A SATYA NARAIN PANDEY

v.

STATE OF U.P. & OTHERS

JANUARY 13, 1988

B [SABYASACHI MUKHARJI AND S. RANGANATHAN, JJ.]

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972—Section 2(1)(d)—Inter-pretation of.

These matters involved the interpretation of section 2(1)(d) of the C U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 (Act No. 13 of 1972).

The landlords of a building known as Prem Talkies had let out the building to Sunil Sharma and another, and the lease to the Sharmas was a lease of the building simpliciter. The building was subject to the D provisions of the Act above-said. The landlords obtained delivery of vacant possession of the building on 30.09.1984 through a suit for eviction instituted by the landlords. The revision petition filed by the Sharmas in the High Court against the order of eviction was dismissed on 1st August, 1985. After the Revision Petition of the Sharmas was dismissed, landlords proceeded with the renovation of the building, E installation of plant, machinery, new furniture and electrical fittings, as they wished to let out the building alongwith the plant, machinery, furniture and apparatus installed for running a cinema theatre.

On February 5, 1986, an agreement of lease was executed between the landlords and the Mehrotras—respondents before this Court under F which the Mehrotras agreed to take the building fully equipped with projector, machines, fixtures and furniture for a period of five years with an option to renew. A lease-deed pursuant to the agreement of the lease between the landlord and the Mehrotras was entered into on 30.12.86 and actual possession of the building, it was claimed, was given to the Mehrotras on the 8th January, 1987.

G

In the meantime, the appellant, Satya Narain Pandey, appeared to have made an application under s. 16 of the Act for allotment of the building in question to him. He claimed to have filed that application on 25.9.86 and that, on the basis of that application, the Additional District Magistrate had called for a report from the Rent Control & Evic- H tion Inspector, who had submitted a report dated 28.10.86, stating that

the building was vacant as on that date. On the other hand, the landlords claimed that the vacancy of the building had been declared on 6.3.87 and that notification calling for applications for allotment had been issued on 9.3.87 and the application by Pandey for allotment had been made only on 9.3.87. They also applied to the Additional District Magistrate on 23.3.87, requesting that a high-placed official should be sent to inspect the premises and submit a report, as the report of the Eviction Inspector had been obtained behind their back. The application was granted and the Sub-Divisional Magistrate submitted a report on 28.4.87, which said that as on that date the building was a full-fledged building with all the equipments and was not vacant as it appeared to have been let out to the Mehrotras under the agreements of 5.2.86 and 30.12.86. In the meantime, the Mehrotras, in pursuance of the lease deed entered into by them with the landlords, had applied on 8.1.87 for the grant of a licence for running a cinema in the building in question. The application was granted by the Additional District Magistrate.

Pandey, who had applied for the allotment of the building to him, felt aggrieved by the grant of the cinematographic licence to the Mehrotras. He filed a writ petition in the High Court, challenging the grant of the licence. The High Court dismissed the writ petition. Pandey, the appellant, then filed in this Court Civil Appeal No. 1502 of 1987 by Special Leave against the decision of the High Court.

The Writ Petition of the landlords filed in the High Court against the order dated 6.3.87 of the Additional District Magistrate, declaring a vacancy of the building in question and the notice dated 9.3.87 inviting applications for allotment of accommodation in respect thereof, and a similar writ petition filed by the Mehrotras in the High Court, were disposed of by the High Court by a consolidated order dated 20.11.87, by which the High Court had accepted the contentions of the petitioners and allowed the writ petitions setting aside the order dated 6.3.87 and the notice dated 9.3.87 and directing the Rent Control & Eviction Inspector to proceed with the allotment of the cinema building under the Act. One of the respondents in those two writ petitions was Pandey, the appellant, who then also filed two petitions for special leave in this Court against the said decision of the High Court in the two writ petitions above-said.

Dismissing the appeals out of the two petitions for special leave (wherein leave to appeal was granted) and, consequently, the Civil Appeal No. 1502/87, the Court

A HELD: The short question that arose for decision in these matters was whether the cinema building in question was exempt from the purview of the U.P. Urban Buildings (Regulations of Letting, Rent & Eviction) Act, 1972, by reason of the exemption contained in section 2(1)(d) thereof. As regards the controversy regarding the grant of the cinema licence to the Mehrotras, the High Court was clearly right in B holding that Pandey had no *locus standi* in the matter. However, the issue of a valid licence to Mehrotras would ultimately depend upon the outcome of their right to occupy the premises in question. If had Pandey succeeded in his contention that the building continued to be subject to the provisions of the Act, then, the allotment of the building on its vacation by the Sharmas would have to be made in accordance with law C and the Mehrotras would not be able to occupy the building in pursuance of the lease deed and run the cinema, as they would not be entitled to a licence, as, a condition precedent for which was the availability to the exhibitor of a building in which he had a right to exhibit cinema shows. This was clear from the provision in s. 13 of the Act. If, on the other hand, Pandey's contention was not acceptable, then, the D Mehrotras would be entitled to run the theatre. The Court, therefore, granted leave to Pandey in the two petitions for special leave and took up those appeals for consideration in the first place. [686E-H; 687A-B]

