

# **THE SLUM AREAS**

**(IMPROVEMENT AND CLEARANCE)**  
**Act, 1956**

# CONTENTS

## The Slum Areas (Improvement and Clearance) Act, 1956

Page No.

### CHAPTER - I

#### PRELIMINARY

1. Short title, extent and commencement . . . . .
2. Definitions . . . . .

### CHAPTER - II

#### SLUM AREAS

3. Declaration of slum areas . . . . .
  - (a) Notified Slums . . . . .
  - (b) JJ Clusters . . . . .

### CHAPTER - III

#### SLUM IMPROVEMENT

4. Power of competent authority to require improvement of buildings unfit for human habitation . . . . .
  - (1) Where the land in possession of slum dwellers was urgently required by concerned government agency for public purpose . . . . .
  - (2) Where land owning agency does not need the land in near future and gave NOC . . . . .
  - (3) Provisions of basic amenities . . . . .
5. Enforcement of notice requiring execution of works of improvement . . . . .
6. Expenses of maintenance of works of improvement, etc., to be recoverable from the occupiers of buildings . . . . .
- 6A. Restriction on buildings, etc., in slum areas . . . . .
7. Power of competent authority to order demolition of building unfit for human habitation . . . . .
8. Procedure to be followed where demolition order has been made . . . . .

### CHAPTER - IV

#### SLUM CLEARANCE AND RE-DEVELOPMENT

9. Power to declare any slum area to be a clearance area . . . . .
10. Slum clearance order . . . . .
11. Power of competent authority to re-development clearance area . . . . .

### CHAPTER - V

#### ACQUISITION OF LAND

12. Power of the Central Government to acquire land . . . . .
13. Land acquired by Central Government to be made available to the competent authority . . . . .
14. Right to receive compensation . . . . .
15. Basis for determination of compensation . . . . .
16. Apportionment of compensation . . . . .
17. Payment of compensation or deposit of the same in court . . . . .

18. Powers of competent authority to re-develop clearance area . . . . .

*CHAPTER- VI*

**PROTECTION OF TENANTS IN SLUM AREAS FROM EVICTION**

19. Proceeding for eviction of tenants not be taken without permission of the competent authority . . . . .
1. Constitutional Validity of this Provision . . . . .
  2. Whether Provisions of Slum Act are Inconsistent with Delhi Rent Control Act . . . . .
  3. Applicability of Provisions of Civil procedure Code . . . . .
  4. Competent Authority Whether is a Court . . . . .
  5. Section 19 whether applicable to commercial premises . . . . .
  6. Person Competent to Institute Proceedings under section 19 . . . . .
  7. Against Whom Proceedings under section 19 can be Instituted . . . . .
  8. Simultaneous Filing of Civil Suit and Applying for Permission under section 19 of Slum Areas (improvement and Clearance) Act, 1956 . . . . .
  9. Scope of Inquiry of Competent Authority . . . . .
  10. Procedure for Conducting Enquiry . . . . .
  11. Availability of Alternative Accommodation . . . . .
  12. Means of Tenant - Consideration to be Looked Into . . . . .
  13. Onus to Prove Income Upon Whome? . . . . .
  14. Consideration before Competent Authority while Granting or Refusing Permission . . . . .
  15. Finding of Competent Authority . . . . .
  16. Conduct of the Tenant How far is Relevant . . . . .
  17. Where Permission of Competent Authority is Required . . . . .
  18. Where Permission can be Granted . . . . .
  19. Where Permission should be Ordinarily Granted . . . . .
  20. Where Permission of Competent Authority not Required . . . . .
  21. Second Permission where Required . . . . .
  22. Change of Circumstances - Second Application Maintainable . . . . .
  23. Instances of Some Orders of Competent Authority . . . . .
  24. Grounds of Eviction . . . . .
  25. Execution of Eviction Decree . . . . .
  26. Miscellaneous Matters Relating to the Proceedings of Competent Authority . . . . .
  27. Right of Legal Representative to Contest the Proceedings . . . . .
  28. Setting Aside of Ex-parte Order . . . . .
  29. Power to Review its Order by Competent Authority . . . . .
  30. Dismissal in Default . . . . .
  31. Dismissal as Withdrawn . . . . .
  32. Right of Contesting Party to Cross-examine . . . . .
  33. Technical defects in application . . . . .
  34. Limitation . . . . .
  35. Local Commissioner . . . . .

36. Slum Act and Public Premises Act	.	.	.	.	.	.	.
37. Mode of Service	.	.	.	.	.	.	.
38. Effect of Amendment on Pending Executions	.	.	.	.	.	.	.
20. Appeals	.	.	.	.	.	.	.
20A. Restoration of possession of premises vacated by a tenant	.	.	.	.	.	.	.
20B. Rent of buildings in slum areas	.	.	.	.	.	.	.
21. Chapter not to apply to eviction of tenants from certain buildings	.	.	.	.	.	.	.

*CHAPTER - VII*

**MISCELLANEOUS**

22. Powers of entry	.	.	.	.	.	.	.
23. Powers of inspection	.	.	.	.	.	.	.
24. Power to enter land adjoining land where is in progress	.	.	.	.	.	.	.
25. Breaking into buildings	.	.	.	.	.	.	.
26. Entry to be made in the day time	.	.	.	.	.	.	.
27. Owner's consent ordinarily to be obtained	.	.	.	.	.	.	.
28. Power of eviction to be exercised only by the competent authority	.	.	.	.	.	.	.
29. Power to remove offensive or dangerous trades from slum areas	.	.	.	.	.	.	.
30. Appeals	.	.	.	.	.	.	.
31. Service of notices, etc.	.	.	.	.	.	.	.
32. Penalties	.	.	.	.	.	.	.
33. Order of demolition of buildings in certain cases	.	.	.	.	.	.	.
34. Jurisdiction of courts	.	.	.	.	.	.	.
35. Previous sanction of the competent authority or officer authorised by it for prosecution	.	.	.	.	.	.	.
36. Power to delegate	.	.	.	.	.	.	.
37. Protection of action taken in good faith	.	.	.	.	.	.	.
37A. Bar of jurisdiction	.	.	.	.	.	.	.
38. Competent authority, etc., to be good faith	.	.	.	.	.	.	.
39. Act to override other laws	.	.	.	.	.	.	.
40. Power to make rules	.	.	.	.	.	.	.
<i>THE SCHEDULE.</i> —Principle for Determination of the Net Average Monthly Income	.	.	.	.	.	.	.

# The Slum Areas (Improvement and Clearance) Act, 1956

96 of (1956)

[29th December, 1956]

*An Act to provide for the improvement and clearance of slum areas in certain Union territories and for the protection of tenants in such areas from eviction.*

BE it enacted by Parliament in the Seventh Year of the Republic of India as follows:-

## CHAPTER - I PRELIMINARY

### 1. Short title, extent and commencement.—

- (1) This Act may be called the Slum Areas (Improvement and Clearance) Act, 1956. tc “
- (2) It extends to all Union territories except the Union territories of the Andaman and Nicobar Islands and the Laccadive, Minicoy and Amindivi Islands.
- (3) It shall come into force in a Union territory on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different Union territories.

### Comments

This Act into force in the Union territory of Delhi on 8th February, 1957 *vide* Notification No. S.R.O. 421 dated 4-2-1957 published in the Gazette of India, Part II, Sec. 3, page 256 and in the Union territory of Tripura on 1st April, 1958 *vide* S.O. 414, dated 31st March, 1958, published in the Gazette of India, Pt. II, Sec. 30(ii) P. 256 Extended to Pondicherry by Act of 1968

**2. Definitions.**—In this Act, unless the context otherwise requires,—

- (a) “Administrator” means the Administrator of a Union territory;
- (b) “building” includes any structure or erection or any part of a building as so defined but does not include plant or machinery comprised in a building;
- (c) “competent authority” means such officer or authority as the Administrator may, by notification in the Official Gazette, appoint as the competent authority for the purpose of this Act;
- (d) “erection” in relation to a building includes extension,

alteration or re-erection;

<sup>1</sup>[(e) “land” includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth;

(f) “occupier” includes—

(a) any person who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable;

(b) an owner in occupation of, or otherwise using his land or building;

(c) a rent-free tenant of any land or building;

(d) a licensee in occupation of any land or building; and

(e) any person who is liable to pay to the owner damages for the use and occupation of any land or building;]

(g) “owner” includes any person who is receiving or is entitled to receive the rent of any building or land whether on his own account or on behalf of himself and others or as agent or trustee, or who would so receive the rent or be entitled to receive it if the building or land were let to a tenant;

(h) “prescribed” means prescribed by rules made under this Act;

(i) “slum clearance” means the clearance of any slum area by the demolition and removal of buildings therefrom; and

<sup>2</sup>[(j) “work of improvement” includes in relation to any building in a slum area the execution of any one or more of the following works, namely:—

(i) necessary repairs;

(ii) structural alterations;

(iii) provision of light points, water taps and bathing places;

1. Subs. by Act 43 of 1964, sec. 2, for clauses (e) and (f) (w.e.f. 27-2-1965).

2. Ins. by Act 43 of 1964, sec. 2 (w.e.f. 27-2-1965).

- (iv) construction of drains, open or covered;
- (v) provision of latrines, including conversion of dry latrines into water-borne latrines;
- (vi) provision of additional or improved fixtures or fittings;
- (vii) opening up or paving of courtyards;
- (viii) removal of rubbish; and
- (ix) any other work including the demolition of any building or any part thereof which in the opinion of the competent authority is necessary for executing any of the works specified above.]

### Comments

By virtue of powers granted under the Delhi (delegation of Powers) Act, 1964, any power, duty, authority or jurisdiction under this Act vested with the administrator can be delegated to Chief Secretary. The Administrator can transfer to from himself or withdraw any appeal, revision or any other matter pending before such officer for its disposal by him.

The definition of 'occupier' under section 2(f) includes any person whether he is in possession of the property in the capacity of tenant, licensee or even unauthorized occupant. In case of premises being let out to the partnership firm, every partner of the firm is treated as a tenant as held by Delhi High Court in case *Kanhiya Lal Balkishan Das v. Labhu Ram*, AIR 1971 Del 219: 1971 Ren CJ 250. Court further held that dissolution of the firm would not cease to be tenants merely because the firm had been dissolved.

Lease of premises is found creation heritable right in case *Ajudhia Pershad v. Chief Commissioner of Delhi*, 1979 PLR 107 by Delhi High Court While holding that the legal representative of a tenant whose contract of tenancy has not been terminated would be tenants of the landlord. It was further held that when a landlord enters into a contract of tenancy with a firm, he takes all the partners of the firm as his tenants and by operation of law the rights of each of them in the event of death is inheritance by his legal representatives who gets locus standi to contest petition under section 19 of the Act.

In case of an individual also, Delhi High Court in *Lachhmi Devi v. Hira Lal*, 34 (1988) DLT 395 held that financially dependant wife also inherit the tenancy of her deceased husband as per provisions of section 2(1) of the Delhi Rent Control Act, 1958 where before the period for vacating the premises comes to an end after alleged termination of tenancy, husband had died. Court also found that mere fact that wife was found working at the time of Death of her deceased husband by cleaning utensils in the houses of her neighbours, it could

not be said that she was not financially dependent on her husband and that her act might be to supplement the family income and by no stretch of imagination it could be construed that the defendant ceased to be financially dependent on her husband.

A tenant against whom an eviction decree is passed remains tenant for purposes of the Act and he cannot be sued in a civil court after refusal of permission under section 19 of the Act but on his death, his heirs being not tenants can be evicted without necessity of permission as held in *Krishan kant v. Tulsibhai Gordhan Bhai patel*, 1989 RLR (N) 29: AIR 1988 Del 203.

If there is an eviction decree against joint tenants, the Competent Authority cannot split up the joint tenancy and consider their case individually as per decision given in *Bakshish Singh v. Padam Narain*, 1972 RLR (N) 62

While considering the 'means of tenant' for purpose of acquiring the alternative accommodation by him, the Competent Authority has not to consider the status and means of sub-tenant or other occupier whether lawful or unlawful, even if they are made a party to the proceedings as held in *Shri kishan v. Mahabir Singh*, 1972 RLR(N) 64. Court further held that provisions of Delhi Rent Control Act and Slum Areas (Improvement and Clearance) Act, 1956 are not in pari materia with each other and word "tenant" in section 19 of Slum Act does not include sub-tenant or occupier.

The question whether a tenant against whom decree of eviction is already passed but still he continuing to be in possession of the property can be treated as tenant or not arose in case *Bardu Ram Dhanna Ram v. Ram Chander Khibru*, 8 (1972) DLT 135: AIR 1972 Del 34. Court held that after the amendment made in year 1964 in the Act, no suit or other proceeding can be instituted against a tenant of property, if the permission is refused so the question of making decree or order of eviction executable would not arise as the suit or proceeding would itself shall not be maintainable. While interpreting section 19 of the Act, it was held that the word "tenant" in that section include a person in occupation of the tenanted premises even though a decree or order eviction has been obtained against him.

The position of co-owner came into consideration before Delhi High Court in case *Mahinder Kumar Khandelwal v. Padam Chand Parmar*, 26 (1984) DLT452: (1984) 2 Ren CR 347 and court held that petition for permission under section 19 of the Slum Act to file eviction suit by a co-owner without the consent of the other co-owner and without joining him as a party would make such application as not maintainable. Where another co-landlord withdraws the General Power



of Attorney in favour of another co-landlord, an application under section 19 of the Act cannot be made by one co-owner without joining the other co-landlord.

## CHAPTER - II SLUM AREAS

### 3. Declaration of slum areas.—

- (1) Where the competent authority upon report from any of its officers or other information in its possession is satisfied as respects any area that the buildings in that area—
- (a) are in any respect unfit for human habitation; or
  - (b) are by reason of dilapidation, overcrowding, faulty arrangement and design of such buildings, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health or morals,” it may, by notification in the Official Gazette, declare such area to be a slum area.
- (2) In determining whether a building is unfit for human habitation for the purposes of this Act, regard shall be had to its condition in respect of the following matters, that is to say—
- (a) repair;
  - (b) stability;
  - (c) freedom from damp;
  - (d) natural light and air;
  - (e) water supply;
  - (f) drainage and sanitary conveniences;
  - (g) facilities for storage, preparation and cooking of food and for the disposal of waste water; and the building shall be deemed to be unfit as aforesaid if and only if it is so far defective in one or more of the said matters that it is not reasonably suitable for occupation in that condition.

### Comments

It is very important to firstly distinguish between Slum Areas and *Jhuggi Jhopri* Clusters. Building and areas that are considered unfit for human habitation can be declared as slum areas under section 3 of the Act which becomes eligible for certain benefits and considered to be legal. However encroachment on public or private lands by the squatters in JJ Cluster is considered as illegal settlement. The position in Delhi in this regard can be described as under;

**(a) Notified Slums.**— The entire area of walled city and its extension have been notified as slum areas wherein about 1 lacs Katras/properties containing 10 lacs families have been indentified. Out of the same, about 3000 properties/katras were being maintained by Slum department of MCD under Delhi Ajmeri Gate Scheme in the year 1965 which used to manage the same and to keep it structurally safe by providing repairs from time to time. In case of demolition of property, the built up flats had been allotted to the occupants. Now that scheme does not survive.

**(b) JJ Clusters.**— It is an illegal encroachment on public land by jhuggi dwellers. In the survey of 1990, there were 929 JJ cluster containing about 2.59 lacs jhuggies which increased to 4.80 lacs in 1080 clusters in year 1994.

