

(1963) 03 AHC CK 0010

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 500 of 1960

Shamsher Bahadur

APPELLANT

Vs

The State of U.P and others

RESPONDENT

Date of Decision : 26-03-1963

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Evidence Act, 1872 — Section 23

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 116, 3, 7, 7(2), 7(3)

Citation : (1963) 03 AHC CK 0010

Hon'ble Judges : D.S.MATHUR, J

Final Decision : Dismissed

Judgement

1. This is a petition under Article 226 of the Constitution of India by Shamshei Bahadur for the issue of a writ in the nature of certiorari, or a like writ or direction, to quash all the proceedings leading to and including the order dated 1921959, AnnexureF to the affidavit, of the Town Rationing Officer/District Supply Officer, Lucknow (to be referred hereinafter as the Rent Control and Eviction Officer), respondent No. 4 who was exercising the powers of the District Magistrate under the U.P. (Temporary) Control of Rent and Eviction Act (to be referred hereinafter as the Act), and also the order of the State Government dated 821960, AnnexureK to the affidavit, whereby the order dated 1921959 was reestablished. The State Government has been impleaded as respondent No. 1 by the name of the State of Uttar Pradesh. A request was also made for the issue of a writ in the nature of mandamus to direct respondent No. 4 not to give effect to the order of the State Government and to continue to treat the petitioner as a tenant of the premises in question in pursuance of his order dated 1711959, AnnexureE to the affidavit. After the proceeding under Section 76 of the Act was initiated by M/s. Property Agents, respondent No. 3, the petitioner had the petition amended by in pleading Munsif (South), Lucknow, as respondent No. 5, and by including a prayer for the issue of a writ in the nature of certiorari to

quash the above proceeding under Section 7B, and also for a writ of prohibition to direct the Munsif not to take any further action in the proceeding.

2. In the writ petition serious allegations were made against the conduct of Sri Jag Mohan Singh Negi, the then Minister Incharge of the department. He was consequently impleaded as respondent No. 6, so that no order may be passed without giving him a hearing. Sri Negi filed a counteraffidavit, but for purposes of the present proceeding it is not necessary to give the details of the allegations made and the versions of the respondents on this point. It may simply be mentioned that according to the petitioner, respondent No. 6 had acted arbitrarily with a view to help Messrs. Ganeshdas Ramgopal, respondent No. 2, in recovering rent in excess of the reasonable rent as was not permissible under the law. Sri Negi and also respondents Nos. 2 and 3 have denied these allegations and their version is that he had throughout acted impartially without an attempt to show favour to anyone.

3. In the writ petition the petitioner did not give particulars of the lease said to have been executed by Messrs. Ganeshdas Ramgopal, respondent No. 2, in favour of Messrs. Property Agents, respondent No. 3, and the sublease of the same premises obtained by the petitioner from respondent No. 3. Whether this omission is fatal to the present petition shall be commented upon later. However, all the facts as appear from the affidavits shall be detailed in the very beginning of the judgment so that the full history may come on the record without any unnecessary repetition. Most of the facts are not in dispute, and consequently matters not in controversy shall be reproduced as they are. While those in controversy shall be referred to by giving the versions of both the parties.

4. Messrs. Ganeshdas Ramgopal, respondent No. 2, is the owner of Halwasiya Court Hazratganj, Lucknow, a building which was constructed in 1939 or 1940; but according to respondents Nos. 2 and 3, material additions and alterations were made in the portion of the premises which is at present in the occupation of the petitioner for running the restaurant known as "Royal Cafe". Their version is that the accommodation in dispute is in the eye of law, a new construction not subject to the provisions of the Act. The version of the petitioner and the other respondents, on the other hand, is that it is not a new accommodation and is subject to the provisions of the Act. It was apparently for this reason that the R.C. and E.O. exercised the jurisdiction under the Act and passed the three orders, Annexures E to G at various occasions. The State Government also purports to have exercised its jurisdiction under Section 7F of the Act by treating the accommodation to be an old one governed by the provisions of the Act.

5. The premises in question are a part of a big hall which had, in the past, not been leased to anyone. Respondent No. 2 divided the hall into two portions with the intention to lease the portion in dispute to some one willing to take it on, rent. As would also appear from Annexure II to IV to the counter affidavit of respondent No. 3, Beni Prasad Halwasiya of Messrs. Ganeshdas Ramgopal, respondent No. 2, was approached by B.R. Vohra, Deputy Chairman of Tea

Board, Lucknow, for lease of the premises in question,, and respondent No. 2 was willing to let out this portion on a monthly rent of Rs. 1425, exclusive of a rent of Rs. 25/ for the garage. The Annexuresto the petitioners affidavit have been marked A, B, C etc., the Annexuresto the counter affidavit of respondent No. 2, 1, 2, 3 etc. and Annexuresto the counter affidavit of respondent No. 3, I, II, III etc., and to avoid having to make a reference to the parties the petitioners Annexuresshall be simply referred to as AnnexuresA, B, C, etc., while those of respondents Nos. 2 and 3 as Annexures1, 2, 3 etc., and AnnexuresI, II, III etc. respectively.

6. AnnexureII is a letter dated July 26, 1958, of B.P. Halwasiya addressed to B.R. Vohra. However, on 3171958 respondents No. 2 and 3 executed the lease, given on lease to respondent No. 3 on an annual rent of Rs. 6,000/ subject to many conditions detailed therein. One of the conditions is that the premises or any part thereof shall not be sublet to any one without the consent in writing of the lessor. It will thus appear that though a few days earlier respondent No. 2 were demanding a monthly rent of Rs. 1425/ from the Tea Board, Lucknow, a lease in favour of respondent No. 3 was executed on 3171958

for a monthly rent of Rs. 500/ only. The lease though executed on 3171958 Was registered on 4101958.

7. AnnexureV dated 1481953 is a letter of Messrs. Property Agents addressed to the petitioner containing terms and conditions of the sublease. These terms were accepted by him and at the time of the acceptance a cheque for Rs. 15,000/ was given to Messrs. Property Agents. Thereafter on 1581058 respondent No. 3 sent the letter, AnnexureV to respondent No. 2 for permission to sublet the premises for restaurant purposes and the permission was granted by respondent No. 2 under AnnexureVII dated 1681958. The petitioner and respondent No. 3 executed the sublease, AnnexureXII, on 12101958; but the sublease was registered on 551959 after the petitioner refused to appear fix registration of the same. The monthly rent payable under the sublease was Rs. 1650/ and it appears that the petitioner paid a few months rent only and not thereafter.

8. The petitioners case is that he had given his consent to tile sublease and executed AnnexureXII as result of fraud played and misrepresentation made by respondents Nos. 2 and a that the premises is question were new constructions not subject to the provision of the Act. His version, further is that the always had talks with B.P. Halwasiya of respondent No. 2 and not with the partners of Messrs. Property Agents, respondent No. 3, or its agents. The lease, and the sublease are said to be void to being contrary to the provisions of the Act. The version of respondents Nos. 2 and 3, on the other hand is that both the lease and the sublease are genuine and that the petitioner had negotiated the matter with Messrs Property Agents and not B.P. Halwasiya of respondent No. 2 for the simple reason that respondent No. 2 could not, after the execution of the lease, Annexure1 grant any lease of the premises in question.

