

# **Training Programme on Rent Control Act and S.C.C. (from 21.06.2023 to 22.06.2023)**

## **Topic**

### **Definition of 'building' under U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act 1972**

Presented by,

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# THE UTTAR PRADESH URBAN BUILDINGS (REGULATION OF LETTING, RENT AND EVICTION) ACT, 1972

Amended by

U. P. Act No. 37 OF 1972

U. P. Act No. 19 OF 1974

U. P. Act No. 28 OF 1976

U. P. Act No. 17 OF 1985

U. P. Act No. 11 OF 1988

U. P. Act No. 05 OF 1995

U. P. Act No. 17 OF 1999

[ Received the assent of the Governor on March 08, 1972, under Article 200 of the Constitution of India and was published in the Uttar Pradesh Gazette Extraordinary, dated March 13, 1972]

## An ACT

*“An Act to provide, in the interest of the general public, for the regulation of letting, and rent of, and the eviction of tenants from, certain classes of buildings situated in urban areas, and for matters connected therewith.”*

## CHAPTER-1 (Preliminary)

### 3. Definitions

In this act-

(i) **“Building”**, means a residential or non-residential roofed structure and includes:-

(i) any land (including any garden), garages and out-houses, appurtenant to **such building**;

(ii) any furniture supplied by the landlord for use in **such building**;

(iii) any fittings and fixtures affixed to **such building for the more beneficial enjoyment thereof**;

The building in question being a "new construction" as it was assessed to house tax with effect from 1st April, 1986, the provisions of U.F. Act No. 13 of 1972 are not applicable to it.

3. Whether the provisions of U.F. Act No. 13 of 1972 are not applicable to the property in suit ?

Secondly, the property in dispute is not "a building" within the meaning of provisions of U.F. Act No. 13 of 1972. It is in the shape of open piece of land with small tin shed described as gher. It does not fall within the purview of the provision of the aforesaid Act.

Thirdly, in alternative, if it is treated as "a building" within the meaning of the said Act, the building in question is exempted from the operation of the said Act as it is a "new construction" having first assessment under the municipalities' law with effect from 1st April, 1986 and the suit was filed in the year 1992 i.e. within the exemption period. Section 2(2) of the Act.

Thirdly, in alternative, if it is provides that any building constructed after 1st April, 1985 shall be exempted from the operation of the U.F. Act No. 13 of 1972 for a period of 40 years. Earlier the period of exemption was 10 years. Elaborating the argument, it was submitted that the first assessment of the building in question is 1st April, 1986.

With regard to the second point, he submits that the building in question is not a **"new construction" and the property in dispute is "a building" within the meaning of the said Act and as such the provisions of U.P. Act No. 13 of 1972 are applicable.** The other limb of the argument is that even if, it is held that the property in dispute is not a "building" then the suit giving rise to the present revision was not maintainable before the Judge Small Causes Court.

Now, the second point relating to the question as to whether **the property in question is "a building" within the meaning of Section 3(i) of U.P. Act No. 13 of 1972 or not is taken up. It may be noted that U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 referred as U.P. Act No. 13 of 1972 is an Act** to provide in the interest of general public, for the regulation of letting and rent of, and the eviction of tenants from, certain classes of buildings situated in urban areas, and for matters connected therewith. The provisions of the said Act are applicable to certain classes of building. In other words, if the property in dispute is not a building, evidently it will not be governed by the said Act.

The roofed structure is essential to term a construction as a building within the meaning of the aforesaid definition of building. The facts of the case in hand are not much in dispute. A bare perusal of the plaint would show that what was let out to the defendant has been described as gher facing north consisting of one Kothari covered by tin shed, having three trees and water supply connection. In para-4A of the plaint, the dimensions of the gher (subject matter of the letting) has been mentioned as 52 feet x 42 feet, wherein a temporary kothari having dimensions around 8 feet x 8 feet exists. It has been further pleaded that there is no other roofed structure and the said kothari in the gher is appurtenant to the vacant land. The said gher was let out for the purposes of repairing the tractors and the tractors could be repaired on a vacant piece of land. The kothari is situate at north-western corner of land. It was pleaded that the accommodation in question is not a building.

It was contended that the disputed property is roofed structure which is a building and is in existence since the beginning of the tenancy which amounts accommodation.

The question now boils down as to whether in this fact situation, the accommodation in question can be treated as "a building" or not.

