Mohd. Inam vs Sanjay Kumar Singhal on 26 June, 2020

Equivalent citations: AIR 2020 SUPREME COURT 3433, AIRONLINE 2020 SC 618

Author: B.R. Gavai

Bench: B.R. Gavai, Navin Sinha

1

REPORT

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO._2697 OF 2020
[Arising out of Special Leave Petition (Civil) No. 20133 O

MOHD. INAM ...APPELLAN

VERSUS

SANJAY KUMAR SINGHAL & ORS. .... RESPONDE

JUDGMENT

B.R. GAVAI, J.

1. Leave granted.

2. This appeal challenges the judgment and order dated 26.10.2017 passed by the learned single judge of the High Court of Uttarakhand at Nainital in Writ Petition No.1074 of 2008 (M/S) thereby, allowing the writ petition filed by the respondent Nos. 1 and 2 – landlords herein.

3. The facts, in brief, necessary for adjudication of the present appeal are thus:

> Rashid Ahmed, the father of the present appellant, was the original tenant of House No.61/8, Ground Floor, Green Pasture View, Landhour Bazar, Mussoorie (hereinafter

referred to as "the suit premises" or "the premises") since 1965. The respondents had purchased the suit premises from the original landlord Sudesh Kumar Singhal in the year 1998 and, as such, became the tenant □Rashid Ahmed's landlord from 1998. The respondents – landlord moved an application before the Rent Controller and Eviction Officer, Mussoorie on 10.6.1999, contending therein, that Rashid Ahmed had sub□let the property to some other persons who were not the family members of the tenant. As such, they prayed for declaration of vacancy under the provisions of Section 16(1)(b) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "U.P. Act, 1972" or "the Act").

On the application of the landlord, a Rent Control Inspector was appointed to inspect the suit premises. The Rent Control Inspector visited the suit premises and submitted his report on 16.08.1999. In the report, it was stated, that Rashid Ahmed, who was the tenant, was not present in the premises at the time of the inspection and he was informed by the occupants that he had gone to his village Bhatpura in Saharanpur District. The report further stated, that Rashid and Akbar were sons of Hasunuddin and, as such, real brothers. The report stated that, there were several persons residing in the premises and they comprised of four separate families, namely, (1) Rashid Ahmed; (2) Inam s/o Rashid Ahmed along with his six children; (3) Shabbir Ahmed, wife Shafikan and daughter; and (4) Ayyub and his children Naseem and Nashima respectively.

The original tenant □Rashid Ahmed filed objections to the inspection report stating therein, that he and his brother and their families are living in the premises as tenant. He further stated, that tenancy was in his name and there was no other person who was outside his family residing in the said premises. He, therefore, resisted declaring the suit premises as vacant.

During the pendency of the proceedings, the house owner informed the competent authority that, on 19.1.2000 Rashid Ahmed died in his village Bhatpura leaving behind his son Mohd. Inam, the present appellant, as his legal heir. As such, the name of Rashid Ahmed came to be substituted with that of the present appellant. The present appellant filed his application stating therein, that he along with other family members of late Rashid Ahmed was residing in the said premises.

The Rent Control and Eviction Officer came to the conclusion that the persons, who were presently residing in the premises had not produced any evidence to prove, that they were living as tenants since 1965 along with late Rashid Ahmed. As such, he came to the conclusion, that the tenants had allowed persons to reside in the premises, who are not members of the family and, as such, declared the suit premises as vacant vide order dated 4.6.2003.

Being aggrieved thereby, the present appellant along with his cousin Shabbir Ahmed filed Writ Petition before the High Court of Uttaranchal at Nainital being Writ

> Petition No. 7 (MS) of 2003. The High Court vide order dated 23.8.2006 by referring to the judgment of this Court in the case of Achal Misra vs. Rama Shanker Singh and others1 granted liberty to the petitioners therein to challenge the order dated

4.6.2003 after the final order i.e. order of release/allotment was passed under Section 16 of the U.P. Act, 1972.

The Rent Controller and Eviction Officer passed a final order under Section 16 of the U.P. Act, 1972 on 31.5.2007 thereby, declaring the suit premises 'vacant' in favour of the respondents – landlord.