9. On 8121958 the Rent Control and Eviction Officer served the notice, Annexure2 on Messrs. Ganeshdas Ramgopal to show cause why it be not prosecuted under Section 8 of the Act for letting out the accommodation in question to a person without an allotment order and for failing to notify the vacancy of the accommodation. At the same time another notice of the same date, annexure A under Section 7A(1) of the Act was served upon the petitioner to show cause why he be not evicted from the accommodation within three days of the receipt of the notice. Respondent No. 2 sent his reply, AnnexureB, on 11121958 followed by a supplementary reply, AnnexureC dated 22121958. In AnnexureB respondent No. 2 reiterated that the construction in question was a new construction for which no prior permission of the Rent Control and Eviction Act was necessary before giving it on lease. However, under AnnexureC respondent No. 2 requested the Rent Control and Eviction Officer to allot the premises to avoid any legal complication without prejudice to his claim. The reply submitted by the petitioner is AnnexureD wherein he clearly mentioned that the landlord while demanding exorbitant rent had made a representation that the premises in question were new constructions and he was at liberty to charge whatever rent he liked. The petitioner made a request that the notice be withdrawn and an allotment order issued in his favour. It will be found that respondent No. 2 did not indicate in AnnexuresB and C that the premises had already been given on lease to respondent No. 3. The petitioner also made no reference to the execution of the sublease in favour of respondent No. 3 on the basis of the replies submitted by the petitioner and respondent No. 2, the Rent Control and Eviction Officer passed the allotment order, AnnexureE dated 1711959.

10. On 1021959 the petitioner moved an application under Section 3A of the Act for determination of the reasonable rent of the accommodation allotted to him under allotment order, AnnexureE, and after hearing the petitioner and respondent No. 2, the Rent Control and Eviction Officer fixed the reasonable rent of the accommodation at Rs. 362.50 nP. under the order dated 2591959, AnnexureI. Meanwhile on 1721959 Messrs. Ganeshdas Ramgopal, respondent No. 2, sent the letter, Annexure5, to the Rent Control and Eviction Officer wherein a mention was made of the lease already executed in favour of Messrs. Property Agents. A request was made for the amendment of the allotment order by permitting the tenant, Messrs. Property Agents, to sublet the premises to the petitioner. Attention of the Kent Control and Eviction Officer was drawn to another mistake in the allotment order wherein the premises were mentioned to be situated in Halwasiya market and not in Halwasiya Court. Messrs. Property Agents, respondent No. 3 also sent a similar letter, AnnexureXVI, repeating that the premises were not governed by the Act and if so governed permission may be granted to sublet it to the petitioner.

Without giving any hearing to the petitioner, a fact which has not been controverted by the respondents, the Rent Control and Eviction Officer modified the allotment order by issuing the order, AnnexureF, dated 1921959 in

supersession of the order, AnnexureE. Under this order the chief tenant, Messrs. Property Agents, was directed to sublet the accommodation to the petitioner. On receipt of the fresh allotment order dated 1921959 the petitioner made a representation to the Rent Control and Eviction Officer (Annexure(XVIII)) for not reducing his status or that of a subtenant. The request made was that the allotment order dated 1711959 be allowed to stand. Objections filed by respondents Nos. 2 and 3 to this application are Annexures6 and XIX. After giving a hearing to the parties, the Rent Control and Eviction Officer passed the order, AnnexureG, on 1931959 whereby the allotment order dated 1921959, AnnexureF, was cancelled and the allotment order, AnnexureE dated 1711959 restored. The detailed order on the basis of which annexureG was passed is annexed to the rejoinderaffidavit; and for the disposal of the present proceedings, it is not necessary to give further details of this order.

11. Respondent No. 3 took no further steps but Messrs. Ganeshdas Ramgopal, respondent No.

2, moved the application, AnnexureXXIV under Section 7F of the Act before the State Government. It was repeated that the construction was mw one not subject to the provisions of the Act, and it was also pleaded that the allotment order, AnnexureE, was in contravention of Rules 7 and 8 of the Rules framed by the State Government under Section 17 of the Act. The request made in the application was to set aside the orders dated 1931959 and 1711959 of the Rent Control and Eviction Officer, and either to restore the order dated 1921959 or to order that the premises in question be let to Messrs. Property Agents. The petitioner filed a reply to the application, and it was on 821960 that the State Government passed final orders. The order was communicated to the parties under AnnexureK. The result was that the order, AnnexureF dated 1921959 of the Rent Control and Eviction Officer was restored. The petitioners case is that this order is invalid and beyond the jurisdiction of the State Government. It was also alleged that the Honble Minister dealing with the application had originally expressed his opinion that the application under Section 7F shall be dismissed, but later changed his mind and put pressure upon the petitioner to come to terms with respondent No. 2, otherwise the application would be allowed, that is an order passed against the petitioner. These allegations have been denied by all the respondents including Sri Jag Mohan Singh Negi; but for purposes of the present proceeding, it is not necessary to enter into this controversial question of fact.

12. From the affidavits on record, it further appears that respondent No. 3 instituted a civil suit No. 111 of 1959 in the Court of Munsif (South), Lucknow, against the petitioner on 2521959 for the recovery of Rs. 4980/ towards the arrears of rent for three months with interest. The plaint of that suit is AnnexureXIV and the written statement filed by the petitioner is AnnexureXV. Respondents Nos. 2 and 3 together instituted another suit No. 31 of 1959 in the Court of the Civil Judge, Lucknow, to restrain the petitioner from making any

opening in any wall, or making any structural alteration or to carry out any construction in. the premises in question. Respondent No. 3 also moved an application under S. 7B of the Act on 1021960 for the recovery of the arrears of rent from the petitioner. This step was taken soon after the decision of the application under S. 7F by the State Government on 821960. The proceeding under S. 7B was apparently challenged in the writ petition so that it may not be necessary for the petitioner to deposit the arrears of rent or to furnish security as necessary under the law.

13. Respondents Nos. 2 and 3 have raised a few preliminary objections to the maintainability of the writ petition, and it will be proper to dispose of these objections before commenting upon the merits of the case. I shall take up these objections one by one.

14. The first point contended is that the petitioner had intentionally suppressed material facts himself approached Messrs. Property Agents, respondent No. 3, and voluntarily obtained sublease of the premises in question after execution of the sublease, AnnexureXII, on 12101958. It is said that these facts were also suppressed at the time he obtained the order of allotment, AnnexureE dated 1711959 from the Rent Control and Eviction Officer. The suggestion made is that the petitioner had acted in a mala fide manner to obtain an ex parte order, in his favour.

Reliance was placed upon a Full Bench decision of this Court in Asiatic Engineering Co. v. Achhru Ram, AIR 1951 All 746. In the circumstances of the present case the petitioner cannot be held guilty of suppression of relevant facts. In the Full Bench case, AIR 1951 All 746 it was observed that if the facts were stated in such a way as to mislead and deceive the Court, there was a power inherent in the Court, in order to protect itself and to prevent an abuse of its process, to discharge the interim order and to refuse to proceed further with the examination of the merits of the case. It was on this ground that the petitioner of that case was held to have disentitled itself to ask for a writ of prohibition by material suppression, misrepresentations and misleading statements. In the Full Bench case, AIR 1951 All 746 it was further observed that the suppression, misrepresentation, or misleading statements must be with regard to relevant facts. In case a party has to give all the facts, whether relevant or irrelevant, the petition and also the affidavit shall become bulky and the time of the Court would be unnecessarily wasted. The point for consideration invariably is, in case the petitioner had given full facts, in other words, the facts which are said to have been suppressed, would this Court have exercised its extraordinary powers under Art. 226 by admitting the writ petition and issuing an interim order ? In case the writ petition would have been admitted and an interim order passed even if the facts not given were detailed in the writ petition, there would not in the eye of law, be suppression of material relevant facts as to disentitle the petitioner to any remedy under Article 226.

