

Dwarka Prasad vs Central Talkies, Collectorganj, ... on 21 September, 1955

Equivalent citations: AIR1956ALL187, AIR 1956 ALLAHABAD 187

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Raghubar Dayal, J.

1. This is a plaintiff's appeal against the dismissal of a suit for the ejectment of the defendant, the Central Talkies Ltd., Kanpur from the premises No. 73/22 old 73/28 situate in Collector-ganj and for a decree for Rs. 4500/- damages for use and occupation from 1-11-1948, upto the date of the suit at the rate of Rs. 1500/- per month.
2. The plaintiff alleged that the defendant was the tenant of the Central Talkies from before 1942 and that the terms for a fresh lease were settled in May 1943. The contemplated lease was not actually executed. The monthly rental, however was Rs. 550 per mensem and was paid by the defendant.
3. The plaintiff instituted a suit for ejectment in 1946 but withdrew it on the coming into force of the U. P. (Temporary) Control of Rent and Eviction Act (Act No. III of 1947). He then obtained permission of the District Magistrate, Kanpur, for ejecting the defendant and thereafter, giving a notice to the defendant, instituted the present suit when the defendant did not vacate and continued in possession of the premises.
4. The defendant contested the suit on various grounds including the grounds that the notice issued was invalid, that the permission given by the District Magistrate was not a valid permission under Section 3 of the aforesaid Control of Rent and Eviction Act and that the plaintiff was not entitled to any damages in excess of the rent fixed. The learned Civil Judge decided against the plaintiff on the question of the validity of the permission given by the District Magistrate and accordingly dismissed the suit. He did not assess any damages because the defendant's tenancy had not come to an end.
5. The permission to eject the defendant was given by Sri B. P. Singh Seth on 7-7-1948. He was Additional District Magistrate (Rural), Kanpur. The plaintiff's application under Section 3 of the Control of Rent and Eviction Act was on the file of Sri Hadi Hasan, Additional District Magistrate, Kanpur. He did not wish to continue the hearing of the case as one of the parties had approached him and submitted a note to the District Magistrate on 9-2-1948.

The note was written on the order-sheet of the file. In this note besides noting the aforementioned fact, he suggested that the District Magistrate might decide the case either himself or make it over to the Additional District Magistrate (Rural) for disposal. Reference was also made in this note to the fact that the person who had spoken to him had done so on behalf of the Central Talkies and wanted to influence him on account of his social position in Kanpur, On this note the District Magistrate Sri Kishan Chand passed an order on 11-2-1948, in these words.

"Transferred to Additional District Magistrate Rule A for disposal."

6. The contention for the appellant in support of the validity of the permission granted by Sri B. P. Singh Seth for suing the defendant for ejectment is based on two grounds. One is that the District Magistrate by the aforesaid order authorised Sri B. P. Singh Seth to perform the District Magistrate's functions under the Act with respect to the granting or refusing to grant the desired permission.

The other ground is that the State Government had empowered Sri B. P. Singh Seth when posting him as an Additional District Magistrate, Kanpur, with the powers of a District Magistrate under the Criminal Procedure Code or under any other law for the time being in force under Section 10, Sub-section (2), Criminal P. C.

7. I am not inclined to agree with, the appellant's first ground. Section 3 lays down the various grounds on which a suit for ejectment can be filed without the permission of the District Magistrate and its Sub-section (2) provides for the making of an application to the District Magistrate for permission to sue a tenant for eviction from any accommodation. The expression "District Magistrate" is denned in Section 2, Clause (d) of the Control of Rent and Eviction Act thus.

" 'District Magistrate' includes an officer authorised by the District Magistrate to perform any of his functions under this Act".

8. The order of transfer does not by its terms authorise Sri B. P. Singh Seth, Additional District Magistrate (Rural) to perform any of the District Magistrate's functions under the Act. It is, however, contended for the appellant that when the District Magistrate made over the file to Sri B. P. Singh Seth for disposal, he must be deemed to have authorised the Additional District Magistrate (Rural) to perform the functions of the District Magistrate under Section 3 of the Act in connection with this application.

