

Sri Vishal Bansal And Another vs Addl. District Judge/Special Judge And ... on 29 March, 2018

Equivalent citations: AIRONLINE 2018 ALL 5130

Author: Surya Prakash Kesarwani

Bench: Surya Prakash Kesarwani

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Court No. - 07

Case :- MATTERS UNDER ARTICLE 227 No. - 50 of 2018

Petitioner :- Sri Vishal Bansal And Another

Respondent :- Addl. District Judge/Special Judge And 5 Others

Counsel for Petitioner :- Tarun Agrawal

Counsel for Respondent :- Prem Chand Jain,C.S.C.,H,S.Bedi,Kshitiz Shailendra

Hon'ble Surya Prakash Kesarwani,J.

1. Heard Sri Ravi Kant, learned senior counsel assisted by Sri Rishab Agarwal, learned counsel for allottee-petitioners, learned standing counsel for respondent No.2 and Sri Kshitiz Shailendra, learned counsel for respondent Nos.4 and 5.

2. Respondent No.6 Sri Din Dayal Kayan has been impleaded as proforma respondent.

Questions Involved:-

- (a) Whether in allotment proceedings, the provisions of the UP Act XIII of 1972 and the Rules framed thereunder, were observed?
- (b) Whether the allotment order dated 25.8.2006 was the result of fraud and collusion?
- (c) Whether the review application filed by landlord-respondent under Section 16(5) of the Act was barred by limitation?
- (d) Whether the revisional court exceeded its jurisdiction to pass the impugned judgment under Section 18 of the Act and whether it was justified for the revisional court to enter into the merits of the case when the review application was rejected on the ground of limitation?

Original Records Produced:

3. Learned Standing Counsel has filed an affidavit of the respondent No.2, which is taken on record. On earlier occasions as well as today, he has produced the following records:

- (i) File of Case No.76 of 1998 (Bhushan Narang vs. Sita Ram Kayan) allotment order dated 02.05.1998 for allotment of disputed shop being Property No.6/336, Belanganj, Ward Chhatta, Agra under Section 16(1)(a) of U.P. Act XIII of 1972 and the allotment letter dated 04.05.1998 issued by the Additional District Magistrate (Civil Supplies/ Rent Control and Eviction Officer), Agra, whereby shop in question was allotted to the respondent No.3.
- (ii) File of Case No.105 of 2006 (Vishal Bansal, Priti Bansal vs. Din Dayal Kayan) of allotment order dated 25.08.2006 and allotment letter dated 31.08.2006 of the disputed shop being Property No.6/336, Belanganj, Ward Chhatta, Agra under Section 16(1)(a) of U.P. Act XIII of 1972 in favour of the petitioners herein.
- (iii) File of Review Application/ Case No.25 of 2012 (Bhushan Narang vs. Vishal Bansal and others) rejected by order dated 06.08.2016 passed by the Additional District Magistrate (Civil Supplies)/ Rent Control and Eviction Officer, Agra, from which petition arose.

4. These records have been shown to the learned counsel for the parties. After perusal of these records by learned counsel for the parties and by the Court, it has been returned to the learned standing counsel.

FACTS:-

5. Briefly stated facts of the present case are that one Sri Sita Ram Kayan was the original owner and landlord of the disputed shop being property No. 6/336, Balanganj, Agra, which was allotted by the Rent Control and Eviction Officer, Agra to the respondent No.3 by allotment order dated 02.05.1998 and the allotment letter dated 04.05.1998 was accordingly issued to him to occupy the disputed shop as tenant. After the death of Sita Ram Kayan, the aforesaid property was succeeded by his son Sri Din Dayal Kayan who sold the disputed shop to the respondent No.3 by a registered sale deed dated 17.02.1999. The respondent No.3 was carrying on business from the said shop. According to the respondent No.3, due to some financial problem, he had let out the disputed shop to one Sri Surendra Kumar Sahani in the year 2006 and took certain advance money adjustable towards future rent. According to him, the aforesaid Surendra Kumar Sahni permitted the petitioner No.1 herein to run business with him in the disputed shop, but, secretly and fraudulently, the petitioner No.1 moved an application dated 21.07.2006 for allotment of the disputed shop before the RC & EO, Agra in which he falsely and with malafide intention mentioned the name of owner as "Din Dayal Kayan". Without any evidence of ownership or inquiry in this regard and without any notice to the owner, the shop was secretly and fraudulently allotted to the petitioners. According to the respondent Nos.3, 4 and 5, after adjustment of the advance money when the respondent No.3 demanded rent in the year 2012, then the aforesaid Surendra Kumar Sahni refused to pay the rent. Consequently, the respondent No.3 issued a notice dated 03.02.2012 to the tenant Sri Surendra Kumar Sahani and also to the petitioner No.1. By reply dated 27/29.2.2012, they disclosed that the shop has been allotted to them by the Rent Control and Eviction Officer, Agra. Having come to know for the first time about the aforesaid allotment, the landlord-respondent No. 3 immediately filed a review application dated 12.3.2012 before the R.C. & E.O. Agra, under Section 16(5) of the UP Act XIII of 1972 being Case No.25 of 2012, which was rejected by order dated 6.8.2016. During pendency of the review application, the respondent No. 3 died on 22.11.2015. He was substituted by his heirs and legal representatives being respondent Nos. 4 and 5 herein. Aggrieved with the order dated 6.8.2016 rejecting the review application, the landlord-respondent Nos. 4 and 5 filed a Rent Control Revision No.70 of 2016, which has been allowed by the Additional District Judge/ Special Judge (D.A.A. Act), Agra by the impugned judgment dated 24.11.2017. In compliance to the aforesaid judgment and order of the Revisional Court, the Rent Control and Eviction Officer, Agra passed the order dated 28.12.2017 in favour of the landlord respondent Nos.4 and 5 for possession of the disputed shop. The possession has been actually received by the respondent Nos. 4 and 5 on 01.01.2018. The order of the Rent Control and Eviction Officer, Agra dated 28.12.2017 and 01.01.2018 are not under challenge in this petition. The petitioners have filed the present petition praying for the following relief:

"A) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 24.11.2017 passed in Rent Control Revision No.70/2016 by the Addl. District Judge/ Special Judge, (DAA) at Agra.

B) Issue a writ, order or direction of mandamus commanding the respondents to restore the possession of the shop in dispute to the petitioner.

C) Issue any suitable writ, order or direction in addition to and in supplement to refer to above, as this Hon'ble Court may deem fit and proper in the facts and

circumstances of the case."

SUBMISSIONS:-

6. Learned counsel for the parties were heard at length on 13.02.2018, 15.03.2018, 16.03.2018, 22.03.2018 and 27.03.2018 and the orders were passed by this Court recording their submissions as under:

Order Dated 13.02.2018 "Heard Sri Ravi Kant, learned senior Advocate assisted by Sri Rishabh Agarwal, learned counsel for the allottee-petitioners, the learned standing counsel for respondent no. 2 and Sri Kshitiz Shailendra, learned counsel for respondent nos. 4 and 5. The respondent no. 6 Sri Din Dayal Kayan, who is the original owner has been impleaded as proforma respondent in the present petition.

Facts Briefly stated facts of the present case are that one Din Dayal Kayan was the original owner of the disputed property No. 6/336, Balanganj, Sita Ram Market, Agra. It appears that the aforesaid original owner had sold the disputed shop to Sri Bhushan Narang, deceased respondent no. 3 by a registered sale deed dated 17.02.1999, copy of which has been filed as Annexure CA-5. As per sale deed the consideration of the vended property was received by the vendor-respondent no. 6 (the original owner) from the respondent no. 3 (the vendee) before the Sub Registrar at the time of registration of the sale deed. It is also mentioned in the aforesaid sale deed that the vendor, respondent no. 6 Sri Din Dayal Kayan has put in possession to the respondent No. 3 vendee Sri Bhushan Narang. Without there being any vacancy order, the Rent Control and Eviction Officer/Addl. District Magistrate (Civil Supplies), Agra registered a Case No. 105/06 (Vishal Bansal, Priti Bansal Vs. Din Dayal Kayan) under Section 16 (1) (a) of U.P. Act No. 13 of 1972 on the application filed by the aforesaid Vishal Bansal, Priti Bansal the petitioners herein and an alleged inspection report dated 22.07.2006. He passed an order of allotment dated 25.08.2006, in which he noted as under:

"iz'uxr Hkkx dh jktif=r vf/kdkjh ls tkWap djkbZ xbZ tkWp vk[k; k fnukad&22&7&2006 esa fy[kk gS fd tkWp ds le; iz'uxr Hkkx cUn ik;k x;kA ekSds ij iwNrkaN djus ij Kkr gqvk fd iz'uxr Hkkx HkouLokeh ds dCts esa ik;k x;k tks fdjk;s ij mBkuk pkgrs gSA vk[k; k dk lkjka'k uksfVl cksMZ ij pLlk fd;k x;kA Hkou Lokeh dh vksj ls odkyrukek o 'kiFk i= izLrqf fd;k x;k ftlesa mUgksaus fy[kk gS fd iz'uxr Hkkx dHkh fdjk;s ij ugha mBk gS vkSj vc igyh ckj izkFkhZx.k dks :o 475@izfrekg ij mBkuk pkgrs gS ftls fy, mUgksaus lgefzr nh gSA fdLh vU; i{k dh vksj ls dksbZ vkfRr ;k vU; vkoaVu izkFkZuk i= izkIr ugha gqvka"

The aforesaid order was followed by a letter of allotment dated 31.08.2006 in favour of the petitioners herein issued by the Rent Control and Eviction Officer/Addl. District Magistrate (Civil Supplies), Agra.

Having come to know about the aforesaid allotment order, the respondent no. 3 Sri Bhushan Narang (owner) filed a review application under Section 16(5) of the Act on 12.03.2012 before the Addl. District Magistrate (Civil Supplies), Agra, which was registered as Case No. 25/12 (Bhushan Narang (deceased), Meena Narang and Ors. Vs. Vishal Bansal and Ors.), who rejected it by order dated 06.08.2016 on the presumption that it is not possible that the owner Sri Bhushan Narang was not having information about the allotment of the disputed shop but he has filed application after about six years, which is barred by limitation under the Proviso to Sub-Section 5 of Section 16 of the Act.

Aggrieved with this order, the legal heirs of respondent no. 3 namely the respondent nos. 4 & 5 filed a Rent Control Revision No. 70/2016, which has been allowed by the impugned order dated 24.11.2017 passed by Addl. District Judge/Special Judge (D.A.A. Act), Agra.

Aggrieved with the aforesaid judgement and order dated 24.11.2017, the allottee-petitioners have filed the present petition under Article 227 of the Constitution of India.

It is alleged in paragraph no. 4 of the counter affidavit filed on behalf of respondent nos. 4 & 5 that after the impugned order dated 24.11.2017 was passed, the Rent Control and Eviction Officer/Addl. District Magistrate (Civil Supplies), Agra passed an order dated 22.02.2017 cancelling the allotment order dated 25.08.2006 and directing for possession to the respondent nos. 4 & 5 by police force. Thereafter he passed another order dated 28.12.2017 to give possession to the owners namely respondent nos. 4 & 5 and on 01.01.2018 they have been given possession and the petitioners herein have been dispossessed. According to learned counsel for respondent nos. 4 & 5, these orders remained unchallenged.

Submissions Sri Ravi Kant, learned senior Advocate assisted by Sri Rishabh Agarwal, learned counsel for the allottee-petitioners submits as under:

I) As per own affidavit of the respondent no. 3 dated 12.03.2012 accompanied the application under Section 16(5) of the Act the possession was never handed over to him by the original owner. Thus he was not the landlord rather the landlord remained the original owner i.e. respondent no. 6 herein. Hence the allotment under Section 16 of the Act was validly made in favour of the petitioners herein and there existed no ground to review the allotment order.

II) The application under Section 16(5) of the Act was filed beyond a period of seven days and as such under the proviso of Sub-Section 5, the application filed beyond 7 days of eviction could not have been entertained. Therefore, the court below has committed a manifest error of law to hold that the application filed by the respondent nos. 4 & 5 herein claiming themselves to be the landlord was not barred by limitation.

Put up on 15.02.2017 for further hearing.

The interim order, granted earlier, shall continue till the next date of listing."

Order Dated 15.03.2018 "Heard Shri Ravi Kant, learned Senior Advocate, assisted by Shri Rishabh Agarwal, learned counsel for the allottee-petitioners and Shri Kshitiz Shailendra, learned counsel for the landlord-respondents No. 3 to 5.

Shri Ravi Kant, learned Senior Advocate, has submitted as under:

(i) Bhushan Narang, the respondent No. 3, had full knowledge of allotment order dated 31.8.2016, at all relevant point of time.

(ii) The review application under Section 16(5) of U.P. Act No. 13 of 1972 could have been filed by the landlord within a reasonable time but he filed the review application after about five years six months. Therefore, the review application was barred by limitation. Hence, it was rightly rejected by the Rent Control and Eviction Officer by order dated 6.8.2016. But, the revisional court has committed a manifest error of law and exceeded its jurisdiction to hold that the review application was filed within limitation on the ground that there is no period of limitation.

(iii) Even if, there is no period of limitation under Section 16(5) of the Act for filing a review application by the landlord, yet the review application could have been filed within a reasonable period, which may be the general period of limitation of three years for review application, as provided under the general law.

(iv) Review is a right conferred by statute. Therefore, the scope of review or the limitation, provided for review under Section 16(5) of the Act, cannot be enlarged.

(v) The revisional Court has exceeded its jurisdiction under Section 18 of the Act to state-away allow the revision. At the most, it could have set aside the order impugned before it and could have remanded the matter to the Rent Control and Eviction Officer under Section 18(1)(b) of the Act. The scope of revision is limited and it is narrower than the appeal.

(vi) All finding of fraud, recorded by the revisional court without recording the finding on the point of knowledge of the allotment order, cannot be sustained, inasmuch as, once the landlord has gained the knowledge of the allotment, the question of fraud does not arise to gain limitation.

(vii) The findings of the Rent Control and Eviction Officer, for rejecting the review application, have not been reversed by the revisional court. Therefore, there was no occasion for the revisional court to substitute its own view on the question of fraud.