15. For reasons to be detailed hereinafter, the premises in question cannot, for

purposes of the present proceeding, be regarded as a new accommodation not subject to the provisions of the Act, and Messrs Ganeshadas Ramgopal could not, without any order of the District Magistrate or the Rent Control and Eviction Officer, give the accommodation in question on lease to anyone. A contract against the law is void and unenforceable. In other words, as a result of the lease, Annexure I, Messrs. Property Agents did not acquire the status of a legal tenant in chief, nor could Messrs. Property Agent sublet the accommodation to the petitioner or to any other person, not only on the ground that it was not a tenant of the accommodation, but also because prior permission in writing of the District Magistrate or the Rent Control and Eviction Officer had not been obtained. It was conceded by the respondents that the provisions of the Act were applicable to the city of Lucknow within which the premises in question were situated; but during the

course of the argument it was suggested that the District Magistrate had not issued any general or special order as contemplated by S. 7(2) of the Act requiring 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. The parties were, thereafter, given an opportunity to file a certified copy of the order under S. 7(2), if passed by the District Magistrate of Lucknow, and it was after considerable search and delay that the original order was produced before the Court. A perusal of this order makes it clear that on 2251947 the then District Magistrate of Lucknow, Sri A.D. Pandit, had passed an order under S. 7(2), the relevant portion of which runs as below :

"1. That every landlord shall, either personally or through his duly authorised agent, give intimation of the falling vacant of any accommodation of which he is the landlord to the Rent Control and Eviction Officer, Lucknow who shall order him to let or sublet such accommodation to any person.

EXPLANATION (1) For the purpose of subletting landlords written consent shall also be required along with the intimation.

(2).....

2. That no landlord or his agent will let any accommodation to any person without first obtaining permission in writing from the Rent Control and Eviction Officer, Lucknow.

3.

4."

As the accommodation in question was subject to the provisions of the Act, no landlord could let any accommodation to any person without first obtaining permission in writing from the Rent Control and Eviction Officer, Lucknow. It is the admitted case of the parties that respondent No. 2 had not obtained the permission of the Rent Control and Eviction Officer before giving the accommodation on lease to respondent No. 3. A lease against the provisions of

the Act was held to be void and unenforceable in *Shyam Sunder Lal v. Lakshmi Narain Mathur*, 1961 All LJ 333 : (AIR 1961 All 347). I am not only bound by this decision but am in respectful agreement therewith. In other words, the contract between respondents Nos. 2 and 3 as evidenced by AnnexureI is void and no effect could be given to such a contract. To put it differently, respondent No. 3 did not become the tenant of the accommodation and on this ground alone it could not sublet the accommodation to the petitioner. The sublease will also be unenforceable.

16. The order dated 2251947 has not been nicely worded, but in view of S. 7(3) of the Act respondent No. 3 could not sublet any part of the accommodation to the petitioner unless permission in writing of the landlord and of the District Magistrate had been previously obtained. It is the admitted case of the parties that no permission in writing of the District Magistrate was obtained before the execution of the sublease AnnexureXII. The permission can be said to have been obtained under the order AnnexureF, dated 1921959 of the Rent Control and Eviction Officer, but this order was subsequently vacated, though later restored by the State Government. As the permission in writing of the District Magistrate was not at all obtained, at least not before subletting the premises in question, the sublease is void and unenforceable. A similar view was taken in Special Appeal No. 40 of 1958. *R.K. Dubey v. Rajendra Kumar*, D/25101961 (All LB). In other words, both the lease, AnnexureI and sublease AnnexureXII are void and unenforceable. A void transaction can be disregarded by the parties to the contract also I and, in any case, the Courts of law shall start with the assumption that no such lease or sublease is in existence.

17. What can be said in the present case is that the petitioner disregarded a void contract while invoking the extraordinary jurisdiction under Article 226 of this Court and suppressed facts with regard to a void contract. Such a conduct on the part of the petitioner cannot be said to be such as to disentitle him of a relief under Art. 226 which he would have been otherwise entitled to. Further, even if all the facts leading to the execution of the lease and the sublease had been given in the writ petition or the affidavit accompanying thereto, this Court would have disregarded those facts and granted an interim order in the same manner and to the same effect as was done on perusal of the writ petition not containing facts pertaining to void contracts.

18. As observed in the above Full Bench case, AIR 1951 All 746, High Courts adopt a strict attitude and do not grant reliefs to a party guilty of suppression of facts to ensure that no one tries to abuse the process of the Court. When the suppression of certain facts had no effect on the admission of the writ petition and the grants of an interim order, it cannot rightly be said that there, was suppression of relevant facts. The present petition cannot, therefore, be dismissed on the ground that full facts regarding void contracts and also the conduct of the petitioner with regard to or in connection with such contracts were not detailed in the writ petition.

19. The second point contended is that in view of S. 116 of the Evidence Act, the petitioner was estopped from challenging the status of Messrs. Property Agents, respondent No. 3, and his own status as subtenant for so long as he continued in possession of the property. Section 116 lays down that no tenant of immovable property shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property. This principle can also be applied to subtenants visavis their principal (tenant) : but the words "during the continuance of the tenancy" are of great significance and make it clear that where there is no legal tenancy or subtenancy, the provisions of the section shall be inapplicable. The relationship as between tenant and subtenant can be created only by contract valid according to the law in force at the time of the execution of such contract, or can be created or continued by operation of law. The existence of such relationship can also be implied from the act of the parties for so long as the implied contract is not invalid, that is, not against

the law. The agreement leading to the execution of the sublease, AnnexureXII, is void and unenforceable. As the contract is against the law, it is not valid and could not make the petitioner a subtenant of respondent No. 3. For this reason the subsequent conduct of the petitioner cannot be used against him. To put it differently, there was no legal subtenancy and there could be no question of the continuance of subtenancy, and the petitioner could later challenge the status of Messrs. Property Agents, and he could not be deemed to be estopped from challenging the status of respondent No. 3 for so long as he was in possession of the premises in question.

20. The third point raised is that many highly controversial questions of fact are involved which cannot be properly adjudicated upon unless full evidence of the parties is recorded. The suggestion made is that the petitioner should have challenged the order of the State Government in a suit instituted by him or he could challenge the order in the two suits which have already been instituted by respondent No. 3 for the recovery of rent. One of these proceedings is suit No. 11 of 1959 for the recovery of three months rent and the other an application under S. 7B of the Act for the recovery of the arrears of rent.

21. The three controversial questions of fact involved in the present proceeding are :

(1) Whether Sri Jag Mohan Singh Negi, the then Minister, had acted in a mala fide manner in order to help respondents Nos. 2 and 3, or he was discharging his functions impartially without any intention to show favour to anyone ?

(2) Whether the Firm of Messrs. Property Agents, respondent No. 3, is fictitious and has no legal status, or there was a genuine transaction between respondents Nos. 2 and 3 even though on some other ground the contract arrived at between the two may not be enforceable ?

(3) Is the accommodation in question not subject to the provisions of the Act ?

22. As already mentioned above, the writ petition can be decided without expressing any opinion on the first point and also on the second. For reasons to be discussed hereinafter, the State Government had no jurisdiction to pass the impugned order, AnnexureK, dated 821960 and for this reason it is not necessary to consider the diverse allegations made by the petitioner against the conduct of Sri Jag Mohan Singh Negi. A finding in the present case can be recorded by treating Messrs. Property Agents as a genuine partnership concern, or by consideration of the case in the alternative, that is, the partnership is or is not genuine. It is, therefore, not necessary to direct the petitioner to seek his remedy in a regular suit, whether instituted by or against him, simply because the above controversial questions of fact have been raised.