On a careful consideration of the scheme and language of the Act, the Court was of the opinion that the judgment of the High Court E should be affirmed and the appeals, dismissed. [690D]

Section 2(1) of the Act exempts from the operation of the Act various types of buildings set out in clauses (a) to (f) of the sub-section. The initial attempt of the appellant was to suggest that the above exemptions were available only where the premises in question was of a nature specified in one or the other of those clauses as on the date of the F commencement of the Act, namely, 15th July, 1972. The Court could not accept this contention. A perusal of the various clauses makes it clear that the building should fulfil the character indicated therein on the date on which the provisions of the Act are sought to be made applicable thereto. It was clear, in the opinion of the Court, that even a building which might have belonged to private individuals since 1972 G would automatically fall within the exemption clause (a) as soon as it was purchased by the Government or a local authority or a public sector corporation. It would not be correct to read the section as conferring an exemption only on the buildings which belonged to the Government, etc., on 15th July, 1972 and not on those acquired by them thereafter. The position must be construed likewise in respect of the H other clauses too. [690E-H]

It was strongly urged by the appellant that the nature of the building had to be determined as on the 30th September, 1984, on which date the building was vacated by the Sharmas, and on that date, the building was subject to the provisions of the Act. A vacancy having arisen in such a building, it was the duty of the landlord to have intimated the same to the District Magistrate and then followed the procedure under the Act. Any letting out of the property by them to the Mehrotras was unlawful in view of s. 13 of the Act, and on the strength of an unlawful letting, the landlords could not contend that the building was outside the purview of the Act. There was a plausibility about this contention but the Court could not accept it as this construction of the provisions would render the exemption section totally unworkable. [690H; 691A-C]

Section 2(1) of the Act takes out of the provisions of the Act certain classes of buildings. Some of these exemptions are based on the nature of the ownership of the property and some of them, on the nature of the use to which the property is either put or intended to be put. In the view of the Court, even in respect of a building covered by the Act, the Act would cease to be applicable if, on a vacancy occurring therein, the landlord intended to put it to the use specified in clauses (c) to (f) of the section and in cases covered by clauses (c) and (d) of the section, also intended to let it out for such use along with the plant and apparatus therefor. The Court favoured this interpretation of an automatic exclusion of certain classes of buildings from the purview of the Act. [691D; 692G-H]

How would the question of the applicability of the Act be determined? It could certainly not be *ipsi dixit* of the landlord. If a landlord let out his property or otherwise dealt with it on his own, and was found at fault, he would not only be punishable but would also be unable to resist an allotment of the property by the District Magistrate in due course. Since the District Magistrate was empowered to deal with buildings to which the Act applied it was for the District Magistrate to satisfy himself, after hearing the landlord, that it was in fact a building to which the Act was applicable. It was open to the landlord to intimate the vacancy but make a claim before the District Magistrate that the Act had ceased to be applicable to his building. Where the landlord failed to do so, the Magistrate might consider the issue if vacancy in respect of the bunlding was brought to his notice. The District Magistrate could inspect the building and then decide whether the Act continued to apply or not. It was for the District Magistrate to satisfy himself that the landlord intended to let out the premises and he intended to let it out not as a mere building but with plant and apparatus. The District Magis-

A trate had to satisfy himself on the materials made available to him. But it would not be incumbent or proper for him to give notice to the proposed allottees of the property and hear them. An application for allotment merely conferred on the applicant a right to be considered for allotment of a building to which the Act was applicable, and he had no right *qua* any property until the District Magistrate came to the conclu-
B sion that the building was one which he could allot. [694C-H]

The Court did not accept the contention of the appellant for remanding the case to the District Magistrate for a determination after hearing the appellant also on the question whether the landlords in this case were entitled to an exemption. This determination had to be ar-
C rived at by the District Magistrate after hearing the landlord and on the basis of such inspection or enquiries as he might consider necessary. At this stage, he should not permit the intervention of any other party; a contrary interpretation would make the provisions almost impossible of being worked. There might be several applicants for allotment, some general, and some with regard to specific property. If they were con-
D sidered as having a right to be heard on the availability of a property for allotment, every one must be allowed to intervene. The landlord might have to face innumerable challenges by the various applicants at different points of time, resulting in the proceedings being delayed. All this was not envisaged under the Act. Once the District Magistrate decided that a building was not one to which the Act applied, there was an end
E of the matter. If the District Magistrate decided that the building fell within the provisions of the Act, an aggrieved landlord's remedy was only by way of a writ petition, where such conclusion was on the face of it erroneous or perverse or based on no material. [695B-E]