In support of his submissions, Shri Ravi Kant has relied upon the judgments of this Court in (a)Akhilesh Kalra vs. Vth Additional District Judge, Lucknow, 2000(1) AWC 128 (paragraphs 17, 18 and 21), on the scope of Section 16(5) and Section 18 of the Act, (b)Mandir Radha Krishanji Maharaj vs. IIIrd Additional District Judge and others, 2004(5) AWC 3855 (All) (paragraphs 8 and 9), on the

point of power of revision under Section 18, (c) J.S. Hitkari vs. Ashok Kumar Shukla and others, 1996 (2) AWC 1208 (All) (paragraphs 9, 11, 12 and 13), on the point of limitation for review under Section 16(5) and (d) Arun Kumar Joseph vs. Victor Samuel Mathews and another, 2013(7) ADJ 354 and the law laid down by the Hon'ble Supreme Court in Madhu Gopal vs. VI Additional District Judge and others, 1988 (4) SCC 644 (paragraphs 2, 3, 7 and 8) on the point of right of the land lord for review under Section 16(5) of the Act.

He submits that the law, laid down by the Court in Sheo Charan Lal Gulati and others vs. Smt. Kamla Kapoor and another, 1983 ARC 299 (paragraphs 13, 14, 15 and 16), on the point of limitation for review or revision and condonation of delay under Section 35 of the Act, is distinguishable on the facts of the present case.

Shri Kshitiz Shailendra, learned counsel for the landlord-respondents, wants to argue the case tomorrow, as no time is left today.

Put up tomorrow, i.e., 16.3.2018, for further hearing."

Order Dated 16.03.2018 "Notice, on behalf of respondent No. 2, has been accepted by the learned Standing Counsel.

Heard Shri Ravi Kant, learned Senior Advocate, assisted by Shri Rishabh Agarwal, learned counsel for the petitioners and Shri Kshitiz Shailendra along with Shri H.S. Bedi, learned counsel for the landlord-respondent.

Shri Kshitiz Shailendra, learned counsel, submits as under:

(i) The disputed property No. 6/336/3, Belanganj, Sita Ram Market, Agra, was initially allotted to Shri Bhushan Narang, the respondent No. 3, by allotment order dated 4.5.1998 and, accordingly, he occupied the disputed shop as tenant. By registered sale-deed dated 17.2.1999, he purchased the aforesaid property from its erstwhile owner, namely, Shri Din Dayal Kayan. He was continuing his business in the said shop. However, due to some financial problem, he had let out the disputed shop to one Shri Surendra Kumar Sahni, in the year 2006, who permitted one Shri Vishal Bansal to run business with him in the disputed shop, however, secretly and fraudulently, the aforesaid Shri Vishal Bansal moved an application dated 21.7.2006 for allotment of the disputed shop before the Rent Control and Eviction Officer, Agra, in which he, with mala fide intention, mentioned the name of the owner as Din Dayal Kayan. Neither any vacancy order was passed in the said case nor any notice, as required under rule 8 and 9 of the Rules, read with section 16 of the Act were issued to the owner and the landlord nor any enquiry was made with regard to the ownership of the disputed shop while the name of the respondent-landlord, namely, Shri Bhushan Narang was even mutated in the municipal records and he was paying the municipal taxes. In conspiracy, an alleged affidavit dated 5.8.2006 of Din Dayal Kayan was filed before Rent Control and Eviction Officer, who fraudulently and in

collusion with the petitioners, passed an allotment order dated 25.8.2006.

(ii) The allotment was kept secret by the aforesaid Shri Surendra Kumar Sahni and the petitioners. Rent was being adjusted by the owner and landlord to Shri Bhushan Narang (respondent No. 3) till December, 2010, against the advance given by the tenant Shri Surendra Kumar Sahni, who (respondent No. 3) took the advance on account of the financial crisis. After the entire advance stood adjusted, the respondent No. 3 issued a notice dated 3.2.2012 to the aforesaid Shri Surendra Kumar Sahni and the petitioner Shri Vishal Bansal. By the reply dated 27/29.2.2012, they disclosed that the shop has been allotted by the Rent Control and Eviction Officer, Agra, to Shri Vishal Bansal (the petitioner). Having come to know for the first time about the fraudulent allotment dated 25.8.2006, the landlord-respondent No. 3 immediately filed a review application dated 12.3.2012 before the R.C. & E.O. Agra, under Section 16(5) of the UP Act XIII of 1972, which was rejected by the Rent Control and Eviction Officer, Agra, by order dated 6.8.2016. During the pendency of the review application, the respondent No. 3 died on 22.11.2015. Therefore, he was substituted by his heirs and legal representative being respondent Nos. 4 and 5, herein.

Aggrieved by the order of rejection of review application dated 6.8.2016, the landlord-respondent Nos. 4 and 5 filed a Rent Control Revision No. 17 of 2016, which has been allowed by the respondent No. 1-Additional District Judge (Special), D.D. Agra, by the impugned judgment dated 24.11.2017 and the review application stood allowed and in consequence, the allotment order dated 25.8.2006, stood cancelled. In compliance of the aforesaid judgment, consequential action under Section 18(3) of the Act was taken by Rent Control and Eviction Officer, Agra, who passed the order for possession of the disputed shop to the landlord-respondent Nos. 4 and 5, on 28.7.2017. In compliance thereof, the possession was received by the respondent Nos. 4 and 5 on 1.1.2018.

(iii) As per settled law, the limitation of seven days for filing review application under the proviso to Section 16(5) of the Act is not applicable to the landlord not in physical possession of the disputed shop. Therefore, rejection of review application by the R.C. & E.O. Agra, was manifestly, illegally and unjust. Consequently, the revisional court has not committed any error of law to allow it and also to pass a consequential order.

(iv) The entire proceeding of allotment by order dated 28.5.2006 was wholly null and void as the allotment itself was the result fraud and collusion. It is a settled law that fraud and justice never dwelt together.

(v) The aforesaid erstwhile owner, Shri Din Dayal Kayan, has never come forth to rebut on oath the averments the affidavit 14-A of the landlord-respondent, more specifically, the fact of execution of sale-deed dated 17.2.1999. He has also not filed any suit for cancellation of the sale-deed. As per the aforesaid sale-deed, the landlord-respondents were in possession of the disputed shop.

(vi) The revisional court has not travelled beyond the scope of Section 18 of the Act. Referring to sub-section 2 and 3 of Section 18, he further submits that the revisional court has lawfully set aside the order of rejection of review application and in consequence thereof set aside the allotment order. The petitioner allottee as well as the landlord-respondents have joined the issue on merit before the revisional court and both sides argued it. Therefore, for this reason also, the revisional court has not committed any manifest error of law to pass the impugned judgment.

(vii) Even, as per Article 137 of the Limitation Act, the limitation for filing review application is three years from the date when the right to apply accrues, i.e., the date of knowledge. Since, the landlord-respondents gained the knowledge of allotment for the first time from the reply of the petitioner dated 27/29.2.2012 and as such the review application dated 12.3.2012, filed by the landlord, cannot be said to be barred by limitation either under the general law of limitation or under the proviso to Section 16(5) of the Act.

In support of his submissions, he has relied upon a decision of Hon'ble Supreme Court in Madhu Gopal vs. VIth Additional District Judge, Agra and others, 1988(2) ARC 498 (paragraphs 5, 7 and 8) on the point of applicability of limitation under the proviso to Section 16(5) of the Act with respect to the landlord not in occupation of the disputed premises, S.P. Chengalvaraya Naidu (dead) by L.Rs., Appellants vs. Jagannath (dead) by L.Rs. and others, AIR 1994 SC 853 (paragraphs 7 and 8) on the point of "finalty of a litigation" and act of fraud and the judgment in Meghmala and others vs. G. Narasimha Reddy and others, 2010(8) SCC 383(paragraphs 28 to 34) on the point of fraud.

He also relied upon the decisions of this Court in J.S. Hitkari vs. Ashok Kumar Shukla, 1996(2) AWC 1208 (paragraph 4), Leela Wati (Smt.) and others vs. Ram Swaroop and others, 2003(2) ARC 483 (paragraphs 2 and 3), on the point of vitiating the proceeding, Ramesh Kumar vs. District Judge Kanpur and others, 1983(2) ARC 309(paragraphs 3 and 5), on the point of start of limitation from the date of knowledge of allotment, Chandra Kant Nagarkar vs. Vth Additional District Judge, Gorakhpur, 2004(2) ARC 349(paragraphs 12,13, 14, 15 and 31) on the point of mandatory requirement of three notices of landlord and principles of condonation of delay, Seeta Ram and another vs. District Magistrate and others, passed in Writ-A No. 4740 of 1992 vide order 27.10.2017 on the point of Revival of an illegal order and Sharad Kumar Kulshrestha vs. Principal Sri Devatraya Adarsh Inter College and others, passed in Writ-A No. 48314 of 1999, decided on 23.11.2017.

In reply Shri Ravi Kant, learned Senior Advocate, assisted by Shri Rishabh Agarwal, learned counsel for the petitioners, submits that the entire argument of landlord-respondent Nos. 4 and 5, is on merit whereas the review application was rejected on the ground of limitation. Therefore, the power of revisional court under Section 18 of the Act was confined to confirm or rescind the final order or to remand the case to the District Magistrate for rehearing. The revisional Court committed manifest error of law to exceed its jurisdiction by setting aside the order of allotment dated 25.8.2006. At best, it could have set aside the order rejecting the review application and should have remanded the matter to the Rent Control and Eviction Officer for decision on merit.

I have carefully considered the submission of learned counsel for the parties. With their consent the following questions for determination, in this petition, are being framed :

(a) Whether in allotment proceedings, the provisions of the UP Act XII of 1972 and the Rules framed thereunder, were observed?

(b) Whether the allotment order dated 25.8.2006 was the result of fraud and collusion?

(c) Whether the review application filed by landlord-respondent under Section 16(5) of the Act was barred by limitation?

(d) Whether the revisional court exceeded its jurisdiction to pass the impugned judgment under Section 18 of the Act and whether it was justified for the revisional court to enter into the merits of the case when the review application was rejected on the ground of limitation?

Shri Ravi Kant, learned Senior Advocate, requests that the matter may be put up for further hearing on 21.3.2018 to enable him to clarify the legal position in reply to the submissions made today by learned counsel for the landlord-respondents and the judgment relied by him.

As prayed, put up on 21.3.2018 for further hearing.

Interim order, if any, shall continue to operate, till the next date fixed.

It is made clear that by the next date fixed, learned Standing Counsel shall also obtain instructions and shall also produce the records of Case No. 105 of 2006, the relevant allotment file and the allotment file relating to Shri Bhushan Narang for allotment of the shop in the year 1998. These records shall be placed before this Court by the respondent No. 2, on the next date fixed, i.e., 21.3.2018."

Order Dated 22.03.2018 "Heard Sri Ravi Kant, learned senior advocate assisted by Ms. Kriti Singh, learned counsel for the allottee-petitioners and Sri Kshitiz Shailendra along with Sri H.S. Bedi, learned counsel for the review-applicants/ landlords/ respondents.

Sri Kshitiz Shailendra, learned counsel for the review-applicants/landlords/ respondents, submits as under:

(i) The landlords/ respondents were not having any knowledge of the allotment order dated 31.08.2006 which fact has also been admitted by the authority concerned while rejecting the review application by making an observation that ",slk gks ldrk gS fd Jh caly ds gd es fd, x;s vkcaVu dh tkudkj ;kph dks uk jgh gS ijUrQ ekSds ij Jh caly ds dCts dh tkudkj ;kph dks uk jgh gks ,slk lEHko ugha gSA" The possession of the disputed shop was of the tenant Sri Surendra Kumar Sahni who permitted the petitioners Vishal Bansal in the year 2006 to run business with him. Thus, possession of the disputed shop is not the issue rather the issue is the fraudulently obtained allotment order about which the landlords-respondents were not having any

knowledge.

(ii) It has been the case of the landlords-respondents that allotment order was fraudulently obtained behind the back of the landlords-respondents and as such the provisions of Section 17 of the Limitation Act was applicable for counting the limitation for filing the review application. Since the landlords-respondents have gained the knowledge of the aforesaid fraudulent allotment order on 01.03.2012 and as such the review application filed by them on 12.03.2012, cannot be said to be barred by limitation.

Sri Ravi Kant, learned senior advocate, in rejoinder, submits as under:

(i) Provisions of Section 17 of the Limitation Act in fact supports the case of the petitioners inasmuch as the respondent No.3 was having the knowledge of allotment dated 31.08.2006 whose shop is also situate in front of the disputed shop and the respondent No.3 was also present at the time of inauguration of the petitioners' shop in the year 2006.

(ii) Review Application should have been filed within a reasonable time from the date of knowledge of the allotment. In case where there is no limitation prescribed under the Act, the Application should have been filed as per limitation under the ordinary law of limitation, which has not been done. Since the Review Application was filed on 12.03.2012 against the allotment order dated 31.08.2006, therefore, it was rightly rejected by the Rent Control and Eviction Officer, Agra as barred by time. The merits of the allotment order could not have been examined in Revision by the court below against the order rejecting the Review Application. At best, the court below could have remanded the matter so that the allottee-petitioners may get an opportunity to put up their case on merit.

Sri Mohan Ji Srivastava, learned standing counsel representing the respondent No.2 has produced the original file of allotment order 31.08.2006 and the record of the Review Application being Case No.25 of 2012 (Bhushan Narang vs. Vishal Bansal and others). However, the respondent No.2 has not produced the original record of Case No.76 of 1998 (Bhushan Narang vs. Sita Ram Kayan) under Section 16(1)(a) of U.P. Act XIII of 1972, wherein an allotment order dated 02.05.1998 was passed by the Additional District Magistrate (Civil Supplies)/ Rent Control and Eviction Officer, Agra in favour of the respondent No.3.

Learned counsel for the allottee-petitioners and learned counsel for landlords-respondents have concluded their arguments.

Put up on 27.03.2018 on which date the records as produced today and the records of aforesaid Case No.76 of 1998, shall be produced by the respondent No.2, who shall also show cause that why exemplary cost may not be imposed if the allotment order dated 31.08.2006 is found to be the result of collusion and fraud.

