
(1964) 04 AHC CK 0006
In the Allahabad High Court
Case No : Special Appeal No. 511 of 1962

Property Agents	Vs	APPELLANT
Shamsher Bahadur and Others		RESPONDENT

Date of Decision : 28-04-1964

Acts Referred:

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 7, 7(2), 7(3), 8

Citation : AIR 1966 All 424

Hon'ble Judges : V. Bhargava, J; G.C. Mathur, J

Bench : Division Bench

Advocate : Jagdish Swarup, for the Appellant; S.C. Khare, for the Respondent

Final Decision : Dismissed

Judgement

1. This is a special appeal against the judgment of a learned single Judge allowing a writ petition filed by Shamsher Bahadur, respondent No. 1, and quashing the order of the State Government passed u/s 7-A of the U. P. Control of Rent and Eviction Act, 1947 (hereinafter referred to as the Act) and granting certain consequential reliefs.

2. Firm Ganesh Das Ram Gopal, respondent No. 3, is the proprietor of a building known as Halwasiya Court situate at Hazratganj Lucknow. The ground floor of this building consisted of a big hall and two small shops. The big hall was in the occupation of respondent No. 3 but the two shops had been rented out. After the tenants of the two shops vacated them the respondent No. 3 demolished the partition walls and included the shops also in the hall. The original building had admittedly been constructed long before the Act came into force. It appears that the respondent No. 3, after the modification of the accommodation, did not desire to occupy it itself and wanted to let it out. The respondent No. 3 did not, as required by Section 7 (1) of the Act, give intimation of the vacancy or intended vacancy to the Rent Control and Eviction Officer and thereby rendered itself liable to prosecution u/s 8 of the Act. Without giving such information and

without any allotment order having been passed in respect of this accommodation, the respondent No. 3, on July 31, 1958, executed a lease for three years in respect of this accommodation in favour of the appellant, Firm Property Agents. This lease provided for payment of a rent of Rs. 500 per month by the lessee and it also contained a clause for renewal of the lease for a further period of three years. It may be mentioned here that this lease deed was executed by respondent No. 3 but it was not signed by or on behalf of the appellant.

On October 12, 1958, the appellant executed a sub-lease of this accommodation in favour of Shamsheer Bahadur, for five years at a rent of Rs. 1,650 per month. It is important to notice that even at this stage the appellant did not obtain the permission of the District Magistrate as required by Section 7 (3) of the Act for subletting the accommodation and rendered itself liable to prosecution u/s 8 of the Act. When the Rent Control and Eviction Officer came to know that Shamsheer Bahadur had entered into possession without any allotment order from him, he, on December 8, 1958, issued a notice to respondent No. 3 to show cause why it should not be prosecuted u/s 8 of the Act for failing to notify the vacancy. On the same date he issued a notice to Shamsheer Bahadur u/s 7-A (1) of the Act to show cause why he should not be evicted from the accommodation. In reply to the notice received by it, the respondent No. 3, on December 11, 1958, wrote to the Rent Control and Eviction Officer stating that the accommodation was a new construction which did not fall within the purview of the Act and that as such no permission of the Rent Control and Eviction Officer was necessary for inducting a tenant. On December 22, 1958, the respondent No. 3 again wrote to the Rent Control and Eviction Officer stating that if he was pleased to hold that its contention made in the previous letter was not correct, the accommodation may be allotted.