Even if such an authorisation could have been implied from the order of transfer, which I very much doubt, the circumstances of this case negative the inference that the District Magistrate must have authorised Sri B. P. Singh Seth to perform the District Magistrate's functions under Section 3 of the Act. We have it in the evidence of two official witnesses, who had to deal with such cases, that the first order by the District Magistrate of Kanpur authorising an officer to perform the functions of the District Magistrate under the Act was passed in 1950 on the move of Sri Kapoor, the then Additional District Magistrate and that prior to it the records did not show that any such order had been passed.

It appears that till 1950 the District Magistrate, Kanpur did not consider that the Additional District Magistrate Kanpur to whom the work under the Control of Rent and Eviction Act, had been made over according to the distribution of work in the district, required any particular authorisation by the District Magistrate to perform his functions under this Act and probably considered that the Additional District Magistrate, on account of his appointment such and the conferment of the powers by the State Govt. under Section 10 (2), Criminal P. C., was empowered to perform the functions of the District Magistrate under this special Act as well.

If such was the prevalent idea with the District Magistrate of Kanpur, no occasion could have arisen on his getting the file from Sri Hadi Hasan to consider whether he should authorise Sri B. P. Singh Seth to perform any or all the functions of the District Magistrate under this Act. If the District Magistrate did not actively consider this question and the circumstances I have mentioned indicate that he had no occasion to consider, it would be too much to infer that a simple order of transfer which he recorded must imply that the District Magistrate had applied his mind to the requirements of Section 2, Clause (d) of the Act and did decide to authorise Sri B. P. Singh Seth to perform the District Magistrate's functions under the Act.

The note of Sri Hadi Hasan did not indicate what the case was about. It did not indicate the requirements of Section 2 (d) or Section 3 of the Act. He simply suggested that either the District Magistrate should deal with the matter himself or make it Over to the Additional District Magistrate (Rural).

The circumstance that this note of Sri Hadi Hasan was written on the order-sheet of the file does not necessarily lead to the conclusion that the District Magistrate's curiosity would have been aroused and he would have taken pains to find out what the case was about, what questions were to be decided in the case, what functions were to be exercised by the District Magistrate and whether the Additional District Magistrate (Rural) could perform those functions without any specific authorisation or not.

9. Further, I think that even if such an order of transfer could be deemed to imply the District Magistrate's deliberate authorisation of another officer to perform the District Magistrate's functions under the Act, such an order is not probably contemplated by Section 2 (d) of the Control of Rent and Eviction Act. This provision does not empower the District Magistrate to authorise any particular officer to try any or any class of cases which be made over by the District Magistrate to such officer.

This provision contemplates a District Magistrate's authorising air officer to perform any of! the District Magistrate's functions under the Act. It follows therefore, that the order of authorisation should be of a general kind either with respect to all the functions of the District Magistrate under the Act or with some of them. The order should not be just restricted to one particular case.

In 'Mohan Lal Tewari v. Ram Chander', 1955 All LJ 491 (A), a Division Bench of this Court had to consider whether an officer to whom the District Magistrate had allotted house and rent control work could be said to be competent to perform the functions of the District Magistrate under the

Act. The order that he would take up house and rent control work was interpreted to mean that he would exercise the functions of the District Magistrate under the Control of Kent and Eviction Act. The Bench, however, further observed;

"A District Magistrate is a busy officer. He has to 'pass a large number of orders during the course of a day. Courts ought not to take a narrow and technical view of routine orders passed by the District Magistrate."

10. With respect I am not inclined to consider the order which a District Magistrate is required to pass in case he desires to authorise any officer to perform his functions under the Act to be a routine order. In passing the, order the District Magistrate has to consider the necessity of his making over such functions to some officer and the capacity and capabilities of such an officer to deal with such type of work.

If such an order was to be a mere routine order the Legislature need not have left its power to the District Magistrate and could have itself empowered any Magistrate or any officer to do such type of work. The District Magistrate has to exercise his mind in the matter according to his own view of things and has to pass the necessary order authorising any particular officer to perform his functions under the Act.

11. The second point urged for the appellant in this connection appears to me to be correct. Section 10 of the Criminal Procedure Code is "10 (1) In every district outside the presidency towns the State Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

(2) The State Government may appoint any Magistrate of the first class to be an Additional District Magistrate and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code, or under any other law for the time being in force, as the State Government may direct".

