

(1966) 11 PAT CK 0005

In the Patna High Court

Case No : Civil Writ Judl. Case No. 254 of 1965

Nandalal Sinha

APPELLANT

Vs

The District Magistrate and Others

RESPONDENT

Date of Decision : 01-11-1966

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 — Section 11, 11(1), 11(2)
Constitution of India, 1950 — Article 19(1)

Citation : AIR 1967 Patna 334

Hon'ble Judges : R.L. Narasimham, C.J;R.J. Bahadur, J

Bench : Division Bench

Advocate : B.C. Ghosh and Arun Chandra Mitra, for the Appellant; B.D. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is an application under Article 226 of the Constitution by the landlord of a house situate in Hazaribagh town, challenging the validity of the allotment of his house made by the District Magistrate of Hazaribagh in exercise of the powers conferred by Sub-section (2) of Section 11 of the Bihar Buildings (Lease. Rent and Eviction) Control Act, 1947. (hereinafter referred to as the Act). When the writ petition was filed on the 5th April. 1965, the order of allotment under challenge was the order of the District Magistrate, dated the 14th November, 1964 (Annexure C), which was in the following terms:--

"In exercise of the powers vested in me under Clause (a) of Sub-clause (2) of Section 11 of the Bihar Building (Lease. Rent arid Eviction) Control Act. 1947, I.V. Balasubramanian, District Magistrate, Hazaribagh make the following allotment

The house occupied by Major Rattan Singh, Officer Commanding, 22 Bihar Battalion, N.C.C., Hazaribagh. belonging to Shri Nandlal Singh. Retd Deputy Magistrate. Madhava Mandiram Hazaribagh, situate near St. Columba's College,

Hazaribagh, on vacation, is allotted to (1) Miss A.V. Dean Deputy Collector, Hazaribagh, and (2) Smt. Rani Chatterjee.

Lady Principal, Govt. Girls Higher Secondary School, Hazaribagh, on the same terms and tenancy, each being liable for 50 p.c. of the rent.

Sd. V. Balasubramaniyam, District Magistrate. Hazaribagh.

Prior to that allotment the house was always in the occupation of one tenant, but by that order the District Magistrate allotted it to two tenants, namely, (1) Miss A.V. Dean, and (2) Srimati Rani Chatterjee, and further directed that each of them will be liable to pay 50 per cent of the total rent. In other respects the terms of the tenancy were kept as before. The petitioner--filed representation before the District Magistrate soon afterwards, objecting to the allotment of his house to two separate tenants (Annexure D). but he was informed by the Deputy Collector Incharge that in view of Section 15(2) of the Bihar and Orissa General Clauses Act 1917, words in the singular include the plural and vice versa, and that, therefore, there was nothing illegal in allotting a house in the occupation of one tenant to two tenants. After some correspondence when the petitioner found that the District Magistrate was not prepared to change his view, he moved this court on the 5th April, 1965, for quashing the order of allotment.

During the pendency of this writ petition, however, the District Magistrate passed another order of allotment, on the 13th May, 1966 (Annexure L) in the following terms, substituting one Mr. S. Hansdah. Treasury Officer of Hazaribagh in place of Miss. Chatterjee:--

"In exercise of the powers vested in me under Clause (a) of Sub-section (2) of Section 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947. I M. Taneja. District Magistrate. Hazaribagh. make the following allotment:--

The house occupied by (1) Miss. A.V. Dean. Deputy Collector, Hazaribagh and (2) Smt. Rani Chatterjee Lady Principal. Govt. Girls" Higher Secondary School. Hazaribagh, belonging to Shri Nandlal Sinha Retired Deputy Magistrate. Madhava Mandir, Hazaribagh, situated near St. Columba's College. Hazaribagh, on vacation by Smt. Rani Chatterji is allotted to (1) Miss. A.V. Dean, Deputy Collector, Hazaribagh and (2) Shri S. Hansdah, Treasury Officer, Hazaribagh. on the same terms and tenancy.