Records produced today, have been returned to the learned Standing Counsel.

Interim order is extended till the next date fixed.

Let a copy of this order be given to the learned Chief Standing Counsel free of cost within 24 hours for communication to the respondent No.2 and compliance by him."

Order Dated 27.03.2018 "Heard learned counsel for the parties.

This petition was heard at length on several occasions and detail orders incorporating the submissions were passed on 13.2.2018, 15.3.2018, 16.3.2018 and 22.3.2018. By order dated 22.3.2018, the respondent no.2 was directed to produce the original records including the record of Case No.76 of 1998 and also to show cause why exemplary cost may not be imposed, if the allotment order dated 31.8.2006 is found to be the result of collusion and fraud.

In compliance to the aforesaid order dated 22.3.2018, the records have been produced by the learned standing counsel, but no explanation has been filed by the respondent no.2. Even counter affidavit has not been filed by the respondent no.2.

Learned standing counsel prays for some further time to file an affidavit of the respondent no.2 in compliance to the aforesaid order dated 22.3.2018.

As prayed, put up on 29.3.2018.

The original records are returned to the learned standing counsel, which shall be produced again on the next date fixed."

7. Today, learned counsel for the parties have again reiterated their submissions as recorded in the orders afore-quoted. With their consent, the following questions were framed for determination as evident from order dated 16.03.2018:

- (a) Whether in allotment proceedings, the provisions of the UP Act XIII of 1972 and the Rules framed thereunder, were observed?
- (b) Whether the allotment order dated 25.8.2006 was the result of fraud and collusion?
- (c) Whether the review application filed by landlord-respondent under Section 16(5) of the Act was barred by limitation?
- (d) Whether the revisional court exceeded its jurisdiction to pass the impugned judgment under Section 18 of the Act and whether it was justified for the revisional court to enter into the merits of the case when the review application was rejected on the ground of limitation?

Discussion and Findings:

8. I have carefully considered the submissions of learned counsels for the parties and perused the records of the petition before me as well as the original records of the afore-noted three cases produced by the learned standing counsel.

9. Before I proceed to examine the arguments of learned counsel for the parties with respect to the questions framed, with their consent as afore-noted, it would be appropriate to reproduce the relevant provisions of U.P. Act XIII of 1972:

Relevant Provisions:

"Sections 3(a), 3(j), 15, 16, 17, 18 and 38 of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972

3. Definition. - In this Act, unless the context otherwise requires-

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

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

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

Explanation.- An occupant of a room in a hotel or a lodging house shall not be deemed to be a tenant.

3(j) "Landlord", in relation to a building, means a person to whom its rent is or if the building were let, would be, payable and includes, except in Clause (g) the agent or attorney or such person ;

15. Obligation to intimate vacancy to District Magistrate. - (1) Every landlord shall, on a building falling vacant by his ceasing to occupy it or by the tenant vacating it or by release from requisition or in any other manner whatsoever gives notice of the vacancy in writing to the District Magistrate not later than seven days after the occurrence of such vacancy, and such notice may at the option of the landlord be given before the occurrence of the vacancy.

(2) Every tenant so vacating a building shall give notice thereof in writing to the District Magistrate and also to the landlord not less than fifteen days before the vacancy.

(3) The notice under sub-section (1) or sub-section (2) shall contain such particulars as may be prescribed.

(4) The District Magistrate, on being satisfied on an application made to him in that behalf that there was sufficient cause for the landlord or the tenant not to give notice under sub-section (1) or sub-section (2) within time, may condone such delay.

16. Allotment and release of vacant building. - (1) Subject to the provisions of the Act, the District Magistrate may by order-

(a) require the landlord to let any building which is or has fallen vacant or is about to fall vacant or a part of such building but not appurtenant land alone, to any person specified in the order (to be called an allotment order) ; or

(b) release the whole or any part of such building, or any land appurtenant thereto, in favour of the landlord (to be called a release order):

Provided that in the case of a vacancy referred to in sub-section (4) of Section 12, the District Magistrate shall give an opportunity to the landlord or the tenant, as the case may be, of showing that the said section is not attracted to his case before making an order under clause (a).

(2) No release order under clause (b) of sub-section (1) shall be made unless the District Magistrate is satisfied that the building or any part thereof or any land appurtenant thereto is bona fide required, either in its existing form or after demolition and new construction, by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade, calling or where the landlord is the trustee of a public charitable trust, for the objects of the trust, or that the building or any part thereof is in a dilapidated condition and is required for purposes of demolition and new construction, or that any land appurtenant to it is required by him for constructing one or more new buildings or for dividing it into several plots with a view to the sale thereof for purposes of construction of new buildings :

Provided that no application under this sub-section shall be entertained for the purposes of a charitable trust the objects of which provide for discrimination in respect of its beneficiaries on the ground of religion, caste or place of birth.

(3) The allotment order shall specify-

(a) whether the building shall be used by the tenant for residential or non-residential purposes;

(b) in the case of business purposes, the names of proprietors or partners of the business;

(c) the date which shall not be earlier than seven days after the date of the order, by which the landlord shall deliver possession to the allottee; and

(d) such other particulars as may be prescribed.

(4) Where the allottee or the landlord has not been able to obtain possession of the building, allotted to him or, as the case may be, released in his favour, or any part thereof, the District Magistrate, on an application of the allottee or the landlord, as the case may be, may by order evict or cause to be evicted any person named in the order as well as every other 'person claiming under him or found in occupation, and may for that purpose use or cause to be used such force as may be necessary and put or cause to be put the allottee or the landlord in possession of the building or part.

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

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

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

(6) If the District Magistrate finds an application given under sub-section (5) to be false or frivolous, he shall by order award to the allottee or the land-lord, as the case may be, against the applicant special costs which shall not exceed five hundred rupees.

(7) Every order under this section shall, subject to any order made under section 18, be final.

(8) The allottee shall, subject to the provisions of sub-section (5) and (9) and Section 18, be deemed to become tenant of the building from the date of allotment or, where he is unable to obtain possession by reason of a stay order or of any other person having occupied or continued to occupy the building, from the date on which he obtains possession.

(9) The District Magistrate shall, while making an order under clause (a) of sub-section (1), also require the allottee to pay to the landlord an advance, equivalent to,-

(a) where the building is situated in a hill municipality, one half of the yearly presumptive rent ; and

(b) in any other case, one month's presumptive rent, and on his failure to make or offer the payment within a week thereof, rescind the allotment order.

Explanation.- In this sub-section the expression "presumptive rent" means an amount of rent which the District Magistrate prima facie considers reasonable having regard to the provisions of sub-sections (2) and (2-A) of Section 9, provided that such amount shall not be less than the amount of rent which was payable by the last tenant, if any.

(10) Nothing in sub-section (9) shall be construed to require the District Magistrate to take any evidence or hold any formal inquiry before fixing the presumptive rent of the building, allotted and the amount mentioned in the allotment order as presumptive rent shall be subject to any agreement in writing between the parties or to any subsequent determination of standard rent after formal inquiry under Section 9:

Provided that until the presumptive rent is so revised by agreement or by an order under Section 9, the tenant shall continue to be liable to pay rent according to the presumptive rent specified in the allotment order, so however, that any subsequent order under Section 9 shall relate back to the date of commencement of the tenancy.

17. Conditions of making allotment order. - (1) Where the District Magistrate receives an intimation, under sub-section (1) of section 15, of the vacancy or expected vacancy of building any allotment order in respect of that building shall be made and communicated to the landlord within twenty-one days from the date of receipt of such intimation and where no such order is so made or communicated within the said period, the landlord may intimate to the District Magistrate the name of a person of his choice, and thereupon the District Magistrate shall allot the building in favour of the person so nominated unless for special and adequate reason to be recorded he allots it to any other person within ten days from the receipt of intimation of such nomination:

Provided that where the landlord has made an application under clause (b) of sub-section (1) of section 16, for the release of the whole or any part of the building or land appurtenant thereto in his favour, the said period of twenty-one days shall be computed from the date of decision on that application or where an application for review or an appeal is filed against such decision, from the date of decision on such application or appeal.

(2) Where a part of a building is in the occupation of the landlord for residential purposes or is released in his favour under clause (b) of sub-section (1) of section 16 for residential purposes, the allotment of the remaining part thereof under clause (a) of the said sub-section (1) shall be made in favour of a person nominated by the landlord.

Explanation.- Where a building in the occupation of the landlord for residential purposes adjoins (whether horizontally or vertically) the building sought to be allotted, and-

- (a) there is a common entrance to or a common passage for both the buildings; or
- (b) the two buildings share the sanitary conveniences or other amenities (not including electric connection);

then notwithstanding that the two buildings are independently fit for residential purposes, they shall be deemed to be part of each other for the purposes of this sub-section.

18. Appeal against order of allotment or release. - (1) No appeal shall lie from any order under Section 16 or Section 19, whether made before or after the commencement of this section, but any person aggrieved by a final order under any of the said sections may, within fifteen days from the date of such order, prefer a revision to the District Judge on any one or more of the following grounds, namely:--

- (a) that the District Magistrate has exercised a jurisdiction not vested in him by law;
 - (b) that the District Magistrate has failed to exercise jurisdiction vested in him by law;
 - (c) that the District Magistrate acted in the exercise of his jurisdiction illegally or with material irregularity.
- (2) The revising authority may confirm or rescind the final order made under sub-section (1) or may remand the case to the District Magistrate for rehearing, and pending the revision, may stay the operation of such order on such terms, if any, as it thinks fit.

Explanation.--The power to rescind the final order under this sub-section shall not include the power to pass an allotment order or to direct the passing of an allotment order in favour of a person different from the allottee mentioned in the order under revision.

(3) Where an order under Section 16 or Section 19 is rescinded, the District Magistrate shall, on an application being made to him on that behalf, place the parties back in the position which they would have occupied but for such order or such part thereof as has been rescinded, and may for that purpose use or cause to be used such force as may be necessary.

38. Act to override T.P. Act and Civil Procedure Code. - The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Transfer of Property Act, 1882 (Act No.IV of 1882), or in the Code of Civil Procedure, 1908 (Act No.V of 1908).

Rules 8 and 9 of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972

8. Ascertainment of vacancy [Sections 12,16 and 34(8)].-(1) The District Magistrate, shall, before making any order of allotment or release in respect of any building which is alleged to be vacant under Section 12 or to be otherwise vacant or to be likely to fall vacant, get the same inspected by a Gazetted Officer.

(2) The inspection of the building, so far possible, shall be made in the presence of the landlord and the tenant or any other occupant. The facts mentioned in the report should wherever practicable, be elicited from at least two respectable persons in the locality and the conclusion of the inspection report shall be pasted on the notice board of the office of the District Magistrate for the information of the general public, and an order of allotment may be passed not before the expiration of three days from the date of such posting, and if in the mean time any objection is received, not before the disposal of such objection.

(3) Any objection under sub-rule (2) shall be decided after consideration of any evidence that the objector or any other person concerned may adduce.

9. Notice of vacancy [Section 15]-(1) Every notice to the District Magistrate under sub-section (1) or sub-section (2) of section 15 shall contain the following particulars:

(a) The number, if any, allotted by the local authority to the building and the street, ward or division in which the building is situated;

(b) The name and address of the landlord;

(c) Whether the building is residential or non-residential;

(d) Details of accommodation available together with the appurtenant land, garden, garages, out-houses, etc;

(e) In case the building falling vacant is part of a bigger building, the names of occupants of the other parts;

(f) The actual or expected date of vacancy;

(g) The name of the person vacating the building;

(h) The year of construction of the building;

(i) Whether the building was ever let out;

(j) Other information, if any.-

(2) The notice shall be signed and dated by the informant and shall be presented in person at any time during office hours on any working day or shall be sent by registered post acknowledgment due.

(3) Immediately after the receipt of intimation of vacancy of any building in the office of the District Magistrate, the vacancy shall be entered in a register which shall be maintained in that behalf and be notified for the information of the general public by pasting a copy of the list of the vacant buildings on the notice board of that office, specifying therein the date on which the question of allotment will be considered. He shall also issue a notice to the landlord intimating him the date so fixed. On the date so fixed the District Magistrate shall consider the cases of all applicants registered in the register mentioned in Rule 10 and shall pass an order under Section 16 in accordance with Rules 10 and 11."

(Emphasis supplied by me) Question No.(a):- Whether in allotment proceedings, the provisions of the UP Act XII of 1972 and the Rules framed thereunder, were observed?

10. Admittedly, the disputed shop was originally owned by Sri Sita Ram Kayan son of of Ganpat Rai. The respondent No.3 moved an application for allotment of the aforesaid shop which was registered as Case No.76 of 1998 (Bhushan Narang vs. Sita Ram Kayan). The aforesaid Sita Ram Kayan consented before the Rent Control and Eviction Officer for letting of the disputed shop to the respondent No.3. He filed an affidavit dated 24.02.1998 stating that he has no objection if the disputed shop is allotted to the respondent No.3 Sri Bhushan Narang. After following due procedure of law, the Rent Control and Eviction Officer, Agra, respondent No.2, passed an allotment order dated 02.05.1998, as under:-

"U;k;ky; vij ftyk eftLV^asV¹/₄ukovko¹/₂@ fdofuo,oa fuovovkxjk okn lao 76@1998 tk;nkn lao 6@336 csyuxat] vkxjk Hkw"k.k ukjax cuke lhrkjk dkbZ;k /kkjk 16¹/₄1¹/₂, ;woiho,DV 13] 1972 vkns'k izLrqr okn esa Jh Hkw"k.k ukjax ----- iq= Loo Jh ,eo,youkjax fuo 26 Hkjriqj gkml] vkxjk }kjk Hkou la[;k 6@336 csyuxat] vkxjk dh ,d nqdku ds vkoaVu gsrq izkoi= izLrqr fd;k x;kA fujh{kd ls tkap dj;k,h x;hA fujh{kd us viuh vk[;k esa fy[kk gS fd tkap ds le; iz'uxr nqdku can feyhA iwNrkaN ij }kjk gqvkd fd iz'uxr nqdku Jh jke fd'ku vkfn dh fdjk;snkjh o dCts esa gS tks bls [kkyh djus okys gSA fujh{kd vk[;k dk lkjka'k ukxfVl cksMZ ij pLlk fd;k x;kA Hkou Lokeh o fdjk;snkjku dks ukxfVl Hksts x;SA fdjk;snkjku dh vksj ls fjDrrk ds lEcU/k esa 'kiFki= rFkk Hkou Lokeh dh vksj ls izkFkhZ ds gd esa vkoaVu gsrq lgefr lEcU/kh 'kiFki= izLrqr fd;k x;kA dksbZ vkifRr ;k vU; vkoaVu izkoi= izkIr ugh gqvka eSus i=koyh dk voyksdu fd;k ,oa izkFkhZ ds vf/koDrk dks lquka fdjk;snkjku }kjk iz'uxr nqdku dh fjDrrk dh lwpuk rFkk Hkou Lokeh }kjk izkFkhZ ds ge esa vkoaVu gsrq lgefr izLrqr dh x;h gSA vr% iz'uxr nqdku izkFkhZ Jh Hkw"k.k ukjax mijksDr ds gd esa vkoafVr dh tkrh gSA rnuqlkj vkoaVu vkns'k tkjh fd;k tk;SA i=koyh iw.kZ dj nkf[ky nQ~rj dh tk;SA g- viBuh;

2-5-98 ¹/₄Kkus'k dqekj¹/₂ vij ftyk eftLV^asV ¹/₄ukovko¹/₂@ fdofu ,oa fuovovkxjA"

11. Thereafter, the Rent Control and Eviction Officer, Agra (respondent No.2) issued an allotment letter No.49 dated 04.05.1998 for allotment of the disputed shop to the respondent No.3.