Being aggrieved thereby, the appellant and said Shabbir Ahmed filed a revision being R.C.R. No.122 of 2007 before the District Judge, Dehradun as provided under Section 18 of the U.P. Act, 1972. The learned District Judge, Dehradun, by a well□reasoned order dated 5.6.2008, allowed the revision thereby, setting aside the order of vacancy dated 4.6.2003 and the final order dated 31.5.2007. 1 (2005) 5 SCC 531 Being aggrieved thereby, the respondents No.1 and 2 – landlord filed a writ petition before the High Court of Uttarakhand at Nainital being Writ Petition No.1074 of 2008 (M/S). As stated earlier, the said writ petition is allowed by the impugned order dated 26.10.2017. Being aggrieved, the present appeal by special leave.

4. We have heard Shri Ashok Kumar Sharma, learned Senior Counsel appearing on behalf of the appellant and Shri Arvind Kumar Gupta, learned counsel appearing on behalf of the respondents – landlord.

5. The main ground on which the writ petition has been allowed by the High Court is that, the learned District Judge had committed illegality in entertaining the joint revision filed against the vacancy order as well as the final order. The High Court in the impugned order has observed, that the judgment and order dated 23.8.2006, passed by the said High Court dismissing the writ petition had not been challenged before this Court by the respondents No. 1 and 2 therein (appellant and proforma respondent No.3 herein). The High Court further goes to observe, that the respondents therein (appellant and proforma respondent No.3 herein) had elected not to assail the vacancy order as well as the order dated 23.8.2006, passed by the High Court dismissing the said writ petition. It goes to further observe, that after dismissal of the writ petition there was no occasion for the High Court to grant liberty to the respondents therein, to avail remedy of revision, challenging the order of vacancy dated 4.6.2003. The learned Judge has gone to further observe, that the revision against the order dated 4.6.2003 was not maintainable and that the District Judge had committed patent illegality in entertaining the revision.

6. We find, that the impugned judgment delivered by the High Court is not only on misreading of the law but also misreading of the facts. It will be relevant to refer to the judgment of this Court in the case of Achal Misra (supra). It will also be relevant to refer to the background in which the said judgment by the learned three Judges was rendered.

7. In Tirlok Singh and Co. vs. District Magistrate, Lucknow2, two learned Judges of this Court had held, that 2 (1976) 3 SCC 726 under the scheme of the Act, an order notifying a vacancy by itself

does no injury and causes no prejudice to the interests of any party. It was held, that a notification of the vacancy was only a step in aid of an order of allotment or release and only when such orders are passed, the landlord or the tenant can have a grievance. After considering the provisions of Section 16 and Section 18 of the U.P. Act, 1972, as they existed at the time of delivery of the judgment, it was held in Tirlok Singh (supra) that, a writ petition filed against an order declaring a vacancy only, was premature, as the order did not affect the rights of the person who challenges that order.

8. The decision in Tirlok Singh (supra) came up for consideration before a Bench of three learned Judges in the case of Ganpat Roy vs. ADM3. In Ganpat Roy (supra), the Bench of three learned Judges disagreed with the proposition laid down in Tirlok Singh (supra), that the rights of the landlord or the tenant are not affected merely by the notification of a vacancy. No doubt, in the meantime, U.P. 3 (1985) 2 SCC 307 Act,1972 had undergone an amendment and an appeal against the final order of allotment had been replaced by a revision under more restricted conditions. In Ganpat Roy (supra), it was observed, that the observations in Tirlok Singh (supra), holding, that it was unnecessary for the District Magistrate to hear the parties before notifying the vacancy, did not appear to be correct. It was also observed, that it also did not appear to be correct to hold, that an order notifying the vacancy did no injury and caused no prejudice to the interests of any party because an order notifying the vacancy could be objected to. It was held, that the correctness of the decision in Tirlok Singh (supra) was open to doubt. Their Lordships in Ganpat Roy (supra) therefore held, that the scheme of the Act would show that a tenant of a premises, in whose case it was found that there was a deemed vacancy, had no efficacious or adequate remedy under the Act to challenge that finding. It was, therefore, held, that a petition under Article 226 or 227 of the Constitution filed by such a tenant in order to challenge that finding could not, therefore, be said to be premature.