Sd. M. Taneja District Magistrate. Hazaribagh.

The petitioner, therefore, made additional submissions by his petition dated the 5th July 1966. At present, therefore, the order of allotment under challenge is the order dated the 13th May, 1966 (Annexure L), and not the earlier order of allotment dated the 14th November. 1964 (Annexure C)

2. The true scope of Sub-section (2) of Section 11 of the Act has been explained in a Full Bench judgment of this court in Shiveshwar Prasad Sinha Vs. The District Magistrate of Monghyr and Another, where it was pointed out that Sub-

section (2) of Section 11 is of a beneficial nature meant to provide quarters for Government servants who were transferred at short notice from one place to another. Some of the points urged in this petition are covered by that judgment and they were quite properly not pressed again in this petition.

3. The constitutional validity of Sub-section (2) of Section 11 of the Act has been challenged in this petition on the ground that the aforesaid sub-section contravenes Articles 14, 19 and 31 of the Constitution. This point also is concluded by a Division Bench judgment of this court in *Smt. Santi Devi v. Deputy Commr.--District Magistrate of Hazaribagh*. Misc. Judl. Case No. 939 of 1964, disposed of 8-8-1966 (reported in MR 1967 Pat 333). There it was pointed out that neither Article 14, nor Article 31, was contravened by the Legislature when it made special provisions in the interests of Government servants by inserting Sub-section (2) in Section 11 of the Act. Mr. Ghosh for the petitioner, however, urged that in that judgment the question of contravention of Article 19 was not decided and that he would like to urge that point here. According to him the power conferred upon the District Magistrate in Sub-section (2) of Section 11 to foist a tenant on an unwilling landlord amounted to an unreasonable restriction on a landlord to hold his property and hence would contravene the fundamental rights guaranteed by Article 19(1)(f) of the Constitution. This point, however, is also concluded in the aforesaid judgment, where the Bench observed :--

"It may be urged with some justification that there is some restriction on the right to hold property, but the restriction must be held to be reasonable for the very reasons for which I have held that the offending clause does not violate Article 14. Public servants are liable to transfer from place to place at very short notice and unless power is conferred on a competent authority to provide suitable accommodation for them their efficiency in the discharge of public duties will suffer."

In these observations though Article 19 was not expressly referred to nevertheless it was made clear that the restriction on the right to hold property (Article 19(1)(f)) was reasonable in public interest. Hence Sub-clause (6) of Article 19 would "save the statutory provision from attack on the ground of contravention of Sub-clause (1)(f) of that Article."

4. The only surviving point which requires full consideration here is as regards the right of the District Magistrate to split up what was originally one tenancy into two separate tenancies. To appreciate this point, Clause (a) of Sub-section (2) of Section 11 of the Act may be quoted:--

"11 (2) (a)--Where a servant of the Government in possession of any building as a tenant intends to vacate such building he shall give fifteen days previous notice in writing of his intention to do so to the landlord and to the District Magistrate who shall under intimation to the landlord, within a week of the receipt of the notice, either allot the building to any other servant of the Government whom

the District Magistrate thinks suitable subject to the payment of rent, and the observance of the condition of the tenancy by such servant of the Government or direct that the landlord shall be put in possession of the building."

According to Mr. Ghosh, if the outgoing tenant was only one tenant, the new tenant to whom the house may be allotted by the District Magistrate must also be only one and the District Magistrate has no jurisdiction to allot the house to two tenants and apportion the rent payable by each of them to the landlord. The obvious answer to this objection is that by virtue of the Bihar and Orissa General Clauses Act the singular always includes plural and vice versa, and that if the District Magistrate has jurisdiction to allot the building to "any other servant of the Government" he has also jurisdiction to allot same building to more than one Government servant, provided of course that the total rent payable to the landlord is not in any way adversely affected. Mr. Ghosh however, urged that the aforesaid general principle of statutory construction will not apply where it is repugnant to the subject or context. According to him, the context as envisaged in Sub-section (2) of Section 11 and in the other provisions of the Act does not permit of the splitting up of a tenancy except with the consent of the landlord.