Constitutional validity of section 3 of Andhra Pradesh Slum Areas Improvement (Acquisition of Land) Act was challenged in the case *Pithana Apparao V State of Andhra Pradesh*, AIR 1970 AP 318 but while upholding this provision, it was held that:

“it is true that the government is left with the discretion to declare whether a particular area is a slum area within meaning of Act. But to say that such a discretion is unregulated or uncontrolled would not be correct. Section 3 itself provides sufficient guidance apart from a what is provided in the Preamble and purview of the Act, is regard to the necessary material It may however, collect the material from any quarter in order to satisfy itself whether a particular area is a Slum Area or not and then only in a case where it is satisfied that it is a Slum Area that section 3 empowers the Government to declare it as such. Therefore, the contention that section 3 is in conflict with Article 14 on the ground that it confers on the Government uncontrolled and unregulated powers without providing any standard in the exercise of such a wide description is rejected.”

Under Karnataka’s Slum Act, 1973, a question of cancellation of declaration of certain area as slum was raised before Supreme Court in *Scheduled Caste and Weaker Sections Welfare Association (Regd.) v. State of Karnatka*, 1991 (1) RCR (Rent) 690: AIR 1991 SC 1117: (1991) 2 SCC 604: 1991 (1) SCR 974 and it was held that Government cancelling the notification without opportunity of hearing to affected persons amounts to a violation of principle of natural justice. It is held That the Preamble to the present Act it self that the Act is to provide for the improvment and clearance of slums in the State. Under the existig law, it has not been possible effectively to check the increase and to eliminate congestion

and to provide for basic needs such as streets, water-supply, and drainage and to clear the slums which are unfit for human habitation. To obviate this difficulty, it is considered expedient to provide for the removal of unhygienic and insanitary condition prevailing in the slums for better accommodation and improved living conditions for slum dwellers for the promotion of public health generally. These are the objectives sought to be achieved by the enactment which has been made in implementation of the Directive Principle of State Policy to improve public health under section 3 and a further declaration is made under section 11, the inhabitants of the areas are affected and any further action in relation to the area which is declared to the 'slum clearance area' without affording such person an opportunity of being heard would prejudicially affect their rights. The right to be heard in the matter has been acquired by the earlier action of the authority in considering the area for the purpose of the scheme. This is clear from the proviso to sub-section (1) of section 11 of the Act. when any alteration is sought to be made in the original scheme, it becomes incumbent upon the authorities to give an opportunity to the persons who had been affected by the earlier order and required to adopt a certain course of action. In this view of the matter it is to be held that when a notification is made rescinding the earlier notification without hearing the affected parties, it is clear violation of the principle of natural justice. Such action is exercise of the implied power to rescind cannot be said to have been exercised & is liable to be quashed on this ground. It shall be open to the Government to proceed after affording the slum dwellers an opportunity of being heard on the basis of the earlier notifications that were in force.

### CHAPTER - III

#### SLUM IMPROVEMENT

##### 4. Power of competent authority to require improvement of buildings unfit for human habitation.—

(1) Where the competent authority upon report from any of its officers or other information in its possession is satisfied that any building in a slum area is in any respect unfit for human habitation, it may, unless in its opinion the building is not capable at a reasonable expense of being rendered so fit, serve upon the owner of the building a notice requiring him within such time not being less than thirty days as may be specified in the notice to execute the works of improvement specified therein and stating that in the opinion of the authority those works will render the building fit for human habitation:

<sup>1</sup>[Provided that where the owner of the building is different from the owner of the land on which the building stands and the works of improvement required to be executed relate

to provision of water taps, bathing places, construction of drains, open or covered, as the case may be, provision of water-borne latrines or removal of rubbish and such works are to be executed outside the building, the notice shall be served upon the owner of the land.]”

- (2) In addition to serving a notice under this section on the owner the competent authority may serve a copy of the notice on any other person having an interest in the building 4 [or the land on which the building stands] whether as lessee, mortgagee or otherwise.
- (3) In determining, for the purposes of this Act, whether a building can be rendered fit for human habitation at a reasonable expense, regard shall be had to the estimated cost of the works necessary to render it so fit and the value which it is estimated that the building will have when the works are completed.

#### Comments

In Delhi to tackle the problem of slum dwellers, three point strategy was adopted by Slum and JJ department of MCD.

**(1) Where the land in possession of slum dwellers was urgently required by concerned government agency for public purpose.**—The slum dwellers were to be relocated by providing plots. This funds are to be shared by government, land owning agency and beneficiary for purpose of acquiring plots and for providing basic amenities and costs of resettlement.

**(2) Where land owning agency does not need the land in near future and gave NOC.**—The slum cluster may be upgraded under the scheme “In-situ upgradation”. Jhuggies are relaid in modified layout by redistributing the encroached land pockets amongst the squatter families for construction of pucca informal shelter by provision of infrastructural facilities.

**(3) Provisions of basic amenities.** — Water, electricity, roads, drains etc., facilities be provided in JJ cluster which do not fall under any of the above two categories under EIUS (Environmental Improvement in Urban Slums Scheme) Scheme.

Besides above, certain other schemes such as Pay and use Jansuvidha Complex for curbing habit of mass defecation in open , Basti Vikas Kendras to meet social consumption requirements of jhuggies dwellers, Shishu Vatikas to create space for slum children etc., were also implemented. night shelters, community halls etc., are also being maintained by the department.

*1. Ins. by Act 43 of 1964, sec. 3, (w.e.f. 27-2-1965).*



### 5. Enforcement of notice requiring execution of works of improvement.—

- (1) If a notice under section 4 requiring the owner of the building <sup>1</sup>[or of the land on which the building stands, as the case may be], to execute works of improvement is not complied with, then, after the expiration of the time specified in the notice the competent authority may itself do the works required to be done by the notice.
- (2) All expenses incurred by the competent authority under this section, together with interest, at such rate as the Central Government may by order fix, from the date when a demand for the expenses is made until payment, may be recovered by the competent authority from the owner of the building <sup>1</sup>[or of the land on which the building stands, as the case may be], as arrears of land revenue: Provided that if the owner proves that he—
- is receiving the rent merely as agent or trustee for some other person; and
  - has not in his hands on behalf of that other person sufficient money to satisfy the whole demand of the authority, his liability shall be limited to the total amount of the money which he has in his hands as aforesaid. <sup>2</sup>[\*\*\*]
6. Expenses of maintenance of works of improvement, etc., to be recoverable from the occupiers of buildings.— Where works of improvement have been executed in relation to any building in a slum area in pursuance of the provisions of sections 4 and 5, the expenses incurred by the competent authority or, as the case may be, any local authority in connection with the maintenance of such works of improvement or the enjoyment of amenities and conveniences rendered possible by such works shall be recoverable from the occupier or occupiers of the building as arrears of land revenue.

#### Comments

For Corporation's demand of expenses of repairs carried out under the Slum Act, reference to District Judge for Determining the amount, if disputed is not necessary, as such a matter is not covered by sections 446 and 452 of the Delhi Corporation Act, 1956 as held in *Mst. Memoona Bi v. Municipal Corporation*, 1974 RLR 198.

#### <sup>3</sup>[6A. Restriction on buildings, etc., in slum areas.—

- (1) The competent authority may, by notification in the Official Gazette, direct that no person shall erect any building in a slum area except with the previous permission in writing

of the competent authority.

- (2) Every notification issued under sub-section (1) shall cease to have effect on the expiration of two years from the date thereof except as respects things done or omitted to be done before such cesser.
- (3) Every person desiring to obtain the permission referred to in sub-section (1) shall make an application in writing to the competent authority in such form and containing such information in respect of the erection of the building to which the application relates as may be prescribed.
- (4) On receipt of such application, the competent authority, after making such inquiry as it considers necessary, shall, by order in writing,—
- either grant the permission subject to such terms and conditions, if any, as may be specified in the order; or to
  - refuse to grant such permission:
 

“Provided that before making an order refusing such permission, the applicant shall be given a reasonable opportunity to show cause why the permission should not be refused.”
- (5) Nothing contained in sub-section (1) shall apply to—
- any works of improvement required to be executed by a notice under sub-section (1) of section 4 or in pursuance of an undertaking given under sub-section (2) of section 7; or
  - the erection of any building in any area in respect of which a slum clearance order has been made under section 10.]

### 7. Power of competent authority to order demolition of building unfit for human habitation.—

- (1) Where a competent authority upon a report from any of its officers or other information in its possession is satisfied that any building within a slum area is unfit for human habitation and is not capable at a reasonable expense of being rendered so fit, it shall serve upon the owner of the building, and upon any other person having an interest in the building, and upon any other person having an interest in the building, whether as lessee, mortgagee or otherwise, a notice as to why an order of demolition of the building should not be made.
- (2) If any of the persons upon whom a notice has been served under sub-section (1), appears in pursuance thereof before the competent authority and gives an undertaking to the authority that such person shall within a period specified by the authority execute such works of improvement

1. Ins. by Act 43 of 1964, sec. 4, (w.e.f. 27-2-1965).

2. Sub-section (3) omitted by Act 43 of 1964, sec. 4 (w.e.f. 27-2-1965).

3. Ins. by Act 43 of 1964, sec. 5, (w.e.f. 27-2-1965).

in relation to the building as well in the opinion of the authority render the building fit for human habitation, or that it shall not be used for human habitation until the authority on being satisfied that it has been rendered fit for that purpose cancels the undertaking, the authority shall not make any order of demolition of the building.

- (3) If no such undertaking as is mentioned in sub-section (2) is given, or if in a case where any such undertaking has been given any work of improvement to which the undertaking relates is not carried out within the specified period, or building is at any time used in contravention of the terms of the undertaking, the competent authority shall forthwith make an order of demolition of the building requiring that the building shall be vacated within a period to be specified in the order not being less than thirty days from the date of the order, and that it shall be demolished within six weeks after the expiration of that period.

#### **8. Procedure to be followed where demolition order has been made.—**

- (1) Where an order for demolition of a building under section 7 has been made the owner of the building or any other person having an interest therein shall demolish that building within the time specified in that behalf by the order; and if the building is not demolished within that time the competent authority shall enter and demolish the building and sell the materials thereof.
- (2) Any expenses incurred by the competent authority under sub-section (1), if not satisfied out of the proceeds of sale of materials of the building shall be recoverable from the owner of the building or any other person having an interest therein as arrears of land revenue.

### CHAPTER - IV

#### **SLUM CLEARANCE AND RE-DEVELOPMENT**

#### **9. Power to declare any slum area to be a clearance area.—**

- (1) Where the competent authority upon a report from any of its officers or other information in its possession is satisfied as respects any slum area that the most satisfactory method of dealing with the conditions in the area is the demolition of all the buildings in the area, the authority shall by an order notified in the Official Gazette declare the area to be a clearance area, that is to say, an area to be cleared of all buildings in accordance with the provisions of this Act:

Provided that any building in the area which is not unfit for human habitation or dangerous or injurious to health may be excluded from the declaration if the authority considers it necessary.

- (2) The competent authority shall forthwith transmit to the Administrator a copy of the declaration under this section together with a statement of the number of persons who on a date specified in the statement were occupying buildings comprised in the clearance area.

#### **Comments**

In *Dr. Mahajot sahai v. Competent Authority*, 8 (1971) DLT 53: AIR 1971 Del 57, the meaning and difference between “Slum Area” and “Clearance Area” has been described. Court while upholding order of excluding some building from Slum Clearance Area held that the clearance area is only a part of the slum area and can not be the whole of it as according to the definition of the “Slum Area” given in section 3 of Act, it is clear that all the buildings in the slum area are not to be demolished as a group of buildings. It is further held that the three categories of buildings referred to in sections 4 and 7 the proviso to section 9 (1), though comprising the slum area, are not to be demolished as a group of buildings. The two concept of a slum area and a clearance area are thus distinct from each other. The latter is only a part of the former but not the whole of it.

#### **10. Slum clearance order.—**

- (1) As soon as may be after the competent authority has declared any slum area to be a clearance area, it shall make a slum clearance order in relation to that area ordering the demolition of each of the buildings specified therein and requiring each such building to be vacated within such time as may be specified in the order and submit the order to the Administrator for confirmation.
- (2) The Administrator may either confirm the order in toto or subject to such variations as he considers necessary or reject the order.
- (3) If the Administrator confirms the order, the order shall become operative from the date of such confirmation.
- (4) When a slum clearance order has become operative, the owners of buildings to which the order applies shall demolish the buildings before the expiration of six weeks from the date on which the buildings are required by the order to be vacated or before the expiration of such longer period as in the circumstances of the case the competent authority may deem reasonable.
- (5) If the buildings are not demolished before the expiration of the period mentioned in sub-section (4), the competent authority shall enter and demolish the buildings and sell the materials thereof.
- (6) Any expenses incurred by the competent authority in demolishing any building shall, if not satisfied out of the

proceeds of sale of materials thereof, be recoverable by the competent authority as arrears of land revenue.

<sup>1</sup>[(7) Subject to the provisions of this Act, where a slum clearance order has become operative, the owner of the land to which the order applies may re-develop the land in accordance with plans approved by the competent authority and subject to such restrictions and conditions (including a condition with regard to the time within which the re-development shall be completed), if any, as that authority may think fit to impose:

Provided that an owner who is aggrieved by a restriction or condition so imposed on the user of his land or by a subsequent refusal of the competent authority to cancel or modify any such restriction or condition may, within such time as may be prescribed, appeal to the Administrator and the Administrator shall make such order in the matter as he thinks proper and his decision shall be final.]

(8) No person shall commence or cause to be commenced any work in contravention of a plan approved or a restriction or condition imposed under sub-section (7).

<sup>2</sup>[11. **Power of competent authority to re-develop clearance area.**—

(1) Notwithstanding anything contained in sub-section (7) of section 10, the competent authority may at any time after the land has been cleared of the buildings in accordance with a slum clearance order but before the work of re-development of that land has been commenced by the owner, by order, determine to re-develop the land if that authority is satisfied that it is necessary in the public interest to do so.

(2) Where land has been cleared of the buildings in accordance with a slum clearance order, the competent authority, if it is satisfied that the land has been, or is being re-developed by the owner thereof in contravention of plans approved by the authority or any restrictions or conditions imposed under sub-section (7) of section 10 or has not been re-developed within the time, if any, specified under such conditions, may by order, determine to re-develop the land:

Provided that before passing such order, the owner shall be given a reasonable opportunity to show cause why the order should not be passed.]

## CHAPTER - V

### ACQUISITION OF LAND

**12. Power of the Central Government to acquire land.**—

(1) Where on any representation from the competent authority it appears to the Central Government that,

in order to enable the authority to execute any work of improvement in relation to any building in a slum area or to re-develop any clearance area, it is necessary that land within, adjoining or surrounded by any such area should be acquired, the Central Government may acquire the land by publishing in the Official Gazette a notice to the effect that the Central Government has decided to acquire the land in pursuance of this section:

Provided that before publishing such notice, the Central Government may call upon the owner of, or any other person who, in the opinion of the Central Government, may be interested in, such land to show cause why it should not be acquired; and after considering the cause, if any, shown by the owner or any other person interested in the land, the Central Government may pass such order as it deems fit.

(2) When a notice as aforesaid is published in the Official Gazette, the land shall, on and from the date on which the notice is so published, vest absolutely in the Central Government free from the all encumbrances.

**13. Land acquired by Central Government to be made available to the competent authority.**—

Where any land in a slum area or clearance area has been acquired under this Act the Central Government shall make the land available to the competent authority for the purpose of executing any work of improvement or carrying out any order of demolition or for the purpose of re-development:

<sup>3</sup>[Provided that where on any representation from the competent authority, the Central Government is satisfied that any such land or any portion thereof is unsuitable for the purposes mentioned in this section, the Central Government may use the land or allow it to be used for such other public purpose or purposes as it may deem fit.]

**14. Right to receive compensation.**—Every person having any interest in any land acquired under this Act shall be entitled to receive from the Central Government compensation as provided hereafter in this Act.