Learned counsel for the applicant has placed reliance upon a Judgment of this Court in **Narayan Chand Das v. Panna Lal and another, 1969 AWR 52**, a case under the provisions of old Act, namely **U.P. (Temporary) Control of Rent & Eviction Act, 1947** wherein it has been held that where a landlord while letting out an open piece of land to tenant permitted the tenant to construct tin-shed etc., and tenant was allowed to take away the materials of the constructions at the time when he left the land, land does not become an accommodation within the meaning of the Act. The said decision was given with reference to definition of "accommodation" under the said Act of 1947. There is a marked difference in between the definitions of accommodation as given under old Act of 1947 and "building" as defined in the new Act in as much as concept of roofed structure was not there earlier.

In **Nanhe Ghosi v. Firozul Hassan Khan and others, 1978 ALJ, 1290**, again a case under the old Act, this Court with regard to definition of "accommodation" as defined under the old Act has held that before protection of the provisions of **U.P. Act No. 3 of 1947** or thereafter of **U.P. Act No. 13 of 1972** can be claimed by a tenant having regard to definition of the word "accommodation" or "building", **it must be established that the land is appurtenant to any building or part of a building or residential or non-residential roofed structure.** The observations made in para-10 of the report that mere presence of a building or a roofed structure on the plot of land would not enable the tenant to claim protection of the provisions of these Acts to some extent are helpful to the landlord herein.

In Syed Ahmad Ali and others v. Shafiq Ahmad, 90 ARC 1991 (2), this Court considered the definition of "building" as defined in U.P. Act No. 13 of 1972. The tenant herein was dealer of ballis and he took the land for commercial purpose for storing the ballis. On small portion of land, a temporary shed was constructed. In this factual matrix, this Court has held as follows:

"A building which could be brought under the purview of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 must be residential or non-residential and a roofed structure which would include land including any garden, garage and out houses appurtenant to such building. The defendant is doing his business on a vast piece of land and on a small portion of it if he has constructed a shed also, but that would not change the nature of the land into a building so as to attract the provisions of the U.P. Act No. 13 of 1972. The First Appellate Court has been influenced by the terms and conditions of the unregistered deed and, therefore, it has held the disputed property as building within the meaning of the U.P. Act No. 13 of 1972. After excluding the unregistered lease deed as inadmissible, the other evidence which is on record would positively suggest that the property in question is not a building within the meaning of the U.P. Act No. 13 of 1972 but is a land let out for commercial purpose. That being so, a suit under the Transfer of Property Act could be brought against the defendant-respondent by the plaintiffs."



In **Subedeen and Ors. V. Satyawati Devi & Anr., 1996 (28) ALR 415**, open land along with tin shed and kothari respectively for tethering animals and for storing fodder was let out. The question as to whether the said letting is in respect of a building, and the provisions of U.F. Act No. 13 of 1972 were attracted or not, arose. This Court has held that what was let out to the appellants therein was land termed as "Adda Land" for carrying on the business of sale and purchase of milk animals by them, therefore, provisions of U.F. Act No. 13 of 1972 would not be attracted. It repelled argument that the provisions of the said Act would be attracted because on the land there existed tin shed and kothari respectively for tethering those animals and for keeping Bhoosa (fodder). Noticeably, the Court has relied upon the Apex Court judgment in **Prabha Manufacturing Industrial Co-operative society v. Banwan Lal, AIR 1989, SC 1101**. In the case of **Prabha Manufacturing Industrial Co-operative Society (supra)**, it has been laid down that if open land with a small shed on it was let out it will be letting of land and not the building. The relevant paragraph is reproduced below:

"16. The High Court has gone one step further. It has indicated that, even if one accepted the best case of the appellant Society - that there was a shed on the land even at the time of the original allotment - such plot-cum-shed cannot convert the land into 'premises' within the meaning of the Rent Control Act. This was the prima facie view of the Court as it did not hear arguments from the parties on this point. Counsel canvassed this point before us also. Sri Mehta, referring to **Corporation of City of Victoria v. Bishop of Vancouver Island, AIR 1921 PC 240**, **Karnani Properties Ltd. v. Augustine, 1957 SCR 20: (AIR 1957 SC 309)**; **State of Bombay v. Venkat Rao Krishna Rao Gujar, (1963) 1 SCR 418: (AIR 1966 SC 991)** and **Ghansham Das v. Devi Prasad, (1966) 3 SCR 875: (AIR 1966 SC 1998)** contended that the definition of premises envisages a building and that, as per these decisions, anything that is built on land, even if it is only a kacha shed, would be a building and this brings the property in question within the purview of the Act. On the other hand Dr. Ghosh sought, by analogy of the principle of the decisions in **Uttam Chand v. S. H. Lalwani, AIR 1965 SC 716**; **S. M. Gopalkrishna Chetty v. Ganeshan, (1976) 1 SCR 273 : (AIR 1975 SC 1750)** and **Morarji Goculdas Deoji Trust v. Madhav Vithal Kudwa, (1983) 1 Rent CJ 195 : (AIR 1983 Bom 68)**, to contend that what the Rent Control Act contemplates is a building let out qua building, may be with appurtenant land, but not a land let out for use as land merely because there may be a small building on it. The relevant question, he says, is what was the dominant subject-matter of the allotment - the land or the building and this is a question which can only be decided in the respondent's favour. We do not consider it necessary to embark on a discussion of this aspect as we are satisfied, for the reasons already discussed, that the property allotted to the Society in respect of which it was a tenant, initially under the Custodian and later under the plaintiffs, was only a plot of land and that the plaintiffs were justified in attempting to recover possession thereof by a suit for possession in the Civil Court."