5. In support of this contention he relied on two decisions of the Allahabad High Court in *Shri Krishan Lal Mehra Vs. The District Magistrate, Kanpur and Others*, and *N.C. Agarwal Vs. Krishan Lal Mehra and Others*, where it was held, on a construction of Sub-section (2) of Section 7 of the U.P. (Temporary) Control of Rent and Eviction Act, 1947. that the District Magistrate had no jurisdiction to split up one tenancy into several sub-tenancies in exercise of the Statutory power conferred on him by that sub-section. As Mr Ghosh has relied very much on the aforesaid decisions of the Allahabad High Court. I may quote Section 7 of the U.P. Act in full :--

"(7)(1)(a) Every landlord shall within 7 days after an accommodation becomes vacant by his ceasing to occupy it or by the tenant vacating it or otherwise ceasing to occupy it or by termination of tenancy or by release from requisition or in any other manner whatsoever, give notice of the vacancy in writing to the District Magistrate (b) Every tenant occupying accommodation shall within 7 days of vacation of such accommodation or ceasing to occupy it give notice thereof in writing to the District Magistrate, (c) The notice given under Clause (a) or (b) shall contain such particulars as may be prescribed.

(2) The District Magistrate may by general or special order require a landlord to let or not to let to any person any accommodation which is or has fallen vacant or is about to fall vacant.

3. No tenant shall sub-let any portion of the accommodation to his tenancy except with the permission in writing of the landlord and of the District Magistrate previously obtained.

4. The District Magistrate may, on application made to him by the landlord, require a prospective tenant of any accommodation in respect of which an order

is made under this section to pay to the landlord an advance of rent equal--(a) to one month's rent where the accommodation is to be let on a monthly basis, and (b) to one-half of the yearly rent where the accommodation is to be let on a yearly basis.

Explanation:--For purposes of this section the word "let" shall include the word "sublet".

It will be noticed that in Sub-section (3) of Section 7 of the U.P. Act the tenant's power to sub-let a portion of the accommodation is made subject to his obtaining the permission in writing of the landlord and of the District Magistrate previously obtained. In *N.C. Agarwal Vs. Krishan Lal Mehra and Others*, , in paragraph 12, this sub-section was very much relied upon for the purpose of holding that in the exercise of the power conferred by Sub-section (2) of Section 7 the District Magistrate cannot split up the tenancy without the consent of the landlord. To quote the following observations of the Full Bench

"A tenant cannot sub-let any portion of his accommodation in his tenancy except with the permission and writing of the landlord and of the District Magistrate previously obtained. This clearly indicates that the accommodation in the tenancy of a tenant is not to be sub-divided into further "accommodations" for the purposes of subletting and that If a portion of the accommodation is to be sublet the consent of the landlord and the District Magistrate is essential."

The learned Full Bench then observed that it was the right of the landlord to see that the tenancy was not split up without his consent and that right cannot be taken away in the absence of an express provision in the Act.

6. These principles, however will not be applicable in construing the Bihar Act. Here there is no general power to a District Magistrate to direct the letting of a house as is conferred in Section 7 of the U.P Act Sub-section (2) of Section 11 confers limited power on him to allot a house already in the possession of a Government servant as tenant to an other Government servant after giving due notice to all parties. Sub-section (1) of Section 11 confers immunity from eviction to a tenant (where he is a Government servant or not) except for special reasons mentioned in that sub-section. One of the reasons is mentioned in Clause (a) of Sub-section (1) of Section 11 as "sub-letting the building or any portion thereof without the consent of the landlord". It is true that Sub-section (1) of Section 11 does not expressly say that the provisions of that sub-section are subject to the provisions of Sub-section (2) But on the principle of harmonious construction it must be held that Sub-section (2) will prevail if there is a conflict between that sub-section and Sub-section (1), otherwise the special power conferred on the District Magistrate by Sub-section (2) will be rendered nugatory. Doubtless where there is no conflict the provisions of Sub-section (1) will have to be given full effect. Hence, on the principle of harmonious statutory construction, it must be held that the power of the landlord to give his consent on withdraw his consent to the sub-letting of a a building is taken away by the

Legislature in Sub-section (2) of Section 11.