In this case, the District Magistrate, after registering the vacancy
F on 6.3.1987, came to the conclusion on the basis of the appellant's averments that the Act continued to be applicable to the premises. The landlords challenged this conclusion successfully by a writ petition. Subsequent to 6.3.1987, the District Magistrate himself had the property inspected, and, apparently, he did not apply his mind to the terms of the report of the inspection. In normal course, perhaps, the Court
G would have sent the matter back to enable him to do this, but in the present case, the Court thought no useful purpose would be served by remanding the matter to the District Magistrate for a fresh consideration. The report of the Sub-Divisional Magistrate, the terms of the lease agreement, the registered lease-deed and the application for, and the grant of, a cinematograph licence in the name of the Mehrotras, clearly
H showed that the landlord intended to let out the property as a fully

equipped cinema theatre. In the fact of this, the District Magistrate had clearly no jurisdiction to proceed with the allotment of the premises in question. 695F-H; 696A-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1502 of 1987 etc.

From the Judgment and order dated 14.7.87 of the Allahabad High Court in C.M.W.P. No. 11907 of 1987.

Rajinder Sachhar and K.C. Dua for the Appellant.

Raja Ram Aggarwal, Salman Khurshid, Ishad Ahmed, S. Wasim, N.A. Siddiqui and Mrs. Rani Chhabra for the Respondents.

The Judgment of the Court was delivered by

RANGANATHAN, J. These matters involve the interpretation of section 2(1)(d) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, (Act No. 13 of 1972), (hereinafter referred to as 'the Act'). Section 2(1) of the Act exempt certain classes of buildings from the application of the Act. One such exemption, under clause (d), is in respect of:

> "(d) any building used or intended to be used for any other industrial purpose (that is to say, for the purpose of manufacture, preservation or processing of any goods) or as a cinema or theatre, where the plant and apparatus installed for such purpose in the building is leased out along with the building."

Though the question for our ultimate decision is a short one, there has been a multiplicity of proceedings between the concerned parties. The relevant facts, therefore, need to be set out at some length.

2. The building known as Prem Talkies, situated in Mohalla Sahadatpura, Maunath Bhanjan, District Azamgarh, U.P., belongs to Behari Lal Tandon and five others, (hereinafter referred to as 'the landlords'). They had let out the building to Sunil Sharma and another. Though the landlords claim that the lease was of the building along with certain fixtures, it has to be taken for the purposes of the present proceedings that the lease to the Sharmas was the lease of the building *simpliciter* and that the building was then subject to the provi-

A sions of the Act. This was the finding given in the suit for eviction which the landlords had instituted against the Sharmas. That decree has since become final and the respondents have made out before us no grounds to differ from that finding. The landlords succeeded in obtaining delivery of vacant possession of the building from the Sharmas on 30.09.1984.

B

3. It appears that the Sharmas had filed a revision petition in the High Court against the eviction order, which was eventually dismissed on 1st August, 1985. The landlords claim that, subsequent to the recovery of possession, they wished to let out the building along with plant, machinery, furniture and apparatus installed therein for running a cinema theatre. However, steps in this direction by way of renovation of the building, installation of plant, machinery, new furniture and electrical fittings and the execution of a lease deed could be embarked upon only after the revision petition of the Sharmas was dismissed. They claim that they proceeded to do the needful. Thereafter on 5th Feb., 86, an agreement of lease was executed between the landlords and the Mehrotras (respondents in the matters before us). Under this agreement, the Mehrotras agreed to take the building fully equipped with projector, machines, fixtures and furniture in full running condition for a period of five years with an option to renew for a further period of two years, on certain terms and conditions which are not relevant for our present purposes. It was provided that the Mehrotras should obtain a cinematographic licence from the appropriate authorities by the end of the year 1987, failing which the lease agreement would stand cancelled. It is claimed that a generator was purchased on 20th June, 1986 and a projector on 22.9.1986 and that these were duly installed in the building on 26.10.86. A lease deed pursuant to the agreement of lease between the landlords and the Mehrotras was entered into on 30.12.1986, more or less broadly on the same terms as the agreement of lease earlier referred to. It is claimed that actual physical possession of the building was given to the Mehrotras on the 8th of January, 1987.

