

(1973) 12 AHC CK 0014
In the Allahabad High Court
Case No : Special Appeal No. 648 of 1972

Syed Ajaz Ali Khan and Others

APPELLANT

Vs

Mohammad Rafiq and Others

RESPONDENT

Date of Decision : 12-12-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144, 151
Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 7, 7(2),
7A, 7A(1), 7F
Uttar Pradesh (Temporary) Control of Rent and Eviction Rules, 1949 — Rule 6

Citation : AIR 1974 All 178

Hon'ble Judges : Satish Chandra, J; M.N. Shukla, J; K.B. Srivastava, J

Bench : Full Bench

Advocate : K.C. Saxena and N. Ally Khan, for the Appellant; S.N. Verma and S.J. Hyder and Standing Counsel, for the Respondent

Final Decision : Disposed Of

Judgement

K.B. Srivastava. J.

1. This reference to a Full Bench arises out of a special appeal filed against an order of a learned Single Judge who placing reliance upon a decision of a Division Bench of this Court in Krishna Chandra Sharma v. State of U. P., 1962 All LJ 426, allowed the writ petition in part. The Division Bench, which heard the special appeal, felt that the decision in Krishna Chandra Sharma's case required reconsideration and it has, therefore, referred the following question for the consideration of this Full Bench :--

""Whether an order passed by the State Government cancelling an order of allotment and directing the release of the accommodation in favour of the landlord passed in revision filed under Section 7-E of the Rent Control and Eviction Act is an order passed under Sub-section (2) of Section 7 of the Rent Control and Eviction Act within the meaning of Section 7-A (1) of that Act"

2. In Krishna Chandra Sharma's case 1962 All LJ 426 the original order of allotment was made in favour of one person and when that order was cancelled subsequently by the District Magistrate, the accommodation was split up into two separate portions and while one portion was re-allotted in favour of the original allottee, the second portion was ordered to be let out to another person. On the filing of a revision petition by the, original allottee, the State Government acting u/s 7-F of the U. P. (Temporary) Control of Rent and Eviction Act. 1947 (hereinafter referred to as the Act), cancelled both the allotment orders and allotted the whole accommodation in favour of the original allottee, who applied for initiation of proceedings u/s 7-A (1) of the Act for the eviction of the second person on the ground that he was in occupation of the accommodation in contravention of the order passed by the State Government u/s 7-F in relation to an order passed earlier by the District Magistrate under Sub-section (2) of Section 7. On these facts, two Questions of law were canvassed before the Division Bench (M.C. Desai, C.J. and S.D. Singh J.) in that case. The first Question was whether a person, who is in occupation of an accommodation on the basis of an order passed by a District Magistrate under Sub-section (2) of Section 7 of the Act can be said to be in occupation "in contravention of the said order" in the sense in which these words occur in Sub-section (1) of Section 7-A, if the State Government, exercising its powers u/s 7-F, subsequently cancels it and allots the accommodation in favour of another person. The question was answered in the negative and it was held that such a person would on the contrary be a person in occupation of the accommodation under an order passed under Sub-section (2) of Section 7. The second question was whether in the circumstances stated above, a notice under Sub-section (1) of Section 7-A can be issued against the person in occupation, that is to say, against a person who is in occupation in consonance with an order passed by the District Magistrate under Sub-section (2) of Section 7 but in contravention of the order passed by the State Government u/s 7-F. After quoting Sub-section (1) of Section 7-A and adopting the primary rule of literal construction, the Division Bench answered this second Question, to use its own language, in the following terms:

"There must, therefore, be an order under Sub-section (2) of Section 7 requiring an accommodation to be let or not to be let to any person, and an order under Sub-section (2) of Section 7 can be passed only by a District Magistrate. It may be that the order passed under Sub-section (2) of Section 7 is liable to be revived by the State Government u/s 7-F, but Sub-section (1) of Section 7-A contemplates action being taken only in respect of the contravention of an order passed u/s 7 (2) and not an order passed u/s 7-F. The language of the section is plain and can admit of no two interpretations."

3. The decision in Krishna Chandra Sharma's case. 1962 All LJ 426 was followed by Gur Sharan Lal, J. in Sirajuddin v. State of U. P. 1972 All LJ 364 wherein he held that Section 7-A mentions contravention of an order u/s 7 (2) only and not an order under; Section 7-F and consequently Section 7-A "could not be availed of to oust a person from occupation of an accommodation in pursuance of an

allotment order which is subsequently set aside by the State Government" and that that statement of the law is the obvious inference from the language of Section 7-A (1)."

