

have a possessory rights in respect of undivided property. It is a settled law that in respect of a property of co-sharers, possession of one is taken to be possession of all other co-sharers. This is the principle that has been followed till date. However, in respect of release application upon being filed which is a summary proceeding in which even the title issue cannot be gone into except incidentally and that too where the petitioner raises plea of inherent lack of title but this is not the case in hand. The facts of that case are absolutely distinguishable and the principle enunciated in the said judgment does not attract to the present case.

7. In view of the above, I do not find any manifest error in the order passed by the Prescribed Authority.

8. Petition is devoid of merits and is accordingly **dismissed**.

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**(2025) 2 ILRA 64**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: ALLAHABAD 06.02.2025**

**BEFORE**  
**THE HON'BLE AJIT KUMAR, J.**

Matters Under Article 227 No. 3900 of 2022

**Rambabu Gupta & Ors.                      ...Petitioners**  
**Versus**  
**Shri Ganesh Maharaj Virajman**  
**...Respondents**

**Counsel for the Petitioners:**  
 Nikhil Chaturvedi, Sr. Advocate

**Counsel for the Respondents:**  
 Nitin Yasharth, Padmaker Pandey, Sunil Kumar Srivastava, Yasharth

**Civil Law-The Uttar Pradesh Urban Building (Regulation of letting, Rent and**

**Eviction) Act, 1972-Sections- 21 (1) (a) & 2 (1) (bb)-** Whether even in case of a private trust bona fide need can only be set up for the requirement of the trust and not qua family members of the trustee?---After the amending Act came into force the public charitable trusts no more are amenable to rent authority jurisdiction qua rights under the Act of 1972 but the private trusts do and the last part of provisions as have remained un-amended under Section 21(1) (a) shall not apply to a private trust.

**Petition dismissed.** (E-15)

**List of Cases cited:**

1. Nawab Sardar Meer Sultan Saheb Alim Khan Saheb Vs R.R. Gibson 1969 (71) BomLR 357 = Law Finder DocId # 31388
2. Genda Lal Vs District Judge, Kanpur Nagar & ors. Allahabad Rent Case 1999 volume 1 Page No. 3

(Delivered by Hon'ble Ajit Kumar, J.)

1. Heard Shri P.K. Jain, learned Senior Advocate assisted by Shri Nikhil Chaturvedi, learned counsel appearing for petitioners and Shri Atul Dayal, learned Senior Advocate assisted by Shri Nitin Yasharth, learned counsel appearing for respondent

2. Petitioner tenant has assailed the order of release passed by the Prescribed Authority in P.A Case No. 41 of 2011 in favour of the landlord respondent only on the ground that a personal need could not have been set up for the members of the family of Mutawalli even in the event the trust is a private trust and in support of his submission learned counsel appearing for petitioner has relied upon Section 21 1 (a) of the U.P. Urban Building (Regulation of letting, Rent and Eviction) Act, 1972. There was also a point raised before the

Prescribed Authority and appellate authority qua jural relationship between the respondent landlord and petitioner tenant but the said point has not been pressed before the Court. Thus, the learned Senior Counsel appearing for tenant petitioner has only pressed the point of bona fide need and, hence, question of maintainability of the release application before the Prescribed Authority. □

3. In support of his submission learned counsel for petitioner has relied upon a judgment of Coordinate Bench of Bombay High Court in the case of *Nawab Sardar Meer Sultan Saheb Alim Khan Saheb v. R.R. Gibson 1969 (71) BomLR 357 = Law Finder DocId # 31388* relevant paragraph No. 16 of the judgment has been placed before the Court referring to the relevant provisions quoted therein of the Bombay Rent (War Restrictions) Act, 1918 which is claimed to be para materia to Section 21 1 (a) insofar as the bona fide need in respect of trust property is concerned. Relevant paragraph 16 runs as under:

*"As already pointed out the trust-deed permits only the Managing Trustee to occupy one of the flats for better management of the trust and one such flat has already been occupied by the present Managing Trustee, viz. plaintiff No. 1. Again in her deposition before the trial Court, plaintiff No. 3 stated in cross-examination:*

*If I occupy the flat in suit, I will have to pay the rent."*

*That clearly shows that the plaintiff wanted the premises for being let out to plaintiff No. 3. That would not be occupation by plaintiff No. 3 either in her capacity as a trustee or as a beneficiary. Even otherwise, it would be illegal for a trustee unless authorised by the trustee*

*unless authorised by the trustee to use the trust property for his or her own purpose. No claim for recovery of possession can, therefore, be founded on the plea that the one of the trustees in his or her capacity as a trustee wants to occupy the suit premises."*

4. Shri Jain, learned Senior Advocate has further argued that the point of maintainability of release application was pressed by moving miscellaneous application upon which hearing was deferred vide order dated 13.10.2014 on the ground that this point will be determined at the time of final disposal but this point has virtually remained undecided. It is argued that the court of appeal has manifestly erred in affirming the judgement of the Prescribed Authority.

