

**IN THE HIGH COURT OF KARNATAKA
AT BANGALORE**

Dated this the 31st day of July, 2008

BEFORE:

THE HON'BLE MR JUSTICE D V SHYLENDRA KUMAR

Writ Petition No 52208 of 2003 [HRC]

BETWEEN

1. HILARY MASCARENHAS
SINCE DECEASED BY LRs
 - (A) PATRICK CYPRIAN MASCARENHAS
AGED ABOUT 39 YEARS,
S/O LATE HILARY MASCARENHAS
 - (B) HAROLD MASCARENHAS
S/O LATE HILARY MASCARENHAS
AGED 53 YEARS,
 - (C) MRS. EVELYN MASCARENHAS
W/O LATE HILARY MASCARENHAS
AGED 74 YEARS.

ALL ARE RESIDING AT NO. 123/10C
NEAR ANITHA OIL MILL, PUTTUR,
DAKSHINA KANNADA - 574 201. ... PETITIONERS

[By M/s C B Srinivasan & I Gopala Krishna, Adv.]

AND

M. SANJEEVA SHETTY
S/O M. CHANDU SHETTY,
AGED 81 YEARS,
MERCHANT, PUTTUR,
R/A NEHRUNAGAR,

HIGH COURT OF KARNATAKA HIGH COURT OF KARNATAKA HIGH COURT OF KARNATAKA HIGH COURT OF KARNATAKA HIGH COURT OF KARNATAKA

P.O. NEHRU NAGAR,
PUTTUR,
DAKSHINA KANNADA - 574 203.

... RESPONDENTS

[By M/s S Shaker Shetty & D Vijayakumar, Adv.]

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DT. 20-4-1991 PASSED BY THE PRINCIPAL CIVIL JUDGE (JR DN) PUTTUR VIDE ANNEXURE - H AND ETC.

THIS PETITION COMING ON FOR HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

IA-1 of 2005 for impleading sought to be at the instance of Sri Mahalingeswhara Temple, Puttur, Dakshinakannada district, is not required to be entertained at this stage in a proceeding under Article 227 of the Constitution of India. IA-I/2005 is therefore rejected. It is open to the applicant-temple to workout its remedies elsewhere in accordance with law.

2. This writ petition is by a the legal heirs of first respondent in HRC No 3 of 1987, on the file of Principal Civil Judge (Jr Dn), Puttur, a petition under Section 21(1)(a), (h) and (p) of the Karnataka Rent Control Act,



1961 [for short, the Act], who are aggrieved by the order of eviction passed by the rent control court as per order dated 20-4-1991, which order came to be though slightly varied, but nevertheless the order of eviction was confirmed on one or the other ground as per the order dated 20-2-2001 passed in Revision (Rent) No 136 of 1991, on the file of Second Additional District Judge, Mangalore. It is aggrieved by the order of eviction, which now remains only under Section 21(1)(a) of the Act, the present writ petition to get over the order of eviction.

3. It is relevant to notice here that the tenant-respondent in HRC No. 3/1987 had preferred HRRP No 307 of 2001 before this court being aggrieved by these two orders, but this court having, in terms of the order dated 28-10-2003 [Annexure-K to the writ petition], dismissed the revision petition with liberty to file a writ petition on the same cause of action and accordingly the present writ petition is filed.




4. Writ petition had been admitted for examination and the respondent, who was served, had entered appearance through counsel.

5. The eviction petition was filed against three persons namely Hilary Mascarenhas son of Piade Mascarenhas, Mrs Cicilla Mascarenhas wife of Sebastian Mascarenhas and Lawrence Mascarenhas son of Piade Mascarenhas, figured as respondents 1 to 3 and impleaded as respondents for the reason that they are the grandchildren of one Piade Mascarenhas, who, in terms of a term lease [*vaide genij*] deed dated 27-10-1932 [Exp2 to the eviction proceedings and Annexure-C to this writ petition], executed by one Shanthappa Rai, who had a lease in his favour for a period of 55 years in terms of lease deed dated 28-5-1923 [Exp1 to the original eviction petition and Annexure-B to this writ petition], as *mokhtesar* of Sri Mahalingeshwara Temple at Puttur town

in Dakshinakannada district, obtained leasehold rights in respect of the petition schedule property.