4. The ratio of these two decisions, thus, is: firstly, that an order of allotment can be passed only by a District Magistrate secondly, that the making of such an order is beyond the competence of the State Government and thirdly, that Section 7-A (1) comes into play only if a person is found to be in occupation of an accommodation in contravention of an, order passed by a District Magistrate under Sub-section (2) of Section 7 and that it is not attracted if such a person is in occupation of the accommodation in contravention of an order passed by the State Government u/s 7-F. In short, these decisions are to the effect that the powers of the State Government u/s 7-F are limited to bare confirming or reversing, or may be varying, of the order passed by a District Magistrate and does not extend to the Passing of a different order altogether in the shape of cancelling an order of allotment and making another order of allotment itself, or cancelling an order of allotment and releasing the accommodation in of the landlord, and so forth and so on.

5. On the other hand, there are some decisions, both by Single Judges and Division Benches, which, in express or implied terms, have taken a contrary view. The case of Syed Kasim Husain v. Rent Control and Eviction Officer. Allahabad 1960 All WR 406 was one where under an order of allotment passed by the District Magistrate under Sub-section (2) of Section 7, the allottee had taken, possession, but that order of allotment was set aside by the State Government u/s 7-F and the accommodation was released by it in favour of the landlord who made an application under Section, 7-A (1) for the eviction of the allottee, and the contention raised was that the occupation of the allottee was not in contravention of any order passed under Sub-section (2) of Section 7 and, therefore. Section 7-A would not apply and the only remedy of the landlord was by way of a suit; but this contention was repelled by V.D. Bhargava. J. who held that when the order had been set aside by the State Government, it would be deemed that the original order never existed and the allotment initially made would be deemed to be invalid from its very inception and the District Magistrate would be entitled to proceed u/s 7-A (1) for the reason that continuation of the occupation would be in contravention of the order. V.D. Bhargava, J. further relied upon the doctrine of inherent jurisdiction of the District Magistrate "to place the parties in their proper positions." In Ram Autar v. State of U. P. 1964 All WR 260 where the order of allotment had been passed by the Rent Control and Eviction Officer without jurisdiction and had been cancelled by the State Government after the allottee had taken possession. G.C. Mathur, J. held that it was open to the R. C. & E. O. to take proceedings u/s 7-A of the Act to evict the allottee and to restore possession to the person entitled. He then referred to the decision of V.D. Bhargava, J. in Syed Kasim Husain's case. 1960 All WR 406 and observed that apart from Section 7-A, there would also be inherent jurisdiction to place the parties in their proper positions. In Ram Niwas v. Nankau Ram 1967 All

WR 830 when the R. C. & E. O. started proceedings u/s 7-A after the allotment order had been quashed by the High Court, another writ petition was filed for quashing the eviction proceedings on the ground that there was no provision in law entitling Mm to order eviction, but the Division Bench (G. D. Sahgal and Lakshmi Prasad, JJ.) held that the R. C. & E.O. had the inherent jurisdiction, being a quasi-judicial Tribunal, to restore possession by electing the occupant in order to set right the wrong that had been done in passing the illegal allotment order which had been found by the High Court to have been passed without jurisdiction. Thus, while in *Kasim Husain and Ram Autar*'s cases the decision rested not only on the applicability of Section 7-A on its own strength but also on the basis of inherent jurisdiction, the decision in *Ram Niwas*'s case was founded purely on the doctrine of inherent jurisdiction. In *Ram Agyan Singh v. Murlidhar Aarwal*. 1969 All LJ 1060 where the State Government had passed an order u/s 7-F that the person in unauthorised occupation of the accommodation should not be evicted because there had been undue delay in taking proceedings u/s 7-A. the point raised before the Division Bench (R.S. Pathak and R.L. Gulati. JJ.) was that the District Magistrate alone has to be satisfied under the proviso to Section 7-A (1) that there has been undue delay or it would be otherwise inexpedient to pass an order u/s 7-A (1) and the satisfaction of the State Government in this regard was not contemplated by the proviso. The Division Bench overruled this contention and stated the law thus:

"In my opinion, that is a matter pertaining to the exercise of the power not only by the District Magistrate but also by the Commissioner in revision and by the State Government u/s 7-F, There is no reason why the entire content of the power u/s 7-A cannot be exercised by the State Government when the proceeding comes up before it u/s 7-F. To hold that the satisfaction of the State Government is not contemplated by the statute in such a proceeding would be to abridge the power of the State Government in dealing with a proceeding u/s 7-A and lead indeed to wholly illogical results. The position would be that while the State Government can consider whether a person is in occupation of accommodation in contravention of the orders mentioned in Sub-section (1) of Section 7-A it cannot examine whether the benefit under the proviso should be extended to such a person,"

6. In arriving at that conclusion the Division Bench placed reliance upon the *The Commissioner of Income Tax Vs. Mcmillan and Co.*, where an argument somewhat similar in nature was raised and repelled by the Supreme Court It is undoubtedly true that the point, which fell for determination in *Ram Asvan Singh*'s case 1969 All LJ 1060 related to the competence of the State Government u/s 7-F to pass the same order under the proviso to Sub-section (1) of Section 7-A which the District Magistrate could have passed that the principle enunciated would equally apply to the State Government's power u/s 7-F to pass an order of allotment which the District Magistrate could Pass under Sub-section (2) of Section 7, or to make an order of release which could be, passed by the District Magistrate under Rule 6, Control of Kent and Eviction Rules. 1949. In

Masood Ahmad v. State of U. P. 1971 All WR 336: AIR 1971 AP 544 the State Government had cancelled the order of allotment and had passed an order of release in favour of the landlord. The point canvassed before the Division Bench (Oak. C. J. and R.B. Misra. J.) was that powers u/s 7 and Rule 6 have been conferred on the District Magistrate and the said Section and the rule make no reference to the power of the State Government under them and therefore, the State Government has no power to pass an order of release. The contention was held to be untenable on the ground that since u/s 7-F, an order passed by the District Magistrate u/s 7 or Rule 6 is open to revision by the State Government, it can exercise all the powers of the District Magistrate under that section or under that rule. In Mangal Sen v. a C. & E. O. 1972 All WR 412 the order of allotment was first made in favour of one person and when he could not succeed in obtaining possession over the accommodation another order of allotment was made in favour of another person. The second person instituted a suit in the Civil Court for an injunction restraining the first allottee from taking possession. The Civil Court dismissed the suit on the ground that the first allotment was valid in law and thereupon the first allottee made an application before the R. C. & E. O. for cancellation of the order of allotment in favour of the second person and the R. C. & E. O. cancelled it but rejected the Prayer of the first allottee to put him in occupation of the accommodation by resort to the procedure laid down under Sub-section (1) of Section 7-A on the ground that he had no power to do so. The Division Bench (of which one of us was a member) held that when the order of allotment in favour of the second allottee was cancelled, the effect of the cancellation would in the eye of law, be as if that order had never been passed or that it never existed. The position would be the same as if no order of allotment had been passed in favour of the second allottee. In that event, his possession would be in contravention of the earlier order of allotment; and when an allotment order is cancelled and there is another order of allotment in favour of another person, the possession of the person in whose favour the allotment order was passed but cancelled, would clearly be in contravention of the other order and would attract Section 7-A where under such a person can be evicted.

7. Conflicting opinions have, thus been expressed by Single Judge or Division Benches of this Court as to the true scope, amplitude and extent of the power of the State Government u/s 7-F in relation to the powers mentioned in Sections 7, 7-A and Rule 6. The correctness of one or the other opinion is challenged before us.

8. We have given anxious consideration to the various decisions cited above and are of opinion that the law propounded by the Division Benches in Masood Ahmad Vs. The State of U.P. and Others, is the correct law. The single Judge decisions in Kasim Husain's and Ram Autar's cases 1960 All WR 406 and 1964 All WR 260 in so far as they are consistent with the said Division Bench cases, also lay down good law. However, the decisions in these two single Judge's cases, as also the decision in Ram Niwas's case 1967 All WR 830 by the Division Bench, justifying the power of eviction on the basis of inherent jurisdiction to

