

ALLAHABAD HIGH COURT

Udhoo Dass

Vs.

Prem Prakash

Second Appeal No. 2033 of 1954, against order of Addl. Civil J. Kanpur
(M.C. Desai, C.J., V.G. Oak and R.S. Pathak, JJ.)

10.09.1954. 06.02.1963

JUDGMENT

Desai, C.J.

1. The following question has been referred to this Bench for its opinion :-

"Whether a contract of tenancy of an accommodation governed by the U.P. (Temporary) Control of Rent and Eviction Act entered into by a landlord with a person on payment of rent by latter, for the purpose of carrying on business in the accommodation, in violation of a general or special order issued by the District Magistrate concerned under Section 7 (2), is void under Section 10 read with Section 23 of the Contract Act".

Respondent No. 2 is the owner of a shop governed by the U.P. (Temporary) Control of Rent and Eviction Act, 1947, and had let it out to Sharma Provision Stores. On 1-2-52 respondent No. 1 who will be referred to as the respondent hereinafter, purchased the goodwill, goods and effects of Sharma Provision Stores and continued business in the shop under the style "Sharma Provision Stores". The appellant represented to the District Magistrate that the shop had fallen vacant and on 20-2-1952 obtained from him an order under Section 7 (2) of the Act (known popularly as "allotment order") calling upon the landlord to let it out to him. There upon the respondent instituted the suit giving rise to this appeal for an injunction, it was contested by the appellant and was decreed on the ground that the shop had not fallen vacant and the District Magistrate had no power to issue the order of allotment. An appeal from the decree was dismissed by a Civil Judge and the second appeal has been filed in this Court. The learned Judge before whom the second appeal came up for hearing referred it to a

larger Bench in view of the importance of a question raised in it.

2. Under Section 7 (1) every landlord and every tenant is required to inform the District Magistrate about an accommodation becoming, or having become, vacant. Under Section 7 (2) every District Magistrate is empowered to require by a general or special order a landlord to let, or not to let, to any person any accommodation which is, or has fallen, vacant or is about to fall vacant. A general order is an order directed to the public in respect of every accommodation falling or fallen vacant and a special order is an order addressed to a particular landlord in respect of a particular accommodation. A common general order is an order prohibiting all landlords from letting out any accommodation which is vacant without his permission; such an order is violated if any landlord lets out an accommodation without his permission. If no special order is issued, it is violated as soon as any accommodation is let out without permission. A special order is an order requiring a landlord to let out a particular accommodation to X or not to let it out to X. The former order is violated by the landlord's not letting it out to X; it is violated if he does not let it out to any one. If he lets it out to Y, he violates the general order, if any issued, but not the special order unless time is fixed for his letting it out to X and it has expired. The latter order prohibiting a landlord from letting it out to X is violated by his letting it out to X but not by his letting it out to Y. If he lets it out to X, the general order also is violated and if he lets it out to Y, only the general order is violated.

3. Under Rule 3 of the rules framed by the State Government in exercise of the power conferred by Section 17 of the Act a District Magistrate is required to make an "allotment order" within 30 days of the receipt of information sent to him by the landlord under Section 7 (1)(a) and to inform him of it. The State Government had no justification to call the order an "allotment order"; it is an order directing a landlord to let out an accommodation to a particular person. It confers no right whatsoever upon the person other than of requiring the landlord to let out the accommodation to him. To "let out" means to enter into a contract of tenancy (with a person) and it is only after he has done so that the person gets a tenant's rights. The order issued by the District Magistrate does not confer any tenancy rights upon him naturally he cannot become a tenant unless a contract of tenancy has been entered into between him and the landlord. Landlord-tenant relationship is governed by the provisions of the Transfer of Property Act and the Contract Act; under them an owner of an accommodation can let it out to any person on terms settled between them. The U.P. (Temporary Control of

Rent and Eviction Act simply takes away an owner's right to enter into a contract of tenancy with any person of his choice by requiring him to enter, or not to enter, into a contract of tenancy with a particular person. Other provisions of the Transfer of Property and Contract Acts remain in force. A District Magistrate has the power only of restricting an owner's choice of a tenant, he has no right whatsoever to dictate the terms of the contract of tenancy or even to make a contract of tenancy on his behalf. The preamble to the Act shows that the object behind the Act was to control the letting and not to prohibit it.