6. The eviction petition under Section 21(1)(a), (h) and (p) of the Act had been filed by one M Sanjeeva Shetty son of M Chandu Shetty, on the premise that he is the present landlord claiming under a registered assignment deed dated 3-5-1965 executed by said Shanthappa Rai in favour of the eviction petitioner, which enabled the eviction petitioner to exercise the right of collecting rents in respect of the property and such other rights for a period of 12 years even when the property remains in the possession of Piade Mascarenhas or his legal heirs. The respondents in the eviction petition are sons and daughter of the original lessee Piade Mascarenhas.

7. The eviction petition was contested by the respondents by filing objections to the petition. The trial court, which had formulated necessary points for determination and has examined the supporting evidence



let in by the parties, while allowed the eviction petition under Section 21(1)(a) i.e. the tenants were in arrears of rents and 21(1)(p) i.e. the respondents-tenants can get suitable alternative premises, and dismissed the petition under Section 21(1)(h) i.e. the premises was required for the *bona fide* occupation of the landlord.

8. Aggrieved respondents in the eviction petition had carried the matter by way of revision under Section 50 of the Act to the court of II Additional District Judge, Dakshinakannada, in Revision (Rent) No 136 of 1991. As the original first respondent had died by then, his legal representatives came in place of deceased first respondent.

9. The revision petition though in terms of the order dated 20-2-2001 was partly allowed, in the sense that the order of eviction on the ground under Section 21(1)(p) was set aside, the order of the trial court directing eviction of the respondents-tenants under Section 21(1)(a) of the Act



was affirmed by dismissing the revision petition in so far as this ground of eviction was concerned and it is because of this reason, the aggrieved respondents in the eviction petition had come up with a further revision before this court under Section 115 CPC. In view of declaration of the legal position with regard to the maintainability of the revision petition under Section 115 CPC in respect of such matters, revision petition under Section 115 was permitted to be withdrawn by this court and in its place the petitioners have presented this writ petition.

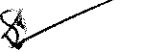
10. The writ petition being against the orders passed by the rent control court affirmed in revision under Section 50 of the Act, the scope of examination is limited and Sri C B Srinivasan, learned counsel for the petitioners and Sri Shaker Shetty, learned counsel for the respondent in this writ petition, have confined to their submissions to the legal aspects, which are as raised by Sri C B Srinivasan,



learned counsel for the petitioners, touching upon the jurisdiction of the court to entertain an eviction petition.

11. It is firstly contended by Sri C B Srinivasan that the eviction petition was not tenable for the reason that the schedule premises in respect of which eviction was sought for by filing an eviction petition is not even a 'premises' in terms of this expression as it occurs under Section 3(n) of the Act. Submission is that if the subject land/premises in respect of which eviction is sought for by filing a petition under Section 21(1) of the Act is not a 'premises' in terms of Section 3(n) of the Act and therefore rent control court had no jurisdiction to entertain the eviction petition.

12. It is secondly contended on behalf of the petitioners-tenants that the eviction petitioner is not a person who fits into the expression 'landlord' as defined in Section 3(h) of the Act. By drawing attention to the very assignment deed, based on which the eviction petition had been filed, submission of Sri C B Srinivasan, learned counsel for the



petitioners, is that on the admission of the eviction petitioner himself, the eviction petitioner had a right under the assignment deed for a period of 12 years from the date of its execution i.e. from 3-5-1965 and such right came to an end by 1977, thereafter, even if the petitioner's version is accepted, which in fact is disputed by the respondents-tenants, the eviction petitioner has no legs to file an eviction petition in the capacity of a landlord, as the expression occurs in Section 3(h), and for this reason also, the eviction petition was not maintainable and the eviction petition should have been dismissed on these two grounds.

13. Elaborating the first contention, Sri C B Srinivasan, learned counsel for the petitioners, has drawn my attention to the provisions of Section 3(n) of the Act and submits that the premises in question when was leased in the year 1932 as per lease deed dated 27.10.1932 was a small bit of agricultural land measuring 8 cents and if

agricultural land and therefore goes out of the definition of 'premises' as it occurs under section 3[n] of the Act.