12. The U. P. Gazette, dated 22-5-1948, contains the State Government notification appointing Sri B. P. Singh Seth, Additional District Magistrate, Kanpur, and empowering him to exercise all the powers of a District Magistrate under the Code of Criminal Procedure or under any other law for the time being in force. The notification is "No. 3400/11-276-48-- With effect from the date on which he takes over charge Shri Brijpal Singh Seth, City Magistrate, Kanpur, is appointed, vice Sri Sheo Ramdas Saksena.

(a) Under Sub-section (2) of Section 10 of the Code of Criminal Procedure, 1898 (Act V of 1898) to be an Addl. District Magistrate of Kanpur District, with jurisdiction extending over the whole of the said district and with all the powers of a District Magistrate under the said Code and under any other law for the time being in force; and

Sri B. P. Singh Seth was, therefore, invested with the powers of the District Magistrate under any law for the time being in force. He could, therefore, exercise the powers with which the District Magistrate was invested under the U. P. Control of Rent and Eviction Act.

13. It is however urged for the respondent that this special Act, the Control of Rent and Eviction Act, lays down a special definition of the expression "District Magistrate" and its various provisions imply that no person other than the District Magistrate or an officer authorised by him could perform the functions of the District Magistrate under the Act and that, therefore, the general conferment of the powers of the District Magistrate under any law in force will not be effective with respect to the powers conferred on the District Magistrate under the Control of Rent and Eviction Act. In this connection reference is made to the fact that the definition of the word "Commissioner" in Section 2 Clause (aa) of the Act is " 'Commissioner' includes an Additional Commissioner".

that the definition of the expression "District Magistrate" does not say that the District Magistrate includes an Addl. District Magistrate and that Section 3 of the Act uses the expression "the District Magistrate" as the person whose permission was necessary in the absence of the other grounds mentioned in that section for the institution of a suit for ejectment.

14. The State Government appoints Commissioners of Divisions under Section 12 of the Land Revenue Act. The section provides that the Commissioner will exercise the powers and discharge the duties conferred and imposed on a Commissioner under the Land Revenue Act or under any other law for the time being in force.

Section 13, Sub-section (1) empowers the Government to appoint an Additional Commissioner in a division; and Sub-section (3) of that section provides that an Additional Commissioner shall exercise such powers and discharge such duties of a Commissioner in such cases or classes of cases as the State Government, or in the absence of orders from the State Government, the Commissioner concerned, may direct.

It is to be noticed that Sub-section (3) of Section 13, Land Revenue Act is differently worded from Sub-section (2) of Section 10, Criminal P. C., and does not provide for any general conferment of powers of an Additional Commissioner to exercise the powers of the Commissioner under any law in force. The Government can only notify certain powers which an additional Commissioner can exercise in connection with such cases or classes of cases as the Government notifies.

In view of this consideration it was essential if the Additional Commissioner was to perform the functions of the Commissioner under the Control of Rent and Eviction Act to express in the definition of "Commissioner" that Commissioner includes an Additional Commissioner. When Section 10, Sub-section (2), Criminal P. C., conferred a general power on the Government to empower an Additional District Magistrate to perform the functions of the District Magistrate under any law, it was not essential that the expression "District Magistrate" in the Control of Rent and Eviction Act must say that includes the Additional District Magistrate.

The definition of the expression "District Magistrate" is not, exclusive and is not to the effect that the District Magistrate means the District Magistrate or an officer authorised by the District Magistrate to perform any of his functions under the Act. If the expression had been defined in that way, the powers of the District Magistrate under the Act could not have been exercised by an Additional District Magistrate because the Act would have given a limited meaning to that expression and

indicated by the language used that no person would be included in that expression if he is not either the District Magistrate or a person authorised by the District Magistrate to perform the functions of the District Magistrate under the Act.

The definition in Section 2, Clause (d), Control o Rent and Eviction Act provides the performing of the functions of the District Magistrate by a person who would not have otherwise performed those functions except when he is authorised by the District Magistrate to perform those functions. I am, therefore of opinion that the provisions of the Control of Rent and Eviction Act do not expressly or even by necessary implication, provide that an Additional District Magistrate duly empowered by the State Government under Section 10 (2), Criminal P. C., to exercise all the powers of a District Magistrate under any law would not be competent to perform the functions of the District Magistrate under this Act.

