

Abdul Hamid vs Smt. Fatima Begum on 13 October, 1954

Equivalent citations: AIR1955ALL36, AIR 1955 ALLAHABAD 36

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This case was referred to a Full Bench by a learned single Judge as he considered that the point of law that arose for decision was sufficiently important to need an authoritative pronouncement.

2. This second appeal was filed by the defendant against a decree passed by the Civil Judge of Lucknow confirming a decision of the Munsif decreeing the plaintiff's suit for ejectment of the defendant from certain premises situate in Lucknow. The learned Munsif had granted to the defendant one month's time to vacate the premises and had directed that he should pay to the plaintiff a sum of Rs. 26/4/- as rent for this period. It is not disputed that the defendant is plaintiff's tenant. The defence is that the plaintiff could not file the suit as the plaintiff had not obtained the permission of the District Magistrate to file the suit and grounds (a) to (f) of Section 3 of the U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947) did not exist.

3. The plaintiff, Srimati Fatima Begum, had applied under Section 3 of the Act on -15-1-1949, to the District Magistrate for permission to file a suit for ejectment of the defendant. On 27-2-1948, the District Magistrate had passed an order (Ex. 4) which reads as follows :

"Under Clause (D) of Section 2, U. P. (Temporary) Control of Rent & Eviction Act, 1947, I hereby . authorise Mr. S. S. Nigam, Deputy Town Rationing Officer (Cloth) Lucknow, to perform any of the functions of the District Magistrate, under the Act and he will be designated as Rent Control & Eviction Officer, Lucknow.

Sd/- A. D. Pandit, I. C. S., District Magistrate, LUCKNOW.

27-2-18."

4. The application of 15-1-1949, was, however, not addressed to Mr. S. S. Nigam, Rent Control & Eviction Officer, Lucknow, but to Sri A. D. Pandit, District Magistrate. On 24-1-1949, the District Magistrate passed the following order :

"R. C. E. O. This is a hard case and may be permitted to file a suit after two months. The occupant may be asked to make his arrangements in the meantime."

On receipt of this order the Rent Control and Eviction Officer passed the following order :

"Shrimati Fatima Begam w/o Shri Abdul Mahbood, wants her house No. 171, Ghasiari Mandi, Lucknow, at present occupied by Shri Abdul Hamid, for personal use. She has no independent place and has purchased the house for personal use. In view of her genuine need she is allowed to take ejectment proceedings against the occupant after two months.

Sd/- S. S. Nigam, R. C. E. O. 28-1-49."

When the defendant-appellant, the tenant, came to know of it he sent an application dated 22-2-1949, to the District Magistrate, Lucknow, that he was an old retired official and had been living in the house for the last 20 years, that Srimati Fatima Begum was living in a three storied house in the same mohalla for about 26 years and her claim that she wanted to live in the house which was in the occupation of the defendant was a device to get the permission, and that the permission had been granted without issuing any notice to the tenant and without giving him a chance to be heard and he, therefore, prayed that the permission be withdrawn and proper orders be passed after hearing him. On 25-2-1949, the tenant sent another application to the District Magistrate similarly worded as he was afraid that his first application might not have reached him, the District Magistrate being on tour. On 6-4-1949, the District Magistrate passed the following order (Ex. A-9) :

"It was necessary to give the applicant due opportunity to contest the landlord's application for obtaining permission to file a suit for ejectment. This was not done in this case. I, therefore, order the cancellation of the permission granted to the landlord by the R. C. E. O. I further direct that the notice should be issued and both parties heard in this case before final orders are passed."

4A. On 4-5-1949, the Rent Control and Eviction Officer sent the following report to the District Magistrate :

"D. M., Kindly see your orders flag A. In this case permission had been given to the applicant but subsequently cancelled as the order was 'ex parte'.

Both the parties appeared on 30-4-49 and pleaded their cases. The applicant's case is that she has purchased the house in question occupied by the opposite party for her use and that she has no suitable accommodation. The opposite party says that he has been occupying the house for several years and that he has no other place. But his son who is Secretariat employee is already having a house in Babooganj. This is admitted fact. The applicant says that the opposite party should shift over there. Under these circumstances I think the permission originally granted under your instruction flag

B should be maintained.

Sd/- S. S. Nigam, R. C. E. O. 4-5-49."

On receipt of the report, however, the District Magistrate wrote as follows on 5-5-1949 :

"It will be unfair to turn out a tenant of long-

standing without giving him alternative accommodation. The house suggested by Nigam is said to be too small for his family".