15. With regard to the next contention, namely, that the petitioner is not a 'landlord' within the meaning of the phrase as it occurs in section 3[h] of the Act, submission is that even on the very pleadings in the petition, the petitioner has claimed interest in the subject property that has no privity of contract with the respondent described as a tenant with reference to an assignment deed dated 3.5.1965 marked as Exhibit.P2. What is pointed out is that though the assignment deed purports to grant some rights in favour of the petitioner by the lessor of the respondent-tenant, namely Shanthappa Rai and through his legal heirs, the validity period of the assignment deed was for twelve years from 3.5.1965; that the rights if any the eviction petitioner had got under this assignment deed from the very plea of the petitioner, ended by the year 1977 and the eviction petition filed in the year 1987 by a

person who was not the owner of the land nor the person who had put the respondent impleaded as a tenant in possession had any privity of contract with the respondent – tenant and therefore cannot be termed as a 'landlord' within the meaning of the phrase as it occurs in section 3[h] of the Act.

16. It is submitted that when the land in question had continued to be in possession of the respondent-tenant in the revision petition, the eviction petitioner cannot claim any right of a tenant holding over or such other rights under this assignment deed to put him into the position of the landlord for the purpose of instituting an eviction petition.

17. Learned counsel for the petitioner would submit that section 21 of the Act being the section which provides protection to a tenant and an eviction sought against the protected tenant and by the person mentioned, only in the manner, the eviction petitioner cannot by describing



himself as a landlord present a petition if he is not otherwise a landlord in terms of the provisions of the Act i.e., as defined in section 3[h] of the Act and the eviction petitioner being not the landlord within the scope of the definition of 'landlord' could not have maintained an eviction petition and at the instance of such person, the rent control court could not have entertained the eviction petition.

18. It is these two arguments which were countered by Sri. S Shaker Shetty, learned counsel for the respondent in this writ petition and eviction petitioner before the trial court.

19. Sri. S Shaker Shetty, learned counsel for the respondent has submitted that the conduct of the respondent-tenant in clearly admitting that the eviction petitioner was the one collecting the rents and that he had paid him the rents particularly as deposed in the witness box in the cross examination is good enough to resolve

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this controversy; that it is for this reason, the courts below did not even examine this aspect as to whether the petitioner was a landlord or not and in the absence of such examination, it is not open to undertake such examination while exercising jurisdiction under Article 227 of the Constitution of India.

20. Submission is that the scope of examination in a petition under Article 227 of the Constitution of India is very limited and the examination as is sought to be attempted by the court at the instance of the writ petitioner is one beyond the scrutiny of the court under Article 227 of the Constitution of India and in support of this submission has placed reliance on the decision of the Supreme Court in the case of **'SADHANA LODH vs. NATIONAL INSURANCE COMPANY LIMITED'** reported in **AIR 2003 SC 1561**, particularly the observations as contained in paragraph-7 of this Judgment which reads as under:



support of such submission has placed reliance on the decision of the Supreme Court in the case of **'NALANIKANTH RAMADAS GUJJAR vs. TULASI BAI [DEAD] BY LRs AND OTHERS'** reported in **AIR 1997 SC 404** with reference to the definition of the word 'premises' as it occurred in the Bombay Rents, Hotel and Lodging House Rates [Control] Act [57 of 1947]; that the Supreme Court while examining this question had answered that an agricultural land put to non-agricultural use is a land which is covered within the meaning of the word 'premises' and the definition of the word 'premises' under the Act being not very different, the decision directly applies to the present case and therefore the land in question is 'premises' within the meaning of the Act notwithstanding that it had agricultural character in the beginning as on the very pleadings of the parties and on the evidence there was a dwelling house in the place; that the respondent-tenant had taken steps to demolish and put up new structure and had sought for permission from



the municipal authorities and this clearly demonstrated non-agricultural use of the land which was sufficient to bring it within the meaning of the premises as defined in section 3[n] of the Act also.

24. However, on this aspect, Sri. C B Srinivasan, learned counsel for the petitioner has tried to make a distinction by drawing attention to the difference in the definition of the word 'premises'; that in the Bombay Act, it is a land which is being used for agriculture whereas the word 'being' is conspicuously absent in the Karnataka Act and therefore the definition and authority based on such definition cannot be imported to understand the word 'premises' occurring in the Karnataka Act.

