

## Jagjit Singh vs District Magistrate, Kanpur And Ors. on 21 December, 1955

**Equivalent citations: AIR1956ALL486, AIR 1956 ALLAHABAD 486**

### JUDGMENT

Mootham, C.J.

1. I agree, but as we are differing from Bhargava J. I desire to state briefly my reasons for so doing.
2. The two important questions in this case are, firstly, whether the proviso which appears at the foot of Sub-section (1) of Section 7-A is limited in its application to that sub-section, and, secondly, whether the Rent Control and Eviction Officer could by his order dated 22-12-1952, revoke his earlier order of the 6-11-1952.
3. The proviso is in these terms:

"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."

The proviso in terms empowers the District Magistrate to refrain from passing any order which he is empowered to make under Section 7-A if he think it inexpedient to do so, and the only difficulty in giving full effect to the proviso is due to the fact that it has been placed after Sub-section (1). I do not however think that this is a sufficient reason for restraining the application of the proviso to order which the District Magistrate is empowered to make under that sub-section.

It appears to me that the necessity for vesting the District Magistrate with a discretion as to whether an order should be made is no less strong in the case of orders which he make under Sub-sections (2) and (3) than it is in respect of orders under Sub-section (1). Indeed it would appear more necessary, that he should have a discretion in determining whether a person should be directed to vacate certain premises or in ordering that a person be evicted from premises of which he is in occupation than he should have in deciding whether a notice to show cause should issue.

In my opinion, the proviso is intended to be a proviso to the first three sub-sections of Section 7-A and not a proviso to Sub-section (1) alone. I agree therefore that the order made by the Rent Control and Eviction Officer on 6-11-1952, refusing to direct the appellant's eviction from the premises indispute was an order which he had jurisdiction to make.

4. On 7-12-1952, the District Magistrate passed an order as a consequence of which the Rent Control and Eviction Officer on 22-12-1952, revoked his earlier order of the 3th November refusing to direct

the ejectment of the appellant under Sub-section (3) of Section 7-A. No copy of the District Magistrate's order has been filed, but it appears clear from the Rent Control and Eviction Officer's order of the 22nd December that although he says that he has given the matter careful thought his decision that the appellant should be evicted was not that at which he would have arrived had it not been for the directions or orders he had received from the District Magistrate.

Indeed it was not seriously contended before us that in making this order the Rent Control and Eviction Officer exercised his own discretion or acted otherwise than in accordance with the directions of the District Magistrate.

5. It is a well established rule that a Court has no power to set aside an order which has been properly made unless it has been given by statute, and this is so on the principle that it is in the public interest that there should be finality in litigation. That rule, in my opinion, applies equally to a final order made in quasi-judicial proceedings, and proceedings under Section 7A are of that character : Shri Shri Nath v. Commr. of Allahabad Division, Allahabad, Writ Petn. No. 7563 of 1951, D/- 27-7-1951 (All) (A).

The rule is subject to certain exceptions to which reference has been made by my brother in Debi Prasad v. Khelawan, Special Appeal No. 141 of 1954, D/- 30-9-1955 (All) (B). They have no application in the present case. Sub-section (4) of Section 7-A provides that no appeal shall lie from an order passed by the District Magistrate or by an officer authorised by him to perform any of his functions under the Act, but a power of revision is vested in the Commissioner.

I think it to be clear that the Act does not confer upon the Dist. Magistrate power to revise the order of a Rent Control and Eviction Officer under Section 7-A, or upon the latter officer, power to review his own order, on the ground that upon further consideration he has come to a different conclusion on the facts.

6. I am therefore of opinion that the District Magistrate had no power to set aside the order of the Rent Control and Eviction Officer of the 6th November, 1952, and that) accordingly his order of 7-12-1952, and the consequential order of the Rent Control and Eviction Officer made on 2-1-1952, were without jurisdiction and must be quashed. I also agree with my brother that there was no such suppression of material facts by the appellant as would disentitle him to the relief claimed. AGARWALA, J. :

7.. This is a special appeal against a judgment of our brother V. Bhargava dismissing a writ petition. The dispute is about a shop located in premises No. 77/152 La Touche Road, Kanpur, which used to be occupied at one time by one Dost Mohammad as a tenant. Dost Mohammad migrated to Pakistan.