On 8-5-1949, the Rent Control and Eviction Officer passed the following order :

"Permission applied for by. Mst. Fatima Begam to eject Shri Syed Abdul Hamid from her house in Ghasiarimandi is refused as the case does not appear to be genuine and there is no alternative accommodation for the occupation of the house (tenant?). Parties be informed.

Sd/- S. S. Nigam, R. C. E. O., For D. M. 8-5-

49."

5. On 23-8-1949, the suit was filed out of which this Second Appeal has arisen. In the plaint a number of grounds were alleged which, under Section 3 of the U. P. Control of Rent and Eviction Act, entitled the plaintiff to file the suit, taut all those grounds were ultimately given up and the question of the maintainability of the suit was based entirely on the permission given by the Rent Control and Eviction Officer on 28-1-1949. The trial Court held that permission once granted under Section 3 of the Act could not be cancelled or withdrawn and decreed the, suit.

6. The lower appellate Court came to the conclusion that permission to sue was granted by the Rent Control and Eviction Officer on 28-1- 1949, that the District Magistrate had no power to cancel this permission and the order of 8- 5-1949 could not be construed as an order of the Rent Control and Eviction Officer withdrawing the permission given by Mm on 28-1-1949. Great significance was attached to the fact that he had signed this order "for District Magistrate."

7. When the case came up before the learned single Judge arguments at great length were advanced before him and the learned Judge referred the case to a Full Bench as he thought that there was some conflict of decisions and also because the point was of general importance.

8. The questions, therefore, that have to be considered are:

1. Whether the permission to sue granted by the Rent Control and Eviction Officer on 28-1- 1949, could be cancelled by the District Magistrate by his order dated 6-4-1949?

2. Whether the order dated 8-5-

1949 could be considered to be the order of the Rent Control and Eviction Officer and could it amount to a withdrawal of the permission already granted?

3. Whether permission to file a suit for ejectment once granted could ever be withdrawn?

9. Learned counsel for the defendant- appellant has, in support of his argument that the District Magistrate had authority to pass the order dated 6-4-1949, cited cases to show that by mere delegation of power the authority delegating does not cease to have jurisdiction in the matter. It is urged that the order of 27-2-1948, appointing Mr. S. S. Nigam, Rent Control and Eviction Officer did not take away the jurisdiction of the District Magistrate conferred on him by the Act.

Learned counsel has relied on the decision of

-- 'Nasim. Ali and Remfry, JJ. in Subodh Chandra v. Janenedra Nath', AIR 1937 Cal 718 (A). That case was under the Bengal Local Self-Government Act. The suit was for a declaration that a decision of Mr. R. L. Dey, Senior Deputy Magistrate, Faridpur, under Section 18-B, Bengal Local Self Government Act, setting aside the election of the plaintiff as a member of the Local Board was without jurisdiction. The Magistrate of the district was authorised by Rule 1-A of the Election Rules framed by the Local Government under Section 138-A, Bengal Local Self Government Act, to decide disputes relating to elections.

Section 5 of the Act defined 'Magistrate of the District' as including any Magistrate subordinate to the Magistrate of the District to whom he may delegate all or any of his powers under the Act. The District Magistrate delegated his powers to decide election disputes to the Sub-Divisional Officer of Madaripur. The Sub-Divisional Officer had on an objection made by the principal defendant refused to postpone the election and had intimated to the District Magistrate that the allegation of the defendant that there were irregularities and illegalities in the recording of votes was unfounded.

Thereafter the defendant filed an application before the District Magistrate under Section 18-B of the Act for setting aside the election of the plaintiff and the pro forma defendant. The District Magistrate transferred this application for disposal to the Senior Deputy Magistrate, Mr. R. L. Dey, who decided the matter in favour of the defendant and against the plaintiff. The argument was that after the District Magistrate had delegated his powers to the Sub-Divisional Officer he had no power to entertain the application under Section 18-B and transfer it to a Magistrate subordinate to him. The learned Judges pointed out that the word 'includes' in the definition of the "Magistrate of the District" in Section 5, Bengal Local Self-Government Act, indicated that the District Magistrate was not divested of his authority after he had delegated his powers, that the Sub-

Divisional Officer had not decided the matter but had made a report probably because he thought it was an important matter which the District Magistrate had better himself decide and that the District Magistrate had jurisdiction to entertain an application under Section 18-B and to transfer it to Mr. Dey for disposal.

In -- Nirendra Mohan v. Govt. of Assam, AIR 1949 Assam 37 (B), a case under the Assam Maintenance of Public Order Act (5 of 1947), the Government of Assam purporting to act under Section 9 of the Act had by an order directed that the powers and duties conferred on the Provincial Government by Section 21 shall be exercised and discharged by the District Magistrate in each District of the Province. It was held that this did not mean that the Provincial Government had divested itself of the power to take action.