9. In Achal Misra (supra), the High Court had allowed the writ petitions filed by the allottees on the ground, that the landlord not having challenged the original order notifying the vacancy then and there, was precluded from challenging the order notifying the vacancy in revision against the final order or in further challenges to it in the High Court. When the judgment of the High Court came up for consideration before the two learned Judges of this Court, it was noticed, that it could not be said that the question of vacancy, if not challenged by a separate writ petition on its notification, could not be questioned along with the final order, in the revision filed under Section 18 of the Act. It was observed, that the question of vacancy pertained to a jurisdictional fact and can be challenged in the revision filed against the allotment order passed by the District Magistrate. It was further observed, that in case it was found, that there was no vacancy, the order of allotment had to be set aside. As such, the learned two Judges referred the matter to a larger Bench. The learned three Judges in the judgment in Achal Misra (supra) observed thus:

> “11. On the scheme of the Act, it is clear that the preliminary step is to declare a vacancy. At this stage, an enquiry has to be made including an enquiry involving at least two respectable neighbours. It is thereafter that the vacancy has to be notified and objections invited. This is followed by either dropping of the proceedings on the objections being upheld that there was no vacancy, or by allotment to a tenant on finding the vacancy, or in ordering a release of the building, in case a landlord was found entitled to have such a release under the Act.

Therefore, the notifying of a vacancy is only a step in the process of making an allotment of the building to a tenant. The Act contemplates that no building should be let out by a landlord except through the process of allotment by the Rent Control Authority. Since the order notifying a vacancy is only a step in passing the final order in a proceeding under the Act regarding allotment, it is clear that the same could be challenged while challenging the final order, unless there is anything in the Act precluding such a challenge or conferring a finality to the order notifying a vacancy. It was held long ago by the Privy Council in Moheshur Sing v. Bengal Govt. [(1859) 7 Moo IA 283] (Moo IA at p. 302) "We are not aware of any law or regulation prevailing in India which renders it imperative upon the suitor to appeal from every interlocutory order by which he may conceive himself aggrieved, under the penalty, if he does not so do, of forfeiting forever the benefit of the consideration of the appellate court. No authority or precedent has been cited in support of such a proposition, and we cannot conceive that anything would be more detrimental to the expeditious administration of justice than the establishment of a rule which would impose upon the suitor the necessity of so appealing; whereby on the one hand he might be harassed with endless expense and delay, and on the other inflict upon his opponent similar calamities."

12. In Sheonoth v. Ramnath [(1865) 10 MIA 413] the Privy Council reiterated that a party is not bound to appeal from every interlocutory order which is a step in the procedure that leads to a final decree. It is open on appeal from such final decree to question an interlocutory order.

13. This principle is recognised by Section 105(1) of the Code of Civil Procedure and reaffirmed by Order 43 Rule 1□A of the Code. The two exceptions to this rule are found in Section 97 of the Code of Civil Procedure, 1908, which provides that a preliminary decree passed in a suit could not be challenged in an appeal against the final decree based on that preliminary decree and Section 105(2) of the Code of Civil Procedure, 1908 which precludes a challenge to an order of remand at a subsequent stage while filing an appeal against the decree passed subsequent to the order of remand. All these aspects came to be considered by this Court in Satyadhyan Ghosal v. Deorajin Debi [(1960) 3 SCR 590 : AIR 1960 SC 941. Ed.: See also(1981) 2 SCC 103, (2004) 12 SCC 754 and (2005) 3 SCC 422] wherein, after referring to the decisions of the Privy Council, it was held that an interlocutory order which had not been appealed from either because no appeal lay or even though an appeal lay, an appeal was not taken, can be challenged in an appeal from a final decree or order. It was further held that a special provision was made in Section 105(2) of the Code of Civil Procedure as regards orders of remand where the order of remand itself was made appealable.

Since Section 105(2) did not apply to the Privy Council and can have no application to appeals to the Supreme Court, the Privy Council and the Supreme Court could examine even the correctness of an original order of remand while considering the correctness of the decree passed subsequent to the

order of remand. The same principle was reiterated in Amar Chand Butail v. Union of India [AIR 1964 SC 1658] and in other subsequent decisions.