The appellant Jagjit Singh claimed that before Dost Mohammad vacated the shop, a partnership had been entered into between them to run a business in machinery, that the partnership business was started on or about 7-9-1951, and that therefore when Dost Mohammad left for Pakistan, the appellant was in possession of the shop as a partner in the business and that the shop did not fall

vacant on his departure.

8. After Dost Mohammad had left India several persons applied to the Rent Control and Eviction Officer, Kanpur, for the allotment of the shop on the allegation that the shop had fallen vacant. On 24-11-1951, the Rent Control and Eviction Officer allotted the shop to Santokh Singh, respondent No. 3. Santokh Singh could not get possession of the shop and applied that proceedings under Section 7A of the U. P. Temporary Control of Rent and Eviction Act be taken against the appellant who was in possession of the shop at that time.

Notice was issued to the appellant under Sub-section (1) of Section 7A of the Act. The appellant filed an objection which was dismissed on 29-12-1951 and the Rent Control and Eviction Officer ordered that the appellant must vacate the shop which he had illegally occupied. In January 1952 the appellant filed a suit in the civil court for a declaration that he was rightfully in possession of the shop as a tenant. He applied for the issue of an injunction restraining the respondent No. 3 from evicting him from the shop.

The temporary injunction was accordingly issued, but was vacated on 6-5-1952. The appellant appealed against the order of 6-5-1952 but the appeal was dismissed on 4-10-1952.

9. Santokh Singh then moved Rent Control and Eviction Officer for ejecting the appellant and for placing him in possession under the provisions of Section 7A (3). Meanwhile the appellant's civil suit was dismissed ex parte on 21-10-1952. The Munsif decided the case on the merits under the provisions of Order 17 Rule 3, C. P. C. and his findings were that there was no partnership between the appellant and Dost Mohammad and that the appellant had not entered into possession of the shop in the capacity of a partner.

10. On 6-11-1952 Santokh Singh's application came up for decision before a new Rent Control and Eviction Officer who by an order of that date, held that the appellant need not be ejected and no further action need be taken upon Santokh Singh's application under Section 7A of the Act.

Santokh Singh took up the matter to the District Magistrate and the District Magistrate by an order dated 7-12-1952, directed the Rent Control and Eviction Officer to evict the appellant under Section 7A(3) of the Act. In passing this order the District Magistrate considered the merits of the case and came to a conclusion contrary to that reached by the Rent Control and Eviction Officer.

11. On 22-12-1952 the Rent Control and Eviction Officer ordered that respondent Santokh Singh be put into possession "as ordered by the District Magistrate" and later on, on 2-1-1953, a formal order under Section 7A (3) of the Act directing the Station Officer, Police Station Collectorganj to deliver the possession of the premises to Santokh Singh by physically evicting the appellant was passed.

Against this order of the Rent Control and Eviction Officer the appellant went up in revision to the Additional Commissioner, but the revision was rejected on 7-9-1953 whereupon the writ petition which has given rise to this appeal was instituted in this Court on the 23-9-1953, praying that by an issue of a writ of certiorari the proceedings in pursuance of the order of the District Magistrate dated

7-12-1952, and the orders of the Rent Control and Eviction Officer dated 22-12-1952 and 2-1-1953 be quashed.

12. In his writ petition the appellant alleged that he had entered into possession of the shop in question as a partner of Dost Mohammad. He did not mention the fact that in the civil suit a finding had been recorded by the court that there had never been a genuine partnership between the appellant and Dost Mohammad and that the appellant had not entered into possession of the shop as a partner of Dost Mohammad. He however challenged the order of the District Magistrate dated 7-12-1952 and the orders of the Rent Control and Eviction Officer dated 22-12-1952 and 2-1-1953 on the ground that the order of the Rent Control and Eviction Officer dated 6-11-1952 was a quasi-judicial order, that the Act did not empower either the District Magistrate or the Rent Control and Eviction Officer to review such an order and that consequently the order of the District Magistrate dated 7-12-1952 and the orders of the Rent Control and Eviction Officer dated 22-12-1952 and 2-1-1953 were without jurisdiction and could not be enforced.

On these pleadings the appellant also claimed an 'ad interim' order from the Court staying the execution of the orders of the Rent Control and Eviction Officer which was granted.