23. The third point whether the accommodation in question is not subject to the provisions of the Act has been raised by respondents Nos. 2 and 3 and not by the petitioner. This point had to be considered by the Rent Control and Eviction Officer and also by the State Government. If the accommodation was not subject to the provisions of the Act, none of them could pass any order of allotment, that is, the District Magistrate and also the State Government could not issue any order requiring respondent No. 2 to let or not to let the accommodation to any person, nor could any direction be issued for its subletting but if the accommodation was governed by the provisions of the Act, respondents Nos. 2 and 3 would be bound by any order or direction given under Section 7 of the Act. To put it differently the Rent Control and Eviction Officer and also the State Government had to form an opinion whether the present accommodation was governed by the provisions of the Act if they recorded finding in one affirmative or formed an opinion that the accommodation was subject to the provisions of the Act, they could pass an order as contemplated by the Act. When both the Rent Control and Eviction Officer and the State Government passed or purport to have passed an order under the Act, it can safely be assumed that they were of opinion that the present accommodation was subject to the provision of the Act. One of the points to be considered by this Court is whether this finding or implied, finding of the two authorities is proper or there exists an error apparent on the face of the record which would justify the quashing of the various orders on the ground that none of the authorities could exercise jurisdiction with regard to the accommodation in question. Of course, this Court shall not express any final opinion and it shall be open for the respondents Nos. 2 and 3 to challenge by way of separate suit the various orders passed by the Rent Control and Eviction Officer and also the State Government.

24. The case of the petitioner is that the accommodation in question is not a new accommodation and is subject to the provisions of the Act. He could not, therefore, challenge the jurisdiction of the Rent Control and Eviction Officer, though he could in a separate suit challenge the order of the State Government on another ground, namely that it had no jurisdiction to pass such an order. The present case, however, is not one in which we may not dispose of the writ petition on merits and leave it for the petitioner to seek his remedy in a regular

suit. The jurisdiction of the State Government depends upon the wording of the Act and not upon any controversial question of fact, and consequently it will be in the interest of the parties that the writ petition be disposed of on merits, though, of course, it shall be open for them to seek such other remedy as they may be advised.

25. Respondents Nos. 2 and 3 had not unconditionally submitted to the jurisdiction of the Rent Control and Eviction Officer and also the State Government; and for this reason it is open for them to urge in the present proceeding that the accommodation is a new one not subject to the provisions of the Act. They can also raise this point in a separate suit, but on the basis of the material on record it cannot be held that the implied finding of the Rent Control and Eviction Officer and the State Government that the accommodation is not a new accommodation and is governed by the provisions of the Act, is improper,

nor can such a finding be interfered with in the proceeding under Article 226. It may here be mentioned, that while exercising jurisdiction under Article 226 High Courts do not usurp the functions of a Court of Appeal and for that reason can interfere with an order passed by subordinate authorities only if there exists any error in the exercise of jurisdiction or there exists an error apparent on the face of the record. Where two opinions are possible and the subordinate authorities adopted one, that would not be a case for interference by this Court, though it shall be open for the parties to seek such other remedy as they may be advised :

26. In para 9 of the counteraffidavit of Beni Prasad Halwasiya filed on behalf of respondent No. 2 it was mentioned that the accommodation in question was a new accommodation as after 1951 various material changes in accommodation were effected and the character of the accommodation was changed. It is of significance that this point was not raised by respondent No. 2 itself at other stages. Such does not appear to be the case of Messrs. Property Agents, respondent No. 3, though it has been pleaded by both respondents Nos. 2 and 3 that material alterations were made in September and October 1958 after the accommodation had been given on lease to respondent No. 3.

27. Annexure B is a reply which respondent No. 2 had submitted at an earlier stage in reply to the notice u/S. 8 of the Act. It was mentioned in para 2 of the reply that various portions of the groundfloor were demolished and a new construction was made by putting new walls and construction at considerable cost after an application for reconstruction was made to the Municipal Board, Lucknow. No copy of the application appears to have been filed before the Rent Control and Eviction Officer; nor has it been filed in the present case. It is, therefore, difficult to hold that any new construction was made prior to or after 1951. Mere demolition of walls or construction of fresh walls will not change the character of the accommodation. The order dated 25/9/59 of the Rent Control and Eviction Officer (Annexure H), where under reasonable rent of the accommodation was fixed, suggests that in the objection filed by respondent No. 2 on 25/9/59, he simply mentioned that a substantial amount was spent on

alterations and additions to the building in September and October, 1958 for converting it into a modern restaurant. It appears that at that stage it was not pleaded that any material alteration was made prior to September, 1958. Annexure5 is the letter dated 1721959 which respondent No. 2 had sent to the Rent Control and Eviction Officer for the modification of AnnexureE. Therein it was indicated that additions and alterations had been made but if the letter is read as a whole it will be clear that such additions and alterations were made after 3171958. In para 1 of the letter there is, first of all, a reference to the lease dated 3171958 and thereafter to the additions and alienations made and last of all to the sublease dated 12101958. Similarly, Annexure6 dated 1831959, another letter addressed to the Rent Control and Eviction Officer, is silent as to when the additions or alterations were made. In para 3 thereof it was simply mentioned that respondent No. 3 had spent considerable amount in additions and alterations. Similarly, in AnnexureXXIV, which is the application under Section 7F of the Act of respondent No. 2, there is no reference to any alteration or addition made prior to August 1958. The Counteraffidavit of respondent No. 3 does not also speak of any addition or alteration being made to the accommodation in question prior to August 1958.

In these circumstances, the Rent Control authorities could hold that the accommodation in question was constructed in 1939 or 1940 and thereafter no material alterations were made therein. The accommodation was, therefore, governed by the provisions of the Act and could not be let to respondent No. 3 unless an order of the District Magistrate under Section 7(2) was obtained. Admittedly, no such order was passed by the District Magistrate and consequently the lease in favour of respondent No. 3 was against the law, void and could not create the relationship of landlord and tenant between respondents Nos. 2 and 3.

28. There exists some dispute on additions and alterations made since after August 1958. It is not necessary for me to record any finding on this controversy, all the more when the alterations alleged to have been made by respondent No. 3 could make the Rent Control authorities form an opinion that the accommodation continued to be governed by the provisions of the Act.

Full particulars of the alterations made in of after August 1958 appear to have been given by respondent No. 3 for the first time in its objection, AnnexureXIX, to the application of the petitioner for setting aside the ex parte order, AnnexureF, dated 1921959. This objection dated 331959. It is mentioned in para 6 of the objection that respondent No. 3 spent over Rs. 20,000/ in making walls, latrines doors, painting etc. as desired by the petitioner, and other fixture and fittings. Respondent No. 2 also gave these details in para 18 of its application under Section 7F, annexureXXIV. Therein it was mentioned that respondent No. 2/ or respondent No. 3 had made considerable additions and alterations by dividing the hall, making partitions, latrines, doors, stairs and dochhatte. The alterations and additions made, as contained in para 13 of the counteraffidavit of

respondent No. 3, are new walls, mezzanine floor, two latrines with foreign sanitary fittings, making new openings, windows and ventilators, providing costly new doors together with furniture, fans and lighting arrangement to suit the petitioner.

29. None of the additions and alterations made could change the nature of the constructions. To the most, it can be said that minor alterations were made to the building and additional facilities were provided to the petitioner. The Rent Control and Eviction Officer and also the State Government did not act wrongly by treating the accommodation to be still governed by the provisions of the Act. In other words, the Rent Control and Eviction Officer had the jurisdiction to pass an order under Sec. 7 of the Act and the State Government could treat the accommodation to be governed by the provisions of the Act. The orders

of these two authorities cannot, therefore, be quashed on the ground that the accommodation was a new one and was not subject to the provisions of the Act.

30. The jurisdiction of the State Government to entertain the present application under Section 7F and to pass the impugned order, annexure K, could be challenged in the proceeding under Section 7B of the Act, Annexure XXVI, and also in suit No. in of 1959, if raised by any of the parties; but as already held above, the present is not one of those cases in which these matters may not be disposed of in the present petition. The decision of this question depends upon the consideration of the provisions of the Act, and not controversial questions of fact, and after the writ petition has been admitted and heard at length, it does not appear proper to direct the petitioner to seek remedy in one of those proceedings or in a regular suit to be instituted by him.