**15. Basis for determination of compensation.**—

(1) The amount payable as compensation in respect of any land acquired under this Act shall be an amount equal to sixty times the net average monthly income actually derived from such land during the period of five consecutive years immediately preceding the date of publication of the notice referred to in section 12.

1. Subs. by Act 43 of 1964, sec. 6, for sub-section (7) (w.e.f. 27-2-1965).

2. Subs. by Act 43 of 1964, sec. 7, for section 11 (w.e.f. 27-2-1965).

3. Added by Act 43 of 1964, sec. 8 (w.e.f. 27-2-1965)

- (2) The net average monthly income referred to in sub-section (1) shall be calculated in the manner and in accordance with the principles set in the Schedule.
- (3) The competent authority shall, after holding an inquiry in the prescribed manner determine in accordance with the provisions of sub-section (2) the net average monthly income actually derived from the land and publish a notice in the Official Gazette specifying the amount so determined and calling upon the owner of the land and every person interested therein to intimate to it before a date specified in the notice whether such owner or person agrees to the amount so determined and if he does not so agree, what amount he claims to be the net average monthly income actually derived from the land.
- (4) Any person who does not agree to the amount of the net average monthly income determined by the competent authority under sub-section (3) and claims a sum in excess of that amount may prefer an appeal to the Administrator within thirty days from the date specified in the notice referred to in that sub-section.
- (5) On appeal the Administrator shall, after hearing the appellants, determine the net average monthly income and his determination shall be final and shall not be questioned in any court of law.
- (6) Where there is any building on the land in respect of which the net average monthly income has been determined, no separate compensation shall be paid in respect of such building:

Provided that where the owner of the land and the owner of the building on such land are different, the competent authority shall apportion the amount of compensation between the owner of the land and the owner of the building <sup>1</sup>[in the same proportion as the market price of land bears to the market price of the building on the date of the acquisition]. <sup>2</sup>[\*\*\*]

#### **16. Apportionment of compensation.—**

- (1) Where several persons claim to be interested in the amount of compensation determined under section 15, the competent authority shall determine the persons who in its opinion are entitled to receive compensation and the amount payable to each of them.
- (2) If any dispute arises as to the apportionment of compensation or any part thereof, or as to the persons to whom the same or any part thereof is payable, the competent authority may refer the dispute to the decision

of the Administrator; and the Administrator in deciding any such dispute shall follow, as far as may be, the provisions of Part III of the Land Acquisition Act, 1894 (1 of 1894).

#### **17. Payment of compensation or deposit of the same in court.—**

- (1) After the amount of compensation has been determined, the competent authority shall on behalf of the Central Government tender payment of, and pay, the compensation to the persons entitled thereto.
- (2) If the persons entitled to compensation do not consent to receive it, or if there be any dispute as to the title to receive compensation or as to the apportionment of it, the competent authority shall deposit the amount of the compensation in the court of the District Judge and that court shall deal with the amount so deposited in the manner laid down in sections 32 and 33 of the Land Acquisition Act, 1894 (1 of 1894).

#### **18. Powers of competent authority in relation to determination of compensation, etc.—**

- (1) The competent authority may, for the purposes of determining the amount of the compensation or apportionment thereof, require, by order, any person to furnish such information in his possession as may be specified in the order.
- (2) The competent authority shall, while holding inquiry under section 15, have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—
- summoning and enforcing the attendance of any person and examining him on oath;
  - requiring the discovery and production of any document;
  - reception of evidence on affidavits;
  - requisitioning any public record from any court or office;
  - issuing commissions for examination of witnesses.

### CHAPTER - VI

#### **PROTECTION OF TENANTS IN SLUM AREAS FROM EVICTION**

#### **<sup>3</sup>[19. Proceedings for eviction of tenants not to be taken without permission of the competent authority.—**

- (1) Notwithstanding anything contained in any other law

1. Subs. by Act 43 of 1964, sec. 9, for certain words (w.e.f. 27-2-1965).

2. Second proviso omitted by Act 43 of 1964, sec. 9 (w.e.f. 27-2-1965).

3. Subs. by Act 43 of 1964, sec. 10, for Section 19 (w.e.f. 27-2-1965).



for the time being in force, no person shall, except with the previous permission in writing of the competent authority,—”

- (a) institute, after the commencement of the Slum Areas (Improvement and Clearance), Amendment Act, 1964 (43 of 1964) any suit or proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in a slum area; or
  - (b) where any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of a tenant from any building or land in such area, execute such decree or order.
- (2) Every person desiring to obtain the permission referred to in sub-section (1) shall make an application in writing to the competent authority in such form and containing such particulars as may be prescribed.
  - (3) On receipt of such application, the competent authority, after giving an opportunity to the parties of being heard and after making such summary inquiry into the circumstances of the case as it thinks fit, shall by order in writing, either grant or refuse to grant such permission.
  - (4) In granting or refusing to grant the permission under sub-section (3), the competent authority shall take into account the following factors, namely:—
    - (a) whether alternative accommodation within the means of the tenant would be available to him if he were evicted;
    - (b) whether the eviction is in the interest of improvement and clearance of the slum areas;
    - (c) such other factors, if any, as may be prescribed.
  - (5) Where the competent authority refuses to grant the permission, it shall record a brief statement of the reasons for such refusal and furnish a copy thereof to the applicant.]

### SYNOPSIS

1. Constitutional Validity of this Provision
2. Whether Provisions of Slum Act are Inconsistent with Rent control Act
3. Applicability of Provisions of Civil Procedure Code
4. Competent Authority Whether is a Court
5. Section 19 Whether Applicable to Commercial Premises
6. Person Competent to Institute Proceedings under Section 19
7. Against whom Proceedings under Section 19 can be Instituted
8. Simultaneous Filing of Civil Suit and Applying for Permission under Section 19 of Slum Act

9. Scope of Inquiry of Competent Authority
10. Procedure for Conducting Enquiry
11. Availability of Alternative Accommodation
12. Means of Tenant - Consideration to be Looked into
13. Onus to Prove Income Upon Whom?
14. Consideration before Competent Authority while Granting or Refusing Permission
15. Findings of Competent Authority
16. Conduct of the Tenant How far is Relevant
17. Where Permission of Competent Authority is Required
18. Where Permission can be Granted
19. Where Permission should be Ordinarily Granted
20. Where Permission of Competent Authority not Required
21. Second Permission where Required
22. Change of Circumstances - Second Application Maintainable
23. Instances of Some Orders of Competent Authority
24. Grounds of Eviction
25. Execution of Eviction Decree
26. Miscellaneous Matters Relating to the Proceedings of competent Authority
27. Right of Legal Representative to Contest the Proceedings
28. Setting aside of *Ex-parte* Order
29. Power to Review its Order by Competent Authority
30. Dismissal in Default
31. Dismissal as Withdrawn
32. Right of Contesting Party to Cross-examine
33. Technical Defects in Application
34. Limitation
35. Local Commissioner
36. Slum Act and Public Premises Act
37. Mode of Service
38. Effect of Amendment on Pending Executions

### Comments

#### 1. Constitutional Validity of this Provision

Supreme Court in *Jyoti Prasad v. Administrator, union Territory of Delhi* AIR 1961 SC 1602: (1962) 2 SCR 125 upheld the constitutional validity of section 19 and held that it does not violate equal protection laws guaranteed by Article 14 of Constitution as there is enough guidance in Act for exercise of discretion by competent authority under section 19(1). Clause (3) of section 19 was also not found invalid on ground of excessive delegation of legislative power. Though section 19 of the Act does not in terms lay down any rules for the guidance to the competent authority in the use of his discretion under section 19(1) of the Act, but there is enough guidance in the Act which can be gathered from the policy, and purpose of the Act as set out in the Preamble and in the operative provisions of the Act. Supreme Court further held that section 19 is not unconstitutional as being violative of Article 19(1) (f) of Constitution which relate to the right of

property because restrictions imposed are reasonable and in interest of general public.

## 2. Whether Provisions of Slum Act are Inconsistent with Delhi Rent Control Act

As per decision of court in *Wazir chand v. Narain Devi*, (1978 RLR 88, for filing and eviction under section 14(1)(e) of Delhi Rent Control Act under new amendend procedure of section 25 B in respect of premises in slum areas, it is still necessary to obtain permission under section 19 of Slum Areas (Improvement and Clearance) Act. There is no inconsistency between the two provisions. Both operate in different field and one does not impinge upon the other as section 19 has to be followed before instituting the suit. The contrary observation in 1977 RLR 44 is obiter and was made in a case under section 14A. However, this overruled later on in case *Krishna Devi Nigam v. Shyam Babu Gupta*, 1980 RLR 215: 17 (1980) DLT 344: AIR 1980 Del 165 wherein it was held that an eviction petition under section 14(1)(e) of Delhi Rent Control Act can be filed without permission under section 19 of Slum Act.

Supreme Court in *Madan Lal Gupta v. Ravinder Kumar*, (2001) 1 JT (SC) 123: (2001) 1 SCC 252: 2000 (2) Rent Control Reporter 698 held that provisions of Slum Areas Act will not apply in respect of section 14 A, 25A, 25B, 25C and 54 of Delhi rent control Act which were inserted in the Rent Act in 1975.

Supreme Court in *Shafait ali v. Shiv Mal*, AIR 1988 SC 214: 1987 (2) RCR 274: (1998) 3 SCC 728: (1988) 34 DLT 354 held that in case of an application for ejection on ground of bona fide requirement, prior permission of Competent Authority under section 19(1)(a) of Slum Areas Act is not necessary as in view Chapter IIIA of Delhi Rent Control Act, the Slum Areas Act is rendered inapplicable to the extent of inconsistency. Slum Areas Act has no application in cases covered by sections 14A and 14(1)(e) in view of provisos added by Amending Act of 1976 though these two provisions relate to eviction of tenants under different situations.

As per *Sarwan Singh v. Kasturi Lal*, AIR 1977 SC 265: (1978) 2 Rent CR 445: (1977) 2 SCR 421 when two or more laws operate in the same field and each contains a non-obstante clause stating that its provisions will overridethose of any other law then case of such conflict have to be decide byreference to the object and purpose of the laws under consideration. The special and specific purpose which motivated the enactment of section 14A and Chapter IIIA of the Delhi Rent Control act would wholly frustrated if the provisions of the slum Areas (Improvement and Clearance) Act, 1956 requiring permission to the competent authority were to prevail over them Therefore, the newly introduced provisions of the Delhi

Rent Control Act must be given full effect despite anything to the contrary contained in the Slum Clearance Act.

It is held in *Punnu Ram v. Chiranjil Lal Gupta*, 1982 RLR (FB) 576: AIR 1982 Del 431 that clauses (a) and (b) of Section 19 (4) are in the alternative. These should not be read cumulatively and neither is entitled to precedence. Section 19(4) protects only a tenant and not a licensee or mere occupiers. A tenant against whom permission is granted cannot claim alternative accommodation. Improvement and clearance may be by the State or the owner.

## 3. Applicability of Provisions of Civil procedure Code

A second petition seeking permission to evict a tenant is not barred by the principal of *res judicata* under section 11, CPC , if change takes place in the status and means of the tenant as held in *Nem Chand v. Laxmi Chand*, 13(1977) DLT 33: 1976 RLR (N) 114. Court held that onus lies on the landlord to establish the change. The principle of plea of *res-judicata* can be waived by the party. It was also held that that passage of time may bring about change in the situation of tenant, but it is not every change justifies a fresh petition. It must be a change which from the point of view of the status and means of the tenant must be favourable to him, so that it could be said that what could not be justified in the context of the status and means of the tenant then, would be justified in his changed situation. It was, therefore, incumbent on the landlord to allege how the situation of the tenant had favourably changed as to constitute a change in the context so as to justify a fresh petition, and it is for the landlord to establish that there has been such changed before the bar of *res-judicata* could be said to have been lifted.

Question of applicability of section 11, CPC was raised in case *Sat Pat v. Sudershan Lal*, 9 (1973) DLT 1: AIR 1972 Del 295 and it was held that the general principle of *res-judicata* though not in the express terms of section 11 of the Code of Civil Procedure, applies to quasi-judicial decisions of tribunals other than civil courts. The effect of *res-judicata* is, however, confined to the matter which was “directly and substantially in issue” in the former litigation inter-parties. The time at which an event takes place is not necessary ingredient of the plea of *res-judicata*. Such time is relevant only to show that an event which has taken place prior to the former litigation would be within the knowledge of the parties to the former litigation.

It is held in *Chameli Devi v. C.C. Jain*, 49 (1993) DLT 506 that in absence of change of circumstances, second application is hit by the principles of *res-judicata*. In this matter, Competent Authority had not considered the consequences that will flow from the earlier decision in a similar petition filed before the Competent Authority, which should have in fact been considered. Such no-consideration had resulted in failures



of exercise of jurisdiction vested in him under the law and impugned order was set aside.

#### 4. Competent Authority Whether is a Court

Competent Authority technically cannot be held as a court though it is a quasi-Judicial Tribunal as held *Mohinder Singh v. Competent Authority* (II) Slum Areas, Delhi, 1973 RLR 232: 11 (1973) DLT 434: AIR 1974 Del 219: 1973 Ren CR 306.

It is also held in *Shish Chan v Bhagwan Dass*, 1973 RLR 688 that Competent Authority appointed under Slum Areas Act is not a court within the meaning of section 195(1)(b) of the Code of Criminal Procedure.

#### 5. Section 19 whether applicable to commercial premises

Both residential and commercial premises are include within the purview of Slum Act. Provisions of section 19 are applicable to non-residential premises as much as they are applicable to residential premises as held in *Gauri Shankar v. Financial Commissioner*, 1975 RLR 413

#### 6. Person Competent to Institute Proceedings under Section 19

An application filed by a co-owner without the consent of other co-owners and without joining them as a party is found incompetent to institute the proceedings for obtaining permission of eviction of the tenant as held in *Mahinder Kumar Khandelwal v. Padam Chand*, 26 (1984) DLT 452: (1984) 2 Ren CR 347. It was also held in this case that where one co-landlord withdraw the General Power of Attorney in favour of another co-landlord, an application under section 19 of the Act cannot be made by one co-owner without joining the other co-landlord.

#### 7. Against Whom Proceedings under Section 19 can be Instituted

A tenant against whom an -eviction decree is passed remains tenant for purposes of the Act and he cannot be sued in a civil court after refusal of permission. But on his death, his heirs being not tenants can be evicted without necessity of permission as per case *Bishan Singh v. Kala Wati*, 1975 RLR (N) 29: AIR 1976 Del 133.

A person against whom an eviction order has been passed may not be a tenant under Delhi Rent Control Act, 1958 but he continues to be a tenant under Slum Areas (Improvement and Clearance; Act, 1956 even if Authority under the latter Act refused permission to execute the decree. Landlord cannot treat such person as trespasser and use him for recovery of

possession without obtaining permission under section 19 of Slum Areas (Improvement and Clearance) Act. Such a suit is barred by section 37A of the Act and also by the principle of *res judicata* as held by Supreme Court in *Lai Chand v. Radhakishan*, 1977 RLR (SC) 215: AIR 1977 SC 789: (1977) 2 SCC 88.

As per view given in *Bakshish Singh v. Padam Narain*, 1972 RLR (N) 62 an eviction decree passed against joint tenants is indivisible and joint tenancy cannot be split up and case of each individual tenant cannot be considered separately.

The Word “tenant” in section 19 does not include sub-tenant or occupier, whether lawful or unlawful and Competent Authority is concerned Only with means of tenant even if sub-tenant has been made a party as held in *Shri Kishan v. Mahabir Singh*, 1972 RLR (N) 64.