13. The case of the respondent Santokh Singh was that the writ petition should be rejected on the ground that the appellant had obtained an interim order of stay upon suppression of true facts, inasmuch as he had not disclosed to the Court in his affidavit that the Civil Court had recorded a finding against him on the questions of partnership and of his being in possession of the shop as a partner, that the appellant had no legal title to remain in possession of the shop and that he was in illegal possession because no allotment order had been passed in his favour and that, therefore, he had no title to apply under Article 226 of the Constitution.

The respondent further contended that the order of the Rent Control and Eviction Officer dated 6-11-1952 was an administrative order and not a quasi-judicial order, that the orders of the Rent Control and Eviction Officer dated 22-12-1952 and 2-1-1953 were not illegal because it was open to the District Magistrate to direct his subordinate, the Rent Control and Eviction Officer, to act in a particular way in an administrative matter and that the delegation of his powers to the Rent Control and Eviction Officer under the provisions of the Temporary Control of Rent and Eviction Act did not deprive him of his authority to act under Section 7A himself and as such he could have himself passed an order for the ejectment of the appellant or in the alternative could have directed the Rent Control and Eviction Officer to carry out his behest in that regard.

14. The learned single Judge, before whom the writ petition came up for decision, dismissed the application on the findings that the applicant had no legal right to remain in possession, that he had suppressed material facts and for that reason he was not entitled to get any relief from the Court under Article 226 of the Constitution, that the order of 6-11-1952, was an order of review of the previous order dated 29-12-1951, that it could not be said to be an independent order under the proviso to Sub-section (1) of Section 7A of the Act, as that proviso could only be resorted to before the objections against the enforcement of the order of allotment were decided and not at a subsequent stage, that if the Rent Control and Eviction Officer had no power to review, the order of

6-5-1952 was without jurisdiction, but that if he had the power of review the order of 6-5-1952 was validly reviewed by the order dated 22-12-1952 and that in any view of the matter the appellant was liable to be evicted.

15. In this appeal it has been contended on behalf of the appellant that he did not ask for any relief on the basis of being in possession as a partner of Dost Mohammad, that, therefore it was unnecessary for him to have stated in his affidavit that the civil court had found against him on the point, that his cause of action for the reliefs claimed in the writ petition was based on the fact that the order of 5-11-1952 being a quasi-judicial order could not be reviewed later on either by the District Magistrate or by the Rent Control and Eviction Officer as there was no provision empowering any of the said officers under the Rent Control and Eviction Act to do so and that as such the orders of 7-12-1952, 22-12-1952, and 2-1-1953 Were made without jurisdiction & further that he had a legal right to maintain the writ petition because he was in actual possession which was ordered not to be disturbed by the order of 6-11-1952.

16. As regards the contention that the appellant was not entitled to relief because he had suppressed material facts I find that the applicant did not claim any relief by virtue of his being in possession as a partner of Dost Mohammad. He claimed his reliefs on the basis of the orders passed subsequent to the order of 6-11-1952 as being invalid. Consequently the fact that he did not mention in his writ petition what the civil court had decided in the suit filed by him though deplorable, did not disentitle him to the relief claimed by him as even if the statement had been made it would have had no material bearing upon the grounds urged by him for the relief claimed.

17. As regards the contention that the appellant had no legal right to maintain the petition because the house had not been allotted to him and he had not entered into possession as a partner of Dost Mohammad, I am of opinion that this contention also had no force. The appellant claims the right to remain in possession by virtue of the order of the Rent Control and Eviction Officer dated 6-11-1952 which entitled him to remain in possession of the shop in dispute.

In order to entitle the petitioner to claim relief under Article 226 of the Constitution for certiorari, mandamus or prohibition it is not necessary that he must show that he is the owner of the property in dispute. It is enough for his purpose to show that he is lawfully in possession and that he is not liable to be evicted therefrom under the orders passed against him which he seeks to be quashed. A possessory title is a good title for the purposes of enabling the Court to grant relief under Article 226 of the Constitution.

18. It was urged that since the appellant had entered into possession without an allotment order his possession was illegal and he was liable to punishment under Sections 8 and 11 of the Rent Control Act. But it may however be pointed out that the effect of the order of 6-11-1952, if valid, is a recognition of the right of the applicant to remain in possession and a virtual cancellation of the allotment in favour of Santokh Singh.