31. The Act has vested special jurisdiction in the District Magistrate (Rent Control and Eviction Officer) and also the State Government, as has in one way divested the parties, all the more, the landlord of certain rights which they could exercise under the general law. Consequently, the provisions of the Act must be strictly construed, and if there exists no provision in the Act for the exercise of certain jurisdiction, it shall have to be held that such jurisdiction cannot be exercised by that authority.

32. Section 7 of the Act vests jurisdiction of three kinds in the District Magistrate (Rent Control and Eviction Officer). SubSection (2) provides that 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.

33. SubSection (3) gives the jurisdiction to the District Magistrate to grant or refuse to grant permission for subletting any portion of the accommodation in the tenancy of the tenant. SubSection (3) has been worded to lay down 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.

34. SubSection (4) authorizes the District Magistrate to direct 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 to one months rent or to onehalf of the yearly rent, as the case may be. In the present proceeding we are not concerned with the jurisdiction of the District Magistrate under SubSection (4).

35. The Explanation to Section 7 makes it clear that for purposes of this section the word "let" shall include the word "sublet". In other words, under SubSection (2) of Section 7 the District Magistrate can require a tenant to sublet or not to sublet to any person any accommodation which is or has fallen vacant or is about to fall vacant.

36. The jurisdiction of the State Government is detailed in Section 7F of the Act. The State Government can, in exercise of its jurisdiction, call for the record of any case granting or refusing to grant permission for the filing of a suit for eviction referred to in Section 3, or requiring any accommodation to be let or not to be let to any person under Section 7, or directing a person to vacate any accommodation under Section 7A, and can make such order as appears to it necessary for the ends of justice.

The State Government can call for the record and pass a suitable order, for the ends of justice, in only three kinds of cases detailed in Section 7F. We are at present concerned with the second class of cases as admittedly the instant case cannot come within the other two categories. The words "requiring any accommodation to be let or not to be let to any person under Section 7" shall have to be read along with the provisions of Sec. 7 itself. It will be found that similar words have been used in SubSec. (2) of Section 7 and in no other SubSection thereof. As a reference has been made to Section 7, it shall have to be inferred that the word "let" used in Section 7F includes the word "sublet" also. In other words, the State Government can exercise jurisdiction under Section 7F only when an order has been passed by the District Magistrate under Section 7(2) of the Act with regard to both letting and subletting, and not if an order has been passed under SubSections (3) and (4) of Section 7. To put it differently, the grant or refusal to grant permission to sublet the accommodation under SubSec. (3) of S. 7 cannot be challenged before the State Government under S. 7F of the Act, though an order passed under SubSec. (2) of S. 7 for the subletting of the accommodation to any person can be challenged before the State Government.

37. This naturally leads us to the consideration of the provisions of S. 7 of the Act to lay down whether the State Government could have passed an order of the nature contained in AnnexureK. Under this order the State Government had reestablished or restored the order, AnnexureF, dated 1921/1959 of the Rent Control and Eviction Officer whereby respondent No. 3 was to sublet the accommodation to the petitioner. In other words, respondent No. 2 was to let the accommodation to respondent No. 3. while respondent No. 3 was to sublet the accommodation to the petitioner. The order, AnnexureF, is challenged by the

petitioner on the ground that no tenancy was created by directing respondent No. 2 to let the accommodation to respondent No. 3; but on this point no opinion need be expressed, though it must be noted that the petitioner and also the respondents were throughout under the impression that under the order respondent No. 3 became the tenant of respondent No. 2, while the petitioner the subtenant of respondent No. 3.

38. Under S. 7(2) the District Magistrate can not issue any direction unless the whole of the accommodation is vacant or has fallen vacant or is about to fall vacant Accommodation has been defined in S. 2(a) of the Act to mean residential and nonresidential accommodation in any building or part of a building. A building can thus

consist of more than one accommodation. It will depend upon the circumstances of the case whether a part of a building can be deemed to be a separate accommodation for purposes of the Act. This will depend upon whether the whole of the building is treated as one unit for being leased to tenant or being sublet to person, or the building has been divided into many parts and more than one tenant or subtenant can reside therein. It is for this reason that the District Magistrate cannot allot, without the consent of the landlord and or tenant, a part of the accommodation if that part is not needed by the landlord or tenant for his purposes. The landlord or tenant can remain in occupation of the whole even though a part of the accommodation may not be put under use. Similarly, the District Magistrate cannot direct a tenant to sublet an accommodation or a part thereof. For purposes of subletting there must be compliance to SubSec. (3) of S. 7. In other words the subletting can be done at the instance of the tenant after he has obtained the prior permission in writing not only of the landlord but of the District Magistrate also. The tenant can, if he so likes, obtain a general permission for subletting the accommodation or a part thereof to any person about whom the District Magistrate may issue a direction under SubSec. (2), or he may obtain permission of both the authorities for subletting the accommodation to a particular person. In the first case, the grant of permission by the landlord and also by the District Magistrate shall be exclusively under SubSec. (3) and the accommodation shall be sublet to a person as and when occasion arises in accordance with the directions issued by the District Magistrate under SubSec. (2). The other case can, if considered narrowly, be deemed to fall under SubSec. (3) only; but such an order can also be subdivided into two parts, one under SubSec. (3) and the other under SubSec. (2).

39. Courts of law have to make an attempt to harmonize the various provisions of a section and on the application of this principle also, it shall have to be held that where an order similar to Annexure F or Annexure K is passed, it would mean that a tenant is being granted the permission to sublet the accommodation and at the same time there is a direction under SubSection (2) to sublet the accommodation to a particular person. The two parts of the order can, for purposes of jurisdiction, be deemed to be of a distinct nature. The order as far as

the grant of permission for subletting is concerned shall be under SubSection (3) of S. 7, and such permission can be granted by the District Magistrate and his order cannot be reviewed by the State Government under Section 7F of the Act. Where the District Magistrate or the Rent Control and Eviction Officer exercising the powers of the District Magistrate refuses to grant the permission, the State Government cannot order the subletting of the accommodation to any one. The order of the District Magistrate under SubSection (3) is final and cannot be questioned before anyone. It is a different thing that the District Magistrate may later in the conditions then existing modify his earlier order and grant the permission. In other words, the jurisdiction to pass an order granting or refusing to grant the permission lies exclusively with, the District Magistrate and the State Government has no power to exercise such a jurisdiction.

40. In case permission for subletting is granted by the District Magistrate, the other part of the order to whom the accommodation shall be sublet can be reviewed under Section 7F.

41. Coming to the instant case the final order passed by the Rent Control and Eviction Officer is AnnexureG, dated 1931959 by which the earlier order of allotment, AnnexureE, dated 1711959 was restored. The final order of the Rent Control and Eviction Officer was thus a direction to the landlord to let the accommodation in question to the petitioner. The Rent Control and Eviction Officer did not allot it to Messrs. Property Agents, nor did he grant the permission to Messrs. Property Agents to sublet the accommodation to the petitioner. In other words, the Rent Control and Eviction Officer had refused to grant permission for subletting of the accommodation, and when he did not grant permission the State Government could not issue a direction for the subletting of the accommodation to any one. In other words, the order of the State Government, AnnexureK, restoring the order, AnnexureF, that is directing the landlord to let the accommodation to Messrs. Property Agents and at the same time directing Messrs. Property Agents to sublet the accommodation to the petitioner, is without jurisdiction and deserves to be quashed.