If a partnership firm is a tenant then all its partners are tenants whose liability to landlord does not cease on dissolution of the firm, LR’s of such a deceased partner (if contract of tenancy has not been terminated) are entitled to inherit tenancy rights as per view given in *Usha Bhasin v. Competent Authority*, 1980 RLR 84: 17 (1980) DLT 353.

It is held in *Punnu Ram v. Chiranji Lai Gupta*, 1982 RLR (FB) 576: AIR 1982 Del 431 that section 19(4) protects only a tenant and not a licensee or mere occupiers. A tenant against whom permission is granted cannot claim alternative accommodation. Improvement and clearance may be by the State or the owner.

In *Sham Lai v. Ram Chand Siriram*, 1972 RLR (N) 200: ILR (1972) II Del 841 it is held that section 19 affords protection only to tenant or the ex-tenant and not to their legal representatives.

Supreme Court in *Lakhmi Chand Khemani v. Kauran Devi*, (1966) 2 SCR 544: AIR 1966 SC 1003 is of the view that section 19 of the Slum Areas (Improvement and Clearance) Act, 1956, did not in any way affect the definition of “tenant” in Delhi Rent Control Act. Section 19 only says that a person who has obtained a decree in ejection against a tenant shall not be entitled to execute it without the previous permission of the prescribed authority. It does not say that a tenant suffering the decree still continues to be a tenant for any purpose. The section does not purport to define the word ‘tenant’ in any way. It assumes that a decree of eviction has been passed against a tenant. No question as to what the rights of a tenant against whom a decree in ejection has been passed in view of section 19 of the Slum Areas Act are, arises in this appeal the only point being whether he is a tenant within the Act of 1958 so as to oust the jurisdiction of a Civil Court to entertain

the suit. we think he is not, for section 2(1) of the Act of 1958 must be read by itself and its meaning cannot be affected by any consideration derived from section 19 of the Slum Areas Act.

### 8. Simultaneous Filing of Civil Suit and Applying for Permission under Section 19 of Slum Areas (Improvement and Clearance) Act, 1956

It is held in *Devi Pershad v. Ghanshyam Das*, 1987 RLR 82: 31 (1987) DLT 62 that if a landlord applies for permission under section 19 in respect of tenanted premises and files a suit for possession in respect of another portion claimed to be unauthorized construction (as a trespasser) then proceedings under section 19 cannot be stayed because of the civil suit. In this case, dismissal of stay application by Competent Authority was upheld by holding that for filing a suit for dispossession of a trespasser no such permission is required. It is also held that for deciding an application under section 19 of the Act the only thing which has to be seen is whether a tenant, if evicted is likely to create a slum. For this purpose, his capacity to acquire alternate accommodation has to be seen. If there is any other challenge to the eviction petition on merits regarding the extent of tenancy or relationship of landlord and tenant, it can be made in the eviction petition and not in the application under section 19 of the Act.

### 9. Scope of Inquiry of Competent Authority

In *Sat Pal v. Sudershan Lal*, 9 (1973) DLT 1: AIR 1972 Del 295 it is held that according to section 19 (3) of the Slum Areas (Improvement and Clearance) Act, 1956 the application of the landlord has to be decided by the Competent Authority "after making such enquiry into the circumstances of the case as it thinks fit". The manner of this enquiry is deliberately left flexible by the legislature. It is of course subject to the basic principle of natural justice that both the parties must be given the opportunity of rebutting whatever material is placed before the Competent Authority against either of the parties.

### 10. Procedure for Conducting Enquiry

As per view of Delhi High Court in *Mohinder Singh v. Competent Authority, (II) Slum Areas, Delhi*, 1973 RLR 232: 11 (1973) DLT 434: AIR 1974 Del 219: 1973 Ren CR 306, Competent Authority is not required to follow the provisions of Civil Procedure Code for conducting its proceedings. It is also held that under section 19(3) of the act, on receipt of the application of the landlord for permission to evict the tenant, the Competent Authority has to make "such summary enquiry into the circumstances of the case as it thinks fit". The discretion as to what procedure should be followed is, therefore, entirely of the Competent Authority. This discretion cannot be

controlled by the Rules framed under the Act. Therefore, the Slum Areas (improvement and Clearance) Rules, 1956 also leave it to the Competent Authority as to what procedure he would follow in holding the enquiry. The provisions of the Code of Civil Procedure have not been made applicable to it by section (4).

### 11. Availability of Alternative Accommodation

According to *Bal kishan v. P.R. Varshneya*, 1972 RLR (N) 192: 1972 DLT 390 the scope of alternative accommodation as referred to in clause (4) of section 19 has the element of suitability implicit in it and its non-consideration vitiates the orders.

In *Amar Nath v P.C. Sharma*, 1974 RLR (N) 83 it was also held that the Competent Authority must determine whether the tenant would be able to obtain alternative accommodation. It cannot ignore to do so, even if tenant gives undertaking in eviction proceedings to vacate within 2 months.

Tenant's Mother's house cannot be called an alternative accommodation where tenant can go and live as a right as held in *Om Prakash v. Lachhman Das*, 1972 RLR (N) 119: 1972 DLT 382.

If a tenant is not able to show that house built in the name of wife was built by her own resources, then tenant can be said to be owner of the said house as per *Sat Prakash v. D.K. poddar*, 1981 RLR 288

Delhi High Court in *D. Saroorp Chand v. Anguri Devi*, 1987 RLR 609 found that if a tenant takes a garage on rent in the neighbourhood of his residence and keeps his motor cycle, scooters and household goods in the same, then the purpose of letting garage would be residential, same being incidental, amenity and facility to residence. Absence of Kitchen, bath etc., is immaterial. A tenant who takes one stand before Slum Authority in Proceedings under section 19, of the Slum Areas (Improvement and Clearance) Act cannot be allowed to take different stand before Rent Controller.

Competent Authority not only to consider the availability of alternative accommodation but also to consider whether it would be to the needs of the tenant or not while granting or refusing the permission under clause (3) of section 19 of the Act. According to Hon'ble High Court as per decision in case *Balkishan v. P.R. Varshneya*, 1972 RLR (N) 192: 1972 DLT 390 the purpose of the said provision is obviously to see that the tenant would not create another slum if he is to be evicted. If the alternative accommodation is such that it cannot accommodate the tenant and the members of his family who are dependent upon him and who are living with him in the premises from which he is sought to be evicted, he would not

be able naturally to live in that alternative accommodation and would thereof, create another slum. This shows that an element of suitability is implicit in the words “alternative accommodation” used in sub-section (4)(a). It does not, of course, mean that the alternative accommodation should be exactly similar to and should have all the amenities, facilities and conveniences which he may be having in the premises from which he is sought to be evicted.

According to Delhi High Court in case *V.P. Singh, Rathour v. Ram Kali Devi*, AIR 1986 Del 149, section 19(4) of Slum Act requires that in granting or refusing to grant permission under section 19(3), the Competent Authority should ascertain whether alternative accommodation within the means of the tenant would be available to him if he were evicted. For this purpose two factors are to be considered, (a) Whether alternative accommodation is already available with him, and (b) Whether financial status of the tenant was such that he could find suitable alternative accommodation. The purpose of the provision is to see that the tenant would not create another slum if he were evicted. There is no doubt that suitability of the accommodation, has to be taken into account while deciding whether the tenant was likely to create slums, if he were evicted from the premises but it does mean that the alternative accommodation available to the tenant should be exactly similar or that it should have all the amenities, facilities and conveniences which he may be having in the premises from which he is sought to be evicted. The fact that the petitioner (tenant) had to live near his other family members who were residing in the adjoining house is not sufficient to refuse permission to file a suit for eviction.

As per *Bismilla Jain v. Jatin Tractors & Auto Spare*, 1985 RLR 477 there is no doubt that suitability of the accommodation has to be taken into account while deciding whether the tenant was likely to create any Slums if evicted, but that does not mean that the alternate accommodation should be exactly similar or that it should have all amenities, facilities and conveniences which a tenant may be having in the premises from which he is sought to be evicted.

The factors to be taken into consideration by the Competent Authority includes number of members of tenant's family as well as his capacity to afford alternative accommodation within family's means having regard to its requirement for bare substance and to check that no other slum is created after eviction elsewhere according to decision given in *Padam Narain v. Competent Authority*, 26 (1984) DLT (SN) 3.

In *Noor Ahmed v. Rehmat Bi*, 42 (1990) DLT (SN) 27 permission was granted by Competent Authority in respect

of tenancy area having only 68 square feet including one room of 8.6' x 8' size. Family of tenant comprised of 10 grown up members and means of tenant hardly sufficient to make both ends meet who was found not in a position to arrange alternative accommodation within his means, if evicted. Court held that in such circumstances permission should not have been granted.

## 12. Means of Tenant - Consideration to be Looked Into

In matter *Om Parkash v. Lachhman Das*, (1972) DLT 382:1,972-RLR (N) 119, consideration of availability of alternative accommodation within the means of the tenant in case of eviction is found an essential ingredient of provision of section 19 of the Act. It is necessary that the Competent Authority should address himself to the question of the means of the tenant and 'determine the same on the evidence placed before him.

An obligation has been put upon the Competent Authority in *Krishan Lai v. Ramo Devi*, 1972 RLR (N) 162: AIR 1973 Del 21: 1972 DLT 509 to hear witnesses for just decision. Means and alternative accommodation should be of the tenant himself and not of the Joint family.

The means of tenant has to be taken into consideration to find out whether he can afford alternative accommodation or not and the means of sub-tenant or other occupier whether lawful or unlawful have to be ignored as per view given in *Shri Kishan v. Mahabir Singh*, 1972 RLR (N) 64.

The burden to show the existence of inadequate means to procure alternative accommodation is upon the tenant as per view given in *Mohinder Singh v. Competent Authority* (II) Slum Areas, Delhi, 1973 RLR 232: 11 (1973) DLT 434: AIR 1974 Del 219:1973 Ren CR 306 because the means of the tenant are a fact within his special knowledge within the meaning of sections 102 and 106 of the Indian Evidence Act and, therefore he has to prove the same.

According to *Montgomery Coop. Goods Transport Co. v. P.C. Sharma*, 1975 RLR (N) 55 the initial onus to show the status and financial position of the tenant lies on the landlord. The tenant cannot object, if a direction is issued by the Competent Authority requiring him to produce the records showing his financial position. In this matter directions issued to tenant to produce his income-tax returns or the assessment orders is found not barred by section 138 of the Income-tax Act, 1961.

According to *Kirath Chand v. P.R. Varshneya*, ILR (1971) 1 Del 405: 1972 Ren CR 228, ordinarily the income of tenant alone must be taken into account in considering whether he had the means to find alternative accommodation, if evicted.



The income of the daughter-in-law could not be taken into consideration as the income of the tenant, especially in the absence of any material to suggest that the income earned by her was the result of an investment made by her husband or father-in-law. It was also held further that a court will interfere if the conclusion of the Tribunal could not reasonably be drawn from primary facts. In other words, if the conclusion drawn from the primary facts is one which cannot be drawn from them, there is scope for judicial review in such a situation.

The circumstances when income of tenant and nephew living with him came into consideration before the High Court in case *Raj Rani v. Ram Lai*, 1972 RLR 47.

It is held in *Charanjilal v. Kailash Ch. Jain*, 1982 RLR 299: 21 (1982) DLT 369 that means would include income of relations living with the tenant (like father's income and from house in the name of wife). To ascertain who are the family members, the Competent Authority can look into the electoral rolls.

It is held in *Ashrafi Devi v. Ganga Sahai Kishan Lal*, 1988 RLR (N) 68: 35 (1998) DLT 390 that if tenant's, wife is doing separate business though residing with husband then only his income is to be considered for determining means. Petty traders cannot be asked to produce Account Books.

If tenant society belongs to a big organisation, It is not entitled to protection even if it shows itself to be poor by indicating losses as held in *Hamida Sultan Begum v. Jamia Tibbia*, 1988 RLR (N) 69: 36 (1988) DLT 397: AIR 1989 Del 163.

As per *Mohd. Ismail v. M.K. Rai*, 1983 RLR 271: AIR 1983 Del 326 if a tenant is not earning or is not earning enough then income of family members (including that of daughter-in-law) living with tenant may be clubbed together for determining his means to find out alternative house. Calculating 12% of the means for finding another house is a reasonable approach of the Competent Authority.

In *O.P. Handa v. P.C. Sharma*, 46 (1992) DLT 525 permission to evict granted without any material regarding the emoluments of tenant not based on any material was quashed and it was held that initial burden to prove the status of the tenant is on the landlord. The conclusion of the Competent Authority that the monthly emoluments are around Rs. 600 per month whereas it was actually Rs. 240. This small amount was found not sufficient for arranging alternative accommodation. While quashing the permission order, landlord was granted liberty to institute fresh application under the aforesaid Act, if need arises.

In *Sri Pal Singh v. H.D. Birdi*, Competent Authority, 30

(1986) DLT 199 the averments of the landlord that tenant owned 11 bighas of agricultural land, was in possession of Rs. 33,000 the sale proceed of 24 bighas of land and was earning Rs. 1,200 p.m. and his son was earning Rs. 100 p.m. was not specifically denied and only evasive reply was given. The order of the Competent Authority believing the landlord and granting the permission to file eviction proceedings was upheld.

In a case *Hamida Sultan Begum v. Jamia Tibbia*, 1988 RLR (N) 69: 36 (1988) DLT 397: AIR 1989 Del 163 at the relevant time as per the balance-sheet, tenant had fixed assets of over Rs. 2 lakh. Its annual income was over Rs. 30,000 besides reserve funds. Though it was true that the expenditure is much more than the income received from tuition fee, admittedly every year all the deficiency is made up by donations from Hamdard National Foundation. Thus, even though the respondent was showing losses, it had means to find alternative accommodation. This is also obvious from the fact that tenant had purchased properties only a couple of years before the permission was sought by the petitioners. The grant of permission was found justified.

In *Ratan Lai v. Mohabir Singh*, 30 (1986) DLT 148 where landlord proved that tenant was earning Rs. 9100 p.m. and premises was being used commercially and tenant was in occupation of 1384 sq. ft. covered area and rent at the rate of 12% of Rs. 9100 coming to Rs. 1,092 then holding that he could not acquire alternate accommodation in a non-slum area within his means is unbelievable as he could be in a position to spend Rs. 300 p.m. more for the acquisition of another alternative accommodation. It is further held that in many cases, where a person is evicted, it may not always be possible for him to maintain all the previous items of expenditure on the same scale as before and his capacity to secure alternative accommodation cannot be determined on the footing that all the expenditure must be allowed to continue as before.

Where wife/tenant is running a petty juice shop and her husband is not assisting her due to strained relations then means of husband of tenant cannot be clubbed with her means. The availability of alternative accommodation at the rate of Re. 1 per sq. ft. is also found highly unrealistic. Permission could be refused in such situation as held in *Ashrafi Devi v. Ganga Sahai Kishan Lal*, 35 (1988) DLT 390: 1988 RLR (N) 68.

Where son and grandson of tenant were earning members of the family and they were joint in mess, their income has to be clubbed with that of the tenant's income to find the status of tenant under section 19 of the Act as per view given in *Vishashar Nath through L.R.s v. Competent Authority*, 36 (1988) DLT (SN) 6. In this matter existence of telephone connections,

having many firms names of which were found mentioned in the wedding card and availability of fixed deposits were found sufficient to treat tenant a person of means.

As per view given in *Sat Pal v. Sudershan Lal*, 9 (1973) DLT 1: AIR 1972 Del 295 the issue to be decided by the Competent Authority under section 19(4) of the Act is whether at the time when the application is made by the landlord and is defended by the tenant, the income of the tenant is such to enable him to find alternative accommodation. The income of a person is not something which must remain the same at all times. This is more so in case of a person who was not a mere wage earner but who could do business. Business income is always liable to change according to the fortunes of the business.