12. Subsequently, the aforesaid owner Sri Sita Ram Kayan died. The aforesaid disputed shop was succeeded by his son Din Dayal Kayan, who sold it to the respondent No.3 by a registered sale deed dated 17.02.1999 which was entered in Bahi No.1, Pustak Khand No.2737, Pages 357-368 by the Sub-Resistrar (I), Agra. Relevant portion of the sale deed dated 17.02.1999 is reproduced below:

"vr% mijksDr nqdku dks e; tqeyk gd gdwd nkf[kyh o [kkfjth ds o e; tqeyk 'kS tks mlls rkYyqd j[krh gS vkSj ekosn gnwn gS tqt o dgy uacjh etdwjkokyk ds tqt Hkkx flldkiw.kZ foaj.k nl nLrkost ds Åij ntZ gS dks viuh jkth o [kq'kh ls [kwc lksp le>dj fcyk cgd;k;s fl[kk;s fcyk noky fdlh ukth;t ds foy ,ot eqcfyx 1]00]000@& ,d yk[k :i;k fd vk/ks fllds eqcfyx 50]000@& ipkl gktj :i;k gksrs gSa onLr Jh Hkw" k.k ukjax iq= Loo Jh eD[ku yky ukjax fuoklh Hkjriqj gkÅl [kUnkjh vkxjk dks varj.k fd;k vkSj foØ; dj fn;kA dher dk dgy :i;k eSus [kjhnkj ls udn oDr jftLVjh cSukek ggtk jkso: Jheku lc jftLV^a kj lkgc vkxjk olwy ikuk r; djkj ik;k vkSj vc ckor tjs leu etdwj esjk [kjhnkj ls dher esa dqN ikuk 'ks" k ugha jgkA vkSj u dksbZ rkYyqd o ljksdkj vkt ds ckn mDr nqdku ls feu eqfdj dk jgk vkSj u Hkfo"; esa gksxk fygtk dCtk o n[ky vkt dh rkjh+[k ls [kjhnkj dk djkrsgq, [kjhnkj dks mDr nqdku dk rugkekfyd ekfyd dkfet o n[khy cuk fn;k ve [kjhnkj dks vf/kdkj gS fd og nqdku etdwj ls cgSfl;r ekfyd pkgs tSlS ykHkkfUor gksosA dgy v[R;kjkr fuLor nqdku etdwj rug [kjhnkj dks gd ekfydkuk gkfly gSa vkSj vk;ank jgsxs [kjhnkj vius uke dk nkf[ky [kkfjt egdek etkt esa feu eqfdj ds LFkku ij viuk uke ntZ djky sos feu eqfdj dh ftl dnj Hkh jtkUnh oxSjk dh vko';drk gksxh ns nsxkA vkt rd ds ftdnj Hkh gkÅl VSDl o okVj jsV o fcy fetyh oxSjk mDr nqdku dh ckor cdk;k gksxs mudks feu eqfdj vnk djsxk vkt ls ckn [kjhnkj vnk djsxsA"

13. In the aforesaid sale deed, the boundaries of vended property, i.e. the disputed shop is shown as under:

East: - Shop K. Sons Machinery West: Prakash Hardware North: Government Road
South: Vacant Land of vendor

14. On the basis of the aforesaid sale deed, the name of the respondent No.3 was mutated in the records of Nagar Nigam, Agra. Accordingly, the respondent No.3 was depositing the house tax with the Nagar Nigam, Agra which fact is evident from the copies of receipts filed in Review Case No.25 of 2012. Thus, the respondent No.3 was in occupation of the disputed shop by allotment order dated 02.05.1998 as tenant and thereafter since 17.02.1999 as owner and landlord on account of the registered sale deed.

15. From records of Case No.105 of 2006 (Vishal Bansal, Priti Bansal vs. Din Dayal Kayan), it appears that an application in Form "A" dated 21.07.2006 for allotment of the disputed shop was filed by the petitioner in which at Serial No.15, he has shown the boundaries of the shop for allotment as under:

East: Kaysons Machine Tools West: Prakash Ware Store North: Road South: other shops of Sita Ram Kayan, Market Belanganj, Agra

16. In the aforesaid application, the petitioners have shown the name and address of landlord as "Din Dayal Kayan" son of late Sri Sita Ram Kayan. In the said case, allegedly an affidavit of Din Dayal Kayan was filed who allegedly stated that he has let out the shop on a monthly rent of Rs.475/- including house tax, water tax, sewer tax as per Nagar Nigam, Agra and if the shop is allotted to the petitioners, then he has no objection. Immediately thereafter on 25.08.2006, the R.C. & E.O., Agra passed the allotment order in favour of the petitioners and issued an allotment letter dated 31.08.2006.

17. Undisputedly, neither the vacancy of the disputed shop was declared nor any notice of vacancy as required under Section 15 of the Act read with Rule 9 of the Rules of 1972, were issued nor the vacancy was ascertained as provided under Rule 8 nor any notice was issued to the landlord. Under these provisions, it was essential to issue notices to the landlord at three stages, firstly; before inspection, secondly; before declaring vacancy and thirdly; before making the allotment. In the allotment Case No.105 of 2006, neither any notice at any stage was issued to the landlord or any effort was made to find out who is owner and landlord or any paper relating to ownership of the disputed shop was filed either by the petitioners herein or by Din Dayal Kayan. Thus, the provisions of Rule 8 and 9 of the Rules and provisions of Section 15 and 16 of the Act were completely ignored. This indicates a clear case of collusion between the petitioners and the then Rent Control and Eviction Officer, Agra who managed to prepare the allotment order dated 31.08.2006.

18. In the case of Chandra Kant Nagarkar vs. Vth Additional District Judge, Gorakhpur, 2004 (2) ARC 349, this Court considered the requirement of notice of allotment under Section 16 of the Act and held as under:

"12. From the above, it is quite clear that the notice was sent to S. R. Nagarkar only after declaration of vacancy and before allotment, however, no notice was sent before inspection of the premises or before declaring vacancy. By virtue of proviso to Section 16 (1), Rule 8 (2) and Rule 9 (3) as interpreted by the Supreme Court in Yogendra Tiwari v. District Judge. Gorakhpur, AIR 1984 SC 1149 : 1984 (2) A.R.C. 7 (S.C.) and Ganpat Roy v. A.D.M. Allahabad, AIR 1985 SC 1635 : 1985 (2) A.R.C. 73 (S.C.) and AIR 1987 SC 22 and AIR 1998 SC 2262, it is essential to issue notice to the landlord at three stages first ; before inspection, second ; before declaring vacancy and third ; before making allotment. No notices before inspection and before declaration of vacancy having been issued, the entire proceedings are liable to be quashed on these grounds alone. It is most unfortunate that the revisional court took notice of the first two aforesaid Supreme Court authorities but still it held vacancy declaration order to be valid, even without notice before inspection and before declaration of vacancy."

(Emphasis supplied by me)

19. In Leela Wati (Smt.) and others vs. Ram Swaroop and others, 2003 (2) ARC 483, (Paras-2 to 5), this court held as under:

"2. The revisional Court has rightly held that no notice was issued before the inspection, R.C.I. has not mentioned even the names of the persons from whom he enquired. The entire proceedings including allotment order is liable to be set aside on this ground alone. If inspection is made without notice to the landlord and the names of two persons of the same locality from whom R.C.I. enquires the matter are not mentioned in his report then it is violation of mandatory provisions of rule 8 which vitiates the entire proceedings. The other ground which vitiated the entire proceedings including the allotment order is that there is no order declaring vacancy, hence there arises no question of issuing notice to the landlord before passing such order. In view of Section 16 (1) proviso it was mandatory for R.C. & E.O. to give opportunity to the landlord of showing that there was no vacancy. The Supreme Court has held in 1985 ARC (2) 73, that the order declaring vacancy without hearing landlord is illegal. In the instant case the illegality is stronger as there is no order declaring vacancy.

3. The revisional Court has rightly held that notice issued after pasting the gist of R.C.I. report on the notice Board was not served upon the landlord.

4. Even if the version of the tenant that he was tenant since 1978 is taken to be correct still he is entitled to allotment as possession of tenant without allotment after July, 1976 is unauthorized and such unauthorized occupant is not entitled to allotment except when landlord agrees to such allotment. In the instant case landlord since beginning is denying this fact that he inducted Bankey Lal as tenant hence the shop in dispute cannot be allotted to Bankey Lal.

5. Accordingly, I hold that the Revisional Court has rightly set aside the order of R.C. & E.O. passed on review petition of the landlord filed before R.C. & E.O. and rightly allowed the review petition of the landlord filed before R.C. & E.O. and quashed the allotment in favour of the Bankey Lal."

20. Thus, neither the vacancy of the disputed shop was ascertained by the R.C. & E.O. Agra under Rule 8 nor any notice was issued to the landlord nor vacancy of the disputed shop was declared nor the provisions of Section 15 of the Act read with Rule 9 of the Rules at three stages, firstly; before inspection; before declaring vacancy and thirdly; before making allotment but no effort was made by the R.C. & E.O. to find out who is the owner and landlord of the disputed shop. The original record of allotment Case No.105 of 2006 clearly discloses that neither there was any material before the R.C. & E.O. to indicate that who is the owner and landlord of the disputed shop nor any effort was made by him to verify as to whether the alleged landlord shows in the allotment application form namely, Sri Deen Dayal Kayan is still the owner and landlord, when the disputed shop was already sold by him to the respondent No.3 by a registered sale deed dated 17.02.1999 and the name of the respondent No.3 was mutated in Nagar Nigam records and accordingly he was paying house tax and

water tax, thus, the provisions of Section 15 and 16 of the Act and Rules 8 and 9 of the Rules were not observed by the R.C. and E.O., Agra while passing the allotment order dated 25.08.2006 and issuing the allotment order dated 31.08.2006 on the basis of an application for allotment of the petitioners in Form-A dated 21.07.2006. Detail finding of fact in this regard have been recorded by the Revisional Court in paras-25 to 34 of the impugned judgement and I find myself in complete agreement with those findings. Thus, non-observance of the mandatory provisions of the aforesaid mandatory provisions of the Act and Rules has rendered the allotment order dated 25.08.2006 and allotment letter dated 31.08.2006 to be void ab initio.

21. The question No.(a) is accordingly answered and it is held that in the allotment proceedings, the provisions of U.P. Act XIII of 1972 and Rules framed thereunder were not observed by the R.C.& E.O. The facts noted in detail in the impugned order and as also in paragraph-10 to 17 above, leads to an irresistible conclusion that the provisions of the Act and Rules were not observed. Therefore, the entire proceedings allotment proceedings including the allotment order dated 25.08.2006 and the allotment letter dated 31.08.2006 issued by the R.C. & E.O. Agra, are vitiated.

Question No.(b) Whether the allotment order dated 25.8.2006 was the result of fraud and collusion?

22. In the impugned order, the Revisional Court considered the detail facts of the case and evidences on record as has been briefly noted above and held as under:

"11. At the outset, it is desirable to deal with the preliminary objection of the O.P.s is that the review application of the revisionists is time barred. For the purpose, their learned Counsels have pressed upon proviso to S.16(5) (a) which reads thus:

"Provided that no application under this clause shall be entertained later than seven days after the eviction of such person.' As against this, the learned Counsel for the revisionists has relied upon the law laid down by the Hon'ble Allahabad High Court in the case of - Sheo Charan Lal Gulati & ors. Vs. Smt. Kamla Kapoor & anr. - 1983 ARC 299 - and urged that there is no period of limitation for landlord for moving of an application u/S.16(5) of the Act.

Reliance has also been placed on - Madhu Gopal vs. Vith A.D.J., Agra - 1988(2) ARC 498 (Supreme Court) - wherein it has been held by the Hon'ble Supreme Court of India that "the proviso puts an embargo of 7 days in making the application for review. It can only apply to those who were in lawful occupation at the time of making of the original order. It cannot curtail the rights of landlord, as such, it only affects any other person who was in lawful occupation. In any event, it is well settled principle of construction that unless clearly indicated, a proviso would not take away substantive rights given by section or sub-section. A landlord has a right to property. The section should not be so construed as to defeat the right to possession of property in appropriate cases unless the intention of the legislature is manifest. We find no such clear intention in the facts of this case.' The law laid down down in - J. S. Hitkari

vs. Ashok Kumar Shukla- 1996(2) ARC 83 - has also been relied upon by the learned Counsel for the revisionists wherein it has been held that "the limitation of seven days is applicable only in those cases where the person who was in actual physical occupation of the premises in question was evicted and not for the landlord who was not in its actual physical occupation".