Similarly, in the case of **Koti Saroj Anamma & Anr. V. Jonnalagada Malleswara Rao, AIR 1995 SC 1401**, the Apex Court has held as follows:

"7. Looking to the evidence, it is clear that the shed, which has a zinc sheet roof, was erected only to protect the Saw mill machinery. What was leased out to the respondent was substantially the Saw mill machinery for the purpose of carrying on timber/Saw mill business. The shed was merely erected to shelter the machinery. The dominant purpose of the lease was to lease out the Saw mill machinery. In order that the lease should be covered by the **Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960**, the lease should be of a building as defined in Section 2(iii). It should, therefore, be a lease of any house or a hut or a part of a house or a hut let for residential or non-residential purposes. It would include gardens, grounds, garages and outhouses appurtenant to such a house or a hut. In the present case, however, the lease is not of any house or a hut or part of a house or a hut. The lease is of a Saw mill machinery which is covered by a zinc sheet shed. The dominant purpose of the lease is to lease out the machinery. The shed is only an adjunct. It is also pointed out that a covering over the machinery in the shape of a structure consisting of zinc sheets supported on poles can hardly be called a house or even a hut. In any case, looking to the dominant purpose of the lease, the two courts below have rightly come to the conclusion that the lease is not covered by the provisions of the **Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960.**"

The trial court proceeded on the footing, that there is kothari and tin shed having roofed structure and an open space it will be a building. It failed to notice the distinction where the vast piece of land having a small kothari on small portion of it is subject matter of lease and where a lease is of a kothari with small piece of open land is let out. In the case on hand, the letting is of land to enable the defendant tenant who is mechanic to carry on his business of repairing the tractors in an open space and the kothari on a small piece of land is being used for the purpose of storing the tools etc.

Upshot of the above discussion is that it is a case of letting of an open piece of land having a tin shed towards a corner of the land and letting took place in respect of land for the purposes of repairing the tractors and kothari was meant for purposes of storing the tools. The dominant purpose of letting is vacant piece of land and as such the **provisions of U.P. Act No. 13 of 1972** will not be applicable, the existence of kothari on a small part of it notwithstanding. In other words, it is a case of letting land and not of letting kothari.

Thus, the Apex Court has divided the buildings in two categories; one category consists of the buildings which are subject to municipal tax and in second category other buildings fall. In the case of a building subject to assessment of municipal tax it has been laid down that for the purposes of determination the date of construction of a building, it is the date of the first assessment which is the relevant date for reckoning the exemption period of 10 to 40 years as the case may be.

Here the building is subject to assessment, now the question remains as to what is the date of the first assessment of the building in question. The plaintiff landlord has placed reliance upon Exhibit-A-7 (paper no. 37-C) which according to him is the first assessment of the property in dispute. In this document the name of various tenants including that of the defendant tenant is recorded against the different shop numbers. As against the entry of name of the defendant tenant Mistri Udal son of Raghbir, Shop No. 274/12 has been mentioned. At the top of this document it is mentioned that the assessment is for the period of 1st April, 1986 to 31st March, 1992. The landlord submits that this is first assessment of the property in question.

"where such substantial addition is made to an existing building that the existing building becomes only a minor part thereof the whole of the building including the existing building shall be deemed to be constructed on the date of completion of the said addition."

Sub-clause (c) of Explanation 1 to Section 2 of the Act as reproduced above, clearly provides that where substantial addition is made to an existing building that the existing building becomes only a minor part thereof, the existing building shall be deemed to be constructed on the date of completion of the said addition.