42. The general order of the District Magistrate dated 2251947 under S. 7(2) is on record. It has not been worded happily. I am inclined to be of opinion that this order prohibits the subletting of accommodation or part thereof without the permission or order of the District Magistrate. The matter has been considered above from this aspect, namely, that no tenant can sublet the accommodation unless permitted or directed by the District Magistrate, of course, after permission in writing of the landlord and of the District Magistrate had been previously obtained. But if for some reason a contrary view is taken of the order under Section 7(2) passed by the District Magistrate on 2251947, it shall have to be held that there was no restriction for subletting and the tenant could sublet the accommodation without any order or direction of the District Magistrate under SubSection (2). In such a case, the only order which the Rent Control authorities could pass would be one under SubSection (3), that is, to grant or

refuse to grant the permission to sublet the accommodation. If such was a case, the order of the District Magistrate would not be subject to review by the State Government under Section 7F and the State Government shall have no power to revise or modify any order that the District Magistrate may have passed under SubSection (3).

43. The order of the State Government can be held to be without jurisdiction on another ground also and for this we shall have to look into the object of the Act. As already mentioned above, it is not necessary to record any finding on the nature of the transaction undergone between respondents Nos. 2 and 3. We can consider the matter in the alternative. At this place, it may also be observed that for purpose of the present

proceeding we are not to attach any importance to the disputes that are in existence between the parties on the rent payable by the petitioner. That matter can be adjudicated in a proper proceeding. It will be in the fitness of things that this part of the dispute may be disregarded, not only for determination of the validity of the order of the State Government but also the nature of the transaction between respondents Nos. 2 and 3. It shall be open for the parties to raise this question in a proper proceeding.

44. In case Messrs. Property Agents, respondent No. 3, is a fictitious partnership firm and the transactions were in effect being undergone by or on behalf of Messrs. Ganeshdas Ramgopal, respondent No. 2, no question of subletting can arise as in spite of the execution of the lease of any order under Section 7(2), the landlord shall continue to be respondent No. 2 even though there may be formal allotment in favour of respondent No. 3, tenantin chief. It is where respondent No. 3 is a genuine partnership firm that in certain circumstances, the accommodation can be leased to respondent No. 3 and later sublet to the petitioner. It will be in the fitness of things that we should record a finding treating respondent No. 3 as a genuine partnership concern. No opinion is however being expressed on this point.

45. From the Annexure on record it is clear that the accommodation in question was never in actual occupation of Messrs Property Agents. The lease, Annexure I, was executed on 31/7/1958, and it was within 14 days that negotiations for the sublease thereof in favour of the petitioner were almost finalized. The terms of the sublease are contained in Annexure V dated 14/8/1958. Messrs. Property Agents were never in actual possession of the accommodation. In any case, on the date the Rent Control and Eviction Officer served the notices on respondent No. 2 and the petitioner it was the petitioner who was in actual possession and Messrs. Property Agents had no rights unless the District Magistrate passed an order directing the landlord to let the accommodation to Messrs. Property Agents. In other words, from whatever aspect the matter is looked into, Messrs. Property Agents, respondent No. 3 were not in occupation of and did not require the accommodation in question for its own use. The accommodation was meant to be occupied by the petitioner may be under a lease or sublease. The question

for consideration is whether under the provisions of the Act, the rent control authorities could pass an order directing the landlord to let the accommodation to respondent No. 3 to enable the latter to sublet the accommodation to another person, in the present case, the petitioner. To put it differently, could the Rent Control authorities allot the accommodation to a person who did not want to himself occupy it. I have given my patient consideration to this question and am of opinion that such an allotment is not permissible under the law.

46. The object of the Act is contained in the preamble of the Act. The preamble runs as bellow :

"An Act to provide for the continuance, during a limited period, of powers of control the letting and the rent of residential and nonresidential accommodation and to prevent the eviction of tenants therefrom.

The subsequent part thereof clearly indicates that the legislature made the law due to the shortage of accommodation in Uttar Pradesh. The Act is a special law meant to control the special conditions existing due to the shortage of accommodation. When the public authorities including the State Government were given the power to control the letting, that was done for the interest of the public to ensure that landlords and tenants in chief did not take undue advantage of the shortage of accommodation. No monopoly could be created in favour of any one and the accommodation was to be let to a person who was genuinely in need of it for his own occupation. In other words, any accommodation falling vacant after the commencement of the Act is to be allotted to a person, who is genuinely in need. It is within the discretion of the Rent Control authorities to lay down who is genuinely in need or whose needs are more urgent than of others requiring accommodation. The discretion so exercised cannot be questioned before the Courts of law; but if the Rent Control authorities act arbitrarily by allotting the accommodation to a person not in need of the accommodation or as a result of the allotment create monopoly in favour of any one, that would be a clear case where the discretionary powers have been abused and not exercised in accordance with the law. This finds corroboration from Sections 3 and 7 of the Act. Clause (e) of SubSection (1) of Section 3 gives power to the landlord to sue for ejectment of the tenant if he has on or after the 1st day of October, 1946, sublet the whole or any portion of the accommodation without the permission of the landlord. Similarly, SubSection (3) of Section 7 lays down that no tenant shall Sublet any portion of the accommodation in his tenancy without the permission in writing of the landlord and of the District Magistrate previously obtained. The accommodation is allotted by the District Magistrate to a person genuinely in need for his own occupation, and such a person cannot be permitted, except in special circumstances, to sublet the whole or a part of the accommodation. When subletting has been prohibited without the permission of the District Magistrate it can be inferred that the underlying idea is that the accommodation be allotted to a person who requires it for his own use.

47. In the present case, Messrs. Property Agents did not require the

accommodation for its use, and the Rent Control authorities had no jurisdiction to pass an order under Section 7(2) of the Act for the accommodation being let to respondent No. 3, who was not in need of the same. The effect of the impugned order of the State, Government is that the accommodation in question was to be let to respondent No. 3 to enable it to sublet it to the petitioner. This order is against the provisions of the Act and being arbitrary shall be deemed to be without jurisdiction.

48. To get over this difficulty it was contended on behalf of the contesting respondents that while disposing of the application under Sec. 7F of the Act, the State Government does not act as a judicial or quasijudicial authority and the order

passed by it is a mere administrative order, as mentioned in the section itself for the ends of justice.

It was contended that for passing an order as may be necessary for the ends of justice, the State Government can depart from the law or even take an erroneous view of the law in order to do justice between the parties. It is said that in the present case the State Government had done justice by accepting the contracts that had been arrived at between the parties and regularized what had been done in the past without obtaining the prior permission or order of the Rent Control authorities.

49. For purposes of the present proceeding it is not necessary to record a finding whether the State Government was acting as an administrative authority or a quasijudicial one. I am alive to certain decisions of this Court wherein it has been held that the State Government acts as an administrative body while dealing with an application under Sec. 7F. These decisions may require reconsideration in view of a recent decision of the supreme Court in which the Board of High School and Intermediate Education was deemed to be acting as a quasijudicial authority while debarring candidates from appearing in Examinations conducted by it, or while cancelling their result already announced. The jurisdiction of the State Government under Sec. 7F is similar, being not more administrative than of the Board of High School and Intermediate Education. Before any direction is issued by the District Magistrate under S. 7(2), he has to deal with the matter administratively and not quasijudicially. He has to consider the needs of various persons applying for allotment of the accommodation. It is not necessary for him to weigh with golden scales the evidence which the claimants may adduce; but once an order has been passed under Sec. 7(2) of the Act and the allottee takes possession of the accommodation the matter has to be considered from a different angle. When an order of allotment is to be modified or vacated by the District Magistrate, he has to view the matter somewhat judicially. The same can be said about the State Government when it is called upon to review the order of the District Magistrate and it decides to make an order necessary for the ends of justice.