15. On behalf of the respondent reliance has been placed on the cases reported in -- 'Emperor v. Sibnath Banerjee', AIR 1943 FC 75 (B);

-- 'Prabhulal Ramlal v. Emperor', AIR 1944 Nag 84 (C); and --'Kedar Nath v. Mool'Chand', AIR 1953 All 62 (D), and also on the observations in

-- 'Queen v. County Court Judge of Essex', (1887) 18 QBD 704 (E). In 'AIR 1943 FC 75 (B)', the question - was whether a certain order passed under Rule 26, Defence of India Rules had been validly made by the Governor.

It was contended for the Crown that under Section 59, Sub-section (3), Government of India Act, 1935, the Governor could delegate his power to make orders under the Defence of India Rules to subordinate officers under the rules of business framed under Section 59(3), Government of India Act of 1935. The Federal Court held that the power given under Sub-section (5) of Section 2, Defence of India Act must be exercised either by the Governor or by someone to whom the Governor delegates- the power strictly in conformity with Sub-section (5) of Section 2, Defence of India Act. It was observed at page 85:

"The executive 'action or authority dealt with in Sections 49 and 59 must relate to matters with respect to which the Legislature of the Province has power to make laws (Section 49 (2)). Section 124 (2) makes provision for Federal legislation conferring powers and imposing duties upon a Province or officers and authorities thereof relating to matters with respect to which a Provincial Legislature has no power to make laws.

We are of the opinion that whenever powers of this kind or indeed other special statutory powers are conferred, they must to the extent, to which specific provision has been made in the statute conferring the powers be exercised by the authority and in the manner specified in the statute and in strict conformity with the provision thereof."

16. Nothing that was held or observed in the case affects the question before us. Here it is the order passed by the State Government under the powers conferred under Section 10, Sub-section (2), Criminal P. C., which confers the power on the Additional District Magistrate to exercise the powers of the District Magistrate under any law in force. There is no question of delegating any powers by the State Government.

The question is of the conferment of powers and, if powers had been conferred, the officer on whom the powers were conferred could exercise them.

17. In the case reported in 'AIR 1944 Nag 84 (C)', an Additional District Magistrate passed an order under Rule 26, Defence of India Rules when the Provincial Government had not empowered him by its notification to pass, such an order and had empowered the District Magistrate only to pass that order. There the Additional District Magistrate was not exercising any power with which the District Magistrate was invested under any law in force.

The power to pass an order under Rule 26, Defence of India Rules was delegated to a particular officer, namely the District Magistrate and it was in that connection that it was held that the District Magistrate was empowered to pass an order under Rule 26, Defence of India Rules as a 'persona designata' and that, therefore the Additional District. Magistrate could not, on account of the notification tinder Section 10, Sub-section (2) Criminal P. C., exercise the powers of the District Magistrate delegated to him by the Local Government under Section 2, Sub-section (5), Defence of India Act.

18. In 'AIR 1953 All 62 (D)', Sapru J., held that the District Magistrate as contemplated under Section 3, U. P. Control of Rent and Eviction Act did not include an Additional District Magistrate. He relied on the aforesaid 'Nagpur case'.

I have already pointed out the distinction between the Nagpur case and the present case and am of opinion that the Additional District Magistrate, who has been empowered by the State Government to exercise the powers of the District Magistrate under any law in force, could perform the functions of the District Magistrate under the Control of Rent and Eviction Act when there is nothing in the Act itself which restricted the exercise of those powers by the District Magistrate and the District Magistrate alone or by such other person only whom the District Magistrate authorises to perform those functions.

Nothing in my opinion, turns on the use of the definite article before the expression. "District Magistrate" in Section 3, Control of Rent and Eviction Act. That only indicates that it is the District Magistrate of the district in which the suit is to be filed that an application for permission to sue for ejectment is to be made. It cannot be made to any District Magistrate in the State. I am, therefore, of opinion that this was not correctly decided.

18a. The observations in '(1887) 18 QBD 704. (E), are merely to the effect that when an act gives a new jurisdiction, a new procedure, new forms and new remedies, and the procedure, forms and, remedies there prescribed must, where they have not been altered by subsequent ' legislation, be

strictly complied with.