### 13. Onus to Prove Income Upon Whom?

It is held in *Mandir Das Jain v. P.R. Varshneya*, 1972 RLR (N) 41: AIR 1973 Del 71 that the onus of proving the income and status of the tenant is on the tenant as the facts are within his special knowledge.

In another matter *Ramji Lal v. H.C. Arora*, 1976, RLR (N) 12, it is again held that as per section 106 of Indian Evidence Act, final burden to prove tenant's status is upon him as he is the best person to disclose his income and resources.,

In *Sanatan Dharam Yuvak Sabha v. Financial Commissioner, Delhi*, 22 (1982) DLT (SN) 8, landlord alleged tenant to be man of means then the onus of proof shifts and it is for the tenant to prove what is his income. This principle has been laid down because the extent of the income, is within the special knowledge of the tenant and no one else.

It is held in *Girdhari Lal v. G.C. Jain*, 1980 RLR 299:17 (1980) DLT 269 that a tenant must disclose his income and that of his dependents with candour, it is within his knowledge and if he does not do so with clean hands, then adverse inference may be raised against him. A tenant who does not disclose his income and withholds relevant information disentitles himself by his conduct to relief under Article 226 of Constitution of India. The "clean hands" theory is just another name of adverse inference which a tribunal is entitled to raise if a party does not disclose the information he possesses. The Competent Authority has to apply the means test. That is the determinative test. If the tenant does not assist in the inquiry and does not state his means or the means of the dependents the authority can do nothing else except to raise presumption of adverse inference.

If landlady alleges that tenant has decent income and tenant does not produce his Account Books, then landlady has to be believed as held in *Asu Ram v. Radhabai*, 1983 RLR (N) 68.

As per law laid down in *Parma Nand v. Sneh Lata*, 1983 RLR 285, landlord can give only a rough estimate of tenant's income. Tenant on his part must make full and truthful disclosure. Since passing of the Act in 1956, population and commerce have tremendously increased in slum areas with the result that vested interests have developed in their continuation.

As per *Chiranjilal v. Kailash Chand Jain*, 1982 RLR 299: 21 (1982) DLT 369 initial onus is on the landlord but it is very light. Once the landlord has averred that the income of the tenant was sufficient to provide him with alternative accommodation and a figure is indicated then thereafter, it is for the tenant to prove to the contrary.

### 14. Consideration before Competent Authority while Granting or Refusing Permission

According to decision given in *Raj Rani v. Dwarka Das*, 1972 RLR (N) 13 non-payment of rent is not a relevant consideration and cannot be taken into consideration under section 19(4) of Slum Act because the grounds under Delhi Rent Control Act are irrelevant. However, tenant living outside Delhi is not entitled to any protection as section 19(4) requires the Competent Authority to take into account whether the alternative accommodation within the means of the tenant would be available to him in Delhi, if he is living in the premises in dispute. If he is not living in Delhi the question of his need cannot be said to exist. In this matter tenant has been pleading since long that he is shortly to come back but had not done so upto the date of decision so that issue was found need not be considered.

As per decision in case *Abdul Haq v. Hafiz Abdul Rashid Khan*, 1972 RLR 177: AIR 1975 Del 13 for considering the question of grant of permission to execute eviction order, the Authority should take into consideration the income of all persons living with the tenant.

As per *Bismilla Jain v. Jatin Tractors & Auto Spare*, 1985 RLR 477 in the case of business firm, Competent Authority and Finance Commissioner must apply their minds to all the facts and circumstances and not be guided by balance sheets alone which are usually made to avoid taxation. The Act was made for protection of poor persons and not to business men who float companies and show losses. If person who have financial interest in a Pvt. Ltd. Co. own several other concerns and are sufficiently rich, no protection is contemplated under the Act because even if eviction order is passed the company is not likely to create slums. The Act was enacted for giving protection to poor individual tenants.

As per *Chiranjilal v. Kailash Chand Jain*, 1982 RLR 299:

21 (1982) DLT 369 question of status of landlord being benamidar is irrelevant.

### 15. Findings of Competent Authority

The decision of Competent Authority should be based upon evidence on record and not on surmises or conjectures as held in *Balak Ram Jain v. Angoori*, 1975 RLR (N) 120 and *Brij Lal v. K.K. Chowdhry*, 1974 RLR (N) 4.

It is the quality and not the quantity of evidence which is important. Competent Authority is entitled to reject a statement or a contention having regard to the common course of events and the surrounding circumstances as held in *Bishan Singh v. Kala Wati*, 1975 RLR (N) 29: AIR 1976 Del 133.

If Competent Authority patently ignores vital evidence, then its order is bad according to *Ujjagar Singh v. Kanwar Sen*, 1975 RLR (N) 121.

As per law laid down in *Parma Nand v. Sneh Lata*, 1983 RLR 285, though procedure prescribed in section 19(3) is summary, the matter is stretched as if it is suit. Section 19(5) requires giving of reasons if permission is refused but Act does not require necessity of reasons in case of grant. But courts are taking view that in latter case also there should be reasoned order.

In *Ali Hasan v. M.S. Shami*, 3 (1967) DLT 681 it was held that the Competent Authority has to consider the case objectively before deciding either to grant or to refuse to grant the permission applied for by the landlord. It was further held that no doubt it is true that the final order which the Competent Authority passes must be one granting or refusing to grant the permission asked for by the landlord. The other factor that has to be noted is that under section 19(4), the statute requires the Competent Authority to take into account certain factors, one such factor being whether an alternative accommodation within the means of the tenant would be available to him if he were evicted. It cannot be denied that the function of the Competent Authority under section 19 is a quasi-judicial function. Therefore, even if the statute does not require him to state the reasons for his conclusion, by the very nature of his function, he will have to state the reasons for his conclusion even if he grants the permission applied for by the landlord. It is not a subjective satisfaction of the Competent Authority that is contemplated by the Act and the very requirement that the Competent Authority must take into account certain factors clearly postulates that the Competent Authority will have to consider the case objectively before deciding either to grant or to refuse to grant the permission applied for by the landlord. Therefore, if the Competent Authority comes to any conclusion with reference to the factors which he is called

upon to take into account and that conclusion or finding is not supported by any evidence on record or is contrary to the evidence available on record, the order of the Competent Authority cannot stand.

As per *Mohammed' Sayeed v. Chiranji Lal Gupta*, 24 (1983) DLT 93: AIR 1984 Del 104 Competent Authority is not concerned with question whether relationship of landlord and tenant exists or need of landlord is bona fide. Competent Authority acting under section 19 of the Act, is concerned only with the exercise of his powers to grant or not to grant permission in the context of the provision of sub-section (4) of section 19 of the Act. All the other enquiries, including whether a person is a tenant or is not a tenant, or a landlord needs or does not need the premises, are outside the scope of the enquiry contemplated by the section 19 of the Act. These are matters which have to be considered by civil courts or by Rent Controllers.

### 16. Conduct of the Tenant How Far is Relevant

How far the conduct of the tenant can effect decision of Competent Authority while considering application under section 19 of Slum Areas (Improvement and Clearance) Act, 1956 came into consideration before court in *Bhur Singh v. G.C. Jain*, 24 (1983) DLT 122: 1983 RLR 444: AIR 1984 Del 5 and it was held that while there can be no doubt that the conduct of a tenant, as indeed any other party to proceedings, which is connected either with the proceedings or with the question in controversy in the proceedings, would be relevant, there would be legal impediments in taking into account conduct which is either not germane to the question in controversy between the parties or does not partake of the character of the manner in which the parties have conducted the proceedings in a court or before an Authority. Default in payment of rent in certain circumstance is one of the grounds for ejection of a tenant. The protection of section 19, nevertheless, not denied to a tenant against whom an order or ejection has been made on ground of non-payment or who may be sought to be ejected on that ground. To deny protection of the Statute to a defaulter in the payment of rent would have the effect of virtually amending the provisions of section 19 and restricting its operation to cases where the tenant has not been in default in payment of rent. If the question as to default in the payable of rent is neither relevant for a decision of the question in controversy before the court under article 226, of the Constitution or before the Authority under section 19, the conduct of the tenant in relation to it could not possible be taken into account as either of the levels. Whether or not the Authority would be entitled to take that into account in granting discretionary relief, it is beyond doubt that the Authority was not entitled to and the order of



the Authority is, therefore, patently bad in law. It is duty of the court to demolish such an order either under article 226 or in exercise of power of superintendence of this court apart from the question, if the party seeking relief, is disentitled to it on account of its conduct. But even if it be assumed that the court was entitled to take that conduct into account it is a little difficult to understand what prevents the court from compelling the tenant to purge himself of that and make a conditional order. If court as discretion in granting relief, it is equally entitled to moderate relief so as to prevent unnecessary hardship being caused to the landlord. Refusal to give relief in the circumstances could be justified only, if such refusal on the ground of conduct was intended to be punitive. The court could perhaps balance the conflicting claims of the parties by making a conditional order.

### 17. Where Permission of Competent Authority is Required

According to the decision given in *Albein Plywood Ltd. v. Janak Kapur*, 1993 RLR (N) 62 if a landlord obtains an eviction decree on the ground of sub-letting in respect of a premises in slum areas without obtaining permission under section 19, then the eviction order is nullity.

### 18. Where Permission can be Granted

As per *Abdul Ghaffoor v. Abdul Wahid*, 1976 RLR (N) 62 permission under section 19 may be granted without enquiring the financial status of the tenant, if he is in arrears of rent. Discretion cannot be exercised in favour of such a person.

It is held in *Charanjilal v. Kailash Ch. Jain*, 1982 RLR 299: 21 (1982) DLT 369 that if a petitioner does not come to Court with clean hands and suppresses material facts, he is not entitled to consideration of his case. In tenant's challenge to adverse order under section 19 of Slum Areas (Improvement and Clearance) Act, 1956, landlord can produce documents to rebut tenant's case.

### 19. Where Permission should be Ordinarily Granted

It is held in *Kishan Lai Mahadev Pershad v. I.K. Sharma*, 1973 RLR 315: AIR 1974 Del 32 that if a tenant doing business of Delhi shifts to Jaipur and begins doing business there then permission to sue may be granted on this fact alone and status of tenant need not be decided.

When tenant is found not living in the disputed premises then no question of creating another slum area arises and in that situation, permission granted can be said as valid as held in case *Jagan Nath v. Har Lal*, 46 (1992) DLT 644. In this case tenant was giving details of only duplicate Ration Card and not giving any details of loss of original Ration Card. That Duplicate Ration card also showing date of one year after date

of application. Court found that the tenant had deserted the premises and permission granted for his eviction is justified.

Delhi High Court in *Shadi Lal v. Competent Authority*, 2000 VII AD (Del) 291: AIR 2001 Del 76 is of the view that where during pendency of the application for grant of permission, arrears of rent are paid by the tenant, then it would not wipe out the cause of action already accrued. The application would still lie though it is a different matter, the tenant may be entitled to the protection under section 14(2) of the DRC Act from eviction in the case of first default.

### 20. Where Permission of Competent Authority not Required

According to view given in *R.K. Parikh v. Uma Verma*, ILR (1978) 2 Del 786: AIR 1979 Del 17: 1978 RLR 592, if landlord brings eviction case under summary procedure on the ground of eviction given in section 14(1)(e) of the Delhi Rent Control Act, then he need not obtain permission under section 19 of the Slum Act.

Again in *Krishna Devi Nigam v. Shyam Babu Gupta*, AIR 1980 Del 165: 1980 RLR 215: 17 (1980) DLT 344 it was held that an eviction petition filed under section 14(1)(e) under summary procedure introduced by Amended Rent Act in 1976, can be filed without permission under section 19 of the Slum Areas (Improvement and Clearance) Act if tenanted premises is situated in a slum area. While overruling earlier decision of case *Wazir Chand v. Narain Devi*, 1978 RLR 88, it was held that non-obstante clause in Amended Rent Act of 1976 being later than that of Slum Areas (Improvement and Clearance) Act, 1956 must prevail over latter. Same view was endorsed in case *Ravi Dutt Sharma v. Ratan Lal Bhargava*, AIR 1984 SC 967: (1984) 2 SCC 75: 25 (1984) DLT 235.

Delhi High Court in *Shyam Kishore v. Roop Saree Kendra*, 2003 (69) DRJ 544 held that suit for recovery of arrears of rent is maintainable without any prior permission of Competent Authority but for suit for recovery of mesne profits, such permission is required.

According to view given in *Ram Singh v. Nathi Lal*, 23 (1983) DLT 35: AIR 1983 Del 114 where notice of determination of contractual tenancy was issued and thereafter statutory tenancy expired, then his heirs become only trespassers with no right to remain in occupation. No permission under section 19 of the Slum Areas Act is necessary for institution of suit for possession against his heirs or legal representatives. Tenant continuing in possession despite determination of tenancy will not acquire status of tenant merely due to acceptance of rent by landlord. It was further held that the Competent Authority, acting under section 19 of the Act, is concerned only with the exercise of his powers to grant or not to grant

permission in the context of the provisions of sub-section (4) of section 19 of the Act. All the other enquiries, including whether a person is a tenant or is not a tenant, or a landlord needs or does not need the premise are outside the scope of the inquiry contemplated by section 19 of the Act; These are matters which have to be considered by civil courts or by Rent Controllers.

Where a suit is instituted against defendant whose possession is described as of unauthorized and unlawful occupant, then permission under section 19 of the Act is not required as held in case *Mohan Lal Goela v. Siri Krishan*, AIR 1978 Del 92: (1977) 2 Ren CJ 505 because a sub-tenant is not a tenant under the Act and hence to evict him, owner need not seek permission under section 19. A sub-tenant whether lawful or unlawful does not appear to have been intended to be given any protection from eviction under the Act. Permission under section 19 of Slum Areas (Improvement & Clearance) Act, 1956 is not necessary by a tenant to sue his lawful or unlawful sub-tenant under the Delhi Rent Control Act as held in *Kailash Chand v. Ganpat Rai*, 1989 RLR 274: 38 (1989) DLT 318.

## 21. Second Permission where Required

If on the basis of the permission under section 19, an eviction case was filed and the same got dismissed, then it is not necessary to obtain fresh permission for filing a second or subsequent eviction case. Earlier permission does not get exhausted on filing of eviction case as held in *Hari Raj Kishore v. Raj Kumar*, 1979 RLR 103.

In *Murarilal v. P.C. Sharma*, 1988 RLR 685: 36 (1988) DLT 54: AIR 1989 NOC 177, it was held that if landlord obtains permission to sue tenants on the ground of rebuilding house under section 19(4)(b) and there is no determination of tenant's means under section 19(4)(a) under Slum Areas (Improvement and Clearance) Act, 1956 and landlord files eviction suit on the ground of rebuilding under section-14(1)(f) and (g) of Delhi Rent Control Act and fails, then landlord is not entitled to use old permission of Slum Authority to sue tenants on other grounds under the Delhi Rent Control Act.

In *Wahid Hussain v. Nisar Ahmed*, 1985 RLR 177: 27 (1985) DLT 202: AIR 1985 Del 457, it was held that for suing under sections 14(1)(e) and 25B, permission under section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 is not necessary. If landlord obtains eviction order under section 14(1)(e) and same comes under jeopardy in appeal, he can sue tenant under one or more eviction grounds in section 14 of the Rent Control Act. Facts in each ground if exist constitute an independent cause of action and landlord is not debarred by Order 2, rule 2, CPC, from filing another eviction

case. But if property is in slum area, then landlord must obtain permission under section 19. Competent Authority cannot refuse to entertain application on the plea that eviction order has already been made under section 14(1)(e).

Again in *Mohd. Usman v. Mohd. Siddiq*, 28 (1985) DLT 279, it was held that where first application for eviction after getting permission under section 19 of Slum Act on account of non payment of rent was dismissed under section 14(2) then the second application for eviction for fresh default without obtaining permission again is maintainable as permission once obtained did not stand exhausted on dismissal of first application. Second eviction application on the basis of previous permission is competent.