14. It is thus clear that an order notifying a vacancy which leads to the final order of allotment can be challenged in a proceeding taken to challenge the final order, as being an order which is a preliminary step in the process of decision□making in passing the final order. Hence, in a revision against the final order of allotment which is provided for by the Act, the order notifying the vacancy could be challenged. The decision in Ganpat Roy case[(1985) 2 SCC 307] which has disapproved the ratio of the decision in Tirlok Singh and Co.[(1976) 3 SCC 726] cannot be understood as laying down that the failure to challenge the order notifying the vacancy then and there, would result in the loss of right to the aggrieved person of challenging the notifying of vacancy itself, in a revision against the final order of allotment. It has only clarified that even the order notifying the vacancy could be immediately and independently challenged. The High Court, in our view, has misunderstood the effect of the decision of this Court in Ganpat Roy case [(1985) 2 SCC 307] and has not kept in mind the general principles of law governing such a question as expounded by the Privy Council and by this Court. It is nobody's case that there is anything in the Act corresponding either to Section 97 or to Section 105(2) of the Code of Civil Procedure, 1908 precluding a challenge in respect of an order which ultimately leads to the final order. We overrule the view taken by the Allahabad High Court in the present case and in Kunj Lata v. Xth ADJ [(1991) 2 RCJ 658] that in a revision against the final order, the order notifying the vacancy could not be challenged and that the failure to independently challenge the order notifying the vacancy would preclude a successful challenge to the allotment order itself. In fact, the person aggrieved by the order notifying the vacancy can be said to have two options available. Either to challenge the order notifying the vacancy then and there by way of a writ petition or to make the statutory challenge after a final order of allotment has been made and if he is aggrieved even thereafter, to approach the High Court. It would really be a case of election of remedies."

10. It could thus be seen, that considering the scheme of the Act; the principles as recognized by Section 105(1) and Order XLIII Rule 1□A of the Code of Civil Procedure, 1908 and the various judgments of the Privy Council as well as this Court, it was held, that an interlocutory order which had not been appealed from, either because no appeal lay or even though an appeal lay, an appeal was not taken, can be challenged in an appeal from a final decree or order. It was therefore held, that an order, notifying a vacancy which leads to the final order of allotment can be challenged in a proceeding taken out to challenge the final order, as being an order which is a preliminary step in the process of decision making in passing the final order. The learned three Judges therefore held, that in a revision against the final order of allotment which is provided for by the Act, the order notifying the vacancy could be challenged. It was held, that the decision in Ganpat Roy (supra), which disapproved the ratio in Tirlok Singh (supra) cannot be understood as laying down, that the failure to challenge the order notifying the vacancy then and there, would result in the loss of right to the aggrieved person of challenging the order notifying vacancy itself, in a revision against the final order of allotment. It was held, Ganpat Roy (supra) had only clarified that even the order notifying the vacancy could be immediately and independently challenged. It was therefore held, that the High Court had misunderstood the effect of the decision of this Court in Ganpat Roy (supra) and had not kept in mind the general principles of law governing such a question as expounded by

the Privy Council and this Court. It was held, that there was nothing in the Act corresponding either to Section 97 or to Section 105(2) of the Code of Civil Procedure, 1908 precluding a challenge in respect of an order which ultimately leads to the final order. It was further held, that in fact, the person aggrieved by the order notifying the vacancy can be said to have two options available, either to challenge the order notifying the vacancy then and there by way of a writ petition or to make a statutory challenge after a final order of allotment has been made and if he is aggrieved even thereafter, to approach the High Court. It was further observed, that it would really be a case of election of remedies.

11. In the present case, the appellant and deceased Shabbir Ahmed, rightly, on the basis of the judgment of this Court in the case of Achal Misra (supra), had filed a writ petition being Writ Petition No.7 (MS) of 2003, challenging the order of vacancy dated 4.6.2003. The learned single judge of the High Court vide order dated 23.8.2006 after specifically observing and reproducing paragraph 14 of the judgment of this Court in the case of Achal Misra (supra) observed thus:

> "In view of the aforesaid, liberty is given to the petitioner to challenge the order dated 4th June, 2003 after the final order is passed under Section 16 of the U.P. Act No.13 of 1972."

12. In the light of this, we fail to appreciate, as to how the learned judge of the High Court in the impugned order, could have made observations in paragraph 11 thereof. The learned Judge goes to observe, that after dismissal of the writ petition there was no occasion for the said High Court to grant liberty to the respondents to avail remedy of revision challenging the order of vacancy dated 4.6.2003. It appears, that the learned judge has missed the last line in the order of the High Court dated 23.8.2006, which reads thus:

> "Subject to aforesaid, writ petition is dismissed."

13. The learned single Judge of the High Court has also failed to take into consideration that in the order dated 23.8.2006 itself, the learned judge while disposing of the earlier writ petition had referred to the law laid down by this Court in the case of Achal Misra (supra), wherein it is specifically held, that even if a party does not challenge the vacancy order by way of writ petition, it is still open to it to challenge the same order along with the final order passed under Section 16 in the revision under Section 18. However, the learned Judge, in the impugned judgment, has not even referred to the judgment of this Court in the case of Achal Misra (supra), a relevant part of which has been reproduced in the earlier order of the said High Court dated 23.8.2006.