The finding recorded by the court below with regard to the date of construction is based on misreading of the documentary evidence on record. It misinterpreted the definition of building as contained in the said Act. A reading of the judgment of the trial court would show that it under issue no. 3 has reproduced paragraphs from the rulings relied upon by the parties and immediately jumped to the conclusion without making an analysis of the relevant facts. The trial court has disposed of this vital point for determination in a slipshod manner. It was under legal obligation to discuss the documentary evidence with some detail.

In view of the above discussions, the findings recorded by the trial court with regard to rate of rent on issue no. 1 is confirmed, but at the same time the findings on other issues are, hereby, set aside by holding that the property in dispute is not a building within the meaning of Section 2(i) of the Act and even if, it is a building, the provisions of U.F. Act No. 13 of 1972 are not applicable as its date of construction is 1st April, 1986 and the suit was filed in the year 1992 and therefore, it is exempted from the operation of U.P. Act No. 13 of 1972, under Section 2(2) of the said Act.

# Exemptions from operation of Act

2. Exemptions from operation of Act (1) Nothing in this Act shall apply to 1[the following, namely]:

2 [ 3 [(a) any building of which the Government or a local authority or a public sector corporation 4 [or a Cantonment Board] is the landlord;  
or]

(b) any building belonging to or vested in a recognised educational institution, 5[\* \* \*]; or

6 [(bb) any building belonging to or vested in a public charitable or public religious institution;

(bbb) any building belonging to or vested in a waqf including a waqf-alal-aulad;]

(c) any building used or intended to be used as a factory within the meaning of the Factories Act, 1948 (Act No. LXIII of 1948) 7 [where the plant of such factory is leased out along with the building]; or

(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:

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**1 Ins by sec 2 of U.P.Act no 17 of 1985**

**2 Subs by sec 2 of U.P.Act no 28 of 1976**

**3 Subs by sec 2 of U.P.Act no 17 of 1985**

**4 Ins by sec 2(a) of U.P.Act no 05 of 1995**

**5 Ommited by sec 2 of U.P.Act no 05 of 1995**

**6 Ins by sec 2 of U.P.Act no 05 of 1995**

**7 Ins by president act 19 of 1973 and up act no 30 of 1974 and shall be deemed to have come into force on 15 july,1972**

Provided that nothing in this clause shall apply in relation to any shop or other building, situated within the precincts 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 theatre), or any building appurtenant thereto; or

(f) any building built and held by 1 [\* \* \*] a society registered under the Societies Registration Act, 1860 (Act No. XXI of 1860) or by a co-operative society, company or 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;

2 [(g) any building, whose monthly rent exceeds two thousand rupees;

(h) any building of which a Mission of a foreign country or any international agency is the tenant.]

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1. Ommited. by sec 2 of U.P.Act no 28 of 1976

2. Ins by sec 2 of U.P.Act no 05 of 1956



(2) 3 [Except as provided in **sub-section (5) of Section 12, sub-section (1-A) of Section 21, subsection (2) of Section 24, Sections 24-A, 24-B, 24-C or sub-section (3) of Section 29,** nothing in this Act shall apply to a building during a period of ten years from the date on which its construction is completed]:

4 [Provided that where any building is constructed substantially out of funds obtained by way of loan or advance from the **State Government or the Life Insurance Corporation of India or a bank or a co-operative society or the Uttar Pradesh Avas Evam Vikas Parishad,** and the period of repayment of such loan or advance exceeds the aforesaid period of ten years then the reference in this sub-section to the period of ten years shall be deemed to be a reference to the period of fifteen years or the period ending with the date of actual repayment of such loan or advance (including interest), whichever is shorter.]:

5 [Provided further that where construction of a building is completed on or after April 26, 1985 then the reference in this sub-section to the period of ten years shall be deemed to be a reference to a period of 6 [forty years] from the date on which its construction is completed.]

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3. Subs by sec 2 of U.P. Act no 28 of 1976

4. Ins by sec 2 of U.P. Act no 28 of 1976

5. Ins by sec 2 of U.P. Act no 17 of 1985

6. Subs U.P. Act no 11 of 1988

**Explanation I. 7 [For the purposes of this section], -**

(a) the construction of a **building** shall be deemed to have been completed on the date on which the completion thereof is reported to or otherwise recorded by the local authority having jurisdiction, and in the case of **building** subject to assessment, the date on which the first assessment thereof comes into effect, and where the said dates are different, the earliest of the said dates, and in the absence of any such report, record or assessment, the date on which it is actually occupied (**not including occupation merely for the purposes of supervising the construction or guarding the building under construction**) for the first time:

Provided that there may be different dates of completion of construction in respect of different parts of a **building** which are either designed as separate units or are occupied separately by the landlord and one or more tenants or by different tenants;

(b) construction includes any new construction in place of an **existing building** which has been wholly or substantially demolished;

(c) where such substantial addition is made to an **existing building** that the **existing building** becomes only a minor part thereof the whole of the building including the **existing building** shall be deemed to be constructed on the date of completion of the said addition.