However in *Bishamber Nath v. Urmila*, 43 (1991) DLT 50, in respect of shop situated in slum areas, suit for eviction filed on ground of non-payment after permission from Competent Authority was dismissed by giving first benefit to tenant and on second default committed, fresh suit for eviction filed which was decreed but it was reversed in first appeal. In the second appeal by landlord, preliminary objection that second eviction petition filed by the appellants and the other proceedings subsequent thereto are not maintainable without fresh permission from Competent Authority was sustained and appeal was dismissed. While relying upon the decision of Supreme Court in *Mohd. Usman's case*, C.A. 1906/87 D 26-8-1987 (SC), it was held that even if the gap between the two orders is very short fresh permission has to be obtained. The permission granted by the Competent Authority under the Act gets exhausted when a final order is passed by the appropriate court either allowing or dismissing the eviction petition. If the landlord has to file a fresh petition it is necessary for him to obtain fresh permission under section 19 of the Act for the second time before filing the second eviction petition. Court also rejected the plea that this objection raised first time in second appeal cannot be allowed and deem to have been waived by holding that pure question of law can be raised at any time during the proceedings. If the landlord has to file a fresh petition of eviction it is necessary for him to obtain fresh permission under section 19 of Slum Areas (Improvement and Clearance) Act, 1956.

In *Mahavir Prasad v. Sukhdev Mongia*, 40 (1990) DLT 82: (1990), 2 RCJ 254 it was found that where Suit for possession against a trespasser was filed who alleged himself as tenant but rent receipt of advance rent of one year produced was found contrary to section 5(2)(b) of the Delhi Rent Control Act and there was no Rent note and even receipt produced was neither stamped nor printed one but was a typed receipt whose existence was not disclosed in earlier reply to notice, then the rejection of such receipt was found justified and it

was held that the suit was not barred under section 50 of the Delhi Rent Control Act and under section 19 of Slum Areas (Improvement and Clearance) Act, 1956. The plea taken that a suit for possession by a co-owner against a trespasser without impleading the other co-owner was also rejected.

## 22. Change of Circumstances - Second Application Maintainable

According to *Charanjilal v. Kailash Ch. Jain*, 1982 RLR 299: 21 (1982) DLT 369 a second petition is not barred by res judicata if there is a change of circumstances (like enhancement of tenant's means). Means would include income of relations living with the tenant (like father's income and from house in the name of wife).

It is held in *Chet Ram v. Budhwanti*, 1976 RLR (N) 63 that in a second petition for permission, Authority has only to see whether there has been any improvement in the tenant's means.

Again it is held in *Des Raj v. Noor Khan*, (1985) 1 Ren CR 606: AIR 1985 Del 470 that despite dismissal of initial application to get decree of eviction enforced, second application is maintainable for same relief in case of changed circumstances as there is no limitation on the right of the decree-holder to make application under section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 seeking permission to execute the decree.

## 23. Instances of Some Orders of Competent Authority

In *Chander Bhan v. Chattar Singh*, 4 (1968) DLT 501: AIR 1986 Del 229 the restraint order not to execute eviction decree passed against a tenant who had not paid rent to his landlord for more than six years was held bad as it would amount to conferring on him a right to remain in possession without paying any rent forcing the landlord to go on instituting successive proceedings for recovery of rent every month. It was held that this factor would be quite relevant and germane for being taken into account in granting or refusing permission under section 19 of the Act.

In case *Tulsi Bai v. J.R. Parshad*, 5 (1969) DLT 421: AIR 1969 Del 322, the order of Competent Authority directing the tenant to pay arrears of rent in instalments along with future rent and in case of default, deemed permission to execute ejectment order has been granted without further order was held as valid.

In *Murari Lai v. P.C. Sharma*, 36 (1988) DLT 154:1988 RLR 685, permission to institute suit of eviction on the ground of building or rebuilding as contained under section 14(1)(g) of the Delhi Rent Control Act as granted by Competent Authority in the interest of improvement and clearance of slum area

without looking into status of tenants who were very poor was held justified. It was also held that grounds of eviction under Rent Control Act have to be co-related to clauses (a) and (b) of section 19(4) of Slum Areas (Improvement and Clearance) Act, 1956.

As per *Jagotri Lal v. Chiranjil Lal*, 1973 RLR 521 Competent Authority can not break up tenancy and grant permission under section 19 in respect of a portion and refuse in respect of other. Order must be categorical and not filed before final order.

Supreme Court in *Neelakantan v. Mallika Begum*, 2002 (1) RCR (Rent) 166: AIR 2002 SC 827 held that in a case of eviction of tenant, if a plea is taken by tenant that the premises falls in Slum Area which is denied by the landlord, then onus lies upon the tenant to establish this fact.

## 24. Grounds of Eviction

Competent Authority should confine consideration to grounds in section 19(4) and totally ignore grounds of eviction in Delhi Rent Control Act, 1958 as held in *Mohanlal Ahuja v. Ramjas Foundation*, 1972 RLR 1: AIR 1972 Del 148.

## 25. Execution of Eviction Decree

In *Shankar Lal v. Shadi Ram Swaroop*, 8 (1971) DLT 311 question of limitation to execute the decree also arose where permission to execute the same was not granted, by Competent Authority. It was held that where decree has become inexecutable then the Rent Court ought to have adjourned the execution application sine die with liberty to get it revived after receipt of permission of Competent Authority but it should not be dismissed. It was held, that that the prohibition contained in the Slum Areas (Improvement and Clearance) Act, 1956 deprives the decree-holder of his right to execute the decree and when his right to move the application has itself been taken away then in that case no question of suspension of period of limitation or stoppage of the running of the time would arise because in the absence of his right and remedy to move the particular application, the bar of limitation to move it will be deemed not to have commenced to operate. Section 9 of the Limitation Act does not govern the case in such situation and starting point of limitation would not run against him during the period the bar of Slum Areas (Improvement and Clearance) Act is in operation. There is no question of any suspension of right to execute the decree nor is it either in any provision of the Limitation Act.

In an interesting case, decree for eviction was passed before enactment of Slum Areas (Improvement and Clearance) Act, 1956 and during execution proceedings, when this Act has already come in force, no objection to the execution was



raised. However later on the area where property was situated was denotified and came out of the purview of the Act, then the objection of non taking of permission under section 19 was raised. Delhi High Court in *Alauddin v. Hakim Syed Hussain*, 2004 VII AD (Del) 235: 2005 (2) RCR (Civil) 161 held that disability if any attached to execution proceedings had stood removed so execution is maintainable. It was also held that the executing court ought to have adjourned the application till the necessary permission was obtained by the decree-holder and should not have continued with the execution proceedings.

## 26. Miscellaneous Matters Relating to the Proceedings of Competent Authority

In *Mam Chand v. Sumat Prashad*, 5 (1969) DLT 51 failure of copying agency to secure the permission of the court or the Deputy Commissioner came into consideration. It was held that if the Copying Agency Rules are not intended to be a trap for ignorant or unwary litigants it should be the duty of the Copying Agency to forward the application to the court concerned for permission in case it is found that his record is still in the custody of the presiding officer of that court. There is no warrant for refusing such an application on the ground that the previous permission of the Presiding Officer of the Court, has not been obtained. There is a great deal of practical wisdom and soundness behind this Rule but the utility an application the Copying Agency shows a little more courtesy and thoughtfulness in directly forwarding the application to it with itself for several days and then returning it to the applicant with the endorsement "refused". This evinces an attitude of being obstructive rather than being helpful and responsive to the needs of citizens. A person who applies to obtain a certified copy has to be informed by the Copying Agency when his application is refused. He can not be expected to call at the office of the Copying Agency every day in order to ascertain what action, if any had been taken on his application.

In *Mohan Singh v. Subhash Chander*, AIR 1980 SC 315: 1980 RLR 232 (SC), it is held by Supreme Court that clerical mistakes in the orders of Competent Authority can be overlooked by the Rent Court. In this case, permission to evict tenant from 1st and 2nd floors was sought and Competent Authority granted permission but by mistake omitted to mention that permission was also in respect of 2nd floor, then tenant could not claim that permission was only in respect of portion of tenanted premises. Rent Controller was justified in looking into pleadings etc., to conclude that omission was due to a clerical error.

## 27. Right of Legal Representative to Contest the Proceedings

Legal representative of deceased whose tenancy was not

terminated are entitled to contest the proceedings before Competent Authority as held in *Ajudhia Pershad v. Chief Commissioner of Delhi*, 1979 PLR 107 on the ground that lease of premises creates heritable rights. It would not make any distinction even if the premises was let out to partnership firm because each and every partner is treated as a tenant.

Similarly wife of deceased tenant who was dependent upon him is eligible to oppose the application for obtaining permission for institution of eviction proceedings as per view of court in case *Lachmi Devi v. Hira Lal*, 34 (1988) DLT 395.

According to decision given in *Bhagwati v. J.M. Malik*, AIR 1987 Del 184, legal representatives of deceased tenant are not entitled to protection under Act. Same view also can be found in the decision of Delhi High Court in *Sham Lal v. Ram Chand Siriram*, ILR (1972) II Del 841: 1972 RLR (N) 200 wherein it was held that section 19 affords protection only to tenant or the ex-tenant and not to their legal representatives.

In *Sri Pal Singh v. H.D. Birdi*, *Competent Authority*, 30 (1986) DLT 199 it is held that where there was an inordinate delay and laches in bringing on record the legal heirs without proper explanations for the substitution, the court will have to refuse to exercise its discretion.

## 28. Setting Aside of Ex-parte Order

Competent Authority is a quasi-judicial Tribunal and has an inherent jurisdiction to set aside an ex-parte order passed by it in case of improper service as held in *Mohinder Singh v. Competent Authority (II) Slum Areas, Delhi*, 1973 RLR 232: 11 (1973) DLT 434: AIR 1974 Del 219: 1973 Ren CR 306. Court is of the view that it is a basic rule of natural justice that no order adversely affecting the rights of a party or no order having civil consequences can be passed against a party unless the party is heard. Therefore, the Competent Authority, as a quasi-judicial tribunal, even if it is not a Court is bound to follow this procedure as a part of natural justice. It is also held that on setting aside of an ex-parte order, the Competent Authority should hold fresh enquiry and pass a fresh order and any order passed by "the Rent Controller holding that eviction case filed on ex-parte permission was valid is neither binding on the Competent Authority nor on parties before him. Competent Authority acting under section 19 would thus have inherent jurisdiction to withdraw the permission which had been granted by it to the landlord and the landlord would be made by the Controller to restore the benefit which he had obtained acting on such permission.

According to decision given in *Seth Bros. v. Seth Ram Nath*, 1972 RLR (N) 60, after an ex-parte order of permission under section 19, the Competent Authority does not become

functus officio and it can set aside ex-parte order.

In another matter *Mohinder Singh v. Shanti Devi*, 1973 RLR 479: 9 (1973) DLT 242 it is held that the Competent Authority has inherent power to set aside an ex-parte order of permission if the same is passed without service on the respondent as no one should be condemned unheard. On aspect of question of limitation in moving for setting aside ex-parte order, it is also held that though no period of limitation is fixed for making an “application for setting aside an ex-parte order passed by Competent Authority still one must apply within a reasonable time fixed by Limitation Act. However, the analogy of limitation prescribed for an application to set aside an ex-parte decree under Order IX, rule 13 of the Code of Civil Procedure will have to be borne in mind. Applications filed after the expiry of the period of such limitation would be regarded as unduly delayed. The Competent Authority would have the discretion not to entertain a delayed application in as much as it is specific statutory provision. In exercising such discretion, the Competent Authority would have to further bear in mind whether setting aside ex-parte permission would involve injustice or hardship. The inherent power would be so exercised by it as to avoid such hardship or injustice.

### 29. Power to Review its Order by Competent Authority

Competent Authority has power to review its own orders as per decision of Delhi High Court in case of *Mohinder Singh v. Competent Authority*, 1973 RLR 232: 11 (1973) DLT 434: AIR 1974 Del 219: 1973 Ren CR 306.

### 30. Dismissal in Default

Where previous application is dismissed in default, then there is no bar to move fresh application on the same facts as provisions of CPC are not applicable to the proceedings before Competent Authority as per the view given in *Mohammad Bashir v. I.K. Sharma and Delhi Wakf Board*, 25 (1984) DLT (SN) 32.

### 31. Dismissal as Withdrawn

If an application is dismissed as withdrawn, then subsequent application, on the same, cause of action is not barred according to case law *Ashoka Marketing Ltd. v. B.D. Gupta*, 1976 RLR 217.

### 32. Right of Contesting Party to Cross-examine

According to case *Gurcharan Singh v. Ram Kaur*, 1974 RLR 142 Competent Authority is entitled to take additional affidavit or permit cross examination of a defendant or take oral or documentary evidence for testing veracity of persons who have filed affidavit before it.

### 33. Technical defects in application

According to view given in *Shri Kishan v. Mahabir Singh*, 1972 RLR (N) 64 grounds of eviction on which basis eviction is to be sought before Rent Court need not be stated in application under section 19 of the Slum Areas (Improvement and Clearance) Act.

In another matter *Gargi Devi v. Leila Saraswat*, 1986 RLR (N) 33 it is held that an application under section 19 should not be dismissed on technical ground that the printed form for application contains errors.

### 34. Limitation

As per *Union of India v. Ahmed Din*, 1973 RLR 565 an admission even if conditional admitting Jural relationship and the subsisting liability on the date when it is made would be an acknowledgement under section 19 and fresh period of limitation is available from its date.

According to the decision given in case *Tehl Chand v. Nur Khan*, 1985 RLR 285: 28 (1985) DLT 32 if an eviction decree obtained in 1960 is not executable due to refusal in 1960 to execute under section 19 of Slum Areas (Improvement and Clearance) Act, 1956, then execution is not time barred if permission under section 19 is granted in 1981 and execution petition is filed subsequently. Time in such case would begin to run from the date of permission when it becomes enforceable. If D.H. is once refused permission, he can again apply on change of circumstances of J.D.

Supreme Court in *Kashi Ram v. Rakesh Arora*, (1987) 4 SCC 84: (1987) 2 Ren CR 290: AIR 1987 SC 2230 held that to enforce decree of eviction from premises in slum area obtained on grounds of bona fide requirement, no permission under section 19 was required but it should have been filed within period of 12 years. In this case decree for eviction was passed on 15-10-1960 whereas execution was filed on 25-9-1979 which was clearly time barred. It was also held that decree passed by the Rent Controller even if it was not executable and enforceable unless permission under the Slum Areas (Improvement and Clearance) Act, 1956 had been taken, the steps for such permission had become barred as steps for filing the application under the Slum Act were not taken, on refusal of the first application within 12 years thereof.

### 35. Local Commissioner

In proceedings under section 19, if a local Commissioner is appointed and a party files objections against his report, then objections must be considered as held in *Harbhajan Singh v. Shakuntala Devi*, 1976 RLR 178: AIR 1976 Del 175.

### 36. Slum Act and. Public Premises Act

In *Jain Ink Manufacturing Company v. Life Insurance*

*Corporation of India*, (1980) 4 SCC 435: (1980) 2 Rent LR 650: AIR 1981 SC 670 the conflict between Slum Areas (Improvement and Clearance) Act, 1956 and Public Premises Act came into consideration. It was held that section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 clearly shows that it is in direct conflict with the Public Premises Act which expressly provides for the forum for evicting persons in unauthorised occupation of premises which fell in section 2 of the Public Premises Act. The Public Premises Act being subsequent to the Slum Areas (Improvement and Clearance) Act, 1956, as amended in 1964, and again being a special Act having a very limited sphere, must necessarily override the Slums Act. The Slum Areas (Improvement and Clearance) Act, 1956 was passed as far back as 1956 and the Public Premises Act was subsequent to the Slum Areas (Improvement and Clearance) Act, 1956 and would, therefore, prevail over the Slum Areas (Improvement and Clearance) Act, 1956.