In response to the notice u/s 7-A (1) received by him, Shamsheer Bahadur, on December 20, 1958, wrote to the Rent Control and Eviction Officer stating that the landlord had assured him that the accommodation was a new construction which was exempted from the operation of the Act and that on that representation he had accepted a lease of the same without an allotment order and prayed that the notice be withdrawn and an allotment order be made in his favour. Neither the respondent No. 3 nor Shamsheer Bahadur gave any information to the Rent Control and Eviction Officer about the lease executed on July 31, 1958, or about the sub-lease executed on October 12, 1958. After considering the replies of respondent No. 3 and of Shamsheer Bahadur in response to the notices issued to them and after considering the question whether the accommodation was governed by the Act, the Rent Control and Eviction Officer, on January 17, 1959, passed an order u/s 7 (2) of the Act directing respondent No. 3 to let out the accommodation to Shamsheer Bahadur. Though the allotment had been made at the request both of respondent No. 3 and of Shamsheer Bahadur, the respondent No. 3, on February 17, 1959, wrote to the Rent Control and Eviction Officer bringing to his notice the fact that it had

leased out the accommodation on July 31, 1958, to the appellant and that the appellant had sublet the accommodation to Shamsheer Bahadur and prayed that the allotment order be amended by ordering the appellant to sublet the accommodation to Shamsheer Bahadur.

On the same day the appellant also wrote to the Rent Control and Eviction Officer bringing to his notice the fact about the lease and the sub-lease and praying that the sub-letting may be legalised by amending the allotment order and directing it to sublet the accommodation to Shamsheer Bahadur. Without giving any notice to Shamsheer Bahadur and without giving him any opportunity of being heard, the Rent Control and Eviction Officer, by order, dated February 19, 1959, cancelled the previous order of January 17, 1959, and u/s 7 (3) of the Act directed that the accommodation be sublet to Shamsheer Bahadur by the appellant. No order allotting the accommodation u/s 7 (2) of the Act in favour of the appellant as tenant was ever passed. When Shamsheer Bahadur came to know of this order, he, on February 25, 1959, wrote to the Rent Control and Eviction Officer praying that the order of January 17, 1959, be allowed to stand. After giving notice to all the parties concerned and after hearing them, the Rent Control and Eviction Officer found that the lease and the sublease were both against the provisions of the Act and after considering the cases of all the parties he passed an order on March 19, 1959, cancelling the order for sub-letting, dated February 19, 1959, and restoring the order u/s 7 (2) of the Act, dated January 17, 1959.

The appellant submitted to this order but the respondent No. 3, on March 28, 1959, preferred a revision u/s 7-F of the Act to the State Government. It was prayed in this revision that the orders of the Rent Control and Eviction Officer, dated March 19, 1959 and January 17, 1959, be set aside and that either the order, dated February 19, 1959, be restored or the accommodation be ordered to be let to the appellant. By order, dated February 8, 1960, the State Government allowed the revision, set aside the order of the Rent Control and Eviction Officer, dated March 19, 1959, and restored the order, dated February 19, 1959. The State Government apparently did not grant the prayer for setting aside the order of the Rent Control and Eviction Officer, dated January 17, 1939 or the prayer for letting out the accommodation to the appellant. On February 17, 1960, Shamsheer Bahadur filed the writ petition, out of which this special appeal arises, principally for a writ in the nature of certiorari for quashing the order of the Rent Control and Eviction Officer, dated February 19, 1959, and the order of the State Government, dated February 8, 1960.

It appears that after the filing of this writ petition, the appellant initiated proceedings u/s 7-B of the Act against Shamsheer Bahadur in the Court of the Munsif (South) Lucknow and consequently the writ petition was amended by the addition of another relief for quashing the proceedings u/s 7-B of the Act. By judgment, dated March 26, 1962, a learned single Judge allowed the writ petition and quashed the order of the State Government, dated February Section 1960, as also the proceedings u/s 7-B. The respondent No. 3, at whose instance the

State Government had passed the order, dated February 8, 1960, u/s 7-F of the Act, submitted to the order of the learned single Judge and the appellant alone filed this special appeal.