Further, in - Arun Kumar Joseph vs. Victor Samuel Mathews etc -

2014(1) ALJ 456 (Division Bench) - Hon'ble Allahabad High Court has held that "release application by landlord (u/S.16(1)(a), (b), 12 of UP Act no. XIII of 1972) cannot be treated to be barred by limitation even if same is presented after more than 12 years from the date person has entered into unauthorized occupation of premises covered by Act.....(para-21) No period of limitation can be read in statutory provisions only on the principle that power vested in an authority must be exercised within reasonable time.'

12. No contrary precedent has been brought forth by the learned Counsels of the O.P.s regarding the point of limitation. Instead, the learned Counsel for the O.P. no.3 has assailed the point by contending that those apply only to a landlord as within the meaning of S.3(j) of the Act and the applicant is not a landlord within that definition. He has relied upon Tribhuvanshankar vs. Amrutlal - (2014)2 SCC 788 - wherein it has been held that "Suit for eviction of tenant on ground of bonafide requirement - Relationship of landlord & tenant not proved - Tenant not liable for eviction under Rent Act (M.P. Accommodation Control Act, 1961).

13. Reliance has further been placed on Ram Autar Singh & ors. Vs. A.D.J., Moradabad etc. - 2016(1) ARC 202 - and it has been pointed out that where in a proceeding u/S.21(1)(a) of UP Act no. XIII/1972, there is serious dispute of ownership between the parties then the authority commits illegality in returning the finding on the validity of the documents on basis of affidavits filed by the contesting parties as it is beyond the scope of its jurisdiction; parties should raise their dispute before competent Court of law.

A keen perusal of the aforesaid judgment reveals that the parties to the proceedings i.e. the appellant and the respondent therein both had claimed ownership in themselves and the tenant therein had denied tenancy as such and had set up title in himself.

14. But remarkably, such is not the case in the instant revision. The alleged occupants in consequence of impugned allotment order i.e. O.P.s nos. 1 & 2 have not claimed the title to the disputed property. Instead, a registered sale-deed 14A/8 to 14A/13 is said to have been executed by the O.P. no.3 in favour of the revisionist on 17.02.99. It has been filed as annexure to the revisionist's affidavit 14A and inter-alia in para 2 thereof facts regarding execution of such sale deed have been averred.

15. The O.P. no.3 has never come up to rebut the averments of such affidavit vide counter-oath but has merely got filed his reply 18A/3 in para-2(i) of which he has assailed some sale-deed dt.12.07.1999 while the sale-deed set up by revisionist is dtd. 17.02.99. It cannot be deemed just a

typing mistake. Notwithstanding, even if such anomaly is ignored, it is remarkable that nowhere in this reply 18A or elsewhere, the O.P. no.3 has denied the execution of that sale-deed in explicit terms, instead it has only been stated that "it is a forged and fictitious document, the applicant was neither paid any price nor the property was ever delivered to the applicant by O.P. no.3'.

16. In this respect a bare perusal of the sale-deed 14A/8 reveals that it is a duly registered document; presence of the vendor and the vendee before the Sub-Registrar is clearly mentioned in the endorsements of Sub-registrar; its covenants page-2 (14A/9) and page-3 (14A/10) clearly set out that the entire agreed consideration has been fully & finally paid then & there and per endorsement of Sub-Registrar on the back of 14A/8, the consideration has been paid before the Sub-Registrar himself. Furthermore, vide covenant on page-4 (14A/11) the possession has also been delivered to the vendee in his capacity as owner. It must be reiterated that the averments of affidavit 14A in that regard are uncontroverted on oath. The O.P. no.3 has neither even tried to suggest that the sale-deed is sub-judice before a competent Court. It is well settled principle of law that a rebuttable but heavy presumption is attached to a registered document and to the endorsement of Sub-Registrar and that a registered transfer deed can only be nullified by a Civil Court of competent jurisdiction. No such position has been brought forth by the O.P. no.3. So, eventhough this revisional Court is not competent to adjudicate upon the validity or otherwise of the alleged sale-deed; but in view of the aforesaid circumstances for the limited purposes of instant proceedings, it is sufficient to hold that till date the alleged sale-deed holds good.

17. Further in respect of the contentions raised on behalf of O.P. no.3 vide reply 18A/3 in para-2(i), the learned Counsel for O.P. no.3 has placed reliance on - Kaliaperumal vs. Rajagopal - AIR 2009 S.C. 2122 and argued that "though registration is prima facie proof of intention to transfer property, it is not proof of operative transfer if payment of consideration is a condition precedent for passing of property. The answer to the question whether the parties intended that transfer of ownership should be merely by execution and registration of the deed or whether they intended the transfer of property to take place only after receipt of entire consideration would depend on the intention of parties to be primarily gathered and determined from the recitals of the sale deed.' A careful study of the precedent reveal that as per observations of the Hon'ble Court in para 9 of the judgment, in that case entire consideration was not paid, Rs.40,000/ was balance to be paid; the vendor refused to make corresponding endorsement regarding receipt of payment before the Sub-Registrar, who in turn had clearly recorded thereon itself that no amount was tendered/paid in his presence. It was in such circumstances that the Hon'ble Apex Court held that since intention of parties was to effect transfer of title on payment of entire consideration, so mere registration would not operate as transfer

18. But, conversely, in the instant case, as has been discussed above regarding the covenants/recitals and endorsements of the sale-deed 14A/8, entire consideration is clearly admitted and duly endorsed to have been paid and actual transfer of ownership & possession effected.

Besides, though not proof of ownership or title, the copies of assessment of Nagar Nigam and tax-receipt have also been filed as 14A/14 & 14A/16 by the revisionist to show incidents of ownership. Such documents are also unrebutted.

As regards the possession, the revisionist has produced copy of previous allotment order dt. 04.5.98 (even prior to purchase of property on 17.2.99) paper no. 14A/18 in which the father of O.P. no.3 Sri Sitaram Kayan is shown as owner/landlord.

So in the light of afore-discussed incidents, for the limited purposes of this proceeding, no further detailed enquiry is required into the fact of ownership of revisionist vide sale deed dt. 17.02.99.

19. In the backdrop of such discussion, it is relevant to quote the law laid down in - Sukh Lal & ors. Vs. Ashok Kumar Raghuwansi - 2013(1) ARC 776 - wherein the Hon'ble Allahabad High Court has observed - U.P. Act no. XIII of 1972 - S.3(j) - Landlord - Definition of - In the instant case respondent/landlord had purchased the disputed house, therefore rent being payable to him, hence satisfied to definition u/S.3(j) of Act.

20. Further in - Mam Chand & ors. Vs. Pramodini Srivastava & ors. - 2014(2) ARC 144 - the Hon'ble Allahabad High Court has explained the meaning of 'landlord' as within S.3(j) of U.P. Act no. XIII of 1972 and observed that "(para-35) In other words it can be said that a landlord (owner) to whom rent is payable, if has authorized an agent or attorney for the said purpose of collection of rent, such agent or attorney qua tenant, would also satisfy the definition of landlord under S.3(j) of the Act against all others but not the real owner.....(para-38) The authorization of agent or attorney is to act on behalf of principal.....(para-41) The attorney & agent by himself cannot claim to be the owner of property & simultaneously to claim that they satisfy the definition of landlord..... (para-52) The term landlord in S.21(1-A) of the act connotes landlord in the sense of being the owner of the building.

21. In - Amar Nath Mehrotra vs. III A.D.J., Allahabad - 1995(1) ARC 155 - it has been held that allotment in favour of nominee of one of the co-landlords without intimation to the other co-landlord - review filed (after twenty years since allotment) - maintainable - Allotment order quashed.

22. Furthermore, as discussed above, the previous owner O.P. no.3 has never come forth to rebut on oath the averments of affidavit 14A of the revisionist, more specifically the fact of execution of sale-deed dt. 17.02.99. Instead, the O.P.s nos. 1 & 2 in para-1 of their reply 15A have assailed the sale deed dt. 17.2.99 by saying that "it is wholly ineffective document and does not confer any title to the applicant; Sri Deen Dayal Kayan himself had no transferable right & title in the shop in question.'

23. In this respect, it is firstly important to observe that it does not lie in the mouth of a stranger or a tenant or an allottee or anyone else to question the nature of title of his landlord/owner of premises; more so when the latter himself does not say so; interestingly the O.P. no.3 in his reply 18A has nowhere pleaded that his title was not transferable, instead in para (v) of 18A/5 he has stated that "on the death of Sri Sita Ram Kaiyan (father) the O.P. no.3 is the owner & landlord of the said market'. Furthermore, even if contention of O.P.s nos.1 & 2 as quoted above be taken as such, then it would be fanciful to consider as to how their allotment/tenancy came into being since according to their own contention their landlord could not transfer the property since lease is also a kind of transfer of property.

24. In view of the entirety of above vivid factual and legal discussion it emerges that it is well founded on record, though for the limited purposes of the instant proceedings, that the revisionist had every locus to file instant proceedings before the learned lower Court by virtue of his having acquired ownership of the disputed shop vide hitherto unrebutted sale deed dt. 17.02.1999 executed by the then owner Sri Deen Dayal Kayan, O.P. no.3 in his favour and that the application was not barred by time in view of the aforequoted precedents of the Hon'ble Courts.

25. So far as the merits of the review application are concerned, while assailing the impugned allotment order in favour of O.P.s nos. 1 & 2, the applicant/revisionist has contended in review application that upon sale to applicant, the O.P. no.3 was left with no right over the disputed shop; O.P. no.3 was not in possession thereof; allotment order passed on the false affidavit of O.P. no.3 is illegal, incorrect, based on fraud and malafide intention; applicant is the owner of shop; the averments of affidavit of O.P. no.3 are false; prior to applicant one Sri Ram Kishan Luhar & his heirs were tenant in the shop; thereafter it was allotted to the applicant with the consent of O.P. no.3 as the then owner and ultimately the same was sold out to the applicant by virtue of registered sale deed; the case is not the one first letting; the OPs have committed fraud & misrepresentation; the ARO never inspected the shop; in his report he falsely mentioned that he found the shop locked and that it was found in possession of O.P. no.3; no documentary evidence was obtained by ARO nor he mentioned the names of those from whom he made enquiry which is in contravention of Rule-8 of the Act; impugned allotment order is passed without notifying vacancy and in contravention of Rules 8 & 9 of the Act; fraud has vitiated entire proceedings; title of applicant was wilfully concealed; prior tenancy of Ram Kishan Luhar was also wilfully concealed; no notice of proceeding was ever issued to the applicant as required under law; no vacancy was notified or actually ascertained as required under law; Rule 10(9) was also not complied; the applicant had no knowledge of allotment proceedings; it was upon receipt of reply-notice from O.P. no.1 on 01.3.12 that the applicant came to know of allotment order and thereafter with no further delay the review application is being moved. On such grounds it has been prayed to allow the review application and set aside and cancel the allotment order dtd. 31.08.2006 in Case no. 105/2006 in respect of shop no. 6/336, Belanganj, Agra (actually numbered as 6/336/3, Belanganj, Sita Ram Market).

26. Attention has been drawn to the procedure stipulated for the purpose and in that sequence, the learned Counsel has submitted that the allotment application vide Case no. 105/2006 was filed on 21.07.2006; the report without any spot inspection was filed on 22.7.06; the RC&EO on 24.7.06 ordered to be pasted on notice board and to summon the parties. No summon was actually issued; instead the O.P. no.3 collusively filed false affidavit and on its basis without admitting any evidence regarding his ownership and regarding the alleged first letting the allotment order was passed in a clandestine manner.

27. Perusal of record of the case no. 105/2006 reveal that per undated report of {ks=h; [kk| vf/kdkjh no date & time of inspection has been mentioned therein; it has been mentioned that shop was found closed & according to the enquiry made on spot Deen Dayal Kayan is owner & occupant thereof and is willing to let it out, the property is an old one; but, the names of such informants or persons met have not been mentioned therein. Per endorsement of ADM (RC&EO) thereon, it has been ordered to paste the gist of the matter on notice board and to further issue notices to the

concerned parties; but actually no notice has ever been issued as is evident from that record in so far as neither any served/unserved notice is there nor any order/office-endorsement to that effect is there on the record.

28. Rule-8(2) of the U.P. Act no. XIII/1972 envisages:- "The inspection of the building, so far as possible, shall be made in the presence of landlord and the tenant or any other occupant. The facts mentioned in report should where by practicable, be elicited from at least two respectable persons in the locality and the conclusion of the inspection report shall be pasted on the notice board of the office of the District Magistrate for the information of the general public....."

In view of the abovesaid facts and circumstances, due compliance of this mandatory rule is not evident from report.

29. In - Kailash Chand & anr. Vs. Kailash Narain etc. - 1982 ARC 285 - it has been held that "record should show that such notice [u/Rule 8(2)] was issued; in absence of anything on record that notice was sent - Rule 8(2) will not be complied with - Thus order declaring vacancy and subsequent orders of allotment will be vitiated.' This view has been reiterated in Hukam Chand vs. District Judge etc. - 2004(3) ARC 577.

In Chandra Kant Nagarkar vs. VI ADJ etc. - 2004(2) ARC 349, the Hon'ble Court has observed in case no notices before inspection & declaration of vacancy issued, the entire proceedings are liable to be quashed - undue haste shown by RCEO in allotting premises shows that proceedings were not conducted fairly - RCEO was expected to issue notice to the landlord through registered post as provided u/Rule 28(2).

An almost similar very serious view against such non-compliance has been taken by the Hon'ble Allahabad High Court in - Rafat Ahmad Jamal Alvi vs. R.C. & E.O., Allahabad - 2002(1) ARC 410.

In - Leela Wati & ors. Vs. Ram Swaroop & ors. - 2003(2) ARC 483 - Hon'ble Allahabad High Court has held that if inspection is made without notice to the landlord and the names of two persons of the same locality from which RCI enquires the matter are not mentioned in his report then it is violation of mandatory provisions of Rule 8 which vitiates the entire proceedings.