The freedom of the parties to fix rent is recognised By Section 5; see *Daulat Ram v. Triloki Nath*,¹ if the vacancy of an accommodation is not reported or a person occupies an accommodation in contravention of an order issued under Section 7 (2), the District Magistrate may under Section 7-A(1) require him to show cause why he should not be evicted from it. If he fails to show cause, the District Magistrate can direct him to vacate the accommodation and if he fails to vacate it, the District Magistrate can use force. This provision applies when En allotment order is passed before occupation of the accommodation by another person; it does not apply when an allotment order is passed after the landlord has let out the accommodation to another person. In *Ram Lal v. Shiv Mani Singh*,² it was held that letting out an accommodation before an allotment order is issued is not hit by Section 7-A and the person remains a tenant even though liable to be evicted on his failure to show cause and even though the landlord may be liable to prosecution under Section 8 for not complying with the order. Under Section 8 any person who contravenes any order made under the Act is liable to be convicted and punished. A landlord who violates a general or special order is, therefore, liable to be convicted and punished under Section 8. A person who occupies an accommodation without an allotment order in his favor or in contravention of an allotment order passed in favor of another person does not violate any provision of the Act or any order made under it and is not liable to be punished. A landlord is required by general order not to let out an accommodation without the District Magistrate's permission; Section 7(2) does not authorize a District Magistrate to prohibit a person from entering into a contract of tenancy with a landlord without the District Magistrate's permission. One who abets a contravention of any order made under the Act is deemed to have contravened the order, vide Section 11, so if a person knowing that a landlord has been ordered under Section 7 (2) to let out an accommodation to another person prevails upon him to let it out to himself, he may be guilty as an abettor. Similarly if he knowing that a general order has been issued requiring a landlord not to let out an accommodation without the District Magistrate's

permission and not having obtained the District Magistrate's, permission prevails upon the landlord to let out the accommodation to him, he may be guilty as an, abettor. Thus he can be guilty and he has abetted his guilt.

4. It is not known in the instant case whether any general order had been issued by the District Magistrate or not but this is immaterial. The question before us is of the effect of violation of any order issued by a District Magistrate. The effect does not depend upon the nature of the order.

5. Under Section 7 (2) a District Magistrate has the option not to pass a general or special order; the word used is "may". The provision is an empowering one and not a mandatory one. This means that this provision by itself does not prohibit a landlord from letting out an accommodation; it only empowers a District Magistrate to prohibit it and it is prohibited only if the District Magistrate has exercised the power.

6. Though the Act contains provisions referred to above punishing a person for letting out without permission or letting out in contravention of an order of allotment or refusing to let out in spite of an order of allotment and punishing abetment of the above acts and rendering a person liable to be evicted if he has occupied an accommodation in contravention of an allotment order or without vacancy of an accommodation having been reported, there is no provision whatsoever rendering a contract of tenancy entered into by a landlord and another person void or even illegal. If a landlord lets out an accommodation to Y when he was ordered by the District Magistrate to let it out to X or not to let it out at all, the Act makes him liable to prosecution and punishment but it does not invalidate the contract of tenancy. A person occupying an accommodation in contravention of an allotment order is liable to be evicted under Section 7-A but the contract of tenancy made by him, if any, with the landlord is not rendered invalid by anything contained in the section itself. Whether a contract of tenancy is rendered invalid or void or not depends solely upon the provisions of the transfer of Property Act and the Contract Act. In the present case we are not concerned with the provisions of the Transfer of Property Act because none of them is invoked as rendering the contract of tenancy between the respondent and the landlord void.

7. Under the Contract Act an agreement is a contract if made by the free consent of parties competent to contract for a lawful consideration and with a lawful object and

not expressly declared by any provision of the contract Act to be void. A lease involves two agreements; one by the landlord agreeing to let his accommodation to be used by the tenant in consideration of the latter's paying him money, called rent, and the other by the tenant agreeing to pay to the landlord money, called rent, in consideration of the latter's allowing him to use his accommodation. Each party agrees to do a certain act and each agreement is a consideration for the other. In one case the consideration is payment of rent and in the other case, allowing the accommodation to be used and neither of the two considerations is unlawful. The object of one agreement is to acquire money and the object of the other agreement is to carry on business and neither of the two objects is unlawful. Section 23 of the Contract Act defines what considerations and objects are lawful and what not. Every consideration or object is lawful unless it is forbidden by law or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent or involves or implies injury to the person or property of another or is in the Court's view opposed to public policy. Neither of the considerations is forbidden by law and neither of the objects is forbidden by law. The law does not forbid payment of money or giving use of an accommodation or acquiring money or carrying on business. It also cannot be said that either the consideration or the object in the case of either of the two-agreements is of such a nature that it would defeat the provisions of any law. The U.P. (Temporary) Control of Rent and Eviction Act contains no provision which would be defeated by permitting either of the two considerations or either of the two objects. It must be noted that there must be something in the nature of the consideration or the object which would defeat the provisions of any law. It is not alleged that either of the considerations or either of the objects is fraudulent or involves or implies injury to the person or property of another or is opposed to public policy. Therefore, both the agreements in the instant case would be contracts unless they are declared by any provision in the Contract Act to be void. Sections 24, 25, 26, 27, 28, 29 and 30 are only provisions which declare agreements to be void and none of those provisions applies in the instant case. I must, therefore, hold that the agreements in the contract of tenancy referred to in the question are contracts.

