

ALLAHABAD HIGH COURT

Kedar Nath

Vs.

Mool Chand

Second Appeal No. 175 of 1952

(Sapru, J.)

23.07.1952

JUDGMENT

Sapru, J.

1. This is a tenant's appeal arising out of a suit for ejection from a shop situate in the city of Agra. The suit for ejection was brought by the plaintiff with the permission of the Additional District Magistrate. The suit was resisted by the tenant on various grounds. But the ground with which we are concerned in the present case is that the landlord was not competent to bring the suit for ejection inasmuch as the District Magistrate or any person authorised by him had not given the permission requisite for bringing a suit under Section 3, U.P. (Temporary) Control of Rent and Eviction Act, 1947. Both the Courts decreed the plaintiff's suit and held that there was no force in the objection that the Additional District Magistrate was not competent to authorize the plaintiff to institute a suit for ejection under Section 3 of the Act. The defendant has now come up in appeal to this Court.

2. The question for consideration is whether the District Magistrate as contemplated under Section 3 includes an Additional District Magistrate or not. Section 3 lays down that :

"No suit shall, without the permission of the District Magistrate, be filed in any civil Court against a tenant for his eviction from any accommodation....."

It will be noticed that the article which qualifies the District Magistrate is 'the.' There is no definition of the District Magistrate in the General Clauses Act. There is a definition of a District Magistrate in S.10, Criminal P.C. Clause (1) of Section 10, Criminal P.C. lays down that :

"In every district outside the Presidency. towns the Provincial Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate."

In other words, this section makes it obligatory on the State Government to appoint in every District a Magistrate who shall be different from other Magistrates inasmuch as he shall be the Chief Magistrate of the District.

3. Clause (2) of Section 10 of this Code authorizes the Provincial Government to 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 Provincial Government may direct. Though Additional District Magistrates can be vested with all the powers of a District Magistrate under the Code of Criminal Procedure or under any other law for the time being in force as the State Government may direct they are not exactly District Magistrates.

4. Clause (3) of Section 10 of the Code makes it clear that for certain purposes these Additional District Magistrates are deemed to be Subordinate to the District Magistrate. What clause (3) does is to invest the District Magistrate with powers to transfer cases pending before one Additional District Magistrate to another Additional District Magistrate or some other Magistrate or allow appeals to be heard by one or the other of the Additional District Magistrates or Magistrates in his district or withdraw cases from the Court of one Additional District Magistrate or a Magistrate. Clause (3) makes it thus abundantly plain that there is a difference between the District Magistrate who is the principal executive officer in the District and Additional District Magistrates. They are not considered as exactly identical in all respects.

5. Clause (d) of S.2, U.P. (Temporary) Control of Rent and Eviction Act, 1947, defines the District Magistrate as including a person authorized by the District Magistrate to perform any of his functions under this Act. Now it is to be noted that the Legislature does not say that the District Magistrate includes an Additional District Magistrate as also an officer authorized by the District Magistrate to perform any of his functions under this Act. In other words, reading the reference to the District Magistrate in Section 3 in the light of the definition given in clause (d) of S.2, U.P. (Temporary) Control of Rent and Eviction Act, 1947, I am driven to the conclusion, whether intentionally or by inadvertence, that the Legislature intended the District Magistrate to be a persona designate in this particular and special Act to mean the District Magistrate and not any Additional District Magistrate. It must be assumed that the U.P. legislature which passed the U.P. (Temporary) Control of Rent and Eviction Act 1947, was fully familiar with the provisions of S.10, Criminal P.C. which makes it incumbent upon the State Government to appoint in every district a District Magistrate and further authorizes the State Government to confer all or any of the powers exercisable by the District Magistrate on Additional District Magistrates. Notwithstanding this provision, the U.P. Legislature laid down that the powers under Section 3 of the U.P. (Temporary) Control of Rent and Eviction Act, 1947, shall be exercisable by the District Magistrate or by a Magistrate or officer authorized in that behalf by him. I feel, therefore, that there is no alternative for me but to come to the conclusion that the power of delegation was intended by the legislature to be exercised only by the District Magistrate. On this point I may be

permitted to refer to the observations of an eminent Judge, who is now a Judge of the Supreme Court. In the case of *Prabhakar v. Emperor*¹, Vivian Bose J. dealing with the question whether under the Defense of India Act, Section 2(5), the Additional District Magistrate could be authorized to pass the orders that he had passed in that particular case, observed as follows:

¹ ILR (1943) Nag 154

"Rule 26(1)(b) gives the Provincial Government power to detain a person if it is satisfied, etc.S.2(5) empowers the Provincial Government to direct that any power or duty which it could exercise itself under the Rules be exercised by certain other persons. The Provincial Government has authorized all District Magistrates and certain Sub. Divisional Magistrates to exercise those powers of detention by Notification No.411, 696, C.P.W., 7.4.1942. But the orders in the cases before us have been signed by A.G.F. Farquhar, Additional District Magistrate. No Additional District Magistrate appears to have been authorized to act-at any rate no such authority was shown to us by the Crown. The action of Farquhar would therefore appear to be unauthorized and illegal.

I am aware that there are other provisions which invest Additional District Magistrates with much the same powers and authority as the District Magistrate. But the Act and the Rules we are dealing with are special and in view of the importance which the House of Lords attached to the fact that in England only the Home Secretary could exercise the powers and not minor officials, I have grave doubts whether these very special and drastic powers can be exercised by those not specially authorized. As an illustration I give the fact that an Additional District Magistrate cannot marry persons under the Indian Christian Marriage Act unless specially authorized even when the District Magistrate is authorized to do so. The mere fact that he can exercise the powers of the District Magistrate for a great many purposes does not necessarily invest him with authority to exercise all the District Magistrate's powers. "

6. My attention has been drawn to the notification issued by the U.P. Government on 1-08-1947, which invested the Additional District Magistrate in this case with all the powers of the District Magistrate under the said Code and under any other law for the time being in force. Undoubtedly had the statute not expressly laid down that the power is exercisable by 'the District Magistrate', that is to say, the chief Magistrate in the District, the State Government would have been competent under Section 10(2), Criminal P.C. to delegate the powers under the U.P. (Temporary) Control of Rent and Eviction Act 1947, or for the matter of any Act exercisable by a District Magistrate to Additional District Magistrates. But the position, as I see it, is that under the U.P. (Temporary) Control of Rent and Eviction Act 1947, the power has been conferred not on 'a' District Magistrate but on 'the' District Magistrate and there can only be, as far as I can see, one District Magistrate under the Criminal P.C. in a district. For this reason, this notification is of no effect and cannot be allowed to override the written text of the law. It may be that the argument which has prevailed with me is of a technical nature but it is not for this Court to supply the defects and lacunae in a legislative enactment. Mistakes of drafting cannot be overlooked by this Court.

7. Mr., Gour, who appears for the respondent, has invited my attention to the fact that there is no finding on the point whether the Additional District Magistrate in this particular case was authorized by the District Magistrate to perform any of his functions under the Act. The fact that the District Magistrate is subordinate to the Provincial Government and is bound to carry out the orders of the Provincial Government cannot, however, relieve him of the personal responsibility with which the Act has vested him. We are not concerned with political arguments or political subordination. What we have to see is what exactly the legal position of the District Magistrate is under the Act.

8. The contention put forward by Mr. Gour is that it may well be that in this case the Additional District Magistrate, the City Magistrate, or some other officer chosen by him, was authorized by the District Magistrate to exercise the powers vested in him under Section 3 of the Act. Certainly it was competent to the District Magistrate to delegate his authority to any authority he chooses. This, however, is a question of fact on which there can be no presumption one way or the other. This is a question on which it is necessary to frame an issue.

9. If the Additional District Magistrate was authorized by the District Magistrate obviously the suit was competent. The question, however, is one of fact and has not been properly gone into by the Courts below. I consider it, therefore, necessary to frame the following issue :

"Had the District Magistrate authorized the Additional District Magistrate or the City Magistrate before the institution of the suit to perform any or all the powers under Section 3 of the Act?"

10. Parties will be allowed to adduce fresh evidence. Three months' time from the date of the arrival of the record is given to the learned judge for transmitting his findings to this Court. The usual 10 days' time will be allowed for filing objections. After all this procedure has been gone through, the case will be listed for final disposal.

Order accordingly.