4. In the meantime, it appears, the present appellant, Satya Narain Pandey had made an application under s. 16 of the Act, praying that the building in question should be allotted to him. There is a dispute regarding the date of the application. Pandey claims that the application was filed on 25.9.86 and that, on the basis of this application, the Additional District Magistrate had called for a report from the Rent Control and Eviction Inspector, who submitted a report on 28.10.86, stating that the building was vacant as on that date. On the

other hand, the landlords claim that the vacancy of the building had been declared on 6.3.1987, that a notification calling for applications for allotment had been issued on 9.3.87 and that the application by Pandey for allotment has been made only on 9.3.87. The landlords, thereupon filed W.P. No. 10346/87 in the Allahabad High Court praying that the order dated 6.3.87 and the notification dated 9.3.87 be quashed. They also say that, on coming to know of the alleged report of the Rent Control and Eviction Inspector dated 28.10.86, they had applied to the Additional District Magistrate on 23.3.1987, pointing out that the report of the Eviction Inspector had been obtained behind their back and requesting that a fairly high-placed official should be sent to inspect the premises again and submit a report. This application was granted by the Additional District Magistrate and, in pursuance of the said order, the Sub-Divisional Magistrate submitted a report on 28.4.87. According to this report, the building as on that date was a full-fledged cinema building fully equipped with projector, exhaust and electric fans, electric fixtures, diesel generating set, etc., and the building was not vacant. He also reported that the landlords appeared to have let out the building to the Mehrotras under the agreements of 5.2.86 & 30.12.86.

5. When these proceedings were taking place, the Mehrotras, in pursuance of the lease deed entered into by them with the landlords, applied for the grant of a licence for running a cinema in the premises in question under the U.P. Cinemas (Regulation) Act, 1955. They did this on 8.1.1987. This application was granted by the Additional District Magistrate, Azamgarh by his order datd 22.6.1987. Pandey, who, as mentioned above, had applied for the allotment of the premises to himself, considered himself aggrieved by the grant of the cinematographic licence to the Mehrotras on 22.6.1987. He, therefore, filed Writ Petition No. 11907/87 before the Allahabad High Court. This writ petition was dismissed. The Court held that the order granting a licence to the Mehrotras could not be quashed on the ground of the pendency of the allotment proceedings before the Rent Control & Eviction Officer and that Pandey did not have any right to challenge the grant of licence merely because the vacancy of the building was declared at his instance, particularly when the dispute as to whether the Act applied or not to the premises in question is yet to be decided C.A. no. 1502/87 has been preferred against the judgment of the Division Bench in the above writ petition. This court granted special leave to Pandey by its order dated 14.7.87 and also directed, that, in the meantime the proceedings for the grant of the cinema licence be stayed.

A 6. We have mentioned that the landlords had filed Writ Petition No. 10346 of 1987 in the Allahabad High Court against the order of the Additional District Magistrate declaring a vacancy in respect of the premises in question by the order dated 6.3.87 and notice dated 9.3.87 inviting applications for allotment of accommodation thereto. Their contention was that the cinema building stood excluded from the B purview of the Act by virtue of section 2(1)(d) and that, therefore, the question of declaring a vacancy or allotting it to any person did not arise. The Mehrotras also filed Writ Petition No. 12263 of 1987 raising the same pleas and seeking the same relief. These writ petitions were heard together and disposed of by a consolidated order of the High Court dated 20.11.87. The High Court accepted the contentions C of the petitioners and allowed the writ petitions. The order dated 6.3.87 and notice dated 9.3.87 were set aside and the Rent Control & Eviction Officer, Azamgarh, was directed not to proceed with the allotment of the cinema building in question under the Act. Pandey, who, was one of the respondents in the above writ petitions, has filed SLP nos. 15030-31 of 1987 for leave to appeal from the decision of the D Allahabad High Court in these writ petitions.

7. From the above narration of facts, it will be seen that the short question that arises for decision in these matters is as to whether the cinema building in question is exempt from the purview of the Act by reason of the exemption contained in section 2(1)(d). The other E controversy in C.A. 1502/87 regarding the grant of the cinema licence to the Mehrotras need not detain us long. The High Court was clearly right in holding that Pandey had no *locus standi* in the matter. However, the issue of a valid licence to Mehrotras will ultimately depend on the outcome of their right to occupy the premises in question. If Pandey succeeds in his contention that the building continues to be F subject to the provisions of the Act, then, obviously, the allotment of the building on its vacation by the Sharmas will have to be made by the Additional District Magistrate in accordance with law and the Mehrotras will not be in a position to occupy the building and run the cinema theatre in pursuance of the lease deed and the licence obtained by them. This is clear from the provision contained in S. 13 of the Act. If, G on the other hand, the contention of Pandey is not acceptable, then the Mehrotras will be entitled to run the theatre in pursuance of the lease deed in exercise of the cinematographic licence obtained by them. In this view of the matter, the grant of licence to the Mehrotras recedes to the background and is only relevant to this extent that, in case the lease of the building to the Mehrotras is held to be contrary to the H provisions of the Act, they may not be entitled to the licence, a condi-

tion precedent for which will be the availability, to the exhibitor, of a building in which he has a right to exhibit cinema shows. We may, therefore, leave the controversy in Civil Appeal No. 1502/87, aside for the time being. We shall, therefore, grant special leave to Pandey in the Special Leave Petitions and proceed to dispose of the same, as we have heard the learned counsel on both sides.