30. Amidst such anomaly & non-compliance, it is strange as to under what circumstances the affidavit 8A of the O.P. no.3 came to be filed on the record of allotment case no. 105/2006. Simultaneously, the ARO or the RC&EO never bothered to enquire for sure as to who is the actual owner of the premises and that whether the O.P. no.3 has any authority to let out the same or not. It is also remarkable that the allotment application was moved on 21.07.06 while the stamp paper for affidavit 8A was purchased on 19.07.06 only (as is evident from stamp-vendor's endorsement on the back of 8A/1; furthermore on page-2 of affidavit some inscription (handwritten) has been struck-off/concealed by use of whitener. Entirety of such circumstances does not inspire confidence in the sanctity of the proceedings rather demonstrates premeditated collusion and undue haste. Remarkable again, the O.P. no.3 has not filed any counter affidavit in the review proceedings.

31. Besides, the learned Counsel for the applicant has pointed out that it is not the case of first letting in as much one Ram Kishan Luhar was the prior tenant and thereafter it was allotted to himself as tenant prior to its purchase vide sale deed dt. 17.2.99. In this respect also the record of this case reveals that the averments of affidavit 14A are uncontroverted by O.P. no.3. Also, copy of previous allotment order dt. 02.5.98 paper no. 16A/2 reveals that it was then likely to be vacated by previous tenant Ram Kishan and that it was allotted as such to the revisionist. Besides, certified copy of affidavit of the previous tenant Ram Kishan etc. 16A/3 in that allotment proceeding is also on record. It is also proper to reiterate that copy of assessment register 14A/14, property tax receipt 14A/16, 14A/17 and previous allotment order dt. 04.5.98 paper no. 14A/18 are there on record and are hitherto unrebutted.

32. Notwithstanding, in - Naresh Kumar Puri vs. D.J. etc. - 1998(1) ARC 564 - it has been held by the Hon'ble Allahabad High Court that it is not required that landlord should be in occupation for filing application for review.

33. As regards possession, it is remarkable that no specific date of coming into actual possession of O.P.s nos. 1 & 2 has been mentioned by the O.P. no.3 in their reply 15A; it has just been mentioned in para-5(i) on 15A/3 that they are in continuous possession since 2006. On the other hand, the O.P. no.3 in his reply 18A/2 para-1(d) asserts that date of delivery of possession to the allottees/O.P.s nos. 1 & 2 is 31.08.06; while in para-2(iii) on 18A/4, he says that the allottees/O.P.s nos. 1 & 2 came in possession in October 2006. So the stand of the O.P.s regarding the possession is not clear.

34. A perusal of the impugned order dt. 06.08.2016 reveal that after having reproduced various applications, replies, affidavit, counter, papers, arguments of the parties from pages - 1 to 4 in the body of judgment/order, the concerned Court has just summarized its own findings in the last para on page-4 which continues shortly till page-5. In that too, all the aforesaid factual & legal aspects of the matter have not been dealt with; nor the material placed on record has been dealt with lucidly; instead emphasis has only been laid on the point of delay in filing review application and thereupon rejected the review application merely on the basis of its being time-barred. While, from the emphatic factual & legal discussion hereinbefore, contrary position has emerged. Summarily, the impugned order under revision is based on non-appreciation of facts and non-consideration of law."

23. From the record of Review Application being Case No.25 of 2012, I find that the findings recorded by the Revisional Court in the impugned order is correct and do not suffer from any infirmity. In the aforesaid review case, the review application was filed on merit. Even in their reply dated 25.07.2016 the petitioners have not disputed the ownership of the disputed shop to be of the respondent No.3 by way of the registered sale deed dated 17.02.1999. Instead the petitioners merely alleged in paragraph-2 of their objection that the respondent No.3 was not in occupation of the shop in question at the time of the sale deed dated 17.02.1999. In para-5(vi), they alleged that Sri Din Dayal Kayan held the shop as an authorised person to let out and to realise the rent etc. In paragraphs-6, 7 and 8 of their aforesaid reply dated 25.07.2015, the petitioners merely took the stand that the respondent No.3 was not the landlord and he was sleeping over his rights under the sale deed dated 17.02.1999 and he never asserted his ownership. These facts itself shows that the sale of the disputed shop by Din Dayal Kayan to the respondent No.3 by registered sale deed dated

17.02.1999 and the respondent No.3 to be the owner and landlord of the disputed shop, has been admitted by the petitioners. They merely alleged that the respondent No.3 is not the landlord rather Sri Din Dayal Kayan is the authorised person to let out and to realise the rent. Nothing has been stated and no material has been brought on record by them in support of their aforesaid allegation of authorisation of Din Dayal Kayan to let out the disputed shop.

24. In the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. vs. Jagannath (dead) by L.Rs. and others, AIR 1994 SC 853, Hon'ble Supreme Court held as under:

"7. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax- evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

8. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Exhibit B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial tantamounts to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

(Emphasis supplied by me)

25. In the case of Meghmala and others vs. G. Narasimha Reddy and others, (2010) 8 SCC 383, Hon'ble Supreme Court considered the effect of fraud and held as under:

"28. It is settled proposition of law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent Authority, such order cannot be sustained in the eye of law. "Fraud avoids all judicial acts ecclesiastical or temporal." (Vide S.P. Chengalvaraya Naidu Vs. Jagannath, AIR 1994 SC 853). In Lazarus Estate Ltd. Vs. Besalay (1956) 1 All. ER 341 (CA), the Court observed without equivocation that: (QB p.712) "No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

33. Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression "fraud" involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage. [Vide Vimla (Dr.) v. Delhi Admn. AIR 1963 SC 1572, Indian Bank v. Satyam Fibres (India) (P) Ltd. (1996) 5 SCC 550, State of A.P. v. T. Suryachandra Rao (2005) 6 SCC 149, K.D. Sharma v. SAIL (2008) 12 SCC 481 and Central Bank of India v. Madhulika Guruprasad Dahir (2008) 13 SCC 170]

34. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the court. (Vide S.P. Chengalvaraya Naidu vs. Jagannath, (1994) 1 SCC 1, Gowrishankar v. Joshi Amba Shankar Family Trust (1996) 3 SCC 310, Ram Chandra Singh v. Savitri Devi (2003) 8 SCC 319, Roshan Deen v. Preeti Lal (2002) 1 SCC 100, Ram Preeti Yadav v. U.P. Board of High School & Intermediate Education (2003) 8 SCC 311 and Ashok Leyland Ltd. v. State of T.N. (2004) 3 SCC 1)."

(Emphasis supplied by me)

26. In Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills & Anr. AIR 1994 SC 2151; and State of Maharashtra & Ors. Vs. Prabhu (1994) 2 SCC 481, Hon'ble Supreme Court observed that a writ Court, while exercising its equitable jurisdiction, should not act as to prevent perpetration of a legal fraud as the courts are obliged to do justice by promotion of good faith. "Equity is, also, known to prevent the law from the crafty evasions and sub-letties invented to evade law."

27. In Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers. AIR 1992 SC 1555, it has been held as under:-

"Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct."

(Emphasis supplied by me)

28. In United India Insurance Co. Ltd. Vs. Rajendra Singh & Ors. AIR 2000 SC 1165, this Court observed that "Fraud and justice never dwell together" (*fraus et jus nunquam cohabitant*) and it is a pristine maxim which has never lost its temper over all these centuries.

29. It is settled law that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud, vide District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram & Anr. Vs. M. Tripura Sundari Devi (1990) 3 SCC 655; Union of India & Ors. Vs. M. Bhaskaran (1995) Suppl. 4 SCC 100; Vice Chairman, Kendriya Vidyalaya Sangathan & Anr. Vs. Girdharilal Yadav (2004) 6 SCC 325; State of Maharashtra v. Ravi Prakash Babulalsing Parmar (2007) 1 SCC 80; Himadri Chemicals Industries Ltd. Vs. Coal Tar Refining Company AIR 2007 SC 2798; and Mohammed Ibrahim & Ors. Vs. State of Bihar & Anr. (2009) 8 SCC 751).

30. The facts and legal position as discussed above, lead to an irresistible conclusion that the allotment order dated 25.08.2006 and the allotment letter dated 31.08.2006 obtained by the petitioners were the result of fraud and collusion. The collusion and conspiracy is apparent on record which has been done to deprive the respondent Nos.3, 4 and 5 of their rights to the property. This would render the transaction of allotment dated 25.08.2006/ 31.08.2006 to be void ab initio. Since the allotment order was obtained by playing fraud, therefore, such an order is nullity in the eye of law. Therefore, it was lawfully set aside by the Revisional Court on the principles that fraud and collusion vitiate even the most solemn proceeding in any civilised system of jurisprudence.

31. The expression "fraud" involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. Fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the court. Where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent Authority, such order cannot be sustained in the eye of law. "Fraud avoids all judicial acts ecclesiastical or temporal. A person whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any

stage of the litigation. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. A writ Court, while exercising its equitable jurisdiction, should not act as to prevent perpetration of a legal fraud as the courts are obliged to do justice by promotion of good faith. Dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud. The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. The collusion and conspiracy in the proceedings of the allotment Case No.105 of 2006 (Vishal Bansal, Priti Bansal vs. Din Dayal Kayan), is apparent on record which has been done to deprive the respondent Nos.3, 4 and 5 of their rights to the property. This would render the transaction of allotment dated 25.08.2006/ 31.08.2006 to be void ab initio. Since the allotment order was obtained by playing fraud, therefore, such an order is nullity in the eye of law. Consequently, it was lawfully set aside by the Revisional Court on the principles that fraud and collusion vitiate even the most solemn proceeding in any civilised system of jurisprudence.

Question No.(c) Whether the review application filed by landlord-respondent under Section 16(5) of the Act was barred by limitation?

32. While examining the question Nos.(a) and (b), this court has come to the conclusion that the allotment order dated 25.08.2006 and the allotment letter dated 31.08.2006 in favour of the petitioners were issued in collusion with R.C. & E.O., Agra. The mandatory provisions of Rules 8 and 9 were completely ignored. Mandatory notice as required under Sections 15 and 16 and Rules 8 and 9, were not issued to the owner and landlord. The allotment order and the allotment letter were obtained by the petitioners fraudulently. The petitioners got completed the allotment proceedings by setting up the respondent No.6- Sri Deen Dayal Kayan as landlord in the application Form-A dated 21.07.2006 while the aforesaid Sri Deen Dayal Kayan had sold the disputed shop to the respondent No.3 by a registered sale deed dated 17.02.1999. Prior to the aforesaid sale deed, the respondent No.3 was tenant of the disputed shop by allotment order dated 02.09.1998 in Case No.76 of 1998 (Bhushan Narang vs. Sita Ram Kayan). On account of financial crisis the respondent No.3 had let out the disputed shop in the year 2006 to one Sri Surendra Kumar Sahni and took certain advance money towards future rent. The aforesaid Sri Surendra Kumar Sahni permitted the petitioner No.1 herein to run business with him in the disputed shop but secretly and fraudulently the petitioners got the disputed shop, about which the respondent No.3 came to know for the first time when the respondent No.3 issued a notice dated 03.02.2012 to the aforesaid Sri Surendra Kumar Sahni and the petitioners who, in their reply dated 27/29.02.2012, disclosed that the shop has been allotted by the R.C. & E.O., Agra. The respondent No.3 came to know about the aforesaid fraudulent allotment order dated 25.08.2006/ 31.08.2006 for the first time when he received the reply dated 27/29.02.2012 and immediately thereafter he filed the aforesaid review Case No.25 of 2012 under Section 16(5)(a) of the Act on 12.03.2012.

33. The provisions of Section 16(5)(a) of the Act has been authoritatively explained by Hon'ble Supreme Court and also by this Court in several judgments.

34. In *Madhu Gupal vs. Vith Additional District Judge, Agra and others*, 1988 (2) ARC 498 (paras-6, 7 and 8), Hon'ble Supreme Court held as under:

"6. We are of the opinion that the High Court was right. section 16(5)(a) speaks of "where the landlord or any other person". Hence, there are two categories of persons contemplated i.e a landlord, or any other person. The requirement of sub-section, to be in lawful occupation of the building or any part thereof, applies only in case of any other person claiming to be in lawful occupation and not in case of landlord. The section has used the expression "or" and so the expression "or" is disjunctive of these two categories to be treated separately. Hence, the requirement to be in lawful occupation, is not there in case of an application by the landlord.

7. Mr G.L Sanghi, learned counsel appearing for the tenant, has sought to argue that by virtue of the proviso a landlord who was not in occupation, was not entitled to apply. We are unable to accept this. The proviso puts an embargo of 7 days in making the application for review. It can only apply to those who were in lawful occupation at the time of the making of the original order. It cannot curtail the rights of the landlord, as such, it only affects any other person who was in lawful occupation. In any event, it is a well-settled principle of construction that unless clearly indicated, a proviso would not take away substantive rights given by the section or the sub-section. A landlord has a right to the property. The section should not be so construed as to defeat the right to possession of property in appropriate cases unless the intention of the legislature is manifest. We find no such clear intention in the facts of this case.

8. We are, therefore, of the opinion that the High Court came to the correct conclusion that a landlord, even though not in actual physical possession at the time of the possession of the property, can ask for review of the order of release or allotment. It must be borne in mind that this view was also expressed by Mr Justice N.D Ojha, as our learned brother then was, in his judgment in *Niren Kumar Das v. District Judge, Pilibhit* AIR 1977 All 47. We agree with that interpretation."

35. Similar view has also been expressed by this Court in *J.S. Hitkari vs. Ashok Kumar Shukla*, 1988 (2) ARC 1 (Paras-4, 5 and 6); *Ramesh Kumar vs. District Judge, Kanpur and others*, 1983 (2) ARC 309 (Paras-3, 4 and 5).