25. Let me now consider the grounds urged and the rival submissions made by the learned counsel for the parties.

26. The matter is examined though it is a petition under Article 227 of the Constitution of India only in the context



of legal questions that arise which inevitably involves understanding and interpretation of the provisions of the Act. Though the Act no more remains on the statute book, having been replaced by the Karnataka Rent Act, 1999 [for short, the 1999 Act], which, to a great extent, continues to provide protection to tenants against unreasonable and whimsical evictions as had been provided under the 1961 Act, and some of the expressions used in the two enactments being in pari-materia interpretation of the phrases and expressions in the 1961 Act, still has relevance.

27. The Act was a piece of social welfare legislation enacted by the Karnataka Legislature for regulating the rents and evictions of tenants from premises and for regulating lease of buildings etc. It essentially sought to provide protection to tenants from being subjected to high rate of lease rent and also being subjected to whimsical



21. Protection of tenants against eviction:- (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or other authority in favour of the landlord against the tenant:

Provided that the court may on an application made to it, make an order for the recovery of possession of a premises on one or more of the following grounds only, namely:-

- (a) *that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of payment for the arrears of rent has been served on him by the landlord by tender or delivery either personally to the tenant or to a member or servant of his family at his residence (or if such tender or delivery is not practicable) by affixture to a conspicuous part of the premises;*

One can notice that the order of eviction can only be in favour of a person who is the 'landlord' and in respect of a 'premises' in the occupation of the tenant. It is only because the writ petitioner has suffered an order of

eviction under Section 21(1)(a) of the Act, being aggrieved, the matter has been brought for scrutiny before this court, in the context of the validity of the order of eviction and for which purpose, the understanding of the words 'landlord' and 'premises' is required.

31. 'Premises' is defined in Section 3(n) of the Act, which reads as under:

- (n) *'premises' means -*
- (i) *a building as defined in clause (a);*
 - (ii) *any land not used for agricultural purpose.*

If there should have been a 'building' within the meaning of this word under Section 3(a), that in itself is sufficient to rope it within the meaning of the word 'premises'. Unfortunately, in the present case, there was no building and that is why the matter has assumed some importance in the light of the disputed questions. Further, the respondent in the eviction petition described as tenant is

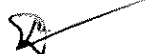
a person claiming under a lease deed of the year 1932 and the said lease deed is one which describes the subject matter of lease as a piece of agricultural land measuring 8 cents. In the absence of any privity of contract between the eviction petitioner and tenants and particularly as the eviction petitioner also claims as a person deriving some rights under the very person who had executed this lease deed of the year 1932 in terms of the assignment deed of the year 1965 the legal status of the eviction petitioner to be a landlord becomes uncertain. The terms of the original lease remains the same even if the eviction petitioner should claim under the lessor of the lease deed of the year 1932. It is in this background, the endeavour on the part of Sri C B Srinivasan, learned counsel for the petitioners-tenant that the subject matter of lease of the year 1932 is not a 'premises' within the meaning of this word under Section 3(n) of the Act.



32. The Act being a social welfare legislation and meant to give some protection to tenants, the understanding and the interpretation of the Act should be in this background. As the demised premises is not coming within the scope of clause (i) of Section 3(n) of the Act, it will have to be necessarily looked to clause (ii) viz., 'any land not used for agricultural purpose'. While the interpretation sought to be placed by Sri C B Srinivasan, learned counsel for the petitioners on this word is that the land which had been used for agricultural purpose and which had not undergone the process of any conversion continues to be a land for agricultural purpose and the meaning of the phrase 'any land not used for agricultural purpose' should only be such a land which has ceased to be capable of being used for agricultural purpose and it is in this context a distinction is sought to be made in respect of the definition of this word 'premises' as it occurs in the Bombay Act and as it was interpreted by the Supreme Court in the case of **NALANIKANTH RAMADAS**



