

Sl. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			WPMS No.2979 of 2023 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Pulak Raj Mullick, Advocate, for the petitioner. Mr. Sagar Kothari, Advocate, holding brief of Mrs. Sunayna Kohli Kothari, Advocate, for the respondent. The petitioner is a tenant of the disputed shop, which was a subject matter of the proceedings under section 21 (1) (a) of the Act No.13 of 1972, situated at property bearing municipal no.25/2 and 25/3 (Old No.25) Mahant Parshuram Marg, Rishikesh, District Dehradun. The said shop was numbered as shop no.4, situated on the ground floor. The respondent/landlord after issuing prior notice on 26.07.2017, had filed a proceedings under section 21 (1) (a) of the Act, for seeking the release of the tenement in question on the ground that since the building in question being in a dilapidated condition, he wanted to demolish the same, and get it reconstructed in order to meet his family need, and particularly, in the context of his mother, who is an ailing aged lady for whom an appropriate residential accommodation is required to be provided at the ground floor. What is surprising is that when the release application was filed before the learned Prescribed Authority by the respondent/landlord on 18.07.2018, upon the notice being issued to the petitioner/tenant, he had filed his written statement/objection on 30.04.2019. There is not even a single iota of pleading or evidence led by the petitioner/tenant before the court of learned Prescribed Authority, that he had ever attempted to look for an alternative accommodation as soon as he was in the receipt of the notice terminating his tenancy with effect

			from 26.07.2017. To satisfy the aspect of having made an attempt to look for an alternative accommodation, it doesn't mean that making a waived effort to look for an alternative accommodation, the search for an alternative accommodation would be a constructive search in accordance with law, that is by filing an appropriate application as per the provisions contained under section 12 to be read with section 16 of the Act No.13 of 1972. The law postulates that in an event if the tenant after receipt of the notice, when he contest the proceedings and doesn't raises a plea of having made any effort for looking for an alternative accommodation, the presumption would be that in an event of his eviction from the tenement in question, his hardship as in comparison to the hardship of the landlord would not be taken as to be more grievous as compare to that of the landlord. Now, the only question, which is left to be survived to be argued is on the question of the bonafide need. Learned counsel for the petitioner has argued that the building where the tenement in question is situated, there are other tenants also, who had been permitted to continue with the tenancy, and the release has been filed against the present petitioner only. It needs no reference and further too that it is a settled preposition of law that when a landlord has got different tenants occupying respective parcels of their tenements, it is an exclusive choice of the landlord to get a specific portion vacated being occupied by the tenant, and the tenant against whom the proceedings have been drawn cannot take a defence, that since the landlord has not drawn the proceedings against other sitting tenants, the release would be vitiated, because the tenant does not have a advisory rights and capacity to advise the landlord as to which part of the building or the property under his ownership would satisfy his needs. Besides this, he submits that the landlord
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			has got various other commercial accommodations, which he has let out to the other tenants, that itself will mitigate the proceedings under section 21 (1) (a) of the Act. This Court doubts to accept this argument of the learned counsel for the petitioner for the reason being that we have to be conscious of the fact that the tenancy which has been created and as argued by the learned counsel for the petitioner is for the commercial establishments and that in itself cannot be kept at a common pedestal where the need is expressed for the residential purposes. Apart from it, the prerogative of giving a tenement on rent to the other tenants in other buildings, other than the building, which is in dispute in a proceeding under section 21 (1) (a) of the Act, would yet again not create any obstacle as such to the need as expressed in the application under section 21 (1) (a) of the Act filed by the landlord. Apart from it, on the issue of the bonafide need, both the courts have concurrently decided the issue against the petitioner directing him to vacate the premises holding that the need of the landlord is more bonafide as compare to that of the petitioner/tenant. As far as the scope under Article 227 of the Constitution of India is concerned, the Court exercising the supervisory jurisdiction only, it may not be misconstrued that Article 227 is if its an appellate jurisdiction, where the evidence and facts could be scrutinized by the High Court while exercising the supervisory jurisdiction. Since the writ petition is concluded by concurrent findings of facts, the same would stand dismissed, subject to the following conditions:- (a) The petitioner/tenant would within a period of two weeks from today would file an affidavit before the court of Prescribed Authority with an undertaking that he would be vacating the premises
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			and handing-over the peaceful possession to the landlord/respondent, after the expiry of one year to be determined from today. (b) The tenant would undertake in the affidavit that he would be remitting the rent and other municipal dues, as due to be paid towards the tenement in question by 10th of each month. (c) The tenant would also ensure that he will not alter or change the nature of the property in question in any manner whatsoever nor will create any sub-tenancy. (d) In an event of non compliance of any of the conditions as given above, it will be open for the landlord to get the judgment executed in accordance with law. Subject to the aforesaid, the writ petition stands dismissed. (Sharad Kumar Sharma, J.) 01.11.2023 NR
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