

**Execution of release order u/s.
23 U.P. Urban Buildings
(Regulation of Letting , Rent and
Eviction) Act, 1972**

- **Section 23 - Enforcement of eviction order -**
(1) The prescribed authority may use or cause to be used such force as may be necessary for evicting any tenant against whom an order is made under Section 21 or an appeal under Section 22, as the case may be, or against any other person found in actual occupation, and for putting the landlord into possession.
- (2) Every order of the prescribed authority in proceedings under this section shall be final.

- This section is parallel to section 16(4).
- **Object of the section** - Without the power of s.23(1), PA couldn't have enforced the power of release.
- Consideration of any **event taking place subsequent** to release order becoming final would be beyond jurisdiction because it amounts to re-opening of controversy finally set at rest. Hence, an order passed under s.23 is not amenable to review, appeal or revision.
- However, an application under **s.151 CPC** for restoration of possession is maintainable. **Mahila Shiksha Mandal v. PA Kanpur 1982 ALR 179.**

- Sub-section (1) empowers PA to use such force as is necessary to evict the tenant. On **harmoniously reading s.21(4)(6) and s.23**, it follows that, after making an order in favour of the landlord under s.21(1) or (2) and **after the expiry of 30 days** from such an order, the tenant or any other person found in occupation of the tenanted premises shall be considered an unauthorised occupant who must vacate the same.

Who can apply under s.23

- Right to apply for execution under section 23 is available only to the **landlord** in whose favour release order was passed. The assignee of the landlord purchasing the tenanted premises after passing of the eviction order under s.21 cannot apply for execution of the release order.

Against whom eviction lies-

- S.23 can be pressed into service not only against the tenant but also against all such persons who are living with him or living in the premises on behalf of the tenant.
- In proceedings under s.23, a person occupying the premises in his own right as a tenant or a person having a **title for the property** cannot be evicted by enforcing an order to which he was not a party. **M/S Ravi Sahkari Avas Samiti Ltd. Allahabad v. Prescribed Authority 1989 (2) ARC 127**

- Also, persons in occupation of the disputed premises **as co-landlords cannot be evicted** on the basis of eviction order as section 23 covers only tenant and persons claiming through him. Hence, PA is bound to hear the co-landlords. **Deepali Bhattacharya v. Ramji 1990 (1) ARC 348**

- **S.23 envisages an enquiry by the PA** to determine whether the person claiming to be in occupation is liable to be evicted as a tenant or a person on his behalf.
- In **Smt. Shah Jahan Begum v. PA 1982(2) ARC332**, some of the LRs of the deceased tenant did not join the release proceedings, and the eviction order became final only against the impleaded LRs. Those LRs filed the objection that they could not be evicted as they were not parties to the release proceedings. It was held that since the non-impleaded LRs were in occupation of the tenanted premises on behalf of the deceased tenant, they could be evicted.

- Execution order under section 23 can be passed by the PA on the basis of **compromise** between the landlord and the tenant.
- Also, execution of eviction order can be passed on the basis of **undertaking** by the tenant that he will vacate the premises within a particular period. And the eviction order shall become executable forthwith on completion of the said duration. **Devi Prasad Srivastava Advocate v. PA Allahabad 1983 (1) ARC 372.**

Rule 14 – Enforcement of order of allotment or release-

- Building allotted or released under s. 16(1)
- Actual vacancy of the building
- Inquiry by the DM regarding vacancy of the building
- Post inquiry, allotment proceedings shall be taken by the DM
- Service of **Form C** order upon the person(s) found in authorised occupation of the building/tenanted premises directing them to vacate and deliver the same to the person named in the Order.

* If the occupant fails to vacate within the stipulated period, the DM shall issue an order to the **officer-in-charge of the Police Station in form D** to get the premises vacated and put the allottee/landlord in possession of the building.

Order of possession given without service of notice in Form C, is illegal and the dispossessed person should be re-instated. **Smt. Usha Raha v. State of UP 1989 (2) ARC 329**

Relevant Case - Laws

- Allottee can only be inducted on the **actual occurrence of the vacancy**. Tenant transferring possession directly to the allottee without the Landlord coming into picture is not permissible. **Dr. Madhuri Gupta v. Dist. Judge Varanasi 1987 ALJ 1019**
- if tenant is dispossessed by playing **fraud on the Court**, wherein fictitious signatures of tenant were found on record and a vakalatnama filed by a fictitious advocate, it was held that he should be put back in possession immediately. **Ashok Kumar v. VI ADJ kanpur 1987(1) ARC 366**

- Mere fact of accepting rent by the landlord after the date by which the tenant was to vacate the tenanted premises does not amount to waiver or creation of fresh tenancy. **Gulab Singh Rawat v. Dist. Judge Uttarkashi 1984 LRJ 170**
- Application under s. 23 filed before the expiry of 30 days from the date of Order under S. 21(1)a), held, PA has jurisdiction to pass order for execution after the expiry of 30 days. **Phool Chand v. PA Kanpur 1985 (2) ARC 359.**

Thank You !