GUJJAR [supra], I find that while the definition as given in the Act in clause 3(n) of the Act should be understood in its normal way and in the background of the objectives sought to be achieved by the Act, particularly the legislature having used the negative conjuncture 'not used for agricultural purpose', which is an exception to any land being coming within the meaning of 'premises', the sweep of the phrase 'used for agricultural purpose' cannot be unduly expanded, as the land used for agricultural purpose goes out of the protection of the Act. Therefore, the phrase 'land used for agricultural purpose' should receive a strict construction. If so, it should be a land which is being used for agricultural purpose and though the word 'being' is absent in the Karnataka Act, the meaning is no different particularly, to understand as to the 'land not used for agricultural purpose' to be brought into the scope of the word 'premises'. It should be noticed that the meaning of the word 'premises' is only with reference to the user of a land and is independent of



the terms between the parties or other aspects. If any property is sought to be taken out of the definition of 'premises' as it occurs in Section 3(n) of the Act, the burden is on such person to prove that it is a land used for agricultural purpose. In the present context, on record, it is not the case of the parties that the land is used for agricultural purpose, though the 1932 lease deed mentions describing the land as a piece of agricultural land. The evidence also does not indicate it as a land being used for agricultural purpose. The land used for agricultural purpose being an exception, it receives strict construction and any land used for any purpose other than agriculture necessarily comes within the meaning of the word 'premises'. If the writ petitioners-tenants not having set up a case that the land is used for agricultural purpose and such stand having not been taken, the land though might have had agricultural character for some point of time, when the user is not agricultural as of now and agricultural use of the property is not made good, it



necessarily comes within the meaning of the word 'premises'. It is only such land where agricultural operations are being carried out and is used for such purpose, that goes out of the definition of the word 'premises'. Therefore, the subject land is a 'premises' within the meaning of Section 3(n) of the Act. The interpretation and understanding of the word 'premises' have significance even in the 1961 Act, continues to the 1999 Act also, as the definition of the word 'premises' in the 1999 Act is in *pari materia* with such definition in the 1961 Act.

33. Significance of the interpretation and understanding of the word 'premises' is that the provisions of the Act applies only to eviction under Section 21 of the Act only to 'premises' and if it is not a 'premises', the benefit under the Act cannot be sought for nor the Act made applicable.

34. That takes us to the second question, pressed into service by Sri C B Srinivasan, learned counsel for the

petitioners-tenant that the eviction petitioner was not the landlord within the meaning of this word as it occurs in Section 3(h) of the Act, which reads as under:

- (h) *'landlord' means any person who is for the time being receiving or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant; and includes any person not being a tenant who from time to time derives title under a landlord; and further includes in respect of his sub-tenant a tenant who has sub-let any premises:*

The interpretation of 'landlord' also cannot be based on any different principle, as this again is a word occurring in the Act - a social welfare legislation. The landlord is a person in whose favour the eviction can be sought under Section 21 of the Act and therefore eviction cannot be sought in favour of any other person/s. Eviction petition presented was for the benefit of the eviction petitioner and as it is not on behalf of any one else, as he claims he is



the landlord for the purpose of the eviction petition. It is because of this, the argument that the eviction petitioner was not the landlord. The requirements for the applicability of the Act are that there should be a lease of a premises and while there is a premises even within the meaning of this word as it occurs in Section 3(n), as discussed above, and lease referred to is of the year 1932, it is only with reference to this lease deed, one has to ascertain the relationship between the parties. The eviction petitioner is not a party to the 1932 lease deed. The lease deed of the year 1932 is a a lease reserving lease rent at Rs 10/- per annum in respect of the agricultural land. The eviction petition filed by the eviction petitioner is also on the same premise and indicating the annual rent to be at Rs 10/-. So, there is no plea of any variation in the terms and conditions. The eviction petitioner though is not the lessor himself, claims to be an assignee of the lessor of the respondents-tenant under the assignment deed of the year 1965. This is the only



instrument on which the eviction petitioner claims the status of landlord, though the respondent-tenant has denied this status in the objection statement to the eviction petition, considerable reliance is placed by learned counsel for the respondent- eviction petitioner on the so-called admission by the petitioner-tenant while answering the questions posed in the cross-examination. Reliance is also placed on some documents viz., Exp3 and 12 to indicate that undisputedly the eviction petitioner had been collecting the rent and therefore being the person who was receiving or entitled to receive rent is the landlord in respect of the premises.