### 37. Mode of Service

Service of notice by publication in the newspaper is not one of the modes of service and should not be used as held in *Mohan Lai v. P.R. Varshneya*, 1972 RLR (N) 58.

According to *Rameshwar Dayal v. Ram Avtar*, 1972 RLR (N) 59: ILR (1970) 1 Del 694 substituted service can be ordered only if personal service is not possible or refusal is satisfactory established.

### 38. Effect of Amendment on Pending Executions

Amendment made in the Act in 1964 applies upon the decree whether passed before or after the amendment, but it would not apply to such executions which were pending on the date of the amendment as held in *Chabil Das v. Saro*, 974 RLR (N) 112. Same is the view given in case *Mohan Lal Ahuja v. Ramjas Foundation*, 1972 RLR 1 wherein it is held the expression 'obtained' used in section 19 does not exclude decrees that were obtained before the amendment.

The effect of amendment in section 19 upon the pending execution application came into consideration before Supreme Court in *Vijendra Nath v. Jagdish Rai Aggarwal*, AIR 1967 SC 600: (1967) 2 SCJ 152: (1967) 2 SCR 138 and it was held that unless the Amending Act affects the pending execution proceeding by express words or by necessary implication, the rights of the parties in the pending proceeding must be decided according to the law in force at the time when the proceeding was commenced and the decree- holder will be entitled to continue the proceeding without obtaining a fresh permission from the competent authority. Thus, the new section 19 inserted by the Amending Act does not affect a pending execution proceeding either expressly or by necessary implication and makes no change in the law applicable to the

proceeding.

<sup>1</sup>[**20. Appeals.**—Any person aggrieved by an order of the competent authority refusing to grant the permission referred to in sub-section (1) of section 6A or referred to in sub-section (1) of section 19 may, within such time as may be prescribed, prefer an appeal to the Administrator and the Administrator may, after hearing the appellant, decide such appeal and his decision shall be final.]

### Comments

In *Ram Avtar v. Laxmi Narayan*, 1973 RLR 39, it is held that an application for permission under section 19, if filed before second appeal in High Court becomes proceedings without jurisdiction on admission of appeal. After dismissal of appeal High court may permit under Article 227 of the Constitution, amendment of application under section 19 for mention of fact and decision of appeal in High court.

According to Delhi High Court in case *Padam Narain v. G.C. Jain*, AIR 1984 Del 310 changes in the circumstances of tenant and landlord and their impact cannot be determined either by High Court in the proceedings under Article 227 or even by the Competent Authority in the proceedings, initiated with a view to seek leave to execute an order of eviction. There can be hardly any controversy that the Competent Authority under the Slum Areas (Improvement and Clearance) Act, 1956 would not be concerned either with the propriety or the correctness of an order of eviction sought to be executed or with the question if the situation in which the eviction order was made has changed so as to justify refusal to grant leave to execute the order. The Competent Authority, as indeed High Court, while dealing with an order made in any such proceedings, cannot be treated higher than an execution Court and the only question that can perhaps be agitated in such proceedings by way of defence, touching the validity of the order of eviction, would be on the basis that on account of total want of jurisdiction or some, other fatal infirmity the eviction order was a nullity. This is so because such a defence could be set-up at any time and anywhere, and even in collateral proceedings. In this case while dealing with application for permission for eviction of tenant, Competent Authority failed to consider the fact that his family was consisting of 12 members and he was just occupying premises measuring 421 sq. feet as well as whether tenant could make alternative arrangement within their means without creating slum elsewhere. However, instead of quashing the proceedings initiated by the owners, matter was remanded back in view

1. Subs. by Act 43 of 1964, sec. 11, for Section 20 (w.e.f. 27-2-1965).



of the drastic changes that are said to have occurred by lapse of time in the status, fortunes and situation of the different members of the family of the petitioners. It has also been a rather long struggle of the owners to evict the tenants, the proceedings for eviction having been filed as early as the year 1959. Determination of the extent and impact of these changes and that the factum and effect of these changes was left to be decided by the Competent Authority, after giving reasonable opportunity to the parties of being heard in relation to it.

It was held in *Usha Bhasin v. Competent Authority*, 17 (1980) DLT 353; 1980 RLR 84 that tenant has no right of appeal under section 30 of Act from order granting leave, but, order can be challenged under Article 227 of the Constitution. Court interpreted sections 19, 20 and 30 of the Act and held that section 30 provides for an appeal by any person aggrieved by a notice, order or direction issued or given by the Competent Authority but this is subject to an important qualification because of the opening words of section 30(1)—“Except as otherwise expressly provided in this Act”, Section 20 of the Act specifically deals with subject-matter of appeals from orders passed under section 19. It lays down that any person aggrieved by an order of the Competent Authority refusing to grant permission referred to in section 19(1) could prefer an appeal to the Administrator. In other words it is only the landlord who is likely to be aggrieved by the order refusing permission that can appeal to the Administrator, and section 20 does not provide for an appeal by the tenant against an order granting permission to the landlord. Section 20 and section 30 have to be construed harmoniously. The more reasonable construction appears to be that section 20 impliedly prohibits an appeal by the tenant where the order of the Competent Authority under section 19 is adverse to him and that section 30 only covers either notice, order or directions that may be issued or given by the Competent authority. Hence a petition under Article 227 is now maintainable against the order of Competent Authority granting leave to the landlord under section 19 of the Act.

The, powers of High Court under Article 227 of the Constitution of India in interfering in the proceedings exists as per decision given in case *Padam Narain v. Competent Authority*, 26 (1984) DLT (SN) 3 wherein it is held that if the Competent Authority is failing to consider important questions in granting or refusing leave to execute and its order suffers from fatal infirmity and liable to be quashed, then case can be remanded back for decision according to latest situation of tenant's family after giving reasonable opportunity to parties of being heard.

As per decision of High Court in case *Niamat Bi v. S.L. Dhani*, 1974 RLR 413 if conclusion of Competent Authority

is not correct according to affidavits on record, then same is based on no evidence and High Court can interfere under Article 226 of the Constitution.

If Competent Authority grants permission to sue (without considering tenant's means) on the only ground of tenant's conduct of omission to pay rent, tenant's conduct is no ground to deny relief under Article 226 of the Constitution of India. Writ Court may allow purge of such conduct by making conditional order as held in *Bhur Singh v. G.C. Jain*, AIR 1984 Del 5: 1983 RLR 443: 24 (1983) DLT 122.

In *Pioneer Chemical Co. v. Suraj Bhan Prem Raj*, 3 (1967) DLT 642, question of powers of High Court to interfere the decision of Competent Authority arose. It was held that writ jurisdiction under Article 227 of the Constitution of India is not a substitute for second appeal or as an alternative to a provision for an appeal which the Slum Areas (Improvement and Clearance) Act, 1956 has declined to the aggrieved tenant. It is not even intended to be a substitute for a second appeal. The right of appeal, for one thing, is by and large not subject to the discretion. A petition under Article 227 is an extraordinary remedy by way of superintendence given by the Constitution itself and is subject to the discretion of the Court, albeit judicial discretion, available in extraordinary circumstances where the court feels that the dictates of justice demand interference. Where the Legislature has in its wisdom considered it proper not to provide for appeals and revisions, the constitutional overall control of superintendence over judicial functions has, from its, very nature to be sparingly exercise. The terms in which this jurisdiction is created is undoubtedly very wide, but the court have traditionally acted under a self-imposed restriction and interference only in cases disclosing jurisdictional or serious legal infirmity causing injustice and not remediable by any alternative legal proceedings.

Again in *Chander Bhan v. Chattar Singh*, 4 (1968) DLT 501: AIR 1968 Del 229 scope of interference by the High Court came into consideration and it was held that that the interference under Article 227 of the Constitution of India is intended only for the purpose of promoting the cause of substantial justice. In any event, in common with Article 226, the exercise of power under Article 227 is also discretionary, depending as it does on the facts and circumstances of each case. In this case to restrain execution of eviction order against the tenant who had not paid rent to his landlord for more than six years was found bad as it would amount to conferring on him a right to remain in possession without paying any rent forcing the landlord to go on instituting successive proceedings for recovery of rent every month. This factor would be quite relevant and germane for being taken into account in granting

or refusing permission under section 19 of the Act.

Where Competent Authority while granting permission to file eviction application on ground on non-payment of rent, even observing that tenant was not expected to get alternative accommodation within his means, then the legality of order can not be challenged before Rent Controller or Tribunal and the remedy of tenant lay under Article 227 of the Constitution of India as held in *Mohd. Usman v. Mohd. Saddiq*, 28 (1985) DLT 279.

Raising of plea first time in second appeal that all owners did not apply for permission so application for permission to file suit for eviction was not maintainable was rejected in *Hamida Sultan Begum v. Jamia Tibbia*, 1988 RLR (N) 69; AIR 1989 Del 163: 36 (1988) DLT 397 by holding that the question of non-joinder of all the owners of tenanted property first time at such belated stage cannot be allowed to be raised.

In *Joginder Singh v. K.C. Johorey*, 44 (1991) DLT 658, High Court refused to exercise jurisdiction under Article 227 of the Constitution of India in order to interfere with the concurrent findings of facts. Court also upheld the taking of additional evidence by the Competent Authority. However, the case was remanded back to the Competent Authority as it had not considered the alternative plea and consternate only on one ground of permission though landlord sought permission both under section 19(4)(a) and 19(4)(b) of the Slum Areas (Improvement and Clearance) Act, 1956.

As per *Sri Pal Singh v. H.D. Birdi*, Competent Authority, 30 (1986) DLT 199 the Competent Authority is amendable to the jurisdiction of High Court under Article 227 of the Constitution.

<sup>1</sup>[**20A. Restoration of possession of premises vacated by a tenant.**—(1) Where a tenant in occupation of any building in a slum area vacates any building or is evicted therefrom on the ground that it was required for the purpose of executing any work of improvement or for the purpose of re-erection of the building, the tenant may, within such time as may be prescribed, file a declaration with the competent authority that he desires to be replaced in occupation of the building after the completion of the work of improvement or re-erection of the building as the case may be.

(2) On receipt of such declaration, the competent authority shall by order require the owner of the building to furnish to it, within such time as may be prescribed, the plans of the work of improvement or re-erection of

the building and estimates of the cost thereof and such other particulars as, may be necessary and shall, on the basis of such plans and estimates and particulars, if any, furnish and having regard to the provisions of sub-section (3) of section 20B and after holding such inquiry as it may think fit, provisionally determine the rent that would be payable by the tenant if he were to be replaced in occupation of the building in pursuance of the declaration made by him under sub-section(1).

(3) The rent provisionally determined under sub-section (2) shall be communicated in the prescribed manner to the tenant and the owner.

(4) If the tenant after the receipt of such communication intimates in writing to the competent authority within such time as may be prescribed that when he is replaced in occupation of the building in pursuance of the declaration made by him under sub-section (1), he would pay to the owner until the rent is finally determined under section 20B the rent provisionally determined under sub-section (2), the competent authority shall direct the owner to place the tenant in occupation of the building after the completion of the work of improvement or re-erection of the building, as the case may be, and the owner shall be bound to comply with such direction.

**20B. Rent of buildings in slum areas.**—(1) Where any building in a slum area is let to a tenant after the execution of any work of improvement or after it has been re-erected, the rent of the building shall be determined in accordance with the provisions of this section.

(2) Where any such building is let to a tenant other than a tenant who is placed in possession of the building in pursuance of a direction issued under sub-section (4) of section 20A, the tenant shall be liable to pay to the owner—

- (a) if there is a general law relating to the control of rents in force in the area in which the building is situated and applicable to that building, the rent determined in accordance with the provisions of that law;
- (b) if there is no such law in force in such area, such rent as may be agreed upon between the owner and the tenant.

(3) Where any such building is let to a tenant in pursuance of a direction issued under sub-section (4) of section 20A, the tenant shall, notwithstanding any law relating to the control of rents in force in the area, be

<sup>1</sup> Ins. by Act 43 of 1964, sec. 12, (w.e.f. 27-2-1965).

liable to pay to the owner—

(a) if any work of improvement has been executed in relation to the building, an annual rent of a sum equivalent to the aggregate of the following amounts, namely:—

- (i) the annual rent the tenant was paying immediately before he vacated the building for the purpose of execution of the work of improvement;
- (ii) six per cent, of the cost of the work of improvement; and
- (iii) six per cent, of a sum equivalent to the compensation payable in respect of any land which may have been acquired for the purpose of effecting such improvement as if such land were acquired under section 12 on the date of the commencement of the work of improvement;

(b) if the building has been re-erected, an annual rent of a sum equivalent to four per cent. of the aggregate cost of reconstruction of the building and the cost of the land on which the building is re-erected.

**Explanation**— For the purposes of this clause, the cost of the land shall be deemed to be a sum equivalent to the compensation payable in respect of the land if it were acquired under section 12 on the date of the commencement of the reconstruction of the building.

(4) The rent payable by a tenant in respect of any building under sub-section (3) shall, on an application made by the tenant or the owner, be determined by the authority referred to in sub-section (5):

Provided that an application for determination of such rent by the owner or the tenant shall not, except for sufficient cause, be entertained by such authority after the expiry of ninety days from the completion of the work of improvement or re-erection of the building, as the case may be.

(5) The authority to which the application referred to in sub-section (4) shall be made, shall be—

(a) where there is a general law relating to the control of rents in force in the area in which the building is situate, the authority to whom applications may be made for fixing of rents of buildings situate in that area, and for the purpose of determining the area under this section that authority may exercise all or any of the powers it has under the said general law, and the provisions of such law including provisions relating to appeals shall apply accordingly;

(b) if there is of such law in force in that area, such authority

as may be specified by rules made in this behalf by the Central Government and such rules may provide the procedure that will be followed by that authority in determining the rent and also for appeals against the decision of such authority.

(6) Where the rent is finally determined under this section, then the amount of rent paid by the tenant shall be adjusted against the rent so finally determined and if the amount so paid falls short of, or is in excess of the rent finally determined, the tenant shall pay the deficiency, or be entitled to a refund, as the case may be.]

### Comments

By getting permission under section 19(4) of the Act by taking his case as falling under clause (b) thereof, the landlord cannot give up the grounds of eviction under clauses (g) and (e). of the Delhi Rent Control Act and file proceedings for eviction of the tenant on any other ground, thus depriving the tenant of his right granted to him under sections 20A and 20B of the Slum Areas (Improvement and Clearance) Act, 1956 as held by Delhi High Court in *Murari Lal v. P.C. Sharma*, 1989 (NOC) 177:36 (1988) DLT 154:1988 RLR 685.

**21. Chapter not to apply to eviction of tenants from certain buildings.**— Nothing in this Chapter shall apply to or in relation to the <sup>1</sup>[eviction under any law] of a tenant from any building in a slum area belonging to the Government, <sup>2</sup>[the Delhi Development Authority] or any local authority

## CHAPTER - VII MISCELLANEOUS

**22. Powers of entry.**—It shall be lawful for any purpose authorised by the competent authority in this behalf to enter into or upon any building or land in a slum area with or without assistants or workmen in order to make any inquiry, inspection, measurement, valuation or survey, or to execute any work which is authorised by or under this Act or which it is necessary to execute for any of the purposes or in pursuance of any of the provisions of this Act or of any rule or order made thereunder.