19. In view of the above I am of opinion, that the permission given by Sri B. P. Singh Seth on 7-7-1948, to the plaintiff to sue the defendant for ejectment was a valid permission even though, there was no authorisation of Sri B. P. Singh Seth by the District Magistrate, Kanpur to perform the District Magistrate's functions under the Act. Such authorisation was not necessary in view of the Government notification empowering Sri Seth to exercise the powers of the District Magistrate under any law in force.

20. On behalf of the respondent the validity of the notice given to the defendant by the plaintiff to vacate the premises has been questioned on two grounds. One is that the notice was not given to the proper tenant. It is said that the tenant was not the Central Talkies Limited, the defendant, but was a body of five persons who had originally taken the building on lease in 1933.

Such a contention was not raised in the written statement which, in fact admitted that the defendant was a tenant of the plaintiff in these premises. An attempt was made during the course of arguments in the court below to get the written statement amended. The application was rightly rejected as a belated one as leading, if granted to the change in the nature of the suit itself.

The other ground is that the notice was issued to the Central Talkies and not to the Central Talkies Limited, and was not, therefore, properly addressed. I do not see much force in this contention. The defendant was not prejudiced thereby. He accepted that notice and even replied to it. I, therefore, see no good reason to differ from the view of the court below on this point. I would confirm the finding that the notice of ejectment was a valid notice.

21. The only other point for determination in this appeal is about the correct amount of damages which should be decreed in favour of the plaintiff. The defendant was paying Rs. 550/-, rent per month. The notice of ejectment said that in case the defendant did not vacate the premises by 31-10-1948, the defendant would be liable to pay damages at the rate of Rs. 1500/-a month.

It is claimed for the appellant that the damages should be decreed at the rate of Rs. 1500 as the defendant had notice of this claim for damages and still preferred to remain in possession of the premises; I am not impressed by this contention. I am of opinion that the damages which the plaintiff claimed from the defendant in the suit should be equal to such amount which the defendant sic plaintiff (?) could have realised as rent of the premises.

In fact this has been the basis of the plaintiff's case too. The evidence led by the plaintiff.

was mostly of the offers made to him by persons desirous of taking the premises on rent. Such persons offered Bs, 1500 a month rent and in 1951 one person offered even Rs. 2000 a month.

These offers appear to me to be unrealistic and cannot affect the question of damages in the present suit.

The plaintiff was not free to let the premises to anyone with whom he could strike a bargain. If he had been free in that respect the 'amount of damages could be fixed on the probable amount which he could have obtained from the person

-desirous to rent the premises. The Control of Bent and Eviction Act controls the amount of rent which a landlord can get for any accommodation. It also provides as to whom the accommodation is to be let.

It is the Control of Bent and Eviction Officer who allots any accommodation falling vacant to a person desiring accommodation. The landlord has no say in the matter. It may be that if the landlord has expressed any desire in favour of any of the applicants the Bent Control and Eviction Officer may take such a desire in consideration, but even in taking such a desire in consideration the Rent Control Officer would not be acting properly, in my opinion if he was to be guided by the consideration that the landlord was likely to get a larger rent from the person in whose favour he desired the allotment of the accommodation to be made.

If such expressions of desires were to be respected or to be given consideration that was likely to nullify the beneficial effect of such control measures. Landlord's desire based on any other consideration could be fairly considered by the Bent Control Officer. Any person to whom the Rent Control Officer allows the house is not likely to pay any fancy rent to the landlord specially when the Control of Bent and Eviction Act helps him in the matter.

The allottee is expected to agree to such rent which would not be in excess of the rent permissible under the Act. It follows, therefore, that the amount which the landlord can be said to get from the premises in suit would be equal to the maximum permissible rent under the Control of Rent and Eviction Act.

Section 2, Clause (f) provides that "reasonable annual rent" in the case of accommodation constructed before 1-7-1946 means, if it is separately assessed to municipal assessment, its municipal assessment plus 25 per cent, thereon. "Municipal assessment" is defined in Clause (e) of the same section to mean "the annual rental value assessed by Municipal Board, or Notified Area as the case may be in force on 1-4-1942, in respect of accommodation which was assessed on or before such date".