order restitution on the analogy of Sections 151 and 144 of the Code of Civil Procedure, do not lay down the correct law. The exercise of inherent jurisdiction is the attribute of a Court of law of general jurisdiction for every Court is constituted for the purpose of doing justice according to law and must be deemed to possess, as a necessary corollary, and as inherent in its very constitution, all such powers as may be necessary to do the right and to undo a wrong in the course of the administration of justice. Even in the case of a Court, the inherent power is not unlimited in that if a matter falls within the ambit of the express provisions of the statute, the inherent power of the Court must, to that extent, be regarded as abrogated by the Legislature. An authority or tribunal of limited jurisdiction not being a Court can have no inherent power, unless the statute confers such a power on them: and in the absence of any such conferment of power, the authority or tribunal can Pass only such orders as the provisions of the Act under which they are created, provide for. Special authorities and tribunal are constituted under special statutes and for special objects and, therefore, it is not possible to imply inherent powers in them. In their case one must turn to the statute itself to find a power either in express terms or by necessary implication. Inherent power was held net to exist in an election tribunal in *Rameshwar Dayal Vs. Sub-Divisional Officer Ghatampur and Others*, A perusal of Section 151 and 144 of the CPC will also show that its terms apply to Courts only and not to authorities or tribunals. In the absence of an express statutory provision, an authority or tribunal cannot order restitution *ex debito justitiae*. The resulting situation may be unfortunate but if there is a lacuna, it would be for the Legislature to provide for the situation.

9. We, therefore, overrule the contention that the Dower to restore occupation by dispossessing the unauthorized occupant, can be justified by invoking inherent jurisdiction, which does not exist in an authority or tribunal, or by relying upon the equitable principles of restitution.

10. The solution to the controversy, to our mind, will depend upon the construction to be placed on Sections 7, 7-A and Rule 6 in relation to Section 7-F. The jural relationship between a landlord and a tenant, under the general law, is regulated by the Transfer of Property Act. The principal object of the special Act, namely, U. P. (Temporary) Control of Rent and Eviction Act, is to control this relationship, in the matter of the landlord's right to evict his right to payment of rent his right to let or not to let his accommodation, and to regulate some other incidental and ancillary matters connected thereto. We are at present concerned with one aspect only, that is to say, with the aspect of letting. The heading of Section 7 is "control of let-ting". Sub-section (1) of Section 7 imposes a statutory liability both upon the landlord and the tenant to give notice of vacancy in writing to the District Magistrate. Clause (a) fixes an obligation on the landlord and Clause (b) on the tenant to give the notice of the vacancy. Clause (c) applies to both of them and requires them to furnish some particulars about the vacant accommodation. Clause (a) further specifies four specific and one general situations, when an accommodation can be said to be vacant. The object of Sub-

section (1) is clearly, therefore, to place information before a District Magistrate regarding an accommodation which is or has fallen vacant or is about to fall vacant. The District Magistrate's power under Sub-section (2) of Section 7 to make a special order requiring a landlord to let or not to let to any person such an accommodation, then comes into play. He can, in such an event either require the landlord to let the accommodation to a particular person or may act under rule 6 and permit the landlord to occupy the accommodation himself. Rule 6 lays down that when the District Magistrate is satisfied that an accommodation which has fallen vacant or is likely to fall vacant is bona fide needed by the landlord for his own personal occupation the District Magistrate may, permit the landlord to occupy himself. He has, thus, two powers, namely, either to make an order of allotment or to release the accommodation in favour of the landlord. Such an order has not been, made subject to any revision by the Commissioner, as in the case of an order u/s 3 or an order u/s 7-A. Section 7-A exists as a necessary corollary to Section 7 and but for it perhaps, the object of Section 7 would have been frustrated. There may be a case where a landlord, or the quondam tenant, or a rank trespasser does not allow the allottee under Sub-section (2) of Section 7 to enter into occupation of the accommodation or the allottee is thrown out after occupying it. Section 7-A clothes the District Magistrate with the power to meet such a situation. While Section 7, thus, gives the Dower to do the act. Section 7-A arms the District Magistrate with Dower to implement that act. The relevant portions of Section 7-A may now be reproduced:--

"Section 7-A(1)-- where an order requiring.....any accommodation to be let or not to be let has been..... duly passed under Sub-section (2) of Section 7 and the District Magistrate believes or has reason to believe that any person has, in contravention of the said order, occupied the accommodation or any part thereof, he may call upon the person in occupation to show cause within a time to be fixed by him why he should not be evicted therefore:

Provided that no order under this section shall be passed if the District Magistrate is satisfied that there has been, undue delay or it is otherwise inexpedient to do so.