5. Countering the above submissions advanced by Shri P.K. Jain, learned Senior Advocate, Shri Atul Dayal, learned Senior Advocate appearing for respondent has placed before the court the judgment in the case of **Genda Lal v. District Judge, Kanpur Nagar and others Allahabad Rent Case 1999 volume 1 Page No. 3** and has placed before the Court paragraph 5 and 6 of the judgment that according to which in case of a □ private trust principles applicable to the public charitable trust will not be attracted especially in the circumstances when amendments have been brought in vide U.P. Act No. 6 of 1995 □ inserting Clause (bb) under Section 2 (1) of Act No. 13 of 1972, exempting public religious institutions from the operation of the Act, 1972. Paragraphs 5 and 6 of the judgment are reproduced hereunder:

*"5. In order to appreciate the above argument of the learned Counsel, it*

is relevant to mention here that by U.P. Act No. 6 of 1995, Clause (bb) was inserted in Section 2(1) of the Act whereby it has been provided that the Rent Control Act shall not apply to any building belonging to or vested in the public charitable trust or public religious institution. This Amending Act came into force with effect from 26.9.1994. □

6. First of all it may be indicated that there is nothing on record to indicate that the building in question belonged to or vested in a public charitable trust. There is a distinction between a public charitable trust and a private charitable trust. To a building belonging to a private charitable trust the Act does not cease to operate on account of the amended Clause (bb). But assuming for the sake of argument that the building in question is covered by Clause (bb), it is to be noted here that the revision filed against the order of allotment made in favour of the petitioner had already been decided on 21.9.94 before the Amending Act came into force. The order of allotment made in favour of the petitioner thus stood cancelled even before the Amending Act came into force. A perusal of the order of the Revisional Court shows that the order of allotment made in favour of the petitioner was cancelled for valid reasons as it was found that the mandatory provisions contained in Rules, 8(2) and 9(3) of the Rules were given a complete go by the authority concerned. Under the said provisions the landlord has a vested right to have a notice of the proceedings relating to the allotment of the vacant building. This is obviously for the reason that if the building is bonafide required by the landlord, he may apply for its release under Section 16 (1) of the Act. After when the order of allotment made in favour of the petitioner was set aside by the Revisional court, the petitioner was left with no rights

in himself which he could enforce in law. Therefore, even on the assumption that on account of the Amending Act having come into force during the pendency of proceedings before the R.C&E.O held in pursuance of remand of the Revisional Court, the petitioner is not entitled to derive any advantage on that account as his status as that of an unauthorised occupant remained the same because indubitably he came to occupy the building in question on the basis of allotment order which was cancelled later on by the Revisional Court. With the cancellation of allotment order his status became that of an unauthorised occupant having no rights to continue to retain the occupation of the building in question."

6. Since learned Senior Advocate appearing for petitioner does not press the point of jural relationship of the respondent landlord and tenant petitioner, the Court proceeds on the admitted fact position that there existed this jural relationship. Under the circumstances, therefore, the only point that is to be looked into is, as to whether even in case of a private trust bona fide need can only be set up for the requirement of the trust and not qua family members of the trustee. □

7. Petitioner though had questioned the trust while setting up a plea of title also but ultimately rested upon the point as to the maintainability of the release application only for the reason that need was set up for the family members of the trustee, namely, the *mutawalli*.

8. Having heard learned counsel for respective parties and having perused the records, in order to address this issue as has been raised by learned Senior Advocate appearing for petitioner, it is relevant to

produce Sub-Clause (a) of Section 21 (1) of Act No. 13 of 1972 that runs as under:

*"21. (1) (a) that the buildings is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust;"*

(emphasis added)

9. The aforesaid highlighted provision clearly stipulates that in the matter of charitable trust the need for the residential purposes of charitable trust, the object of trust is to be set up in order to apply for release under Section 21 (1) (a) of the Act. This provision has continued on the statute right from the beginning when it came into force vide gazetted notification dated 13.03.1972 after it was assented by President on 08.03.1972. However, Clauses (bb) came to be inserted under Sub-Section 1 of Section 2 of the Act vide U.P. Amendment Act No. 5 of 1995 w.e.f. 26.09.1994, the said provision is quoted as under:

*"2(1).....*

*(a).....*

*(b).....*

*(bb) any building belonging to or vested in a public charitable or public religious institutions."*

10. From the bare reading of the aforesaid provision, it is clear that public charitable trust or public religious institutions have been taken out from the purview of the Act No. 13 of 1972 and thus in these circumstances even though the relevant

portion of the clause a of Sub-section 1 Section 21 ought to have been deleted but they remained a statute. In my considered view even if this provision remained unamended, it got rendered otiose as this provision chiefly speaks of public trust. Thus, the said part of provision would not be attracted in the present case as it is admittedly a private trust and not a public trust. The judgment of the Bombay High Court refers to the identical provision of the Act. Upon reading of the relevant paragraph 1 it clearly transpires that public charitable trust fall within the purview of the Bombay Act. The Coordinate Bench discussed the relevant provision of the said Act and the intendment of the legislature to the effect that□ protection has been granted to serve the purpose of the trust and its object and not the individual beneficiary. Upon repeated query being made learned Senior Advocate appearing for petitioner, could not point out any provision of the Bombay Act to demonstrate that in the said Act also public charitable trusts are no more amenable to jurisdiction of the Rent Authorities under the said Act. Besides that I find that a Co-ordinate Bench of this Court in the case of **Genda Lal (Supra)** has rightly observed that after the amending act came into force the public charitable trusts no more are amenable to rent authority jurisdiction qua rights under the Act of 1972 but the private trusts do and the last part of provisions as have remained unamended under Section 21(1) (a) therefore, shall not apply to a private trust.

11. In such above view of the matter, therefore, I do not find force in the argument advanced by learned Senior Advocate appearing for petitioner. No other point has been pressed.

12. Petition lacks merits and is accordingly dismissed.