7. Thus the main reason which weighed with the Full Bench of the Allahabad High Court in taking the view mentioned above cannot apply here, because in the U.P. Act, Sub-section (3) of Section 7 expressly stated that notwithstanding the consent of the District Magistrate, sub-letting cannot be done except with the permission in writing of the landlord also. Such concurrent power to grant permission for sub-letting is not found in the Bihar Act. Hence it cannot be urged here that the right of the landlord to give his consent notwithstanding the statutory power of the District Magistrate has been expressly recognised in the Act.

8. It is true that ordinarily a tenancy cannot be split up into several sub-tenancies without the consent of the landlord. But when Sub-section (2) of Section 11 gives, unfettered discretion to the District Magistrate to allot the building to "any other servant of the Government", there seems no justification for construing the aforesaid words only in the singular and not in the plural. I could see nothing in the contest which would justify my ignoring the well known principle of statutory construction mentioned in Bihar and Orissa General Clauses Act, It is true that the landlord's interests should not suffer, and the only interest of the landlord that is saved by Sub-section (2) of Section 11 is his right to receive the full rent due to him from the tenants. Here the District Magistrate has safeguarded the same by apportioning the rent payable between the two tenants to whom the house was allotted:.

9. It was, however, urged that then was only one kitchen and one latrine in the house, that it was wholly unsuitable for occupation by two separate tenants and that permanent damage may be done to the house by the order of allotment made by the District Magistrate. This statement, however, has been challenged in the counter-affidavit filed by the other side. So long as there is no material damage to the house and no permanent alteration in structure or design, it should be left to the tenants to use the house in such manner as they may consider convenient. If any of the tenants, however, causes material deterioration to the building, then it will always be open to the landlord to take steps for the eviction of that tenant on the ground mentioned in Clause (b) of Sub-section (1) of Section 11 of the Act. So long as the quantum of rent payable to the landlord is not adversely affected and the building is returned to him after the termination of the tenancy in the same manner in which it was at the commencement of the tenancy, subject of course to reasonable wear and tear, the landlord cannot object to the joint occupation of the house by more than one tenant.

10. The construction placed upon Sub-section (2) of Section 11 by Mr. Ghosh if accepted will not substantially advance the remedy intended to be given by that sub-section. A large house in a big city might have been occupied by a senior Government servant getting high salary. On his transfer his successor-in-office may not require that building. But there may be other Government servants

drawing lesser salary who may be willing to occupy portions of the house and pay their portion of the apportioned rent to the land lord. Then again, there may be some Government servants who are unmarried and who may not require such large accommodation. The District Magistrate should have sufficient discretion to allot the house to one Government servant or more than one Government servant according to the circumstances of each case. To say that once a building is occupied by one Government servant, it can under no circumstances be allotted on his departure to more than one Government servant, will be to unduly restrict the power of the District Magistrate under Sub-section (2) of Section 11 and it will not promote the object of the Legislature. It will also offend the well-known rule of statutory construction embodied in Section 16 (2) of the Bihar and Orissa General Clauses Act.

11. I should, however, point out that when the District Magistrate thus splits up the tenancy and allots the building to more than one tenant, he should issue appropriate instructions so that the tenants by their acts of waste or negligence do not allow the building to deteriorate materially.

12. The petition is, therefore, dismissed with costs. Hearing fee Rs. 100/- payable to respondent No. 1.

13. BAHADUR, I.: I agree