(4) No appeal shall lie from any order passed by the District Magistrate under this section, but the Commissioner may revise the said order, if he is satisfied that the District Magistrate has acted illegally or with material irregularity or has wrongly refused to act and may make such order as he thinks fit"

11. The scheme of Section 7-A is self-evident It postulates the existence of an order of allotment which has been, duly passed under Sub-section (2) of Section 7 and the occupation of the accommodation by a person, in contravention of the said order. Under Sub-section (2) of Section 7-A. the District Magistrate may either discharge the notice or direct the person in occupation to vacate the premises. Under Sub-section (3) of Section 7-A, if the person in occupation does not vacate, the District Magistrate may proceed to evict him and Put the person entitled under Sub-section (2) of Section 7 in occupation of the accommodation.

Under Sub-section (4) of Section 7-A the Commissioner may interfere with any order passed by the District Magistrate under the various provisions of the section, if the order has been passed illegally or with material irregularity or if the District Magistrate has wrongfully refused to act and in such cases, the Commissioner is at liberty to make such order as he thinks fit. Section 7-F" reads thus:--

"Section 1-F. The State Government may 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 u/s 7 or directing a person to vacate any accommodation u/s 7-A and may make such order as appears to it necessary for the ends of justice."

12. The language used in Section 7-F is in general terms. It confers upon the State Government a power of wide amplitude. It can call for the record of any case in respect of a matter falling within the ambit of the section, and when the entire record is before it, it may make such order "as appears to it necessary for the ends of justice". The only limitation on the exercise of its power is that the order must be for the ends of justice. Otherwise there is no restrictive provision which could, expressly or impliedly, shorten or abridge this vast reserve power. When an order under Sub-section (2) of Section 7 is before it, it may confirm that order or cancel it or substitute it by a new order of allotment in favour of another person. or release the accommodation in favour of the landlord. The power cannot be said to be circumscribed merely to confirmation, reversal or variation, and nothing more. It includes all these powers and the additional power to pass a fresh order itself. Such a power is indeed implied by the very language used in the section. Any other conclusion will, indeed, completely frustrate the reserve power. A State Government may cancel an order of allotment but may not direct eviction of the allottee under the order which it cancels, it may cancel the order of the District Magistrate refusing to release the accommodation but cannot pass an order of release itself in favour of the landlord; it may, in short, do justice but will be helpless to pass or implement the just order; these are all situations which, to say the least, will lead to illogical and absurd results. The general powers of an appellate or a revisional Court are the same as those of the original Court, unless the law provides otherwise. The appellate Court had the same powers as are conferred on a Court of original jurisdiction, and can do, while the appeal is pending, what the original Court could have done, while the suit was pending. It was held by the Supreme Court in *Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat*, that two things which are required to constitute appellate jurisdiction are the existence of the relation of superior and inferior Courts and the power on the part of the former to review decisions of the latter; and when aid is invoked on the revisional side it is done because it is a superior Court and it can interfere for the purpose of rectifying the error of the Court below. Statute may circumscribe the limits of that jurisdiction but the jurisdiction which is exercised is a Part of the general appellate jurisdiction as a superior Court. The revisional power is only one of the modes of exercising

power conferred by statute: basically and fundamentally it is the appellate jurisdiction which is invoked and exercised in a wider and larger sense. It is true that the above concept of appellate and revisional jurisdiction has application to a Court but there can be no denying the fact that these general principles will also apply to an authority or tribunal exercising a quasi-judicial power. In *Swastik Oil Mills Ltd. Vs. H.B. Munshi*, Deputy Commissioner of Sales Tax, Bombay, while dealing with the revisional power of an authority, their Lordships summed UP the position thus:

"Whenever a power is conferred on an authority to revise an order, the authority is entitled to examine the correctness, legality and propriety of the order and to pass such suitable orders as the authority may think fit in the circumstances of a particular case before it"

13. We are, therefore, of the view that the State Government acting u/s 7-F has a power of vast amplitude, which includes the power to pass the same order which the District Magistrate could pass u/s 7 or which he or the Commissioner can pass u/s 7-A; and that this power admits of no abridgement, inhibition or restriction. The powers are co-extensive while each is working within the sphere of his or its own power.