It follows, therefore, that the reasonable annual rent of the premises in suit would be the municipal assessment of 1942 plus 25 per cent, thereon. The municipal assessment was Rs. 475 and on adding 25 per cent, thereon the reasonable annual rent would work out to Rs. 593/12/-. This is therefore the maximum permissible rent which the landlord could get from the premises and he is not entitled, in my opinion to anything more under the guise of damages on the alleged basis of high offers of rent to him by persons who may not have any chance of getting an allotment made in their favour.

22. Reference was made by the learned counsel for the appellant to -- 'Bhagwandas v. Mt. Kokabai', AIR 1953 Nag 186 (P), for the proposition that the rent fixed for a building is not always the correct

measure of the damages to be paid by a tenant who holds on to the accommodation and does not vacate it in compliance with a notice for ejectment.

The defendant in that case was insisting throughout that the rent should be the measure of damages and, if I may say so with respect, it was rightly held that damages need not always be equivalent to the rent. Reference was made to the observation in -- 'Clifton Securities, Ltd. v. Huntley', (1948) 2 All ER 283 (G).

"When the rent represents the fair value of the premises mesne profits are assessed at the amount of the rent, taut if the real value is higher than the rent, then the mesne profits must be assessed at the higher value".

23. This observation simply means that mesne" profits should be equivalent to the real value of the property to the landlord. The view I have expressed does not go against this observation. The real value of the premises to the landlord in the present case will be represented by the maximum rent permissible to him under the Control of Bent and Eviction Act.

Consideration of the income which the tenant would make from the building or of the defendant's subletting a portion of the building for a substantial amount of rent have no real bearing on the question. I am, therefore, of opinion that the damages to which the plaintiff appellant is entitled from the defendant amount to Bs. 593/12/- per month.

24. In view of the above I would allow the appeal, set aside the decree of the court below, decree the plaintiff's suit for ejectment against the defendant and decree the plaintiff's suit for damages at the rate of Rs. 593/12/- per month, from 1-11-1948 to 24-2-1949 with costs throughout and future interest at 6 per cent, per annum.

I would further decree the claim for damages pendente lite and future till the date of possession at Bs. 593/12/- per month with future interest from the date of accrual of damages to the date of payment at 6 per cent, per annum. Costs of the preparation of the paper book incurred by the appellant should be included In the costs of the appeal.

Brij Mohan Lal, J.

25. I concur in the order proposed. But as my approach to the main question involved in this case, viz., the validity of the permission given by the Additional District Magistrate, is entirely different, I wish to add a few words of my own.

26. The facts of the case have been stated in the judgment of my brother and it is not necessary for me to restate them in detail. Suffice it to say that the suit was instituted by a landlord who owns a cinema building situate in Collectorganj in the city of Kanpur, for ejectment of his tenant, viz., the Central Talkies Ltd. (respondent in this appeal) from that building. Permission was obtained from the Additional District Magistrate of Kanpur for instituting the suit. A notice was given thereafter and, after the expiry of the term mentioned in that notice, the suit was instituted.

27. The plea which found favour with the learned Civil Judge and which resulted in the dismissal of the suit that the permission granted by the Additional District Magistrate was not a valid permission. This is the only question which I wish to discuss in this judgment.

28. Section 3, U. P. Control of Bent and Eviction Act (3 of 1947) imposes a ban on a landlord's right to institute a suit for ejectment. It says that a suit for ejectment cannot be institut-

ed unless there exists the .permission of the District Magistrate on any one or more of the grounds mentioned in that section. The term "District Magistrate" has been denned in Section 2 (d) of the Act as follows:

"District Magistrate includes an officer authorised by the district magistrate to perform any of his functions under this act". Mr. Krishna Chandra was the District Magistrate of Kanpur at the relevant time. Mr. B. P. Singh Seth, who granted the permission was the Additional District Magistrate. The finding of 'the learned Civil Judge who tried the case in the court below is as follows :

" "It is not at all proved that the District Magistrate had delegated his powers under the Rent Control Act to Sri B. P. Singh Seth. The order passed by him is therefore without jurisdiction and cannot be given effect to."