14. In the present case, though the appellant and deceased Shabbir Ahmed could have waited till passing of the final order under Section 16, they had in fact challenged the vacancy order before the High Court in a writ petition. The High Court had specifically granted them liberty to challenge the vacancy order along with the final order in view of the law laid down by this Court in the case of Achal Misra (supra) vide order dated 23.8.2006. The learned single judge of the High Court, in the impugned judgment, while holding that the revision is not tenable under Section 18 of the Act, places reliance on the judgment of this Court in the case of Narayani Devi vs. Mahendra Kr. Tripathi

and others4. It is to be noticed, that the judgment on which reliance is placed by the single judge of the High Court is an order of one paragraph rendered by two Judges of this Court. The learned judge has failed in appreciating the law as laid down by this Court in Achal Misra (supra), which lays down ratio decidendi and is a binding precedent, which was very much available on the record and a part of which had been reproduced in the order dated 23.8.2006 in the earlier proceedings between the same parties.

15. By relying on an order of one paragraph passed by two learned Judges of this Court and ignoring to consider the legal position of law, which is ratio decidendi and a binding precedent as laid down by three learned Judges of this Court in Achal Misra (supra), we find, that the learned single judge of the High Court has committed a gross error.

16. We are, therefore, of the considered view, that the High Court has patently erred in holding, that the revision 4 (1999) 9 SCC 61 entertained by the District Judge against the vacancy order dated 4.6.2003 along with the final order of release dated 31.5.2007 was not tenable. The learned judge has totally erred in observing, that the order of the High Court dated 23.8.2006 dismissing the writ petition had attained finality since it was not challenged before this Court. The learned judge ought to have taken into consideration, that though the vacancy order was challenged in a writ petition, the High Court vide order dated 23.8.2006, while dismissing the writ petition had reserved the right of the petitioners (appellant and proforma respondent No.3 herein) before it to challenge the vacancy order along with the final order passed under Section 16. The observation of the learned judge, that the High Court in its earlier order dated 23.8.2006, could not have granted liberty to challenge the vacancy order along with the final order is also contrary to the settled principles of judicial propriety.

17. That leaves us to the merits of the matter.

18. It will be relevant to refer to Section 18 of the U.P. Act, 1972.

“18. Appeal against order of allotment or release:□(1) No appeal shall lie from any order under section 16 or section 19, whether made before or after the commencement of this section, but any person aggrieved by a final order under any of the said sections may, within fifteen days from the date of such order, prefer a revision to the District Judge on any one or more of the following grounds, namely:□

(a) that the District Magistrate has exercised a jurisdiction not vested in him by law;

(b) that the District Magistrate has failed to exercise a jurisdiction vested in him by law;

(c) that the District Magistrate acted in the exercise of his jurisdiction illegally or with material irregularity.

(2) The revising authority may confirm or rescind the final order made under sub□section (1) or may remand the case to the District Magistrate for rehearing and pending the revision, may stay the

operation of such order on such terms, if any, as it thinks fit.

Explanation—The power to rescind the final order under this sub-section shall not include the power to pass an allotment order or to direct the passing of an allotment order in favour of a person different from the allottee mentioned in the order under revision. (3) Where an order under section 16 or section 19 is rescinded, the District Magistrate shall, on an application being made to him on that behalf, place the parties back in the position which they would have occupied but for such order or such part thereof as has been rescinded, and may for that purpose use or cause to be used such force as may be necessary".

19. It could thus be seen, that the earlier right of an appeal which was provided under Section 18 had been substituted by a remedy of revision with the limited grounds of interference. One of the grounds available is that, the District Magistrate had acted in exercise of his jurisdiction illegally or with material irregularity.

20. This Court in the case of Sarla Ahuja vs. United India Insurance Company Ltd.5 had an occasion to consider the scope of proviso to Section 25-B(8) of the Delhi Rent Control Act, 1958. This Court found, that though the word 'revision' was not employed in the said proviso, from the language used therein, the legislative intent was clear that the power conferred was revisional power. This Court observed thus:

> 5 (1998) 8 SCC 119 "11. Learned Single Judge of the High Court in the present case has reassessed and reappraised the evidence afresh to reach a different finding as though it was exercising appellate jurisdiction. No doubt even while exercising revisional ju-risdiction, a reappraisal of evidence can be made, but that should be for the lim-ited purpose to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable....." It could thus be seen, that this Court has held, that the High Court while exercising the revisional powers under the Delhi Rent Control Act, 1958 though could not reassess and reappraise the evidence, as if it was exercising appellate jurisdiction, however, it was empowered to reappraise the evidence for the limited purpose so as to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.