14. There is no difficulty, therefore, in coming to the conclusion, on the basis of the construction to be placed on the relevant sections, that when an order is passed by the State Government u/s 7-F, cancelling an order of allotment and directing the release of the accommodation in favour of the landlord, it is an order passed under Sub-section (2) of Section 7 and Rule 6 which supersedes the order passed by the District Magistrate under Sub-section (2) of Section 7 so as to make the earlier order passed by the District Magistrate as if it is nonest or never existed. That being so, occupation of a person on the basis of an order passed by the District Magistrate under Sub-section (2) of Section 7. though initially valid, is rendered invalid and becomes one in contravention of the order of allotment when it is cancelled by the State Government and there is another order contrary to the order of the District Magistrate. This interpretation will be consistent with the doctrine of merger also: where there are two orders, one by the inferior authority and the other by a superior one passed in the exercise of its revisional jurisdiction. True, that in such a case there will be a fusion or merger of the two orders only if the order of the inferior authority is directly the subject-matter of the revision and the revisional authority has the statutory power not only to quash the order of the inferior authority but also to substitute it by another one passed by itself, if a District Magistrate passes an order under Rule 6, read with Sub-section (2) of Section 7. rejecting the landlord's application for release of an accommodation in his favour and a separate order under Sub-section (2) of Section 7 allotting the accommodation to another person, and both the matters come UP before the State Government u/s 7-F and it cancels the order of allotment and releases the accommodation in favour of the landlord, it will certainly be a case of fusion or merger of the two orders passed by the

District Magistrate in the orders passed by the State Government. It would be clear that the subject-matter of both the orders were before the District Magistrate and both were agitated before the State Government also. It will also be clear that the State Government has the jurisdiction as also the power to cancel the two orders passed by the District Magistrate and to pass an order of release in favour of the landlord. There would, thus, be a fusion or merger of the orders passed by the Inferior authority in the final order passed by the superior authority; and it is the final order alone which can hold the field. In these circumstances, if a person is found to be in occupation in contravention of the final order, there would be no escape from the conclusion that his occupation will be in contravention of the Orders passed by the State Government u/s 7-F in exercise of its powers under Sub-section (2) of Section 7 and Rule 6. The order passed by the State Government can be none else than an order which "has been duly passed", within the meaning of these words, as they occur in Sub-section fit of Section 7-A. Furthermore, Sub-section (1) of Section 7-A uses the words "where an order requiring any accommodation to be let or not to be let has been duly passed under Sub-section (2) of Section 7" and does not say that such an order must be the original order passed by the District Magistrate under that provision of the law and cannot be the revisional order passed by the State Government under the same provision of law in exercise of its supervisory jurisdiction u/s 7-F. It has been noticed above that the power of the State Government u/s 7-F includes the power to pass an order under Sub-section (2) of Section 7 and, therefore, the language used in Sub-section (1) of Section 7-A is wide enough to comprehend an order passed by the State Government u/s 7-F in relation to its powers under Sub-section (2) Of Section 7. That being so, there can be no bar on the landlord's right to apply for start of proceedings under Sub-section (1) of Section 7-A or on the part of the District Magistrate to act under that provision of the law on the basis of such an application. Whether or not he should actually act, in view of the Proviso to that sub-section, is not a matter with which we are concerned in this Full Bench.

15. It now remains to consider one more argument which, it was contended, would bring this view of ours in indirect conflict with the decision of the Supreme Court in Bhagwan Das Vs. Paras Nath, and Mohammed Ismail Vs. Nanney Lal, . The law laid down by the Supreme Court in these two cases is that a suit validly instituted after obtaining a permission as required by Section 3 (1) does not cease to be maintainable even if the State Government revokes after the institution of the suit, the permission granted. If the State Government revokes the permission granted before the institution of the suit then there would be no valid permission to sue. In other words, the State Government's power to revoke the permission granted u/s 3 (1) gets exhausted once the suit is validly instituted. On the analogy of these two decisions, the contention raised is that the State Government can cancel an order of allotment passed by the District Magistrate under Sub-section (2) of Section 7 and release the accommodation in favour of the landlord under Rule 6 upto a stage anterior to the occupation of the

accommodation by the allottee and once that is a fait accompli, the power of the State Government to pass an order of such a nature gets exhausted and consequently any such order passed posterior to that stage is a nullity which must be ignored.

16. The two Supreme Court decisions enunciate the scope of the State Government's power u/s 7-P to pass an order of the nature referred to in Section 3 (1). The problem posed has to be looked at from three separate angles, namely, (1) the power of the State Government u/s 7-F to pass an order u/s 3 (1) and the effect of such an order, in a case where permission had been refused both by the District Magistrate and the Commissioner and the suit was instituted after permission had been obtained from the State Government; (2) the effect of the order of revocation passed by the Commissioner on the maintainability of the suit for eviction which had already been instituted after obtaining the permission of the District Magistrate, and (3) the effect of the order of revocation Passed by the State Government after the suit had already been Instituted with the permission of the District Magistrate or of the Commissioner or of both.