3. The learned single Judge held that the accommodation was not a new construction and was governed by the provisions of the Act, that the lease, dated July 31, 1958, as well as the sub-lease, dated October 12, 1958, were void as having been made in contravention of the provisions of the Act and that the State Government had no jurisdiction to pass an order u/s 7 (3) of the Act or to restore an order passed u/s 7 (3) of the Act. In this view he quashed the order of the State Government restoring the order of the Rent Control and Eviction Officer passed u/s 7 (3) of the Act and restored the order passed u/s 7 (2) of the Act by the Rent Control and Eviction Officer allotting the accommodation in favour of Shamsheer Bahadur. After Jagdish Swarup had argued the case for a day on behalf of the appellant and after we had tentatively indicated that since respondent No. 3, at whose instance the State Government had passed the order in revision, had submitted to the quashing of that order by the learned single Judge, the appellant had no locus stand to maintain the appeal, S. C. Khare filed his appearance on behalf of respondent No. 3 and sought our permission to address the Court. This permission was granted and we have heard both Jagdish Swarup for the appellant and S.C. Khare for respondent No. 3.

4. The principal argument raised by Jagdish Swarup was that, in view of a Full Bench decision of this Court in *Udhoo Dass Vs. Prem Prakash and Another*, the lease executed by respondent No. 3 on July 31, 1958, in favour of the appellant was a valid lease, that the appellant was legally a tenant of the accommodation and that Shamsheer Bahadur could only be inducted as a sub-tenant of the appellant and not as a tenant of respondent No. 3. Without deciding the question as to the validity of the lease we propose to deal with this appeal on the assumption that the lease, dated July 31, 1958, was a valid lease as between respondent No. 3 and the appellant.

5. In our opinion, the Rent Control and Eviction Officer had no jurisdiction to review or cancel the first order made by him on January 17, 1959, u/s 7 (2) of the Act directing the respondent No. 3 to let out the accommodation to Shamsheer Bahadur the order of the Rent Control and Eviction Officer, dated February 19, 1959, reviewing and cancelling the order of January 17, 1959, was void and ineffective and the State Government had no power or jurisdiction to restore that order. It appears to us that the order of January 17, 1959, was a quasi-judicial order which could not be reviewed as there was no specific provision in the Act empowering the Rent Control and Eviction Officer to do so. It was strenuously contended before us both by Jagdish Swarup and by S. C. Khare that the order of January 17, 1959, was not a quasi-judicial order but was a purely administrative order and that the Rent Control and Eviction Officer could review or cancel such an order. Reliance for this was placed upon the decision of a Division Bench in *Mahabir Prasad Vs. District Magistrate, Kanpur and Others*, .

This case does lend support to the proposition that a simple order of allotment u/s 7 (2) of the Act is not a quasi-judicial order but an administrative order. With great respect to the learned Judges who decided that case, they do not appear to have considered the question in the light of the principles laid down by the Supreme Court for deciding whether an order is quasi-judicial order or an administrative order. The decisions of the Supreme Court have laid down that if any one of the following three conditions are satisfied the order made by an administrative or executive authority would be a quasi-judicial order:

- (i) When there is a lis between the parties;
- (ii) When the authority is required by the statute or by the rules to act in a judicial or quasi-judicial manner; and
- (iii) When the nature of the duties and functions to be exercised by the authority are such that they cannot but be exercised in a judicial or quasi-judicial manner.

In the present case it is unnecessary for us to decide whether every order of allotment u/s 7 (2) of the Act would be a quasi-judicial order or not. We have to see whether the order passed in the present case was a quasi-judicial order or not. There are several decisions of this Court where it has been held that an order u/s 7 (2) passed in cases where applications under Rule 4 or 6 have been made is a quasi-judicial order. In the present case at the time of the making of the order, dated January 17, 1959, the Rent Control and Eviction Officer had to decide the following questions:

- (i) Whether the accommodation was a new or old accommodation and whether the Act applied to it?
- (ii) Whether the respondent No. 3 was liable for prosecution u/s 8 of the Act ?
- (iii) Whether Shamsheer Bahadur was liable to eviction u/s 7-A (i) of the Act? and
- (iv) Whether the accommodation should be allotted to Shamsheer Bahadur ?