## 1 [Explanation II.- The expression bank means-

- i) a banking company, as defined in the Banking Regulation Act, 1949;
- (ii) the State Bank of India constituted under the State Bank of India Act, 1955;
- (iii) a subsidiary bank, as defined in the State Bank of India (Subsidiary Banks) Act, 1959;
- (iv) a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;
- (v) a financing bank or Central Bank (as defined in the Uttar Pradesh Co-operative Societies Act, 1965), not being a Land Development Bank; and
- (vi) any other financial institution notified by the State Government in the Gazette as a bank for the purpose of this Act;

**Explanation III.** - A building shall be deemed to be constructed substantially out of funds obtained from sources mentioned in the proviso, if the funds obtained from one or more of such sources account for more than one-half of the cost of construction.];

(3) 2 [\* \* \*]

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1. Ins by sec 2 of U.P.Act no 28 of 1976

2. omitted by sec2 of up act no 05of 1995

3. Ins by sec 3 of U.P.Act no 28 of 1976

**2 [2-A. Special provisions for short term licence.-** (1) Notwithstanding anything contained in this Act, a person occupying a building as owner or as tenant or in any other capacity (hereinafter in this section referred to as licensor) may permit any other person (hereinafter in this section referred to as licensee) to occupy for purely temporary residential accommodation for a period not exceeding three months without any order of allotment under Section 16: Provided that intimation of the grant of such licence shall be given jointly by the licensor and the licensee to the District Magistrate within one month from the date of occupation of the building or part by the licensee:

Provided further that the **District Magistrate may by order**, extend the maximum period of such temporary occupation up to 6 months in the aggregate (including the original period of occupation):

Provided also that similar licence shall not be granted again to any other person in respect of the same building or part within a period of one year from the date of vacation of the building or part by the last licensee.

**(2) Such licensee** shall not be deemed to be a tenant for purposes of Section 20, notwithstanding that he pays or is liable to pay rent for such occupation.

**(3) Such licensor** shall not be deemed to have ceased to occupy such building or part within the meaning of Section 12 merely on the ground of having granted such licence.

**(4) The District Magistrate** shall not make an allotment under Section 16 in respect of the building or part vacated by the licensee except with the consent of the landlord.

**(5) If the licensee** omits or refuses to vacate the building or part after the expiry of the period of licence the licensor may make an application to the prescribed authority for his eviction, and the prescribed authority shall thereupon order his eviction, and its order shall be final:

Provided that no order shall be made under this sub-section except after giving to the parties concerned a reasonable opportunity of being heard.

**(6) The provisions of Section 23** shall apply to an order made under sub-section (5) as if it were an order made under Section 21 or under Section 22.

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1. Ins by sec 2 of U.P.Act no 28 of 1976

2. omitted by sec2 of up act no 05of 1995

3. Ins by sec 3 of U.P.Act no 28 of 1976

**2-B. Constitution of Rent Control Tribunals.-** (1) The State Government may, by a notified order, constitute one or more Tribunals (to be called Rent Control Tribunals) in each district, and may likewise cancel or amend such order.

(2) Where a Tribunal has been constituted in a district under sub-section (1), the State Government may, by a notified order, confer all or any of the powers of the District Magistrate or the prescribed authority under this Act on such Tribunal, and thereupon, such Tribunal shall, notwithstanding anything contained in any other provision of this Act, be deemed to be the District Magistrate or the prescribed authority, as the case may be, for the purposes of this Act, and all cases pending with the District Magistrate or with the prescribed authority, as the case may be, immediately before the constitution of such Tribunal shall stand transferred to the Tribunal, and any further proceedings before the Tribunal shall continue from the stage at which a case is so transferred, and the cases shall be disposed of by the Tribunal.]

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1 Subs by up.civil laws amendment act 1972

2 Ins by sec 2 of U.P.Act no 28 of 1976 and shall be deemed always to have been inserted.

3 Subs by U.P.Act no 19 of 1974

**Thank You**