17. The decision of the Full Bench (Jagdish Sahai and S.N. Dwivedi, JJ., M.C. Desai. C.J. contra) in Ram Kumar v. Baldeo Prasad 1965 All LJ 88: AIR 1965 SC 572 is an authority on the first aspect mooted above. That related to a case in which permission to file a suit in the Civil Court for the eviction of the tenant, had been refused both by the District Magistrate u/s 3 (1) and by the Commissioner u/s 3 (3) but had been granted by the State Government u/s 7-F and the suit was instituted after the grant of such permission. The majority view was that the powers of the Commissioner and the State Government are co-extensive with that of the District Magistrate with regard to the power mentioned in Section 3 (1); and though it is true that Section 7-F is an Independent provision and its contents do not form part of Section 3 but that would not make it any the less effective and it must be read harmoniously along with Section 3 and, therefore, no invalidity would attach to a suit Instituted after obtaining the permission of the State Government u/s 7-F. This decision still holds the field and, indeed, has obtained confirmation by the Supreme Court also in the said two decisions.

18. With regard to the second and third aspects mentioned above, the Full Bench decision in Bashi Ram v. Mantri Lal. 1965 All LJ 58 - AIR 1965 All 4981 (FB) held the field till It was modified in part by the Supreme Court's decision in Bhagwan Das Vs. Paras Nath, . In Bashi Ram's case. M. C Desai, C. J. and R.S. Pathak, J. (S.N. Dwivedi, J, did not express any view held that a decree obtained in a suit for eviction instituted after obtaining the requisite permission will not become unenforceable even if the State Government revoked, after the decree is passed, the permission granted, in exercise of its powers u/s 7-F. The further held that once a suit is instituted after obtaining the permission of the District Magistrate, any further order made either, by the Commissioner or the State Government

cannot affect the course of the suit or the decree passed therein. The correctness of this Full Bench decision was challenged before the Supreme Court in *Bhagwan Das Vs. Paras Nath*, . Their Lordships held that the Full Bench decision to the extent it held that a suit filed by the landlord after obtaining the permission of the District Magistrate cannot become infructuous even if the Commissioner revokes the permission, is incorrect; but its decision that a suit validly instituted after obtaining a permission as required by Section 3 (1) does not cease to be maintainable even if the State Government revokes after the institution of the suit, the permission granted is correct and further that if the State Government revokes the permission granted before the institution of the suit then there would be no valid permission to sue, and that in other words, the State Government's power to revoke the permission granted u/s 3 (1) gets exhausted once the suit is validly instituted. An attempt was made to persuade their Lordships to reconsider this decision in *Mohammed Ismail Vs. Nanney Lal*, but, that attempt failed and the decision in *Bhagwan Das Vs. Paras Nath*, was reiterated.

19. It is on the basis of these two decisions, as stated earlier, that the argument has been built up that once an allottee has entered into occupation of the accommodation, the power of the State Government to cancel the allotment order or to oust the occupant after an order of release, is exhausted and cannot be exercised. We have given full consideration to this argument but we regret our inability to accept it. In the first instance, the Supreme Court decisions do not furnish direct authority on the subject which is in controversy before us. Secondly, their Lordships took into consideration the various anomalies arising out of the language used in sub-sections (1), (2), (3) and (4) of Section 3 and their interpretation on, the basis of that language. In its relation to Section 7-F, and observed with regard to these anomalies in the following terms:

"Under these circumstances the anomalies pointed out are inevitable. Therefore, in construing this Act no useful purpose will be served by taking into consideration the hardships to the parties. In whatever way we may construe Ss. 3 and 7-F hardship to one party or the other is inevitable. Neither counsel suggested to us any interpretation which will steer clear of the anomalies pointed out at the bar. Therefore, we have to fall back on the grammatical construction of Sub-section (1) of Section 3 and leave out of consideration all other rules of construction for finding out the intention of the Legislature."