In -- 'P. Ramiah v. Chief Secy. to the Govt. of Madras', AIR 1950 Mad 100 (C), a similar view was taken that delegation does not imply a parting with powers by the person who grants the delegation but merely to conferring an authority to do things which otherwise that person would have no right to do.

Reliance was placed on certain observations in -- 'Huth v. Clarke', (1890) 25 QBD 391 (D) and the decision in --

'Blackpool Corpn. v. Locker', 1948-1 KB 349 (E), was distinguished.

In -- 'R.N. Seth v. Girja Shanker', AIR 1953 All 819 (F), the learned Judges followed the decision in -- 'Huth v. Clarke (D)', that delegation does not imply a parting with power by the person who grants the delegation and went on to hold that the District Magistrate cannot be said to have deprived himself of the power to perform his functions under the Act (U. P. (Temporary) Control of Rent and Eviction Act) by authorising another Magistrate to do the work for him and that either of them would be able to perform those functions. Having held that, the learned Judges went on to hold that once the District. Magistrate had authorised the Rent Control and Eviction Officer to grant permission he could not revoke or cancel a permission granted by that officer by constituting himself an appellate or revisional authority.

In -- 'C.D. Hans v. Shri Munnu Lal, AIR 1952 All 432 (G), Misra, J. took the view that the authority empowered to grant the sanction for the commencement of a suit under Section 3, U. P. (Temporary) Control of Rent and Eviction Act, must be deemed to have also the power to revoke that sanction in suitable cases and that the Rent Control and Eviction Officer in either granting the sanction or revoking it does not act in Judicial or quasi- judicial capacity.

In -- 'Jang Bahadur v. Dist. Magistrate, Banaras', AIR 1954 Ali 745 (H), V. Bhargava, J. held that if two officers exercised the same powers one cannot revise the order of another but if the jurisdiction is concurrent it may be possible for one to review the order of another. It was held that the Rent Control and Eviction Officer, who had been authorised by the District Magistrate to perform his functions, exercised concurrent jurisdiction, and the District Magistrate could review an order passed by the Rent Control and Eviction Officer.

In -- ' Hariharanand Saraswati v. Supdt., Central- Jail, Benares', AIR 1948 All 435 (I), a learned single Judge of this Court held that there was no rule of law or of natural justice which required that before an authority which had the power to delegate could delegate its function to another, it must divest itself completely of the power so delegated, that even though the powers had been delegated

to the District Magistrate the notification showed that the Government had reserved to itself powers to act under Section 3 of the Act and that did not make the delegation 'ultra vires' or void.

10. In the U. P. (Temporary) Control of Rent and Eviction Act, so far as we can see, there is no section authorising the District Magistrate to delegate his powers and the question whether even after delegation he must be deemed to have retained the powers does not arise. The Act has conferred certain powers on the District Magistrate and there is no section in the Act which entitles him to divest himself of those powers either by delegation or in any other manner. The only provision on which reliance has been placed in support of the argument that the District Magistrate can delegate his powers is the definition of "District Magistrate" in Section 2, Clause (d), which is as follows " "District Magistrate" includes an officer authorised by the District Magistrate to perform any of his functions under this Act."

The definition, however, would make it clear that the District Magistrate can authorise a person to perform any of his functions and this does not mean that he can divest himself of the duty imposed on him under the Act. All that it suggests is that wherever the words "District Magistrate" occur in the Act they should be read as if they mean 'the District Magistrate and the officer authorised by the District Magistrate to perform any of his functions under the Act'.

The section widens the definition of a District Magistrate and does not provide for taking away the authority of the District Magistrate.

In -- 'Mannu Lal v. Chakradhar Hans', AIR 1952 All 859 CJ), it was pointed out that there was no specific provision in the Act authorising the District Magistrate to delegate his powers to the Rent Control and Eviction Officer. It would, therefore, necessarily follow that wherever under this Act any function has to be performed by the District Magistrate it would be understood that that function could be performed by the District Magistrate as also by the person authorised by him to act on his behalf.

11. In -- 'Mannu Lal's case (J)', already cited it was pointed out that when considering the question of granting or refusing permission to file a suit the District Magistrate was performing an administrative or executive function and not a judicial or quasi judicial function. Chaudhri Niamat Ullah, on behalf of the respondent, has not urged that the Magistrate performs a judicial or a quasi judicial function. He has, however, pointed out that, if the District Magistrate and the Magistrate authorised by him both have the same powers, there is a likelihood of conflict and that if the District Magistrate can set aside an order of the Rent Control Officer, the Rent Control Officer, exercising the same jurisdiction, may set aside an order of the District Magistrate.