8. We may, at this stage, outline the scheme and salient provisions of the Act. Like other enactments of its type, it was a measure designed to meet the acute shortage of urban accommodation in U.P. during and after the Second World War. The continuing increase in urban population and the relatively slow pace of house-building activity mainly due to shortage of materials had rendered it necessary to continue the controls on rents, letting and eviction imposed earlier as a war measure or temporary legislation. The long title of the Act shows that one its objects was to provide "for the regulation of letting certain classes of buildings situated in urban areas" and this object is given effect to by the provisions of Sections 1 & 2 of the Act. By section 1, the Act is made applicable to all buildings in the urban areas of the State. However, section 2 exempts certain buildings form the operation of the Act. It is sufficient here to extract the provisions of section 2(1), which read thus:

> "*Exemptions from operation of Act*: (1) Nothing in this Act shall apply to the following namely:
>
> (a) any building of which the Government or a local authority or a public sector Corporation is the landlord; or
>
> (b) any building belonging to or vested in a recognised educational institution, the whole of the income from which is utilised for the purposes of such institution; or
>
> (c) any building used or intented to be used as a factory within the meaning of the Factories Act, 1948 (Act No. LXIII of 1948) (where the plant of such factory is leased out along with the building); or
>
> (d) any building used or intented to be used for any other industrial purpose (that is to say, for the purpose of manufacture, preservation or processing of

A any goods) or as a cinema or theatre, where the plant and apparatus installed for such purpose in the building is leased out along with the building:

Provided that nothing in this clause shall apply in relation to any shop or other building, situated within the precincts
B of the cinema or theatre, the tenancy in respect of which has been created separately from the tenancy in respect of the cinema or theatre; or

(e) any building used or intended to be used as a place of public entertainment or amusement (including any sports stadium, but not including a cinema or
C theatre), or any building appurtenant thereto; or

(f) any building built and held by a society registered under the Societies Registration Act, 1860 (Act No. XXI of 1860) or by a cooperative society, company or
D firm and intended solely for its own occupation or for the occupation of any of its officers or servants, whether on rent or free of rent, or as a guest house, by whatever name called, for the occupation of persons having dealing with it in the ordinary course of business."

E

9. The clear effect of this section is that if any building falls under any one of the above clauses, it is exempt from the operation of the Act. The whole case of the landlords here is that the premises in question falls under clause (d). The appellant, on the other hand, starts from the uncontroverted position that, as on 30.09.1984, the
F building was covered by the provisions of the Act. It is contended that, once this position is admitted, there is no escape from the conclusion that any subsequent letting of the premises can only be in the manner prescribed in Chapter III of the Act, which contains provisions for the regulation of letting of premises governed by the Act. The scheme of these provisions is that the District Magistrate maintains two registers,
G one of all vacancies of buildings to which the Act applies and the other, of all applications, by needy persons, for allotment. The vacancies come to the notice of the District Magistrate by reason of an obligation imposed on landlords and tenants to notify the vacancy or expected vacancy to him within a stated period (s. 15). There are also provisions of deemed vacancy and a provision to ascertain whether a
H building is vacant or not, with the details of which we are not con-

cerned. The requirements of accommodation are known from applications in prescribed forms received from needy persons from time to time seeking an allotment in general or of a specific building which is, or is likely to fall, vacant. The vacancies are notified to public specifying a date on which allotment will be considered, with notice also to the landlord. On the date fixed, the District Magistrate allots the vacant building to the applicants in accordance with the procedure and priorities outlined in the rules. The District Magistrate, under s. 17, is required to make an allotment order within a specified period. Failing this, the landlord is entitled to require that the building shall be allotted to a person of his choice and the District Magistrate shall comply with his request unless there are special and adequate reasons not to do so but to allot the building to some other person. The landlord can also apply to the District Magistrate to release the building to himself. The landlord, however, can secure a release order only in certain circumstances outlined in sub-section (2) of section 16. It is unnecessary to set out these circumstances here and it is sufficient to say that these circumstances do not exist in the present case. Teeth are provided for the enforcement of the above scheme by providing that, once there is a vacancy, the building can be dealt with only on the basis of a release or allotment order (s. 16); that it cannot be let out to any person other than allottee (s. 11); and that any person occupying it otherwise than in pursuance of an allotment or release order shall be deemed to be an unauthorised occupant of the building or part thereof (s. 13). Any contravention of the provisions of the Act is made punishable as a criminal offence (s.31). On the strength of these provisions, it is contended that, when the premises became vacant on 30.9.84, the provisions of the Act were applicable to it. It was not open to the landlords to flout the requirements of this Act and to proceed to let out the premises to persons of their own choice. There was no alternative for them but to let out the premises to an allottee or, if they could, to obtain release of the premises to themselves. They are not entitled to place the building outside the purview of the Act by merely declaring that they intended to let the premises thereafter along with the plant and machinery thus attracting the exemption under section 2(1)(d). To permit the landlords to do so would facilitate easy avoidance of the provisions of the Act by landlords purporting or claiming to change the nature or use of the property or the nature of the letting in such a way as to fall under the terms of one clause or other of the exemption section. This, it is urged, should not be permitted.