50. Whether the State Government acts as an administrative body or as a quasijudicial authority, it cannot, in my opinion, go against the law, all the more, when the law debars the State Government from exercising jurisdiction in a particular manner. The object of the enactment and also the nature of the order contemplated by the Act determine not only the manner in which the jurisdiction can be exercised but the jurisdiction of the authority itself. An administrative body cannot, in my opinion, go out of the law, nor can it wrongly interpret the provisions of the Act usurp jurisdiction by passing an order which it could not. In any case, an order passed against the law shall, in the eye of law, be arbitrary and on this ground alone can be quashed.

51. The learned Advocate for the respondents relied upon a decision of the Supreme Court of Pakistan in the case *The Tariq Transport Co., Lahore v. The SargodhBehra Bus Service*, 1958 Pak LD 437 (SC). The observations made therein cannot be helpful to them. It is laid down in this case that where an administrative or executive officer acts under the law, the High Court will control the action by an appropriate order if he goes out of the law, that is, exercise a jurisdiction not vested in him by law; wrongly denies or omits to exercise a jurisdiction; or where the law under which he acts prescribes the manner in which he is to act, materially departs from that law and at the same time the excess or denial of jurisdiction or the irregularity in the prescribed procedure has injuriously affected some justiciable right of a party. One goes out of the law by usurping jurisdiction not vested in the authority, that is, by passing an order against the object of the enactment. My attention was also drawn to a passage in the *Judicial Review of Administrative Action* by S.A. de Smith at page 172, how discretionary powers are to be exercised by an authority. It is mentioned in this book also that in the purported exercise of its discretion the authority must not do what it has been forbidden to do, nor must it do what it has not been authorised to do, and that it must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously.

52. Orders passed by administrative authorities against the law were quashed by this Court in *Ram Charan Lal v. State of Uttar Pradesh*, AIR 1952 All 752 and *Smt. Prabhavati Devi v. District Magistrate, Allahabad*, AIR 1952 All 836.

53. In *Munna Lal Goel v. Kishan Pehalwan*, 1959 All LJ 897 this Court quashed the order when there existed an error apparent on the face of the record and jurisdiction was exercised against the law.

54. In the instant case, the State Government did not have the jurisdiction under Section 7(3) nor under Section 7F to grant permission for the creation of subtenancy, and, further, the Rent Control authorities including the State Government could not have the jurisdiction to pass an order under Section 7(2) for the lease of the accommodation in favour of a party which was not to occupy the accommodation but was to sublet it to another person. The first is clear case of exercise of jurisdiction not vested in the State Government, and the other is

an instance of the exercise of jurisdiction against the law. In either case, the impugned order of the State Government, AnnexureK, is invalid and deserved to be quashed by this Court.

55. The next point for consideration is should the proceeding before the State Government be quashed as a whole or it be left open for the State Government to reconsider the application under Section 7F and pass a suitable order. In this connection it shall also have to be looked into whether the order dated 1711959, AnnexureE as restored under order dated 1031959, AnnexureG of the Rent Control and Eviction Officer is valid. If this order is not valid, it would be necessary to quash this order also and to leave it open for the State Government to pass a suitable order under Section 7F of the Act.

56. As would appear from the facts of the case detailed above, the Rent Control and Eviction Officer had originally directed the landlord, namely, respondent No. 2, to let the accommodation in question to the petitioner. This order was modified under order, AnnexureF, dated 1921959 by which the accommodation was to be sublet to the petitioner by respondent No. 3. Impliedly the accommodation was to be leased to respondent No. 3, who was to sublet it to the petitioner. This order was, later vacated and the original order, AnnexureE was restored.

57. The petitioners case from the very beginning is that the order, AnnexureF, was passed without giving him a hearing. In other words, there was at that stage violation of the principles of natural justice. This has not been controverted by the respondents. Soon after the order, AnnexureF, was communicated to the petitioner, he filed an application, AnnexureXVIII, and in para 5 thereof clearly mentioned that the order, AnnexureF, was passed without any intimation to him. Respondents Nos. 2 and 3 filed objections to the above application of the petitioner and these objections are Annexures6 and XIX respectively. A perusal thereof will make it clear that none of the respondents challenged the above assertion. Similarly, in para 16 of the affidavit, the petitioner clearly mentioned that the Rent Control and Eviction Officer modified the allotment order already passed ex parte. The contents of para 16 were denied evasively without asserting that the petitioner was given a hearing before passing the order. AnnexureF. Respondent No. 3 also acted in the same manner. Evasive denial can amount to an admission. The petitioners version is also corroborated by the fact that AnnexureF was passed within 2 days of applications having been moved by respondents Nos. 2 and 3 for modification of the order, AnnexureE.

58. When the Rent Control and Eviction Officer passed an order adverse to the petitioner without giving him a hearing, that order was not only against the principles of natural justice, but the Officer could, on being moved by the petitioner vacate the ex parte order. Further, as already mentioned above the accommodation could not be ordered to be let to respondent No. 3, who had no intention to itself occupy it but wanted to sublet it to another person. Such an order would have been against the law and consequently invalid.

59. The order, AnnexureF, dated 1921959, being invalid, is, in the eye of law, nonexistent and cannot be deemed as an order passed by the Rent Control and Eviction Officer. The only other two orders passed by him are AnnexuresE and G by which respondent No. 2 was to lease the accommodation to the petitioner. The Rent Control and Eviction Officer acts administratively while deciding to whom the accommodation is to be given on lease and his discretion cannot be interfered with unless he is found to have acted arbitrarily and not in good faith. Further, there was no other claimant for the accommodation except the petitioner. The other claimant was Messrs. Property Agents, respondent No. 3, in whose favour no order could be passed by the Rent Control authorities. When there was no other person in the field, the Rent Control and Eviction Officer could, without any difficulty, direct that the landlord shall let the accommodation to the petitioner. It may here be mentioned that at no stage has any person come forward desiring that the accommodation in question be given to him on lease. No one apparently applied to the Rent Control and Eviction Officer for the allotment of the accommodation, nor did any one challenge the order of allotment before the State Government by moving an application under Section 7F. In this connection, it may also be mentioned that even Messrs. Property Agents, respondent No. 3, did not press their claim by moving an application under Section 7F. It was respondent No. 2 which moved an application, under Section 7F before the State Government. When the party desiring the lease of the accommodation does not press the claim, it was not proper for the State Government to pass an order in favour of that party.

60. The respondents have also not asserted that there was some other claimant for the accommodation, and his claims were not considered or could be considered by the State Government; but what the respondents had been pleading from the initial stage was that respondent No. 2 wanted to lease the accommodation to respondent No. 3 and not to the petitioner, though respondent No. 3 could sublet the accommodation to him. In other words, the respondents themselves wanted the accommodation to be occupied by the petitioner and not by any other person, and in such circumstances the only option open for the Rent Control authorities including the State Government was to pass an order under Section 7(2) in favour of the petitioner. To put it differently, AnnexuresE and G are not invalid and as these orders were not challenged before the State Government by respondent No. 3 this Court can quash the order of the State Government without directing a fresh hearing of the application under Section 7F.

61. The orders, AnnexuresE and G, were also challenged on another ground, namely, that there was breach of Rules 7 and 8 of the Rules framed under Section 17 of the Act known as the Control of Rent and Eviction Rules. Rules 7 and 8 run as below :

"7. Allotment of portion of accommodation :

Where a portion of accommodation falls vacant and the owner is in occupation of another portion thereof, the District Magistrate shall before making the allotment

order, consult the owner and shall so far as possible make the allotment in accordance with the wishes of the owner.

8. (i) In case landlord desires to let out a portion of an accommodation any portion of which was not let out before, the District Magistrate shall, make the allotment, if the landlord happens to be living in any portion of the accommodation, in accordance with the wishes of the landlord and, if the landlord does not live in the accommodation, in accordance as far as may be with his wishes :

Provided always that the District Magistrate shall at any time after such allotment, on being satisfied on the application of the landlord that he requires the accommodation bona fide for his personal residence, grant him permission under Section 3 of the Act for ejectment of the tenant.