21. Again in the case of Ram Narain Arora vs. Asha Rani and others6, this Court had an occasion to consider the aforesaid powers under the Delhi Rent Control Act, 1958. This Court observed thus:

> "12. It is no doubt true that the scope of a revision petition under Section 25-B(8) 6 (1999) 1 SCC 141 proviso of the Delhi Rent Control Act is a very limited one, but even so in examin-ing the legality or propriety of the pro-ceedings before the Rent Controller, the High Court could examine the facts avail-able in order to find out whether he had correctly or on a firm legal basis ap-proached the matters on record to decide the case. Pure findings of fact may not be open to be interfered with, but (sic if) in a given case, the finding of fact is given on a wrong premise of law, certainly it would be open to the revisional court to interfere with such a matter....." It was

> thus held, that though the scope of revisional powers of the High Court was very limited one, but even so in examining the legality or propriety of the proceedings before the Rent Controller, the High Court could examine the facts available in order, to find out whether he had correctly or on a firm legal basis approached the matters on record to decide the case. It has also been held, that pure findings of fact may not be open to be interfered with, but in a given case, if the finding of fact is given on a wrong premise of law, it would be open to the revisional court to interfere with the same.

22. In the case of Harshavardhan Chokkani vs. Bhupendra N. Patel and others7, this Court had an occasion to consider the scope of revisional power under Section 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. This Court observed thus:

> "7. There can be no controversy about the position that the power of the High Court under Section 22 of the Act is wider than the power under Section 115 CPC. Nonetheless, the High Court is exercising the revisional power which in its very nature is a truncated power. The width of the powers of the revisional court cannot be equated with the powers of the appellate court. In examining the legality and the propriety of the order under challenge, what is required to be seen by the High Court is whether it is in violation of any statutory provision or a binding precedent or suffers from misreading of the evidence or omission to consider relevant clinching evidence or where the inference drawn from the facts proved is such that no reasonable person could arrive at or the like. It is only in such situations that interference by the High Court in revision in a finding of fact will be justified. Mere possibility of a different view is no ground to interfere in exercise of revisional power. From the above discussion, it is clear that none of the aforementioned reasons exist in this 7 (2002) 3 SCC 626 case to justify interference by the High Court."

23. This Court thus held, that the interference in revisional powers would be permitted only if the High Court finds that the order impugned is in violation of any statutory provision or a binding precedent or suffers from misreading of the evidence or omission to consider relevant clinching evidence or where the inference drawn from the facts proved is such that no reasonable person could arrive at or the like.

24. Lastly, the Constitution Bench of this court in the case of Hindustan Petroleum Corporation Limited vs. Dilbahar Singh8 had an occasion to consider the scope of revisional powers as contained in the Kerala Buildings (Lease and Rent Control) Act, 1965, T.N. Buildings (Lease and Rent Control) Act, 1960 and Haryana Urban (Control of Rent and Eviction) Act, 1973. The Court observed thus:

> "43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority 8 (2014) 9 SCC 78 below. The consideration or examination of the evidence by the High Court in revi□sional jurisdiction under these Acts is

> confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of jus□tice, is open to correction because it is not treated as a finding according to law.

In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is en□titled to satisfy itself as to the correct□ness or legality or propriety of any deci□sion or order impugned before it as indi□cated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reap□preciate or reassess the evidence for coming to a different finding on facts. Re□visional power is not and cannot be equated with the power of reconsidera□ tion of all questions of fact as a court of first appeal. Where the High Court is re□quired to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irreg□ularity." It can thus be seen, that the Constitution Bench has settled the position, that the revisional power does not entitle the High Court to interfere with the finding of the fact recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence is confined to find out as to whether the finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. It has been held, that a finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, in such a case, it is open to correction because it is not treated as a finding according to law.

25. No doubt, that the observations in the aforesaid cases deal with the revisional powers to be exercised by the High Court under the special statute. This Court has observed, that in examining the legality and the propriety of the order under challenge in revision, what is required to be seen by the High Court, is whether it is in violation of any statutory provision or a binding precedent or suffers from misreading of the evidence or omission to consider relevant clinching evidence or where the inference drawn from the facts proved is such that no reasonable person could arrive at or the like. It has been held, that if such a finding is allowed to stand, it would be gross miscarriage of justice and is open to correction because it is not to be treated as a finding according to law.