20. Applying the rule of grammatical construction their Lordships held:

"Section 3 (1) does not restrict the landlord's right to evict his tenant on any of the grounds mentioned in Clauses (a) to (d) of that sub-section. But if he wants to sue his tenant for eviction on any ground other than those mentioned in those clauses then he has to obtain the permission of the District Magistrate whose discretion is subject to any order passed under Sub-section (3) of Section 3 by the Commissioner. These are the only restrictions placed on the power of a landlord to institute a suit for eviction of his tenant. If a landlord files a suit for the eviction of his tenant without obtaining the permission of the District

Magistrate that suit is not maintainable but if he files a suit after obtaining the permission of the District Magistrate and if the Commissioner revokes the permission granted by the District, Magistrate in a properly instituted application u/s 3 (2) then the suit instituted by him will be considered as having been filed without the permission of the District Magistrate because Section 3 (1) in specific terms says that the permission given by the District Magistrate is subject to any order passed under Sub-section (3). In other words the permission given by the District, Magistrate does not acquire any finality until either the period fixed for filing an application under Sub-section (2) of Section 3 expires and no application under that section was filed within that time or if an application had been filed within that time, the same had been disposed of by the Commissioner, The permission to file a suit for eviction assumes finality u/s 3 (1) once the Commissioner decides the revision, petition pending before him. In fact subsection, (4) of Section 3 says that the order of the Commissioner is final, it is true that that order despite the fact that it is final is subject to any order passed by the State Government u/s 7-F. There is no provision in the Act providing that a suit validly instituted after getting the required permission u/s 3 (1) ceases to be maintainable because of any order made by the State Government u/s 7-F On an examination of the relevant provisions of the Act our conclusion is that when the Commissioner sets aside the order passed by the District Magistrate granting permission to file a suit for electing a tenant the order of the Commissioner prevails. If he cancels the permission granted by the District Magistrate there is no effective permission left and the suit instituted by the plaintiff without awaiting his decision must be treated as one filed without any valid permission by the District Magistrate."

21. Now, in interpreting sub-section (2) of Section 7, Sub-section (1) of Section 7-A and Section 7-F there are no anomalies which can present any difficulty in their construction. The order passed by the District Magistrate under Sub-section (1) of Section 3 is subject to the revisional jurisdiction of the Commissioner under Sub-section (3) of Section 3 whereas an order passed by the District Magistrate u/s 7 (2) is not subject to any such revision by the Commissioner, Again, the order passed by the District Magistrate u/s 3 (1) is tentative or provisional and becomes final, if it is not revoked by the Commissioner u/s 3 (3) and in case it is revoked, it ceases to have any effect. On the contrary, an order passed by the District Magistrate u/s 7 (2) has been specifically made subservient to the final verdict of the State Government u/s 7-F. Furthermore, the order passed by the Commissioner u/s 3 (3) becomes final and though it is subject to the revisional jurisdiction of the State Government u/s 7-F. the construction of the provisions of Section 3 is such that the State Government can Invoke its power only upto a particular moment of time and not beyond that but there is no such limitation, restriction or prohibition fn so far as its powers u/s 7-F in relation to Sections 7 (2) or 7-A are concerned. Indeed, as referred to earlier, the Commissioner has no control whatsoever over an order passed under Sub-section (2) of Section 7. Under Sub-section (4) of Section 7-A, he can

interfere only with an order passed by the District Magistrate u/s 7-A (1) or 7-A (2) or 7-A (3). On the other hand, an order passed by the District Magistrate u/s 7 (2) has been made directly subject to the final order passed by the State Government u/s 7-F. The position is different only in respect of the powers of the District Magistrate u/s 7-A, in which case, the powers of the Commissioner under Sub-section (4) of Section 7-A and the powers of the State Government u/s 7-F are no doubt co-extensive but while the Commissioner's order is not final, that of the State Government is. We are, therefore, of the view that the order passed by a District Magistrate under Sub-section (2) of Section 7 cannot be regarded as a final order because under the statute the final order is that of the State Government and if the State Government in exercise of its powers u/s 7-F, cancels or revokes the order passed by the District Magistrate u/s 7 (2) that order ceases to have force or validity and the resulting situation will certainly attract the application of Section 7-A.

22. In our opinion, therefore, (and we say so with all respect to the learned Judges who decided Krishna Chandra Sharma's case, 1962 All LJ 426 Krishna Chandra, Sharma's case does not lay down the correct law.

23. In the result, our answer to the question referred to the Full Bench is in the affirmative.

Satish Chandra, J.

I agree.

M.N. Shukla, J.

I agree.