(ii) If the accommodation referred to in subrule (i) falls vacant at any time subsequently as a result of the tenant vacating it, the District Magistrate shall, if so requested by the landlord, allow him to occupy the same for his own residence."

62. In Rule 7 the State Government has used the word occupation, while in Rule 8, the word "living" or "residence". When the State Government used different words in Rules 7 and 8, it shall have to be inferred that Rule 7 applies to accommodation let out to tenants in the past and a portion of which is in occupation of the landlord as residence or otherwise; while the first, in fact the main part of Rule 8 to accommodation not let out before and a portion of which is occupied for residential purposes by the landlord. The second part of Rule 8 (underlined (here into) by me) applied to accommodation not let out before and also not occupied by the landlord as residence. The second part is akin to R. 7 in that allotment has to be made as far as possible, in accordance with the wishes of the landlord. Respondent No. 2 was not residing in Halwasiya Court, its office only was located there. Consequently, the main part of Rule 8 is inapplicable.

63. There has, in substance, been no contravention of Rule 7 and the second part of Rule 8. These rules do not lay down that the wish of the landlord shall be accepted in each and every case. The two important ingredients of these rules are that the landlord shall be consulted and as far as possible allotment made in accordance with his wishes. In other words, if the landlord makes any illegal or improper request, his wishes shall not be accepted. Further, if the landlord acts arbitrarily while indicating his wishes, the Rent Control and Eviction Officer can pass an order in favour of a suitable person. The underlying idea of Rule 7 and second part of Rule 8 is that a part of the accommodation be not ordered to be let to a person to the annoyance of the landlord. For example, if the accommodation is a residential one; it will not be proper to allot a part of the accommodation to one who is a nonvegetarian which the landlord belongs to that class which does not take meat and, in fact, the taking of meat is against his religion and conscience. A part of the accommodation can not also be allotted to

one who is apparently on inimical or litigation terms with the landlord. But where the landlord has no objection to the accommodation being occupied by a person, there is no disregard of Rule 7, or of Rule 8, when the present case, (sic) the landlord, namely, respondent No. 2, had no objection to the accommodation being occupied by the petitioner. What it desired was that the petitioner should have the status of a subtenant and not of tenant. This request was, as already observed above, against the law and could not be allowed. When respondent No. 2 had no objection to the petitioner occupying the accommodation, it shall have to be held that the allotment was made in accordance with the wishes of the landlord.

64. It is true that there is no documentary evidence on record to show that there was prior consultation with the landlord; but this irregularity, if any is of no importance and is not such as would justify the quashing of the orders of the Rent Control and Eviction Officer. Even if there was no formal consultation, respondent No. 2 had an opportunity to express its wishes were, in substance, accepted and the petitioner was permitted to occupy the accommodation, of course, as tenant and not as subtenant.

65. There is an error in the order of allotment, AnnexureE, dated 1711959. The accommodation is referred to as situated in Halwasiya market, though in fact it is situated in Halwasiya Court. A perusal of the affidavits on record makes it clear that all the parties were aware from the very beginning to which accommodation the order of the Rent Control and Eviction Officer pertained. The mistake attains lesser importance on account of further particulars given in the Schedule of AnnexureE. It was clearly noted therein that the allotment was with regard to that portion which was occupied by Royal Cafe, that is, by the petitioner. It is not in dispute that the accommodation in question was occupied by the petitioner for running Royal Cafe. The minor mistake in AnnexureE can thus be disregarded.

66. Further, under Section 95 of the Evidence Act the petitioner can adduce evidence to prove to which accommodation the order relates. This he has done by giving facts in his affidavits. He can also rely upon the counteraffidavits and their annexures Section 95 lays down that when language used in a document is plain in itself but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense. The illustration to this section also makes it clear that the document shall be deemed to pertain to the correct property and mistake in the description, thereof shall not prove fatal. In the present case the parties were aware from the beginning to which property the order, AnnexuresE and G, dated 1711959 and 1931959 related, and consequently slight wrong description of the location thereof shall not in any way invalidate the orders.

67. To conclude, the order of the State Government, AnnexureK, dated 821960 is under both the SubSections (2) and (3) of Section 7 of the Act under SubSection (3) to the extent respondent No. 3 could sublet the accommodation and under SubSection (2) in that respondent No. 3 was directed to sublet the

accommodation to the petitioner. The State Government had no jurisdiction to pass an order under SubSection (3) of Section 7, nor could it, in exercise of the jurisdiction under Section 7E, interfere with the order of the District Magistrate (Rent Control and Eviction Officer) when no permission for subletting was granted. Further, under the Act the Rent Control authorities including the State Government had no jurisdiction to pass an order under Section 7(2) in favour of a person who was not to occupy the accommodation but was to sublet it. The order, AnnexureK, of the State Government is thus without jurisdiction and deserves to be quashed. The claimants for the lease of the accommodation were the petitioner and Messrs. Property Agents, respondent No. 3. No other person made any claim before the Rent Control and Eviction Officer, nor before the State Government. The accommodation could not be allotted to respondent No. 3.

and hence it was to be allotted to the petitioner, all the more, when there has been no contravention of Rules 7 and 8. Further the application under Section 7F of the Act was made by respondent No. 2, the landlord, and not by anyone who wanted the accommodation to be leased to him. On the basis of the present application under Section 7F the State Government could not issue a direction under Section 7(2) for the lease of the accommodation to any person other than the petitioner. Furthermore, respondent No. 2 wanted the petitioner to occupy the premises as a subtenant and not as tenant. This was not possible, and consequently when the accommodation was ordered to be let to the petitioner, in the eye of law, it was allotted in accordance with the wishes of the landlord. The present is thus a case in which the State Government, could not, in any manner, modify the order of the Rent Control and Eviction Officer; and hence it is but proper that the order, AnnexureK, be quashed without leaving it open for the State Government to reconsider the matter.

68. It is not necessary to quash the order, AnnexureF dated 1921959 as the Rent Control and Eviction Officer himself vacated it by later passing a legal order on 1931959.

69. When the order, AnnexureG, dated 1931959 of the Rent Control and Eviction Officer is in force, the landlord, namely, respondent No. 2 was to let the accommodation to the petitioner. In other words Messrs. Property Agents, respondent No. 3, had no right to move the application under Section 7B and the proceeding based thereon and pending before the Munsif becomes infructuous and shall also have to be quashed.

70. The petition is hereby allowed with costs payable by respondent Nos. 2 and 3 only and the order dated 821960 of the State Government, AnnexureK to the affidavit, whereby the order dated 1921959 of the Rent Control and Eviction Officer (Town Rationing Officer/District Supply Officer, Lucknow), AnnexureF to the affidavit, was restored, is hereby quashed. In the eye of law, the order dated 1931959 of the Rent Control and Eviction Officer, AnnexureG to the affidavit is still in force, as a result of which the petitioner is the tenant of Messrs. Ganeshdas Ramgopal, respondent No. 2. He is not the subtenant of Messrs.

Property Agents, respondent No. 3; and consequently the proceeding under Section 7B of the U.P. (Temporary) Control of Rent and Eviction Act initiated by respondent No. 3 and pending before Munsif (South) Lucknow, is without jurisdiction and is hereby quashed. It is not necessary to issue a writ of mandamus as the effect of the orders being passed is that the petitioner continues to be the tenant of the premises in question in pursuance of the order AnnexureG to the affidavit, dated 1931959 read with the order, AnnexureE to the affidavit, dated 1711959, and all the respondents shall treat him as tenant of respondent No. 2.

Petition allowed.