36. In the case of *Niren Kumar vs. District Judge, Pilibhit*, AIR 1977 All. 47, this Court explained the provisions of Section 16(5) of the Act and held as under:

"In my opinion if this construction is put to subsection (5), no landlord would be in position to make an application for setting aside an order of allotment passed under Clause (a) of Section 16 (1) of the Act. In those cases where the accommodation has actually fallen vacant and has been occupied by the landlord, his occupation would be lawful in his capacity of being the owner of the property only till an order of allotment

has been passed in respect of the said accommodation. The moment an order of allotment is passed which has the effect of issuing a direction to the landlord to let out the accommodation to the allottee the landlord is bound to place the allottee in possession over the accommodation. If he fails to do so and continues to occupy the property, his continuance would become unlawful. Likewise, if it is a case falling under Section 12 of the Act, viz., even though the accommodation has not actually been vacated by the sitting tenant but in respect of which a deemed vacancy can be presumed the landlord will not be in position to make an application under subsection (5) inasmuch as he is not actually occupying the house. The distinction between possession and occupation is well settled. When the Legislature specifically conferred a right on the landlord to make an application for setting aside an order of allotment passed under Section 16 (1) (a) that right cannot be negated by interpreting the said Sub-section in a manner as suggested by counsel for the petitioner. In my opinion the words 'claiming to be lawful occupant' apply only to other persons. They do not apply to the landlord. The matter can be looked at from another angle. Had the intention of the Legislature been, as has been submitted by counsel for the petitioner, the words 'the landlord or any other' would not have been used at all. In place of these words the word 'any' could have served the purpose. In that event subsection (5) would have started with the words 'where any person claiming to be lawful occupant'."

37. I have already reproduced the provisions of Section 16(5)(a) of the Act in Para-9 above. Section 16(5)(a) confers upon the District Magistrate, the power to review an order of allotment or release order where "the landlord or any other person" claiming to be a lawful occupant of the building or any part thereof comprised in the allotment order or release order satisfies the District Magistrate that such order was not made in accordance Clause (a) or Clause (b) as the case may be, of sub-Section (5) of Section 16. The proviso to Section 16(5)(a) provides for limitation of maximum seven days after eviction of such person.

38. Thus, Section 16(5)(a) contemplates two categories of persons, i.e. "a landlord" or "any other person". The phrase "to be a lawful occupant of the building or any part thereof" applies only in such cases where a person other than the landlord claims to be in lawful occupation. The word "or" is used in Section 16(5)(a) between the aforesaid two categories of persons is disjunctive. Therefore, the aforesaid two categories of persons are to be treated separately. Hence the requirement to be in lawful occupation is not applicable in case of an application by the landlord. The limitation for filing application as provided in the proviso to Section 16(5)(a) of the Act is applicable only to such a person who has been evicted. Therefore, where an applicant, like the respondent No.3 in the present case, who files an application for review, has not been evicted, the limitation of filing application within seven days of the eviction as provided in proviso to Section 16(5)(a) of the Act, shall not be applicable to him.

39. Thus, the review application of the respondent No.3 was not barred by limitation in view of the facts of the present case discussed above and the law laid down by Hon'ble Supreme Court in the case of Maghu Gopal (supra), and the law laid down by this Court in J.S. Hitkari (supra) and Leela

Wati and others (supra) and Ramesh Kumar (supra). The submissions made by learned counsel for the petitioners on the point of limitation deserves rejection in view of the law laid down by Hon'ble Supreme Court and also by this court as afore-noted. The submissions of learned counsel for the petitioners on the point of limitation also deserves rejection for simple reason that the law of limitation or the principle of finality of limitation cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. Neither any statutory law nor the process of court can be used for perpetuation of fraud or to benefit the dishonest litigants. Therefore, the question No.(c) is answered in negative and it is held that the review application of the landlord respondent No.3 was not barred by limitation.

Question No. (d) Whether the revisional court exceeded its jurisdiction to pass the impugned judgment under Section 18 of the Act and whether it was justified for the revisional court to enter into the merits of the case when the review application was rejected on the ground of limitation?

40. I have already held while answering the question No.(a), (b) and (c) that the provisions of U.P. Act XIII of 1972 and the Rules framed thereunder were not observed in the allotment proceedings, the allotment order dated 25.08.2006 and the allotment letter dated 31.08.2006 issued by the R.C. & E.O., Agra in favour of the petitioners were the result of fraud and collusion and that the review application filed by the landlord respondent No.3 being Case No.25 of 2012 was not barred by limitation. The aforesaid Review Case No.25 of 2012 was filed on merit. Along with it, he filed copy of the registered sale deed of the disputed shop dated 17.02.1999, copies of receipts of house tax of the disputed shop, copies of various papers relating to allotment order of the disputed shop dated 02.05.1998 in his favour in Case No.76 of 1998 (Bhushan Narang vs. Sita Ram Kayan). He has also explained the circumstances in which he had let out the disputed shop in the year 2006 to Sri Surendra Kumar Sahni who had permitted the petitioner No.1 to run business. In their pleadings, the petitioners nowhere denied the title of the respondent No.3 with respect to the disputed shop. They merely alleged that the earlier owner Sri Deen Dayal Kayan (respondent No.6 herein), is the authorised person but they failed to disclose that how the respondent No.3 was authorized. Despite both the parties have mainly joined the issue on merit as evident from the pleadings available in the original record of the aforesaid Review Case No.25 of 2012 and also from the observations and findings recorded in the impugned judgment by the revisional court. The Additional District Magistrate (Civil Supplies)/ R.C. & E.O., Agra while rejecting the Review Case No.25 of 2012 by order dated 06.08.2016, noted the arguments of the parties on merit, which shows that even in arguments the documentary evidences filed by the respondent No.3 were not specifically denied by the petitioners-allottees or the respondent No.6 and they all joined the issue on merit. Alternatively they made the submission on the point of limitation which was accepted by the R.C. & E.O., Agra in the teeth of the law laid down by Hon'ble Supreme Court in the case of Madhu Gopal (supra) and the judgments of this Court in the case of J.S. Hitkari (supra), Ramesh Kumar (supra) and Niren Kumar (supra).

41. Under sub-Section (2) of Section 18 of the Act, the revising authority may confirm or rescind the final order made under sub-section (1) or may remand the case to the District Magistrate for rehearing, and pending the revision, may stay the operation of such order on such terms, if any, as it

thinks fit. The explanation appended to sub-Section (2) provides that the power to rescind the final order under this sub-section shall not include the power to pass an allotment order or to direct the passing of an allotment order in favour of a person different from the allottee mentioned in the order under revision. Thus, the exercise of revisional power to rescind, has been excluded only to the extent that it shall not include the power to pass an allotment order or to direct the passing of an allotment order in favour of a person different from the allottee mentioned in the order under revision. This clearly indicates that the power to rescind shall include the setting aside of an allotment order. This position is further clear from sub-Section (3) of Section 18 which provides that where an order under Section 16 or Section 19 is rescinded, the District Magistrate shall, on an application being made to him on that behalf, place the parties back in the position which they would have occupied but for such order or such part thereof as has been rescinded, and may for that purpose use or cause to be used such force as may be necessary.

42. It has been held in the case of Rani Devi vs. IIIrd Additional District Judge, Faizabad, 2003 (UP) RCC 492 : 2002 (48) ALR 426 that the power of the revisional authority under Section 18 are equal to Section 115 of the Code of Civil Procedure. The revisional jurisdiction under Section 18 is supervisory jurisdiction which can be exercised by the revisional authority if the District Magistrate has exercised a jurisdiction not vested in him by law or that the District Magistrate has failed to exercise jurisdiction vested in him by law or that the District Magistrate acted in the exercise of his jurisdiction illegally or with material irregularity. Facts of the present case as already noted above clearly reveals that the R.C. & E.O., Agra has acted in the exercise of his jurisdiction illegally and with material irregularity inasmuch as neither the mandatory provisions of Rule 8 and 9 were observed nor any notices were issued to the landlord not any vacancy was declared. The allotment order was the result of fraud and collusion. Under the circumstances, it was not necessary for the revisional authority to remand the matter to the R.C. & E.O. Agra.

43. In Smt. Sushila Devi vs. Ashok Kumar Sahai and another [1990 (16) ALR 433] (para-12), this court considered the provisions of Section 18 and the Explanation, and, held that the restriction referred to in the explanation relates to the power to pass an allotment order. The explanation does not restrict the power to set aside an allotment order. Exercise of power to rescind includes the power to set aside allotment order. It was in the advancement of cause of justice and to prevent perpetuation of the fraudulent allotment order dated 25.08.2006, the Revisional Court has set aside it. Hence, the Revisional Court has not committed any manifest error of law to set aside the allotment order.

44. In the case of Dwarika Prasad vs. Nirmala and others, (2010) 2 SCC 107 (para-21), Hon'ble Supreme Court observed that the appellant who the beneficiary of fraud played upon the trial court and the High Court would not be entitled to invoke discretionary jurisdiction of the High Court under Section 115 C.P.C.

45. In the case of Dalip Singh vs. State of U.P. and Ors., (2010) 2 SCC 114 (Paras-1 and 2), Hon'ble Supreme held as under:

"1. For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

(Emphasis supplied by me)

46. In the case of S.P. Chengalvaraya Naidu (supra), Hon'ble Supreme Court held that where a preliminary decree was obtained by withholding an important document from the court, the parties deserve to be thrown out at any stage of the litigation.

47. In the case of A. Shanmugam vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam and others, [(2012) 6 SCC 430] (Para-24), Hon'ble Supreme Court observed that "The entire journey of a judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of justice delivery system."

48. Hon'ble Supreme Court in Maria Margarida Sequeria Fernandes vs. Erasmo Jack de Sequeria, [(2012) 5 SCC 370], (supra) had an occasion to deal with the importance of Truth in justice delivery system and held as under:-

"31. In this unfortunate litigation, the Court's serious endeavour has to be to find out where in fact the truth lies. The truth should be the guiding star in the entire judicial process.

32. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty.

33. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.

34. In *Mohanlal Shamji Soni v. Union of India* 1991 Supp (1) SCC 271, this Court observed that in such a situation a question that arises for consideration is whether the presiding officer of a Court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice? It is a well accepted and settled principle that a Court must discharge its statutory functions-whether discretionary or obligatory-according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure that justice is being done.

35. What people expect is that the Court should discharge its obligation to find out where in fact the truth lies. Right from inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice.

36. In *Ritesh Tewari and Another v. State of Uttar Pradesh and Others* (2010) 10 SCC 677 this Court reproduced often quoted quotation which reads as under: (SCC p.687, para 37) '37... "Every trial is a voyage of discovery in which truth is the quest"

This Court observed that the power is to be exercised with an object to subserve the cause of justice and public interest and for getting the evidence in aid of a just decision and to uphold the truth.

37. Lord Denning, in the case of *Jones v. National Coal Board* [1957] 2 QB 55 has observed that:

".....In the system of trial that we evolved in this country, the Judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of the society at large, as happens, we believe, in some foreign countries."

38. Certainly, the above, is not true of the Indian Judicial System. A judge in the Indian System has to be regarded as failing to exercise his jurisdiction and thereby discharging his judicial duty, if in the guise of remaining neutral, he opts to remain passive to the proceedings before him. He has to always keep in mind that "every trial is a voyage of discovery in which truth is the quest". In order to bring on record the relevant fact, he has to play an active role; no doubt within the bounds of the statutorily defined procedural law.

39. Lord Denning further observed in the said case of *Jones* (supra) that "... "It's all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth..."

40. World over, modern procedural Codes are increasingly relying on full disclosure by the parties. Managerial powers of the Judge are being deployed to ensure that the scope of the factual controversy is minimized.

41. In civil cases, adherence to Section 30 CPC would also help in ascertaining the truth. It seems that this provision which ought to be frequently used is rarely pressed in service by our judicial officers and judges.

42. Section 30 CPC reads as under:-

"30. Power to order discovery and the like. - Subject to such conditions and limitations as may be prescribed, the Court may, at any time either of its own motion or on the application of any party,

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summons to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(c) order any fact to be proved by affidavit

43. "Satyameva Jayate" (Literally: "Truth Stands Invincible") is a mantra from the ancient scripture Mundaka Upanishad . Upon independence of India, it was adopted as the national motto of India. It is inscribed in Devanagari script at the base of the national emblem. The meaning of full mantra is as follows:

"Truth alone triumphs; not falsehood. Through truth the divine path is spread out by which the sages whose desires have been completely fulfilled, reach where that supreme treasure of Truth resides."

44. Malimath Committee on Judicial Reforms heavily relied on the fact that in discovering truth, the judges of all Courts need to play an active role. The Committee observed thus:

2.2..... In the adversarial system truth is supposed to emerge from the respective versions of the facts presented by the prosecution and the defence before a neutral judge. The judge acts like an umpire to see whether the prosecution has been able to prove the case beyond reasonable doubt. The State discharges the obligation to protect life, liberty and property of the citizens by taking suitable preventive and punitive measures which also serve the object of preventing private retribution so essential for maintenance of peace and law and order in the society doubt and gives the benefit of doubt to the accused. It is the parties that determine the scope of

dispute and decide largely, autonomously and in a selective manner on the evidence that they decide to present to the court. The trial is oral, continuous and confrontational. The parties use cross-examination of witnesses to undermine the opposing case and to discover information the other side has not brought out. The judge in his anxiety to maintain his position of neutrality never takes any initiative to discover truth. He does not correct the aberrations in the investigation or in the matter of production of evidence before court....."

2.15 "The Adversarial System lacks dynamism because it has no lofty ideal to inspire. It has not been entrusted with a positive duty to discover truth as in the Inquisitorial System. When the investigation is perfunctory or ineffective, Judges seldom take any initiative to remedy the situation. During the trial, the Judges do not bother if relevant evidence is not produced and plays a passive role as he has no duty to search for truth....."

2.16.9. Truth being the cherished ideal and ethos of India, pursuit of truth should be the guiding star of the Criminal Justice System. For justice to be done truth must prevail. It is truth that must protect the innocent and it is truth that must be the basis to punish the guilty. Truth is the very soul of justice. Therefore truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the courts to become active seekers of truth. It is of seminal importance to inject vitality into our system if we have to regain the lost confidence of the people. Concern for and duty to seek truth should not become the limited concern of the courts. It should become the paramount duty of everyone to assist the court in its quest for truth.

45. In Chandra Shashi v. Anil Kumar Verma (1995) 1 SCC 421 to enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, pre-variation and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in Courts when they would find that truth alone triumphs in Courts.

46. Truth has been foundation of other judicial systems, such as, the United States of America, the United Kingdom and other countries.