10. On the other hand, the stand taken by the landlords is that section 2(1) exempts certain categories of buildings altogether from

A the purview of the Act. In the present case, on the date of application of the vacancy, namely, 6.3.87, the building let out was equipped with full cinematographic equipment and furniture installed therein was also the subject matter of lease, as a running cinema theatre, in favour of the Mehrotras. This being so, the building fell within the class of buildings exempted under section 2(1)(d). It is submitted that, the B moment s. 2(1)(d) is attracted, the building is automatically taken outside the purview of the Act, even if, earlier, it had been a building to which the provisions of the Act were applicable. It is submitted that the Act is intended to regulate only the letting of buildings and not to regulate or control the development of commerce or to impair the rights of the landlords to deal with their property in any manner they C like. It is, therefore, contended that the High Court was right in holding that the District Magistrate had no jurisdiction to deal with the building under the provisions of the Act.

11. Though there is a plausibility in the contention urged on behalf of the appellant, we are of opinion, on a careful consideration D of the scheme and language of the Act, that the judgment of the High Court should be affirmed and the appeals dismissed.

12. Section 2(1) of the Act exempts from the operation of the Act various clauses of buildings set out in clauses (a) to (f) of that sub-section. The initial attempt on behalf of the appellants was to E suggest that the above exemptions are available only where the premises in question was of the nature specified in one or the other of those clauses as on the date of the commencement of the Act, namely, 15th July, 1972. We cannot accept this contention. A perusal of the various clauses makes it clear that the building should fulfill the character indicated therein on the date on which the provisions of the F Act are sought to be made applicable thereto. To give an illustration, clause (a) exempts "any building of which the Government or a local authority or a public sector corporation is the landlord." In our opinion it is clear that even a building which might have belonged to private individuals since 1972 will automatically fall within this exemption clause as soon as it is purchased by the Government or a local author- G ity or a public sector corporation. It will not be correct to read the section as conferring an exemption only on the buildings which belonged to the government etc. on 15th July, 1972 and not to those acquired by them thereafter. The position must be construed likewise in respect of the other clauses too.

H 13. It is, however, strongly urged on behalf of the appellants is

that in any event, the nature of the building has to be determined as on 30th September, 1984 on which date the premises were vacated by the Sharmas. There is no dispute that, as on that date, the building was subject to the provisions of the Act. That being so, and a vacancy having arisen in such a building, it was the duty of the landlords to have intimated the same to the District Magistrate and then gone through the procedure prescribed under the Act before letting out the property to any person. Any letting out of the property by them to the Mehrotras was unlawful in view of s. 13 of the Act and the landlords cannot be heard to contend, on the strength of such an unlawful letting that the premises stand outside the purview of the Act. There is, as we said earlier, a plausibility about this contention but, in our opinion, it cannot be accepted as this construction of the provisions would render the exemption section totally unworkable.

14. We may first consider the nature of the exemption conferred by s. 2(1). It takes out of the provisions of the Act certain clauses of buildings. Some of these exemptions are based on the nature of the ownership of the property and some of them on the nature of the use to which the property is either put or intended to be put. So far as the former is concerned, there can be no doubt that any building that satisfies the ownership requirements set out therein automatically goes outside the purview of the Act. Thus, under clauses (a) and (b), even if a building was previously subject to the provisions of the Act, it will cease to be so the moment it is purchased by a Government or a local authority or a public sector corporation or a recognised educational institution. The vesting of the ownership of the premises in one of the categories of bodies mentioned effects a statutory cut off of the building from the applicability of the provisions of the Act. The exclusion of the Act would be automatic and does not need any application by the previous or subsequent landlord or any order by the Additional District Magistrate under any of the provisions of the Act. So far as clauses (e) and (f) are concerned the exemption depends upon the nature of the use to which the property is put. There is no difficulty in cases where the building, at the time it falls vacant, was actually used for the purposes specified in these clauses: say, as a place of public entertainment or amusement. It would, like the buildings described in clauses (a) and (b) fall outside the provisions of the Act. So far there is no difficulty. But the exemption conferred by these clauses takes in not only actual user but also intended user; that is, the use to which the property is proposed to be put, whatever may have been the use it was put to earlier. Thus, if a building let out privately earlier, is intended to be used as a place of amusement or entertainment or a Cooperative