In our opinion, the first and the third tests laid down by the Supreme Court mentioned above were satisfied in the present case and the order of the Rent Control and Eviction Officer was a quasi-judicial order. The questions which arose for determination before the Rent Control and Eviction Officer certainly required him to act in a judicial or quasi-judicial manner. He had to decide objectively whether the accommodation was one to which the Act applied and he had to determine what action he was to take against the parties under the Act.

6. It was then contended by Jagdish Swarup that, even if this order was a quasi-judicial order, the Rent Control and Eviction Officer had authority to review it. According to him, a quasi-judicial order cannot be reviewed only when it is a final order not subject to appeal or revision. We cannot agree with this contention. In *Jagjit Singh Vs. District Magistrate, Kanpur and Others*, a Division Bench of this Court laid down that the order of the Rent Control and Eviction Officer passed u/s 7-A of the Act was a quasi-judicial order and the Rent Control and Eviction

Officer had no power to review and set aside that order simply because he thought it was erroneous. It may be noticed that the order passed by the Rent Control and Eviction Officer u/s 7-A, like the order passed in the present case u/s 7 (2), was revisable by the State Government u/s 7-F of the Act. That case clearly negatives the contention of Jagdish Swamp.

Further, in *Laxman Purshottam Pimputkar Vs. State of Bombay and Others*, it has been laid down by the Supreme Court without any qualification that a judicial or quasi-judicial order cannot be set aside or revised or modified just as an administrative order can be. We, therefore, hold that the order of the Rent Control and Eviction Officer, dated January 17, 1959, was a quasi-judicial order and he had no power or jurisdiction to review or cancel that order. It necessarily follows from this that his order of February 19, 1959, superseding the first order and replacing it by an order directing the appellant to sublet the accommodation to Shamsheer Bahadur was an order without jurisdiction and was wholly void. That being so, it was not competent for the State Government to restore a void order passed without jurisdiction and such an order of the State Government itself was without jurisdiction. In *Ram Chander Vs. Mohan Lal Tewari and Others*, it was laid down that where the order of allotment is invalid and has been passed by a person having no authority to pass such an order, the restoration of such order by the State Government would not make it a valid order liable to be enforced. We entirely agree with this view and hold that the State Government had no jurisdiction to restore the order made by the Rent Control and Eviction Officer on February 19, 1959, and to make it valid. Accordingly, the learned single Judge rightly quashed the order of the State Government.

7. The matter may be looked at from another angle. Though the Full Bench of this Court in *Udhoo Dass Vs. Prem Prakash and Another*, held that a contract of tenancy between a landlord and tenant in violation of a special or general order u/s 7 (2) of the Act is a valid and binding contract, it has further held that it is so binding only between the lessor and the lessee and not upon the rent control authorities. The Full Bench has further laid down that even when such a contract of tenancy has been entered into it is open to the Rent Control and Eviction Officer to evict the lessee u/s 7-A of the Act; and it follows that, in such circumstances, he would also have the power to make an allotment of the accommodation u/s 7 (2) in favour of some other person. In the present case, there was, in Lucknow in existence a general order u/s 7 (2) of the Act prohibiting landlords from letting out any accommodation without first obtaining permission in writing from the Rent Control and Eviction Officer. The lease, dated July 31, 1958, was executed in violation of this provision.

In these circumstances, it was open to the Rent Control and Eviction Officer to evict the appellant u/s 7-A of the Act and to allot the accommodation in favour of Shamsheer Bahadur. Since the appellant was not in actual possession it was not necessary to take any proceedings u/s 7-A, but the Rent Control and Eviction Officer could certainly make a valid and proper order u/s 7 (2) of the Act

directing the landlord, respondent No. 3, to let out the accommodation to Shamsheer Bahadur. Further, the sub-lease executed by the appellant in favour of Shamsheer Bahadur was invalid and ineffective as it was made in defiance of the provisions of the Act contained in Section 7 (3) thereof. The Full Bench decision is not applicable to this sub-lease. In that case it was held that the lease was not invalid because it did not offend any provisions of the Act itself. But offended only the provisions of the general order made under the Act. In this case the sub-lease directly offends a provision of the Act itself and must be held to be invalid.