47. In Giles v. Maryland, 386 U.S. 66 (1967), the US Supreme Court, in ruling on the conduct of prosecution in suppressing evidence favourable to the defendants and use of perjured testimony held that such rules existed for a purpose as a necessary component of the search for truth and justice that judges, like prosecutors must undertake. It further held that the State's obligation under the Due Process Clause "is not to convict, but to see that so far as possible, truth emerges."

48. The obligation to pursue truth has been carried to extremes. Thus, in United States v. J. Lee Havens 446 U.S. 620, 100 St.Ct.1912, it was held that the government may use illegally obtained

evidence to impeach a defendant's fraudulent statements during cross-examination for the purpose of seeking justice, for the purpose of "arriving at the truth, which is a fundamental goal of our legal system".

49. Justice Cardozo in his widely read and appreciated book "The Nature of the Judicial Process" discusses the role of the judges. The relevant part is reproduced as under:-

"There has been a certain lack of candour," "in much of the discussion of the theme [of judges' humanity], or rather perhaps in the refusal to discuss it, as if judges must lose respect and confidence by the reminder that they are subject to human limitations." I do not doubt the grandeur of conception which lifts them into the realm of pure reason, above and beyond the sweep of perturbing and deflecting forces. None the less, if there is anything of reality in my analysis of the judicial process, they do not stand aloof on these chill and distant heights; and we shall not help the cause of truth by acting and speaking as if they do."

50. Aharon Barak, President of Israeli Supreme Court from 1995 to 2006 takes the position that:

"For issues in which stability is actually more important than the substance of the solution - and there are many such cases - I will join the majority, without restating my dissent each time. Only when my dissenting opinion reflects an issue that is central for me - that goes to the core of my role as a judge - will I not capitulate, and will I continue to restate my dissenting opinion: "Truth or stability - truth is preferable".

"On the contrary, public confidence means ruling according to the law and according to the judge's conscience, whatever the attitude of the public may be. Public confidence means giving expression to history, not to hysteria. Public confidence is ensured by the recognition that the judge is doing justice within the framework of the law and its provisions. Judges must act - inside and outside the court - in a manner that preserves public confidence in them. They must understand that judging is not merely a job but a way of life. It is a way of life that does not include the pursuit of material wealth or publicity; it is a way of life based on spiritual wealth; it is a way of life that includes an objective and impartial search for truth."

51. In the administration of justice, judges and lawyers play equal roles. Like judges, lawyers also must ensure that truth triumphs in the administration of justice.

52. Truth is the foundation of justice. It must be the endeavour of all the judicial officers and judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth."

49. In the case of A. Shanmugam (supra), Hon'ble Supreme Court also held as under:

"26. As stated in the preceding paragraphs, the pleadings are foundation of litigation but experience reveals that sufficient attention is not paid to the pleadings and documents by the judicial officers before dealing with the case. It is the bounden duty and obligation of the parties to investigate and satisfy themselves as to the correctness and the authenticity of the matter pleaded.

27. The pleadings must set-forth sufficient factual details to the extent that it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. If false averments, evasive denials or false denials are introduced, then the Court must carefully look into it while deciding a case and insist that those who approach the Court must approach it with clean hands.

28. It is imperative that judges must have complete grip of the facts before they start dealing with the case. That would avoid unnecessary delay in disposal of the cases.

29. Ensuring discovery and production of documents and a proper admission/denial is imperative for deciding civil cases in a proper perspective. In relevant cases, the Courts should encourage interrogatories to be administered."

50. In the case of A. Shanmugam (supra), Hon'ble Supreme Court laid down the following principles with respect to the duty of the court discern the truth and to do justice as under:

"43.1. It is the bounden duty of the Court to uphold the truth and do justice.

43.2. Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts.

43.3. The ultimate object of the judicial proceedings is to discern the truth and do justice. It is imperative that pleadings and all other presentations before the court should be truthful.

43.4. Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrong doer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice.

43.5. It is the bounden obligation of the Court to neutralize any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process.

43.6. Watchman, caretaker or a servant employed to look after the property can never acquire interest in the property irrespective of his long possession. The watchman,

caretaker or a servant is under an obligation to hand over the possession forthwith on demand. According to the principles of justice, equity and good conscience, Courts are not justified in protecting the possession of a watchman, caretaker or servant who was only allowed to live into the premises to look after the same.

43.7. The watchman, caretaker or agent holds the property of the principal only on behalf the principal. He acquires no right or interest whatsoever in such property irrespective of his long stay or possession.

43.8. The protection of the Court can be granted or extended to the person who has valid subsisting rent agreement, lease agreement or licence agreement in his favour."

(Emphasis supplied by me)

51. In view of the above discussion, I hold that the revisional court has neither committed any error of law nor exceeded its jurisdiction to set aside the order of the R.C. & E.O. Agra and to allow the review application on the facts of the present case. Question No.(d) is answered accordingly.

52. There is another reason to uphold the impugned order on the ground of fundamental principle of justice, i.e. the "Truth". Truth constitutes an integral part of justice delivery system. "Satyameva Jayate" (Literally: "Truth Stands Invincible") is a mantra from the ancient scripture "Mundaka Upanishad". Upon independence of India, it was adopted as the national motto of India. It is inscribed in Devanagari script at the base of the national emblem. The meaning of full mantra is as follows:

"Truth alone triumphs; not falsehood. Through truth the divine path is spread out by which the sages whose desires have been completely fulfilled, reach where that supreme treasure of Truth resides."

53. Truth is the foundation of justice delivery system. It is the guiding star in the entire judicial process. Truth and justice are inseparable. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth. It is the duty of a Court not only to do justice but also to ensure that justice is being done. Discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice. Every trial is a voyage of discovery in which truth is the quest. It is truth that must protect the innocent and it is truth that must be the basis to punish the guilty. Truth is the very soul of justice. Concern for and duty to seek truth should be the paramount duty of everyone to assist the court in its quest for truth. People would have faith in Courts when they would find that truth alone triumphs in Courts. Judging is not merely a job but a way of life. It is a way of life that does not include the pursuit of material wealth or publicity; it is a way of life based on spiritual wealth; it is a way of life that includes an objective and impartial search for truth. In the administration of justice, judges and lawyers play equal roles. Like judges, lawyers also must ensure

that truth triumphs in the administration of justice. Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts.

54. There is no place of falsehood in any civilized system of jurisprudence. Truth has always prevailed and shall always prevail over falsehood. Technicalities can not outweigh justice. A litigant who touches the pure fountain of justice with tainted hands, is not entitled to any relief.

55. In rent matters court can protect the person who has a valid subsisting allotment order under U.P. Act XIII of 1972 or rent agreement or lease agreement or licence. The issue of validity of allotment order of the disputed shop has already been answered by me above while answering Question Nos.(a), (b) and (c). Therefore, I do not find any good reason to grant any relief to the petitioners in exercise of power conferred under Article 227 of the Constitution of India.

SUMMARY OF CONCLUSIONS:-

56. Conclusions reached by me in answer to question Nos. (a), (b), (c) and (d) as discussed above, are briefly summarized as under:-

Question No. (a): Whether in allotment proceedings, the provisions of the UP Act XII of 1972 and the Rules framed thereunder, were observed?

Conclusion on Question No.(a):

57. Thus, neither the vacancy of the disputed shop was ascertained by the R.C. & E.O. Agra under Rule 8 nor any notice was issued to the landlord nor vacancy of the disputed shop was declared nor the provisions of Section 15 of the Act read with Rule 9 of the Rules at three stages, firstly; before inspection; before declaring vacancy and thirdly; before making allotment but no effort was made by the R.C. & E.O. to find out who is the owner and landlord of the disputed shop. The original record of allotment Case No.105 of 2006 clearly discloses that neither there was any material before the R.C. & E.O. to indicate that who is the owner and landlord of the disputed shop nor any effort was made by him to verify as to whether the alleged landlord shows in the allotment application form namely, Sri Deen Dayal Kayan is still the owner and landlord, when the disputed shop was already sold by him to the respondent No.3 by a registered sale deed dated 17.02.1999 and the name of the respondent No.3 was mutated in Nagar Nigam records and accordingly he was paying house tax and water tax, thus, the provisions of Section 15 and 16 of the Act and Rules 8 and 9 of the Rules were not observed by the R.C. and E.O., Agra while passing the allotment order dated 25.08.2006 and issuing the allotment order dated 31.08.2006 on the basis of an application for allotment of the petitioners in Form-A dated 21.07.2006. Detail finding of fact in this regard have been recorded by the Revisional Court in paras-25 to 34 of the impugned judgement and I find myself in complete agreement with those findings. Thus, non-observance of the mandatory provisions of the aforesaid mandatory provisions of the Act and Rules has rendered the allotment order dated 25.08.2006 and allotment letter dated 31.08.2006 to be void ab initio.

58. The question No.(a) is accordingly answered and it is held that in the allotment proceedings, the provisions of U.P. Act XIII of 1972 and Rules framed thereunder were not observed by the R.C.& E.O. The facts noted in detail in the impugned order and as also in paragraph-10 to 17 above, leads to an irresistible conclusion that the provisions of the Act and Rules were not observed. Therefore, the entire proceedings allotment proceedings including the allotment order dated 25.08.2006 and the allotment letter dated 31.08.2006 issued by the R.C. & E.O. Agra, are vitiated.

Question No. (b): Whether the allotment order dated 25.8.2006 was the result of fraud and collusion?

Conclusion on Question No.(b):

59. The expression "fraud" involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. Fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the court. Where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent Authority, such order cannot be sustained in the eye of law. "Fraud avoids all judicial acts ecclesiastical or temporal. A person whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. A writ Court, while exercising its equitable jurisdiction, should not act as to prevent perpetration of a legal fraud as the courts are obliged to do justice by promotion of good faith. Dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud. The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. The collusion and conspiracy in the proceedings of the allotment Case No.105 of 2006 (Vishal Bansal, Priti Bansal vs. Din Dayal Kayan), is apparent on record which has been done to deprive the respondent Nos.3, 4 and 5 of their rights to the property. This would render the transaction of allotment dated 25.08.2006/ 31.08.2006 to be void ab initio. Since the allotment order was obtained by playing fraud, therefore, such an order is nullity in the eye of law. Consequently, it was lawfully set aside by the Revisional Court on the principles that fraud and collusion vitiate even the most solemn proceeding in any civilised system of jurisprudence.

Question No. (c): Whether the review application filed by landlord-respondent under Section 16(5) of the Act was barred by limitation?

Conclusion on Question No.(c):

60. Section 16(5)(a) confers upon the District Magistrate, the power to review an order of allotment or release order where "the landlord or any other person" claiming to be a lawful occupant of the building or any part thereof comprised in the allotment order or release order satisfies the District Magistrate that such order was not made in accordance Clause (a) or Clause (b) as the case may be, of sub-Section (5) of Section 16. The proviso to Section 16(5)(a) provides for limitation of maximum seven days after eviction of such person.

61. Thus, Section 16(5)(a) contemplates two categories of persons, i.e. "a landlord" or "any other person". The phrase "to be a lawful occupant of the building or any part thereof" applies only in such cases where a person other than the landlord claims to be in lawful occupation. The word "or" is used in Section 16(5)(a) between the aforesaid two categories of persons is disjunctive. Therefore, the aforesaid two categories of persons are to be treated separately. Hence the requirement to be in lawful occupation is not applicable in case of an application by the landlord. The limitation for filing application as provided in the proviso to Section 16(5)(a) of the Act is applicable only to such a person who has been evicted. Therefore, where an applicant, like the respondent No.3 in the present case, who files an application for review, has not been evicted, the limitation of filing application within seven days of the eviction as provided in proviso to Section 16(5)(a) of the Act, shall not be applicable to him.

62. Thus, the review application of the respondent No.3 was not barred by limitation in view of the facts of the present case discussed above and the law laid down by Hon'ble Supreme Court in the case of Maghu Gopal (supra), and the law laid down by this Court in J.S. Hitkari (supra) and Leela Wati and others (supra) and Ramesh Kumar (supra). The submissions made by learned counsel for the petitioners on the point of limitation deserves rejection in view of the law laid down by Hon'ble Supreme Court and also by this court as afore-noted. The submissions of learned counsel for the petitioners on the point of limitation also deserves rejection for simple reason that the law of limitation or the principle of finality of limitation cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. Neither any statutory law nor the process of court can be used for perpetuation of fraud or to benefit the dishonest litigants. Therefore, the question No.(c) is answered in negative and it is held that the review application of the landlord respondent No.3 was not barred by limitation.

Question No. (d): Whether the revisional court exceeded its jurisdiction to pass the impugned judgment under Section 18 of the Act and whether it was justified for the revisional court to enter into the merits of the case when the review application was rejected on the ground of limitation?

Conclusion on Question No.(d):

63. In view of the above discussion, I hold that the revisional court has neither committed any error of law nor exceeded its jurisdiction to set aside the order of the R.C. & E.O. Agra and to allow the review application on the facts of the present case. Question No.(d) is answered accordingly.

64. There is another reason to uphold the impugned order on the ground of fundamental principle of justice, i.e. the "Truth". Truth constitutes an integral part of justice delivery system. "Satyameva Jayate" (Literally: "Truth Stands Invincible") is a mantra from the ancient scripture "Mundaka Upanishad". Upon independence of India, it was adopted as the national motto of India. It is inscribed in Devanagari script at the base of the national emblem. The meaning of full mantra is as follows:

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66. There is no place of falsehood in any civilized system of jurisprudence. Truth has always prevailed and shall always prevail over falsehood. Technicalities can not outweigh justice. A litigant like the petitioners who touches the pure fountain of justice with tainted hands, is not entitled to any relief.

67. In rent matters court can protect the person who has a valid subsisting allotment order under U.P. Act XIII of 1972 or rent agreement or lease agreement or licence. The issue of validity of allotment order of the disputed shop has already been answered by me above while answering Question Nos.(a), (b) and (c). Therefore, I do not find any good reason to grant any relief to the petitioners in exercise of power conferred under Article 227 of the Constitution of India.

68. In view of the above discussion, I do not find any merit in this petition. Consequently, the petition fails and is hereby dismissed with costs.

Order Date :- 29.03.2018 NLY