29. The learned Civil Judge has throughout his judgment referred to delegation of power. It may be pointed out, however, that the word "delegate" or any of its cognate expressions does not find place in the definition quoted above. What is needed is authorisation and not delegation. I shall not pause here to draw a distinction between authorisation and delegation, but following the, language of the Act I shall confine myself to a consideration of the question whether there has been authorisation in this case.

30. The application presented by the appellant for permission under Section 3 of the Act was addressed to the District Magistrate and not to the Additional District Magistrate. This petition was handed over to Mr. Hadi Hasan who was at that time one of the Additional District Magistrates at Kanpur. The order transferring the case to him is not, on the record and nothing is known about it.

But it appears that somebody on behalf of the respondent approached Mr. Hadi Hasan with a view to influence him in the case pending before him, Mr. Hadi Hasan was very much annoyed and on 9-2-1948 he wrote out the following note :

"D. M. The opposite party tried to influence me out of court in a manner which I deprecate and detest. I am prejudiced against him. I suggest that you may decide the case either yourself or make it over to Additional District Magistrate (Rural) for disposal.

I have to make this report to you not without reluctance but the gentleman who spoke to me on behalf of the Central Talkies wanted to Influence me because of his social

position in Kanpur and wanted to take advantage of his personal status.

Sd. Hadi Hasan 9-2-1948."

31. It is proved from the deposition of Hari Shanker (P. W. 6) that this note was written by Mr. Hadi Hasan on the Order Sheet. This note was placed before the learned District Magistrate. Two days later, i.e. on 11-2-1948, he passed the following order, viz.

"Transferred to Additional District Magistrate Rule A. for disposal."

The words Rule A. stand for "Rural Area". Mr. B. P. Singh Seth was the Additional District Magistrate for Rural Area. In pursuance of this order Mr. B. P. Singh Seth took cognizance of the case and, after giving the respondent full opportunity of opposing the applicant's petition, granted the application by an order dated 7-7-1948. It may be pointed out at this stage that in the written defence filed by the respondent before Mr. B. P. Singh Seth it did not take the plea that the said officer was not competent to deal with that case.

32. The question that arises for decision is whether the District Magistrate's order dated 11-2-1948 empowering Mr. B. P. Singh Seth to deal with that case was an authorisation contemplated by the Act. Two objections have been taken by the learned counsel for the respondent against this order being treated as a valid authorisation.

It is contended, in the first place, that it is not proved that the District Magistrate applied his mind consciously to the order which he was passing and, secondly, that the order can, at the most be treated as an order transferring the case and not an order authorising Mr. B. P. Singh Seth to exercise some of the functions of the District Magistrate under the Act.

33. We sent for the original to have a look at the order, but we were informed that the entire file had been weeded out. But, as already stated, the note of Mr. Hadi Hasan was written on the Order Sheet. This means—that the entire record was before the District Magistrate when he passed the order. The very contents of Mr. Hadi Hasan's note indicate that it was not a report of a routine nature for transfer such as is put up when an officer is transferred or becomes otherwise too busy to dispose of a case.

There were serious allegations in the note of Mr. Hadi Hasan against the representative of the respondent. It was expressly stated that the case related to the Central Talkies Ltd. The representative of the respondent who was said to have attempted to influence Mr. Hadi Hasan was described as a person of social position in Kanpur and the accusation brought against him was that he wanted to take advantage of his personal status.

Mr. Hadi Hasan was strong in his condemnation of the respondent's representative's conduct which he wanted to "deprecate and detest." He went to the extent of saying that he was prejudiced against him. After making all these allegations he made a suggestion 'that the case might be tried by the District Magistrate himself or by the Additional District Magistrate (Rural). It was a report of a

somewhat unusual nature and must have naturally aroused the curiosity of the District Magistrate to know what the facts were.

It contained sufficient indication as-to the parties involved. It cannot be said that any order passed by him in such circumstances was an order of a mere routine nature to which he did not consciously apply his mind. It may also be pointed out that there is not a word of evidence to indicate that the learned District Magistrate did not exercise his mind consciously. On the contrary, there is the presumption permitted by Section 114, illus. (e), Evidence Act, to the effect that all official acts are regularly and properly performed.