26. The revisional powers conferred upon the District Judge under the U.P. Act, 1972 are almost analogous with the revisional powers of the High Court that have been interpreted by this Court in the aforesaid judgments. We find, that the said principles can be aptly made applicable to the revisional powers of the District Judge under the U.P. Act, 1972. If the said principles are applied to the facts of the present case, it could be seen, that the learned District Judge was fully justified in interfering with the order passed by the Rent Controller and Eviction Officer.

27. It will be relevant to reproduce a part of the judgment and order passed by the learned District Judge while allowing the revision filed by the present appellant and late Shabbir Ahmed.

"The law on the point is very clear.

Hon'ble Supreme Court in ARC 1995(1) 220 Harish Tandon Vs. A.D.M. Allahabad has defined the scope of Section 12(1)(b) – Deemed vacancy. The Hon'ble Court has held that the words "allowed" and "occupy" are significant. The extract of Head Note 'D' (para 18) of the judgment is reproduced below for ready reference.

"Sub-Section (1)(b) of Section 12 says that a landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if he has allowed it to be occupied by any person who is not a member of his family.

The words 'allowed' and 'occupy' are significant. The landlord or the tenant, as the case may be, shall be deemed to have ceased to occupy the building only if he has allowed it to be occupied by any person who is not a member of his family. The words "allowed to be occupied" indicate that the possession of such building has been given to a person who is not a member of the family. It shall not be attracted when any person who is not a member of the family resides in such building either along with landlord or the original tenant. If the landlord or the tenant allows any person, who is not a member of the family within the meaning of the Act to occupy the premises, with the object that such person shall occupy such premises in his own rights, in that event, clause (b) of sub-section (1) of Section 12 shall be attracted?

Averting to the facts and circumstances of the present case, the inspection note on the file is important. The R.C.I. made surprise inspection on 15-8-1999 and found Shabir Ahmed, Smt. Shafikan, Naseema, Shabnam and Nasim present in the premises. It was also told to him that Rashid Ahmed has gone to his village. It is also noted in the inspection note that in the given premises, Sri Rashid himself, Sri Inam, s/o Rashid along with his wife and children, Sri Shabir Ahmed along with his wife Smt. Shafikan, daughter and Sri Ayub, Naseema and Nasim were residing in the property. It is worthy to note that Sri Inam is the son of Rashid who is said to be the tenant even according to landlord. The persons named in the inspection report are either the family members of tenant Rashid or the family members of his brother Akbar. Admittedly except the family member of Rashid or Akbar no other person was found residing in the property in question. In this perspective, the factum of deemed vacancy is to be seen. The Hon'ble Supreme Court in so many words has held that the words "allowed to be occupied" indicate that the possession of such building has been given to a person who is not a family member of the tenant. It shall not be attracted when any person who is not a member of family of the tenant reside in such building either along with landlord or the original tenant meaning thereby if any person other than the family member occupies such premises in his own right, in that event, clause (b) of sub-section (1) of Section 12 shall be attracted and not otherwise. Here in the present case even according to spot inspection, the family member of Rashid who was the original tenant was found residing therein. The other members even if not their family members were found residing along with the family members of the original tenant and not in their own exclusive right. Therefore, the vacancy could not have been

declared in such eventuality."

28. It could be seen, from the judgment and order of the District Judge, that the District Judge has considered the words "allowed to be occupied" in Section 12 of the U.P. Act, 1972 as interpreted by this Court in the case of Harish Tandon vs. Addl. District Magistrate, Allahabad, U.P. and others9. This Court in Harish Tandon (supra), while construing the words "allowed to be occupied" as appearing in Section 12 of the U.P. Act, 1972, had clearly held, that the said words would be attracted if the possession of such a building had been given to a person, who was not family member of the tenant i.e. if any person other than the family member was permitted to occupy such premises in his own right. In such an event, clause (b) of sub-section (1) of Section 12, would be attracted. This Court had further held, that clause (b) of sub-section (1) of Section 12 would not be attracted when any person, who is a member of the family resides in such building either along with the landlord or the original tenant.