A Society decides to convert a flat let out to an outsider earlier into one for occupation by its own officer, it will stand outside the purview of the Act. Now we come to clauses (c) & (d) which not only talk of user or intended user but also impose a further requirement that plant and apparatus "is leased out along with the building". This creates a somewhat anomalous situation. It is argued that, if the building had been B leased out earlier without the plant and machinery, it would be subject to the provisions of the Act and cannot be leased out without the permission of the District Magistrate; any such lease as may have been purportedly enterd into without such permission would be contrary to the provisions of s. 11 and therefore, invalid and illegal. It is argued that where the building is let out wrongfully without an authorisation C by the District Magistrate, such letting should be ignored and it cannot be said that the building "is let out" along with plant and machinery. In our opinion this is not the correct interpretation of these clauses. What they exempt are: "a building intended to be used as a factory ..... where the plant of such factory is leased out along with the building" and a "building intended to be used for any other industrial D purpose or a cinema or theatre where the plant and apparatus installed for such purpose in the building is leased out along with the building". Each of these clauses should be read as a whole and doing so, the exemption is not restricted only to cases where there is a prior valid lease of the building with plant and apparatus but would also extend to cases where, though the building earlier was without such plant and E apparatus or was not being used for such purposes as are specified, the owner intends to put them to the specified uses by letting them out with the necessary plant and apparatus. The words "is leased", therefore, do not connote the idea of a valid actual subsisting lease of the building with plant on the date of vacancy; they are only descriptive of the manner in which the building is intended to be used. What is F needed is (a) that the building should be intended to be used by the prospective tenant, for the purpose specified in either of the clauses and (b) that in order to facilitate the purpose being achieved the building is intended to be let out to him along with necessary plant and apparatus. In our view, therefore, even in respect of a building covered by the Act, the Act will cease to be applicable if, on a vacancy G occurring therein, the landlord intends to put it to the use specified in clauses (c) to (f) and, in cases covered by clauses (c) and (d), also intends to let it out for such use along with the plant and apparatus necessary therefor.

15. We lean in favour of this interpretation, of an automatic exclusion of certain classes of buildings from the purview of the Act, H for the following reasons:

(i) The declaration in s. 2(1) that nothing in the Act applies to the classes of buildings mentioned therein has to be given effect to. It is patent that buildings falling under clauses (a) and (b) go out automatically. A different rule cannot apply in respect of the other clauses. A

(ii) The Act does not contain any provision or machinery whereby the owner of a building subject to the provisions of the Act can ask the District Magistrate or other authority to record the purchase of the property by the bodies specified in clauses (a) and (b) or to grant permission for converting it into a category of building for which exemption would be applicable under clauses (c) to (f). It does not specifically confer jurisdiction on any authority to adjudicate upon a claim that a building falls within the exemption clause and that the provisions of the Act are, therefore, not applicable to it. B C

(iii) On the other hand, under the scheme of the Act on there being a vacancy in a building to which the Act applies, it can only be re-occupied in terms of either an allotment order or a release order. A release order under s. 16 can be only got in certain circumstances. It cannot be obtained by a landlord for the mere asking. The District Magistrate cannot release the building to the landlord, even if he is satisfied of the landlord's intention to use the building in the manner specified in one of the clauses of section 2(1) and his intention to let it out with plant and apparatus. This being so, the interpretation suggested by the appellants would mean that, once a building is subject to the provisions of the Act, it can never be taken out of the Act even if the requirements of clauses (a) and (b) or the intended user in terms of clauses (c) to (f) of s. 2(1) can be established. D E F

(iv) The above interpretation does not result in facilitating any avoidance of the provisions of the Act as contended for by the appellants. As rightly pointed out on behalf of the landlords, the Act is intended to regulate the letting of the premises but it is not intended to curb commercial activities or to impair the right of the landlord to change the nature of the use to which his building should be put. Rather, the manner in which clauses (c) to (f) are phrased would show that the intention of the Legislature was to exempt buildings used or intended to be used for commercial or industrial purposes and that intention should be given effect to. A lease given by the landlord in this manner G H

A cannot be attacked as illegal or collusive to get over the provisions of the Act as there is nothing in law to prevent the landlord from doing so.