It Is also significant that while para 9 of the written statement says that the permission was invalid and ultra vires and para 23 sets forth the ground of Invalidity, none of the said paragraphs contains an allegation to the effect that the District Magistrate did not apply his mind consciously to the question in dispute while handing over the case to Mr. B. P. Singh Seth.

I am not prepared on this state of evidence to record a finding that the District Magistrate did not apply his mind consciously to the order which he was passing. I am satisfied that meant what he said and he knew all about the facts when he passed his order.

34. The second point that arises is whether the order which he passed on 11-2-1948 was merely an order transferring the case or was it an order authorising Mr. B. P. Singh Seth to exercise his functions under the Act. In this connection, it is noteworthy that the case was sent to him not for report, not for enquiry or opinion, but "for disposal," He knew what the case was. He was fully aware of the fact that the petitioner wanted him to give permission to institute a suit for the ejectment of the respondent and when he sent the case to Mr. B. P. Singh Seth "for disposal" obviously he meant to authorise him to either grant the permission or to refuse it. When authorising him to do so, he was certainly authorising him to perform his functions under the Act.

The Act does not prescribe any special formula for authorisation, nor is there any special form prescribed for this purpose. The inference whether authorisation has been made or not is to be drawn from the established facts.

35. It is true that till then no order has been passed by the District Magistrate allotting as a general rule the work of rent control cases to any officer of the district. But it is not necessary that authorisation contemplated by Section 2(d) of the Act should be general and not special. The language of the statute is wide enough to include, on the one hand, a general authorisation, which would be in the form of an order that such officer is authorised to dispose of all such cases, and, on the other a special authorisation in the sense that a particular case is entrusted to a particular officer for decision.

Whenever a particular case is allotted to a certain officer and he is empowered to decide it, it amounts to special authorisation in his favour. As I read the Act, it is not necessary even for the authorisation to be in writing; it may well be oral.

36. In the circumstances of the present case, I am of opinion that sending the case for disposal meant conferring in respect of this case authority on the Additional District Magistrate Rural Area, to exercise the powers which the District Magistrate, himself could exercise under the , Rent Control Act.

37. The learned Civil Judge has, In his Judgment relied upon a single Judge decision of this Court in -- 'Ram Chander v. Mohan Lal Tewari', AIR 1954 All 457 (H). In that case the District Magistrate had passed an order allotting work to different magistrates and, in doing so, he allotted some kind of work to a Magistrate who was expected to be posted to the district and who had not till then taken over charge.

It was held that that order was not valid and it was not proper authorisation. It is unnecessary for me to discuss that ruling in detail because a Division Bench of this Court has already overruled it in the case of 1955 All LJ 491 (A).

38. Another authority to which reference has been made by the learned Civil Judge and on which he has placed reliance is that of AIR 1953 All 62 (D). "That was a case decided by Sapru J. in which he confined himself to the question whether the Additional District Magistrate was included within the term "District Magistrate." The question of special authorisation such as is to be found in the present case did not arise there. In the circumstances, that ruling has no bearing on the point that is under discussion at present.

39. I am, therefore of the opinion that the order passed by the District Magistrate on 11-2-1948 did fully empower Mr. B. P. Singh Seth to perform the functions of the District Magistrate and the latter's order dated 7-7-1948 granting permission to the appellant to institute the suit was a valid permission. There was consequently no bar to the maintainability of the suit.

40. For the above reasons, I agree with my learned brother that the permission was valid. It is unnecessary for me to express any opinion as to whether or not the Notification made by the State Government under Section 10(2), Criminal P. C. conferred lawful authority on the Additional District Magistrate to grant the sanction.

41. I agree with my learned brother on thee question of damages and the validity of the notice to quit given under Section 106, Transfer of Property Act.

42. As already stated, I agree in the order proposed.

BY THE COURT :

43. We allow the appeal, set aside the decree of the Court below, decree the plaintiff's suit for ejectment against the defendant and decree the plaintiff's suit for damages at the rate of Rs. 593/12/- per month from 1-11-1948 to 24-2-1949, with costs throughout and future interest at 6 per cent, per annum.

We further decree the claim for damage pendente lite and future till the date of possession at Rs. 593/12/- per month with future interest from the date of accrual of damages to the date of payment at 6 per cent, per annum. Costs to the date of the paper book incurred by the appellant shall be included in the. costs of the appeal.