It is not shown that the landlord is not agreeable to the tenancy of the appellant and in these circumstances the appellant may be said even to possess a legal right as a tenant of the premises to

remain in occupation thereof provided that the contention of the appellant that the order of 6-11-1952 was valid and that the subsequent orders were invalid is found to be correct. This leads us to an investigation into the validity of the order of 6-11-1952 and of the orders passed subsequent thereto,

19. After an order of allotment has been made under Sub-section (2) of Section 7 and the allottee is not able to obtain possession because somebody else has entered into possession, the allottee has to make an application under Section 7A to the District Magistrate asking him to put him in possession by evicting the person in possession. Three stages are envisaged in Section 7A.

In the first stage the District Magistrate Issues a notice to the person in occupation calling upon him to show cause, within a time fixed by him, why he should not be evicted therefrom. This notice is issued under Sub-section (1) of Section 7A. The second stage commences when on the date fixed the occupier either fails to appear in reply to the notice or appears but fails to satisfy the District Magistrate that the order under Sub-section (1) of Section 7A was not duly passed and that he is entitled to remain in occupation of the accommodation.

The District Magistrate, thereupon, may direct him to vacate the premises within a period to be specified. This order is passed under Sub-section 2(2) of Section 7A. The third stage is reached when the time specified in the aforesaid order expires and the accommodation is not vacated within the said time or such extended time as the District Magistrate may grant. Then the District Magistrate may evict or cause to be evicted such person or persons and put the allottee in possession of the accommodation. Here then the District Magistrate passes another order authorising the notice to evict the person and to put the allottee in possession.

20. In Sub-section (1) of Section 7A there is however a proviso in the following terms:

"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."

Although the proviso is appended to Sub-section (1) of Section 7A, it is really a proviso to Sub-sections (1), (2) and (3) because it speaks of an order by the District Magistrate under "this section". The order spoken of in the proviso may be the notice to be issued under Sub-section (1) or it may be the order to be passed under Sub-section (2) or the order under Sub-section (3) and the proviso gives a discretion to the District Magistrate to refuse to pass an order under any of these sub-sections if he is satisfied "that there has been undue delay or it is otherwise inexpedient to do so."

Undue delay may have occurred in the execution of the order made under Sub-section (2) of Section 7A or the allottee may have been allotted some other accommodation in the meanwhile or for other reason it may be inexpedient to execute the said order, and in all such cases the proviso gives a discretion to the District Magistrate to decline to execute the order made under Sub-section (2).

21. The order of 6-11-1952 was an order by which the Rent) Control and Eviction Officer declined to execute the previous order made by his predecessor on 29-12-1951, under Sub-section (2) of Section 7A on the ground that the respondent's family members had been allotted some of the shops, which ought to meet with his requirements, that on the other hand the appellant who was a refugee from Pakistan deserved consideration and that he had set up machinery in the premises and that the shop in dispute was the only one with him for business and that his need was such that it would be inexpedient to disturb his possession. This order clearly fell within the purview of the proviso mentioned above, and the Rent Control and Eviction Officer had perfect jurisdiction to pass it.

22. The next question to be considered is whether the District Magistrate had the power to supersede the order of the Rent Control and Eviction Officer dated 6-11-1952 and to direct him to evict the appellant and to put the respondent in possession.

It has been contended by Mr. Dhavan, learned counsel for the respondents, that the order of the Rent Control and Eviction Officer dated 6-11-1952 was an executive order and not a quasi-judicial order and that therefore he was bound to carry out the order of the superior executive officer, namely the District Magistrate, and for this proposition the learned counsel relied upon -- 'C. D. Hans y. Mannu Lal', 1952 All 432 (AIR V 39) (C) which decision was affirmed in appeal by a Division Bench of which I was a member, vide -- 'Mannu Lal v. Chakradhar Hans', 1952 All 859 (AIR V 39) (D) and upon -- 'Abdul Hamid v. Smt. Patima Begum', 1955 All 36 (AIR V 42) (E); and the learned counsel contended that the observations of the learned Judges in -- 'Mahabir Prasad v. District Magistrate, Kanpur', 1955 All 501 (S) AIR V 42) (F) were distinguishable or in any case not correct.

Learned counsel further contended that under the Rent Control Act the Rent Control and Eviction Officer is a delegate or an agent of the District Magistrate and as such the District Magistrate does not part with his authority and can issue directions to the Rent Control and Eviction Officer to take a certain course of action, and for this proposition the learned counsel relied upon; -- 'Huth v. Clarks', (1890) 25 QBD 391 (G); -- 'Gordon, Dadds & Co. v. Morris', 1945-2 All ER 616 (H); -- 'Lewisham Metropolitan Borough and Town Clerk v. Roberts', (1949) 1 All ER 815 (I); and -- 'Manton v. Brighton Corporation', (1951) 2 All ER 101 (J).

