturing Co. (supra) & Shabbir Ahmed (supra).** In both the matters, the Court has clearly held that co-owner have full right to file suit for eviction against the tenant and even consent of co-owner is not required to file suit. Therefore, this argument of the learned counsel for the petitioner is not acceptable and no relief can be granted on this ground too.

There is finding of fact by both the courts below in favour of the landlord-respondent and in light of law laid down by the Apex Court in the matter of **K.V.S. Ram (supra)** the Court has taken clear view that finding of fact recorded by Tribunal cannot be challenged in proceeding for a writ

of certiorari on the ground that the relevant facts and material evidence adduced before the Tribual was insufficient or inadequate to sustain the impugned finding. Case of landlord-respondent is getting full support from this judgment.

In view of the above facts and law laid down by the Apex Court as well as this Court, I am of the view that no good ground for interference is made out by the petitioner. The judgment and orders dated 24.09.2019 passed by XII Additional District Judge, Kanpur Nagar in Rent Appeal No. 26 of 2017ent and 06.04.2017 passed by prescribed Authority/Judge Small Causes Court, Kanpur in Rent Case No. 18 of 2014 are affirmed. The writ petition is accordingly **dismissed**. No order as to cost.

However, considering the long tenancy of the petitioner-tenant, he is granted time till 30th November, 2020 to vacate the shop in question subject to filing an undertaking on affidavit before the Prescribed Authority within a period of two weeks from today to deliver the possession of shop in question on or before the stipulated date i.e. 30 November, 2020.

Order Date :- 20.8.2020

Rmk.