The Rent Control and Eviction Officer, on January 17, 1959, first passed an order u/s 7 (2) allotting the accommodation in favour of Shamsheer Bahadur directing the respondent No. 3 to let out the accommodation to him. By a subsequent order, dated February 19, 1959, he cancelled the first order and passed an order u/s 7 (3) of the Act purporting to grant permission to the appellant to sublet the accommodation to Shamsheer Bahadur. In the last order which he passed on March 19, 1959, he again made an order u/s 7 (2) directing respondent No. 3 to let out the accommodation to Shamsheer Bahadur and refused to grant permission u/s 7 (3) to the appellant to sublet the accommodation to Shamsheer Bahadur. u/s 7-F of the Act a revision lay to the State Government against the order of the Rent Control and Eviction Officer requiring the respondent No. 3 to let the accommodation to Shamsheer Bahadur but no revision lay against the order refusing to grant permission u/s 7 (3) to the appellant to sublet the accommodation. As such, this part of the order of March 19, 1959, by which the Rent Control and Eviction Officer refused to grant permission u/s 7 (3) to the appellant to sublet the accommodation became final and could not be revised by the State Government and possibly for this very reason the appellant did not prefer any revision to the State Government.

In the revision filed by the respondent No. 3 the only question which was open was whether the allotment order u/s 7 (2) directing the respondent No. 3 to let out the accommodation to Shamsheer Bahadur was a proper order or not. In this revision it was not open to the State Government either to itself pass an order u/s 7 (3) of the Act or to set aside or restore an order passed u/s 7 (3) by the Rent Control and Eviction Officer. In the revision against the order u/s 7 (2) since there was no dispute regarding the allotment in favour of Shamsheer Bahadur and there was no other person claiming allotment in his favour the State Government could not but confirm that order. In these circumstances, it is manifest that the State Government had no jurisdiction whatsoever to set aside the order made by the Rent Control and Eviction Officer under Section 7 (2) of the Act and to restore an invalid and void order u/s 7(3) of the Act.

Before concluding with this aspect of the case one argument raised by Jagdish Swarup may be mentioned. He contended that the order passed by the Rent Control and Eviction Officer on February 19, 1959, was not an order u/s 7(3) but an order u/s 7(2) of the Act. The order itself recites that it was made u/s 7(3) of the Act. Sri Jagdish Swarup contended that Section 7(3), which provides that no

tenant shall sublet "any portion" of the accommodation in his tenancy except with the permission in writing of the landlord and of the District Magistrate previously obtained, was no bar to the tenant subletting the entire accommodation in his tenancy. This contention has merely to be stated to be rejected. If a tenant sublets the entire accommodation he really sublets every portion of it and clearly violates the injunction of Section 7(3). In the context, "any portion" must mean "the whole or any portion" of the accommodation. If a person is given a loaf of bread and directed not to eat any portion of it, he cannot eat the whole and then say that he was only directed not to eat any portion of it. It is, therefore, clear that the order of February 19, 1959, was an order u/s 7(3) of the Act, and not one u/s 7(2). The State Government had no power or authority to either restore the order passed earlier by the Rent Control and Eviction Officer u/s 7(3) or to pass such an order itself. The order of the State Government purporting to do so was without jurisdiction and was liable to be quashed.