29. A perusal of the inspection report clearly established, that the original tenant was residing in the tenanted premises along with his son, brother's son and their families. As such, the inspection report clearly established, that no person who 9 (1995) 1 SCC 537 was not a member of the tenant's family was allowed to occupy the premises in his own right. As such, the finding of the Rent Controller and Eviction Officer that the landlord had proved the case under clause (b) of sub-section (1) of Section 12 of the U.P. Act, 1972 was totally contrary to the law as interpreted by this Court in the case of Harish Tandon (supra). Not only that, the finding as recorded by the said authority was totally on misreading or ignorance of the evidence on the record. It could thus be seen, that the case would squarely fall in the category of exercising the jurisdiction either illegally or with material irregularity. In that view of the matter, the learned District Judge was wholly justified in interfering with the order impugned before him and reversing the same.

30. Though the District Judge as well as the High Court has also gone on the issue of Section 14, we do not propose to go into the said aspect of the matter, inasmuch as, we find, that the present appeal deserves to be allowed on the aforesaid grounds.

31. We find, that the learned single judge of the High Court has also erred in interfering with the well-reasoned order passed by the learned District Judge while exercising the jurisdiction of the High Court under Article 227 of the Constitution of India.

32. It is a well settled principle of law, that in the guise of exercising jurisdiction under Article 227 of the Constitution of India, the High Court cannot convert itself into a court of appeal. It is equally well settled, that the supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and seeing that they obey the law. It has been held, that though the powers under Article 227 are wide, they must be exercised sparingly and only to keep subordinate courts and Tribunals within the bounds of their authority and not to correct mere errors. Reliance in this respect can be placed on a catena of judgments of this Court including the ones in Satyanarayan Laxminarayan Hegde & Ors. vs. Millikarjun Bhavanappa Tirumale10, Bathutmal Raichand Oswal vs. Laxmibai R. 10 (1960) 1 SCR 890 Tarta & Anr.11, M/s India Pipe Fitting Co. vs. Fakruddin M. A. Baker & Anr.12, Ganpat Ladha v. Sashikant Vishnu Shinde13, Mrs. Labhkuwar Bhagwani Shaha &

Ors. vs. Janardhan Mahadeo Kalan & Anr.14, Chandavarkar Sita Ratna Rao vs. Ashalata S. Guram15, Venkatlal G. Pittie and another vs. Bright Bros (Pvt.) Ltd.16, State of Maharashtra vs. Milind & Ors.17, State Through Special Cell, New Delhi vs. Navjot Sandhu Alias Afshan Guru and others18, Ranjeet Singh vs. Ravi Prakash19, Shamshad Ahmad & Ors. vs. Tilak Raj Bajaj (Deceased) Through LRs. and others20, Celina Coelho Pereira (Ms.) and others vs. Ulhas Mahabaleshwar Kholkar and others21.

33. In the present case, we are of the considered view, that the approach of the High Court in exercising the jurisdiction under Article 227 of the Constitution of India was 11 (1975) 1 SCC 858 12 (1977) 4 SCC 587 13 (1978) 2 SCC 573 14 (1982) 3 SCC 514 15 (1986) 4 SCC 447 16 (1987) 3 SCC558 17 (2001) 1 SCC 4 18 (2003) 6 SCC 641 19 (2004) 3 SCC 682 20 (2008) 9 SCC 1 21 (2010) 1 SCC 217 totally erroneous. The learned District Judge while exercising his power under Section 18 of the U.P. Act, 1972 and after finding that the order passed by the Rent Controller and Eviction Officer was totally contrary to the law laid down by this Court in Harish Tandon (supra), while interpreting clause (b) of sub□section (1) of Section 12 of the U.P. Act, 1972 and also that the order passed was totally on a perverse reading of the evidence, had interfered with the said order and reversed the same. The High Court totally misinterpreting the order passed by the earlier learned judge in Writ Petition No.7(MS) of 2003 dated 23.8.2006, on an erroneous premise, held that the vacancy order could not have been challenged along with the final order. The finding is totally contrary to the law laid down by the bench of three learned judges of this Court in Achal Misra (supra), a relevant part of which was reproduced by the High Court in its earlier order dated 23.8.2006. The learned judge ignoring Achal Misra (supra), which is a binding precedent, relies on an order of one paragraph of the two learned judges of this Court while holding that the revision was not maintainable. We, therefore, are of the considered view, that the exercise of jurisdiction by the High Court under Article 227 in the present case was patently unwarranted and unjustified.

34. In the result, the appeal is allowed. The order of the High Court dated 26.10.2017 is quashed and set aside. There shall be no order as to costs.

.....J. [NAVIN SINHA] .....J. [B.R. GAVAI] NEW DELHI;

JUNE 26, 2020