**23. Power of inspection.**—(1) The competent authority may, by general or special order, authorise any person—

- (a) to inspect any drain, latrine, urinal, cess-pool, pipe, sewer or channel in or on any building or land in a slum area, and in this discretion to cause the ground to be opened for the purpose of preventing or removing any nuisance arising from the drain, latrine, urinal,

1. Subs. by Act 43 of 1964, sec. 13, for certain words (w.e.f. 27-2-1965).

2. Subs. by Act 43 of 1964, sec. 13, for "the Delhi Improvement Trust" (w.e.f. 27-2-1965).



cess-pool, pipe, sewer or channel, as the case may be;

- (b) to examine works under construction in the slum area to take levels or to remove, test, examine, replace or read any meter.

(2) If, on such inspection, the opening of the ground is found to be necessary for the prevention of removal of a nuisance, the expenses thereby incurred shall be paid by the owner or occupier of the land or building, but if it is found that no nuisance exists or but for such opening would have arisen, the ground or portion or any building, drain, or other work opened, injured or removed for the purpose of such inspection shall be filled in, reinstated, or made good, as the case may be, by the competent authority.

**24. Power to enter land adjoining land where work is in progress.**— (1) Any person authorised by the competent authority in this behalf may, with or without assistants or workmen, enter on any land within fifty yards of any work authorised by or under this Act for the purpose of depositing thereon any soil, gravel, stone or other materials, or for obtaining access to such work or for any other purposes connected with the carrying of the same.

(2) The person so authorised shall, before entering on any land under sub-section (1), state the purpose thereof, and shall, if so required by the occupier, or owner, fence off so much of the land as may be required for such purpose.

(3) The person so authorised shall, in exercising any power conferred by this section, do as little damage, as may be, and compensation shall be payable by the competent authority to the owner or occupier of such land or to both for any such damage whether permanent or temporary.

**25. Breaking into buildings.**—It shall be lawful for any person authorised by the competent authority in this behalf to make any entry into any place, to open or cause to be opened any door, gate or other barrier—

- (a) if he considers the opening thereof necessary for the purpose of such entry; and  
(b) if the owner or occupier is absent, or being present refuses to open such door, gate or barrier.

**26. Entry to be made in the day time.**—No entry authorised by or under this Act shall be made except between the hours of sunrise and sunset.

**27. Owner's consent ordinarily to be obtained.**—<sup>1</sup>[Save as provided in this Act, no building or land] shall be entered without the consent of the occupier, or if there is no occupier, of the owner thereof and no such entry shall be made without giving the said occupier or owner, as the case

may be, not less than twenty-four hours' written notice of the intention to make such entry:

Provided that no such notice shall be necessary if the place to be inspected is a shed for cattle or a latrine, urinal or a work under construction.

**28. Power of eviction to be exercised only by the competent authority.**—Where the competent authority is satisfied either upon a representation from the owner of a building or upon other information in its possession that the occupants of the building have not vacated it in pursuance of any notice, order or direction issued or given by the authority, the authority shall, by order, direct the eviction of the occupants from the building in such manner and within such time as may be specified in the order <sup>2</sup>[and for the purpose of such eviction may use or cause to be used such force as may be necessary]:

Provided that before making any order under this section the competent authority shall give a reasonable opportunity to the occupants of the building to show cause why they should not be evicted therefrom.

**29. Power to remove offensive or dangerous trades from slum areas.**—The competent authority may, by order in writing, direct any person carrying on any dangerous or offensive trade in a slum area to remove the trade from that area within such time as may be specified in the order:

Provided that no order under this section shall be made unless the person carrying on the trade has been afforded a reasonable opportunity of showing cause as to why the order should not be made.

**30. Appeals.**—(1) Except as otherwise expressly provided in this Act, any person aggrieved by any notice, order or direction issued or given by the competent authority may appeal to the Administrator within a period of thirty days from the date of issue of such notice, order or direction.

(2) Every appeal under this Act shall be made by petition in writing accompanied by a copy of the notice, order or direction appealed against.

(3) On the admission of an appeal, all proceedings to enforce the notice, order or direction and all prosecutions for any contravention thereof shall be held in abeyance pending the decision of the appeal, and if the notice, order or direction is set aside on appeal, disobedience thereto shall not be deemed to be an offence.

1. Subs. by Act 43 of 1964, sec. 14, for "No building or Land" (w.e.f. 27-2-1965).  
2. Ins. by Act 43 of 1964, sec. 15 (w.e.f. 27-2-1965).

(4) No appeal shall be decided under this section unless the appellant has been heard or has had a reasonable opportunity of being heard in person or through a legal practitioner.

(5) The decision of the Administrator on appeal shall be final and shall not be questioned in any court.

### Comments

Section 30 is not violative of principle of natural justice and the words used in section 30 are of widest amplitude as held in *Ram Nath Baweja v. R.K. Baweja*, (1968) 70 PLR 248 (Del). Court is of the view:—

“The words used in this section are obviously of the widest amplitude and would appear to contemplate appeal against any notice order or direction. It can not be said that the words “order” or “Direction” used in the section refer only to orders or directions made under the provisions of the Acts. The opening words of the section “except as otherwise expressly provided in this Act” means that there must be specific provision in the Act contrary to the provisions contained in this section that is to say “it must be provided an appeal shall not lie against any particular order and direction. An order by the competent authority directing its delegatee to review its order and make full enquiry is not only an order but also a direction and as such appealable under this section”.

In the case of *Noor Mohd. v. Union of India*, CW Petition No. 96/97/98 of 1977 decided on 27th January, 1977 it has been held by the High Court of Delhi that there is a statutory right of appeal given under section 30 of the Slum Areas (Improvement and Clearance) Act, 1956, against the impugned orders. If the petitioner does not seem to have availed of the said opportunity given by the statute then he has to take the consequences. He can not simply ignore the provisions of under section 30 and now seek to get the orders set aside under Article 226 of the Constitution.

Whether tenant has a right to appeal against the order of grant of permission came into consideration before the court in *Usha Bhasin v. Competent Authority*, 17 (1980) DLT 353:1980 RLR 84 wherein it was held that tenant has no right of appeal under section 30 of Act from order granting leave but order can be challenged under Article 227 of the Constitution. It was also held that section 30 provides for an appeal by any person aggrieved by a notice, order or direction issued or given by the Competent Authority but this is subject to an important qualification because of the opening words of section 30(1)— “Except as otherwise expressly provided in this Act”. Section 20 of the Act specifically deals with subject-matter of appeals from orders passed under section 19. It lays down that any person aggrieved by an order of the Competent Authority refusing to grant permission referred to

in section 19(1) could prefer an appeal to the Administrator. In other words it is only the landlord who is likely to be aggrieved by the order refusing permission that can appeal to the Administrator, and section 20 does not provide for an appeal by the tenant against an order granting permission to the landlord. Section 20 and section 30 have to be construed harmoniously. The more reasonable construction appears to be that section 20 impliedly prohibits an appeal by the tenant where the order of the Competent Authority under section 19 is adverse to him and that section 30 only covers either notice, order or directions that may be issued or given by the Competent Authority. Hence a petition under Article 227 would be maintainable against the order of Competent Authority granting leave to the landlord under section 19 of the Act.

**31. Service of notices, etc.—**(1) Every notice, order or direction issued under this Act shall, save as otherwise expressly provided in this Act, be served—

- (a) by giving or tendering the notice, order or direction, or by sending it by post to the person for whom it is intended; or
  - (b) if such person cannot be found, by affixing the notice, order or direction on some conspicuous part of his last known place of abode or business, or by giving or tendering the notice, order or direction to some adult male member or servant of his family or by causing it to be affixed on some conspicuous part of the building, or land, if any, to which it relates.
- (2) Where the person on whom a notice, order or direction is to be served is a minor, service upon his guardian or upon any adult male member or servant of his family shall be deemed to be the service upon the minor.
- (3) Every notice, order or direction which by or under this Act is to be served as a public notice, order or direction or as a notice, order or direction which is not required to be served to any individual therein specified shall, save as otherwise expressly provided, be deemed to be sufficiently served if a copy thereof is affixed in such conspicuous part of the office of the competent authority or in such other public place during such period, or is published in such local newspaper or in such other manner, as the competent authority may direct.

### Comments

As per *Mohan Lal v P.R. Varshneya*, 1972 RLR (N) 58, service of notice by publication in the newspaper is not one of the modes of services and should not be used.

In another matter *Rameshwar Dayal v. Ram Avtar*, 1972 RLR (N) 59: ILR (1970) 1 Del 694 it is held that substituted

service can be ordered only if personal service is not possible or refusal is satisfactorily established.

**32. Penalties.**—(1) Whoever <sup>1</sup>[fails to comply with] any notice, order or direction issued or given under this Act shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever commences or causes to be commenced any work in contravention of any restriction or condition imposed under sub-section (7) of section 10 or any plan for the re-development of a clearance area shall be punishable with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(3) Whoever obstructs the entry of any person authorised under this Act to enter in to or upon any building or land or molestes such person after such entry shall be punishable with fine which may extend to one thousand rupees.

(4) If the person committing an offence under this Act is a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(5) Notwithstanding anything contained in sub-section (3) where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**Explanation.**—For the purpose of this section—

- (a) “company” means a body corporate and includes a firm or other association of individuals; and
- (b) “director” in relation to a firm means a partner in the firm.

**33. Order of demolition of buildings in certain cases.**—<sup>1</sup>[(1)] Where the erection of any building has been commenced, or is being carried out or has been completed, in contravention of any restriction or condition imposed under

sub-section (7) of section 10 or a plan for the redevelopment of any clearance; area or in contravention of any notice, order or direction issued or given under this Act, the competent authority may, in addition to any other remedy that may be resorted to under this Act or under any other law, make an order directing that such erection shall be demolished by the owner thereof within such time not exceeding two months as may be specified in the order, and on the failure of the owner to comply with the order, the competent authority may itself cause the erection to be demolished and the expenses of such demolition shall be recoverable from the owner as arrears of land revenue:

Provided that no such order shall be made unless the owner has been given a reasonable opportunity of being heard.

<sup>2</sup>[(2) For the purpose of causing any building to be demolished under sub-section (1), the competent authority may use or cause to be used such force as may be necessary.]

**34. Jurisdiction of courts.**—No court inferior to that of a Magistrate of the first class shall try an offence punishable under this Act.

**35. Previous sanction of the competent authority or officer authorised by it for prosecution.**—No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the competent authority or an officer authorised by the competent authority in this behalf.

**36. Power to delegate.**—<sup>3</sup>[(1)] The competent authority may, by notification in the Official Gazette, direct that any power exercisable by it under this Act may also be exercised, in such cases and subject to such conditions if any, as may be specified in the notification by such officer or the local authority as may be mentioned therein.

<sup>4</sup>[(2) The Central Government may, by notification in the Official Gazette, direct that any power exercisable by the Administrator under sub-section (7) of section 10, section 15, section 20 and section 30 may, subject to such conditions, if any, as may be specified in the notification, be exercised also by the Chief Secretary or by such other officer as may be mentioned therein.]

1. Section 33 re-numbered as sub-section (1) of that section by Act of 1964, sec. 17 (w.e.f. 27-2-1965)

2. Ins. by Act 43 of 1964, sec. 17 (w.e.f. 27-2-1965).

3. Section 36 re-numbered as sub-section (1) of that section by Act 43 of 1964 sec. 18 (w.e.f. 27-2-1965).

4. Ins. by Act 43 of 1964, sec. 18 (w.e.f. 27-2-1965).



## Comments

By virtue of powers granted under the Delhi (Delegation of Powers) Act, 1964, powers to hear appeals against the order passed under section 19 of the Act has been conferred upon the Chief Secretary.

**37. Protection of action taken in good faith.**—No suit, prosecution or other legal proceeding shall lie against the competent authority or against any person for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

<sup>1</sup>[**37 A. Bar of jurisdiction.**—Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the competent authority or any other person is empowered by or under this Act, to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.]

**38. Competent authority, etc., to be public servants.**—The competent authority and any person authorised by <sup>2</sup>[it] under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

**39. Act to override other laws.**—The provisions of this Act and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law.

**40. Power to make rules.**—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:—

- (a) the manner of authentication of notices, orders and other instruments of the competent authority;
- (b) the preparation of plans for the re-development of any slum area, and matters to be included in such plans;
- <sup>3</sup>[(bb) the form in which an application under sub-section (3) of section 6A shall be made and the information to be furnished and the fees to be levied in respect of such application;

(bbb) the manner in which inquiries may be held under sections 15 and 19;]

- (c) the form and manner in which applications for permission under sub-section (2) of section 19 shall be made and the fees to be levied in respect of such applications;
- (d) the procedure to be followed <sup>4</sup>[and the factors to be taken into consideration] by the competent authority before granting or refusing to grant permission under section 19;
- (e) the time within which an appeal may be preferred under <sup>5</sup>[sub-section (7) of section 10 or section 20];
- <sup>4</sup>[(ee) the time within which a declaration may be filed under sub-section (1) or an intimation may be sent under sub-section (4) of section 20A and the fees, if any, to be levied in respect of such declaration;
- (eee) the time within which plans, estimates and other particulars referred to in sub-section (2) of section 20A may be furnished;
- (eeee) the procedure to be followed by the competent authority for fixing the provisional rent under sub-section (2) of section 20A;
- (eeeee) the manner in which the rent provisionally determined under section 20A shall be communicated to the tenants and owners;
- (eeeeee) the matters in respect of which provision may be made under sub-section (5) of section 20B;]
- (f) the officers and local authorities to whom powers may be delegated under section 36; and
- (g) any other matter which has to be, or may be, prescribed.

<sup>6</sup>[(3) Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or <sup>7</sup>[in two or inore successive sessions, and if, before the expiry of the session immediately following the session, or the successive sessions aforesaid] both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such

1. Ins. by Act 43 of 1964, sec. 19 (w.e.f. 27-2-1965).

2. Subs. by Act 58 of 1960, sec. 3, and Sch. II for "him" (w.e.f. 26-12-1960).

3. Ins. by Act 43 of 1964, sec. 20 (w.e.f. 27-2-1965).

4. Ins. by Act 43 of 1964, sec. 20 (w.e.f. 27-2-1965).

5. Subs. by Act 43 of 1964, sec. 20, for "section 20" (w.e.f. 27-2-1965).

6. Subs. by Act 43 of 1964, sec. 20, for sub-section (3) (w.e.f. 27-2-1965).

7. Subs. by Act 4 of 1986, sec. 2 and Sch., certain words (w.e.f. 15-5-1986).

modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

### **THE SCHEDULE**

*(See section 15)*

#### **PRINCIPLES FOR DETERMINATION OF THE NET AVERAGE MONTHLY INCOME**

1. The competent authority shall first determine the gross rent actually derived by the owner of the land acquired including any building on such land during the period of five consecutive years referred to in sub-section (1) of section 15.

2. For such determination the competent authority may hold any local inquiry and obtain, if necessary, certified copies of extracts from the property tax assessment books of the municipal or other local authority concerned showing the rental value of such land.

3. The net average monthly income referred to in sub-section (1) of section 15 shall be sixty per cent. of the average monthly gross rent which shall be one-sixtieth of the gross

rent during the five consecutive years as determined by the competent authority under paragraph 1.

4. Forty per cent, of the gross monthly rental referred to above shall not be taken into consideration in determining the net average monthly income but shall be deducted in lieu of the expenditure which the owner of the land would normally incur for payment of any property tax to the municipal or other local authority, for collection charges, income-tax or bad debts as well as for works of repair and maintenance of the buildings, if any, on the land.

5. Where the land or any portion thereof has been unoccupied or the owner has not been in receipt of any rent for the occupation of the land during the whole or any part of the said period of five years, the gross rent shall be taken to be the income which the owner would in fact have derived if the land had been leased out for rent during the said period, and for this purpose the rent actually derived from the land during a period prior or subsequent to the period during which it remained vacant or from similar land in the vicinity shall be taken into account.