8. One other aspect, that needs to be taken notice of, is that this special appeal has been filed by the Firm Property Agents who claimed to be lessees of this accommodation and not by the owners Firm Ganesh Das Ram Gopal. As indicated above, the appellant claims interest in this accommodation on the basis of a lease purported to have been executed by the proprietors on July 31, 1958. That lease was executed in contravention of a general order made by the District Magistrate of Lucknow u/s 7(2) of the Act and, consequently, the execution of this lease amounted to the commission of a criminal offence punishable u/s 8 of the Act. The Full Bench decision of this Court: in *Udhoo Dass Vs. Prem Prakash and Another*, , relied upon by the appellant, holds that such a lease is valid and binding between the lessor and the lessee, but in this case even that is doubtful because the lease was not signed by any one on behalf of the appellant and was executed by the lessor alone, so, that it did not even satisfy the requirements of the Transfer of Property Act. The appellant purporting to have obtained rights in this accommodation by virtue of such a lease proceeded further to commit another illegal act in executing a sub-lease in favour of respondent Shamsheer Bahadur. This sub-lease was clearly invalid on the two grounds that its execution amounted to a criminal offence punishable u/s 8 of the Act and it was a sub-lease executed in breach of the provisions of Section 7(3) of the Act. Under this sub-lease, therefore, the appellant could claim no rights, so that when the Rent Control and Eviction Officer on January 17, 1959, passed the order u/s 7(2) of the Act directing respondent No. 3 to let out the accommodation to Shamsheer Bahadur that order was a valid one and its result was that all rights, which the appellant was claiming in this accommodation by virtue of the lease dated July 31, 1958, became extinguished. Shamsheer Bahadur to whom the accommodation was directed to be let out, was already in possession of it and it was not necessary for the Rent Control and Eviction Officer to resort to the provisions of Section 7(1) of the Act to dispossess the appellant in order to give effect to his order dated January 17, 1959, u/s 7(2) of the Act, that order

automatically became effective as Shamsheer Bahadur, to whom the accommodation was let out, had already entered into possession under the circumstances under which he did not have any legal contractual relationship in respect of that accommodation with the appellant.

The appellant, therefore had no right to complain against the order dated January 17, 1959. Subsequently the Rent Control and Eviction Officer vacated that order dated January 17, 1959, by his subsequent order dated February 19, 1959, and then again reversed that order and restored the order of January 17, 1959, by his order, dated March 19, 1959. Even if it were to be held that these two subsequent orders of the Rent Control and Eviction Officer were not beyond his powers or jurisdiction the ultimate result was that the original effective and valid order, dated January 17, 1959, was restored by him. Against that order the appellant did not go up to the State Government and, though there is material to show that the appellant was also heard by the Government in the revision, which was filed by the Firm Ganesh Dass Ram Gopal, u/s 7 (F) of the Act, against the order, dated March 19, 1959 there is nothing to show that the appellant at that stage put forward any grievance against the order, dated March 19, 1959, or even supported the case of Firm Ganesh Dass Ram Gopal in that behalf.

The appellant in not making any move against the order of the Rent Control and Eviction Officer, dated March 19, 1959, thus submitted to that order. Firm Ganesh Dass Ram Gopal were the only party who complained against it to the Government. The Government then passed the order, dated February 8, 1960, on the basis of the revision filed by the Firm Ganesh Dass Ram Gopal and now that order has been vacated by the learned Single Judge. That order of February 8, 1960, was not obtained from the Government at the instance of the appellant, who had submitted to the order of the Rent Control and Eviction Officer, dated March 19, 1959, and consequently, it is not now for the appellant to make a grievance in this special appeal that the learned Single Judge has quashed the order of the State Government, dated February 8, 1960, and made orders the result of which is that either the valid order of January 17, 1959, or the order, dated March 19, 1959, to which the appellant had submitted, would now be the effective order. The effect of either of those orders is that the appellant ceases to be recognised as a lessee of this accommodation and against such a decision the appellant has no right to be heard, particularly in view of the fact that the appellant purported to obtain rights in this accommodation through an act amounting to a criminal offence and then lost possession of it by committing another criminal act of executing sublease in contravention of Section 7 (3) of the Act. In these circumstances, the appellant, at least, has no right to claim any relief in this special appeal.

9. The appeal, for all the reasons given by us above, fails and is dismissed with costs.