23. So far as the nature of the order of the Rent Control and Eviction Officer dated 6-11-1952 is concerned, I am of opinion that it was a quasi-judicial order. The proceedings under Section 7A are clearly Quasi-judicial proceedings as held by a Bench of this Court in Civil Misc. Writ) No. 7563 of 1951 (All) (A) decided by Harish Chandra and Brij Mohan Lall JJ.

The person in possession is required to show cause as his rights are affected by the allotment order and this fact clearly implies that the District Magistrate is bound to decide the matter upon the facts appearing on the enquiry and not merely according to his discretion. Proceedings under Sub-section (3) are intended for the execution of the order passed under Sub-section (2) which being a quasi-judicial order, the proceedings for the execution of such orders are also of the same nature because an order designed to execute a quasi-judicial order is an order passed in quasi-judicial proceedings and is itself a quasi-judicial order.

When an executive or administrative order is spoken of in contradistinction to a quasi-judicial order, it means an order which is not passed in quasi-judicial proceedings but one which is passed purely in the discretion of the executive authority. Such orders are designed to execute legislative rules of law or to carry on the administrative business of Government or other authority.

24. It is an established principle of law that judicial orders which finally decide the rights of the parties should not ordinarily be reviewed, altered or varied by the Court or Judge who made them, because there must be a finality of litigation, (Halsbury's Laws of England, Hailsham 2nd Edition, Vol. 19, p. 230; and -- 'Flower v. Lloyd', (1879) 10 Ch D 327 (K) at page 333). This rule is subject to certain well defined qualifications which have been described by me in my judgment in -- 'Debi Prasad v. Khelawan', Special Appeal No. 141 of 1954 (All) (B).

As pointed out by me in that order, a judicial order cannot be modified or set aside simply on the ground that it was wrong and the Judge on further thought has come to a different conclusion. If this were allowed, there will be no finality of litigation and an order once made would always be liable to be changed again and again. The same rule in my opinion applies to quasi-judicial orders which are final and not interlocutory. As such orders decide the rights of parties, they must in the nature of things be governed by principles analogous to those which apply to judicial orders.

It follows, therefore, that the District Magistrate or even the Rent Control and Eviction Officer had no power to review and set aside the order of 6-11-1952, simply because he thought that it was erroneous. This conclusion is fortified by the consideration that the Act itself makes provisions for the review of such orders on revision by a specified authority.

Under Sub-section (4) of Section 7A no appeal lies from the order of the Rent Control and Eviction Officer passed under that section, but a revision lies to the Commissioner. Section 21 of the General Clauses Act speaks of the power of an officer to alter, or modify, or revoke a notification, order, bye-law or rule made by him. It does not refer to judicial or quasi-judicial orders.

Notifications, orders, bye-laws or rules referred to in that section are in the nature of subordinate legislation or merely administrative orders. It was held by a Division Bench of this Court in -- 'R. N. Seth v. Girja Shanker', 1952 All 819 (AIR V 39) (L) that an order made by the Rent Control and Eviction Officer cannot be reviewed or cancelled by the District Magistrate. Whether this observation is true of an administrative order or not, it is certainly true of an order which is judicial or quasi-judicial.

The orders which were the subject matter of consideration in 1952 All 432 (AIR V 39) (C); 1952 All 859 (AIR V 39) (D); 1955 All 501 (AIR V 42) (F) and 1955 All 36 (AIR V 42) (E) were administrative orders. These decisions, therefore need not detain us.

25. In my opinion the District Magistrate was not competent to direct the Rent Control and Eviction Officer to revoke his previous order dated 6-11-1952, nor had the Rent Control and Eviction Officer any power to review that order on the grounds on which he did it, and consequently the Rent Control and Eviction Officer's orders dated 22-12-1952 and 2-1-1953 were made without



jurisdiction.

26. I would, therefore, allow this appeal, set aside the order of the learned single Judge and quash the order of the District Magistrate dated 7-12-1952, and the orders of the Rent Control and Eviction Officer dated 22-12-1952 and 2-1-1953. In the special circumstances of this case I would direct the parties to bear their own costs in the proceedings both before the learned single Judge and before us.