(v) The appellant's argument overlooks that the restrictions in ss. 11, 13, 16 and other provisions are all applicable only B where the building does not fall under s. 2(1). When it does, the right of the landlord to let it out to a tenant of his choice cannot be defeated by continuing to read those restrictions merely because they were applicable at one time to the property.

16. Naturally the question would arise as to how the question C regarding the applicability of the Act is to be determined. It can certainly not be *ipsi dixit* of the landlord. If a landlord acts on his own and lets out the porperty or otherwise deals with it, he takes the risk and, if he is found at fault, will not only render himself. punishable but will also be unable to resist an allotment of the property by the District Magistrate in due course. Since the District Magistrate has been D empowered to deal with buildings to which the Act applies, it is for the District Magistrate to satisfy himself, before he proceeds to deal with any premises, that it is in fact a building to which the provisions of the Act are applicable. It is open to the landlord to intimate the vacancy but make a claim before the District Magistrate that the Act has ceased to be applicable to his building but he is not obliged to do this. Where E the landlord fails to do so, the Magistrate may consider the issue if the vacancy in respect of the building is brought to his notice. The District Magistrate has powers to inspect the property and then decide whether the Act continues to apply or not. It is for the District Magistrate to consider the circumstances and to satisfy himself that the landlord intends to let out the premises for one of the purposes specified and, in F respect of clauses (c) & (d), that he intends to let it out not as a mere building but with plant and apparatus. We would like to make it clear, however, that, in this process, the District Magistrate has to satisfy himself on the materials made available to him. But it will not be incumbent or proper on his part to give notice to or convene any of the proposed allottees of the property and hear them on this issue. G Whether a building is one to which the provisions of the Act are applicable or not is a matter which has to be decided by the District Magistrate after hearing the landlord. It is a matter between the landlord and the Government. An application for allotment merely confers on the applicant a right to be considered for allotment of a building to which the provisions of the Act are applicable,, and he has no rights H *qua* any property until the District Magistrate comes to the conclusion

that the building is one which he can deal with by way of allotment. A

17. It was contended on behalf of the appellants that the present case may be remanded back to the District Magistrate for a determination, after hearing the appellants, also on the question whether the landlords in the present case are entitled to an exemption. We are unable to agree. We are of the opinion that this determination has to B be arrived at by the District Magistrate after hearing the landlord and on the basis of such inspection or enquiries as he may consider necessary. We are clearly of the opinion that at this stage he should not permit the intervention of any other party. A contrary interpretation would make the provisions almost impossible of being worked. There may be several applicants for allotment, some general and some with C regard to the specific property. If they are considered as having a right to be heard on the availability of a property for allotment, every one of them must be allowed to intervene. Different persons might come in at different stages and challenge the contention of the landlord that the building is not available for allotment. The landlord may have to face innumerable challenges by various applicants at different points of D time and they might claim that they want to lead evidence and thus delay the proceedings. We do not think that all this is envisaged under the Act. It is for the District Magistrate to come to the conclusion whether a building is available for allotment or not, and once he decides that it is not a building to which the Act applies, that is an end of the matter. If he comes to a conclusion that the building falls within E the provisions of the Act and the landlord is aggrieved, the landlord's remedy has only to be by way of a writ petition where such conclusion is on its face erroneous or based on no material or perverse.

18. In the present case, the District Magistrate registered the vacancy on 6.3.87; in other words, he came to a conclusion, mainly on F the basis of the appellant's averments, that the Act continues to be applicable to the premises. The landlords challenged this conclusion successfully in the writ petition. As pointed out by them, subsequent to 6.3.87, the District Magistrate himself had the property inspected and there is a report available on record. Apparently, the District Magistrate has not applied his mind to the terms of the report. G Perhaps, in the normal course, we would have sent the matter back to enable him to do this. However, in the circumstances of the present case, we think no useful purpose would be served by remitting the matter back to the District Magistrate for fresh consideration. As pointed out by the High Court, the report of the Sub-Divisional Magistrate, the terms of the lease agreement and the registered lease deed as H

well as the application for, and the grant of, a cinematographic licence in the name of the Mehrotras, clearly show that the landlord intended to let out the property as a fully equipped cinema theatre and that they have done so. In the face of this evidence, the District Magistrate had clearly no jurisdiction to proceed with the allotment of the premises in question. We would, therefore, uphold the findings of the High Court in this regard.

19. In the result the appeals against the order dated 20.11.87 are dismissed. In consequence of the view taken by us, C.A. No. 1502/87 has also to be dismissed. We direct accordingly. In the circumstances, however, we make no order as to costs.

S.L. Appeal and petitions dismissed.