Though, in theory, there may be no bar to the Rent Control and Eviction Officer setting aside an order of the District Magistrate, if a District Magistrate can set aside the order of the Rent Control and Eviction Officer, in practice there is no likelihood of there being any such conflict.

As was pointed out in -- 'Mannu Lal's case (J)', there can be no objection to an administrative or executive power being exercised subject to the control and guidance of the superior officer. The

District Magistrate being the superior officer would no doubt have the right to supervise and control the action of the Magistrates working under him and, even though both of them may be exercising the same jurisdiction, the subordinate officer would not, without consulting his superior officer, ever think of interfering with an order passed by him.

12. Learned counsel has not contended that the permission once granted under Section 3 of the Rent Control and Eviction Order can never be recalled but he has urged that the observations made in -- 'Mannu Lal's case (J)', that the power being merely administrative it cannot be said that "if on further consideration the Magistrate thought it proper to revise his previous order he had no jurisdiction to do so" must be confined within certain well defined limits. The only limit that we can suggest is, what has already been suggested in that case that the District Magistrate must exercise his discretion honestly and not capriciously.

13. We may mention here that the application filed by the tenant on 22-2- 1949, for reconsideration of the matter was recommended by two Members of the Legislative Assembly, one of whom was also the Secretary of the U. P. Congress Com- mittee, and the application of 26-2-1949, bore strong recommendation of an I. C. S. Officer. If the recommendations made by the two M. L. As. and the I. C. S. Officer had not been there, it could not have been suggested that there was any impropriety in the permission which had been granted 'ex parte' being recalled and the matter being reconsidered after giving both parties a hearing.

Though the District Magistrate has a complete discretion in the matter, yet this discretion must be exercised in accordance with rules of natural justice and it is, therefore, proper that he should give the persons, who are likely to be affected, a chance of placing their view points before him. The question of granting permission to the plain-tiff had, therefore, to be reconsidered after notice to the defendant.

14. We have been addressed only on one ground, i.e., whether the permission granted on 28-1-1949, was or was not withdrawn on the date the suit was filed.

15. Coming now to the question whether the permission granted on 28-1-1949, had or had not been withdrawn, we must bear in mind that the Rent Control and Eviction Officer had been acting throughout under the directions of the District Magistrate. The order passed by him on 28-1-1949, was in accordance with the directions given by the District Magistrate on 24-1- 1949. It cannot, therefore, be said that the order of the 28th of January was passed by the Rent Control and Eviction Officer in the exercise of his independent views in the matter.

Though the Rent Control and Eviction Officer had not, in so many words, said that he was withdrawing the permission granted by him on 28-1-1949, - his order of 8-5-1949, showed that he took it that the permission stood cancelled and the application dated 15-1-1949, was up before him for orders. After having heard the parties he refused to grant the permission by his order of 8-5-1949. The addition made by him of the words "for D. M." are, to our minds, of no importance as he was all the time acting for the District Magistrate, having been authorised by him in that behalf by the order dated 27-2-1948.

The order of 8-5-1949, was passed by him as the Rent Control and Eviction Officer and probably by adding the words "for D. M." he intended to make it clear that he was passing that order at the instance of the District Magistrate. He had, however, passed the order of 28-1- 1949, also at the instance of the District Magistrate. Reading both the orders of the Rent Control and Eviction Officer in the light of the facts stated above it must be deemed that the order of 28-1-1949, stood recalled.

16. If the Rent Control and Eviction Officer had been acting independently and had passed final orders which are now revisable by the Commissioner and then by the Local Government the District Magistrate who has neither appellate nor revisional powers may not be entitled to interfere, but where, as in this case, the District Magistrate has all along been functioning through the Rent Control & Eviction Officer & bearing in mind that the orders passed were administrative or executive orders, it cannot be said that the order passed by the Magistrate on 6-4-1949, was without jurisdiction as by that order he was merely recalling a permission which had been granted at his instance. (17) The conclusions, therefore, are that

1. in our view, in the circumstances of this case, the order passed by the Rent Control and Eviction Officer on 28-1-1949, could be cancelled by the District Magistrate by his order dated 6-4-1949;
2. that the order dated 8-5-1949, was an order by the Rent Control and Eviction Officer which amounted in fact to a withdrawal of the permission already granted by him; and
3. that the permission to file a suit for ejectment once granted can be withdrawn under the circumstances indicated in our judgment.

18. The result, therefore, is that this appeal is allowed, the decrees passed by the lower Courts are set aside and the plaintiff's suit is dismissed.

19. In view of the peculiar circumstances of the case we, however, think that the parties should be directed to bear their own costs throughout.