35. The definition and interpretation of the word 'landlord' is not exactly from the context of facts of a particular case but independent of them in the context of the enactment and as to how it should be understood with reference to the definition in the Act itself. While the assignment deed so long as it works, the eviction petitioner definitely can claim the status of landlord and it



cannot be disputed. In the present case, the eviction petitioner himself having produced the assignment deed along with the eviction petition and that indicating that he gets the right for a period of 12 years, which had expired in the year 1977, on the date of filing of the eviction petition, even in terms of the very assignment deed, he had ceased to be the landlord.


36. Learned counsel for the respondent- eviction petitioner has vehemently urged that the eviction petitioner had much more right than collecting rents on behalf of the *Mokhtesar* of Sri Mahalingeswhara temple and first *genidar* under the *vaide geni* in favour of one Shantappa Rai, in so far as the subject matter of eviction petition is concerned, that being in respect of 8 cents of land, which was the subject matter of the 1932 lease deed, which was, undisputedly, in the possession of the respondents-tenants, because of which possession only, the eviction petition had been filed, the provisions of Section 109 of the Transfer of Property Act cannot be

lease by the eviction petitioner in favour of the petitioners-tenants. While that right is claimed under the assignment deed for the purpose of describing as landlord, the assignment deed itself says that it is for 12 years. What rights the assignee may have against his assignor cannot be a right against the petitioners herein describing them as tenants, as a right to collect the rent in so far as the tenants are concerned and nothing more, because for the entire duration of 12 years the tenants were in possession and continue to be in possession thereafter also and even the right to collect the rent from the tenants ceased after the expiry of 12 years under the assignment deed of the year 1965 and therefore the eviction petitioner/assignee cannot be termed as landlord. The scope of the word 'landlord' cannot be enlarged unduly beyond what is provided in Section 3(h) of the Act, as that will dilute the protection given to tenants from unreasonable and unauthorized evictions. Eviction can



did not find this to be an issue at all, I find from the pleadings of the parties that the tenants disputed the position of the eviction petitioner as landlord. The proceedings under the rent control Act being a summary proceedings, non-framing of an issue by the court of first instance cannot be taken to be a situation to prevent the tenants against whom eviction was sought, to pursue that defence and to call in aid that defence even in the present writ petition to get over the order of eviction that they have suffered. The mere fact that the courts below did not examine the specific question in that context cannot come in the way of this court examining the question for the purpose of interpretation and applying the meaning of the word as applicable to the situation for scrutinizing the sustainability or otherwise of the orders impugned.

38. It is also of significance for the reason that an eviction petition in terms of Section 21 can only be at the instance of the landlord for his benefit and not the benefit of a person who is not the landlord. If the eviction



petitioner is not the landlord and if it is not shown to be for the benefit of the landlord, the eviction petition cannot be entertained by the court, in the sense, the petition cannot be taken up for the purpose of Section 21 of the Act.

39. It is also for this reason, though learned counsel for the respondent- eviction petitioner submits that in the wake of the admission made by the tenants that the eviction petitioner had been collecting rent for some time, the tenants have admitted the eviction petitioner to be the landlord and they are estopped from contending contrary to this the contention falls to ground, as while the eviction petitioner might have been acting for the purpose of collecting rent, but as the eviction petition itself is based on the assignment deed of the year 1965, which expressly recites that it is a for period of 12 years and if so, the eviction petitioner goes out of the definition of 'landlord' and the petition becomes not tenable and if the petition is not one as required to be entertained by the court under



Section 21 of the Act and is to be thrown out at the threshold, it is not that can be validated by the subsequent so called admission. While I am not even satisfied with the submission of the so-called admission, as it is only a statement that the premises was once being used for residence etc., the so-called admission cannot come in the way of applying the law to the situation. The eviction petitioner was not the landlord within the meaning of the word as it occurs in Section 3(h), the eviction petition itself was not tenable and it does not further necessitate any examination and for this reason, I find that the eviction order passed by the trial court and as modified by the revisional court and sustaining an order of eviction against the writ petitioners under Section 21(1)(a) of the Act, is not tenable in law and it is accordingly set aside and the eviction petition is dismissed because the eviction petitioner cannot be construed as landlord within the meaning of this word as it occurs in Section 3(h) of the Act.



40. In the result, this writ petition is allowed and the impugned orders of eviction are set aside by issue of a writ of certiorari. Parties to bear their own costs.

41. Rule made absolute.

Sd/-
Judge

*pjk/An