8. It was argued by Sri Kirty that the consideration for the tenant's agreement is the use of the accommodation and that it is forbidden by law. The argument confuses consideration with the contract itself. Allowing an accommodation to be used is not forbidden by any law; it is entering into a contract of tenancy in contravention of an order made under Section 7 (2) by a District Magistrate that may be said to be a

forbidden act. But it is an act forbidden by a District Magistrate and not by law within the meaning of Section 23. An order made under Section 7 (2) by a District Magistrate may have the force of law but is not law. The U.K. (Temporary) Control of Rent and Eviction Act does not contain any provision prohibiting the letting out of an accommodation by a landlord; it contains no such provision as "do not let out in contravention of an order made under Section 7(2)" or "do not let out in contravention of any provision contained hereunder or any order made hereunder", in *ARLP Firm v. U. Po Kyaing*,³ it was stated that "law" in the phrase "forbidden by law" means juridical statute law. An agreement does not cease to be a contract merely because it is forbidden by law; it ceases to be a contract only if its consideration or object is forbidden by law or it itself is declared to be void under Sections 24 etc., of the Contract Act. Sections 24 etc., have not declared an agreement of tenancy to be void on the ground that it is made in contravention of an order under Section 7 (2).

9. Sri Kirty referred us to Chitty on Contracts, 1965 edition, page 520 in which it is said that the fact that a penalty is imposed for entering into 3 contract shows that it is invalid. We are governed by the provisions in the Contract Act which are exhaustive and the question also refers us only to the provisions of the Contract Act. The penalty that is imposed by Section 8 of the U.P. (Temporary) Control of Rent and Eviction Act is on letting out an accommodation and not on paying money or acquiring money or allowing an accommodation to be used or carrying on business in an accommodation. A sale made in contravention of an injunction is not void, vide *The Delhi⁵ and London Bank Ltd., v. Ram Narain*,⁴ *Manohar Das v. Ram Autar Pande*, and *Kamakhya Dun Ram v. Shyam Lal*,⁶ Similarly a contract of tenancy entered into in contravention of an order made under Section 7 (2) is not void.

10. In *Shyam Sunder Lal v. Lakshmi Narain Mathur*,⁷ Nigam and Misra, JJ., held that a contract of letting out an accommodation in contravention of an order made under Section 7 (2) defeats provisions of law and also is against public policy and is, therefore, void. The learned Judges observed that the U.P. (Temporary) Control of Rent and Eviction Act forbids a landlord from entering into an agreement of letting out an accommodation except in accordance with an order issued under Section 7 (2). But this is not correct because there is no such provision, it is also wrong that allowing a contract in contravention of an order issued under Section 7 (2) win defeat "the very purpose of U.P. Act III of 1947". Section 23 of the Contract Act requires the "provisions" of any law to be defeated and not the "purpose" of any law. Secondly, in

view of the provisions in Section 7-A of the Act it cannot be said that the provisions of the Act would be defeated. Even if the contract entered into by a landlord in contravention of an order made under Section 7 (2) remains valid the District Magistrate is competent under Section 7-A to evict a person occupying an accommodation in contravention of it. The learned Judges have failed to notice the distinction between law and an order made under Section 7 (2) and the requirement that the consideration or the object must be of such a nature as to defeat the provisions of any law. I must say with great respect to the learned Judges that the law laid down by them is not correct.

11. In 1961 All LJ 831 : AIR 1962 Allahabad 147 one of the questions referred to the Full Bench was whether there could be a valid and enforceable agreement of letting out an accommodation before an order in respect of it is passed under Section 7 (2) but this question was not answered by the Full Bench. The case was referred to a Full Bench by Beg and Srivastava, JJ. and they observed that the U.P. (Temporary) Control of Rent and Eviction Act does not contain any provision forbidding a landlord to let out an accommodation to any person, that a District Magistrate is not bound to make a general or special order referred to in Section 7(2) and that a letting before the issue of an order under Section 7 (2) is not hit by Section 23 of the Contract Act. I respectfully agree with the view taken by our learned brothers.

12. I answer the question unhesitatingly in the negative. The Reference may be returned to the Bench concerned with this answer.

Oak, J.

13. I agree that the question referred to the Full Bench should be answered in the negative. The question is :

"Whether a contract of tenancy of an accommodation governed by the U.P. (Temporary) control of Rent and Eviction Act entered into by a Landlord with a person on payment of rent by the latter, for the purpose of carrying on business in the accommodation in violation of a general or special order issued by the District Magistrate concerned under Section 7 (2), is void under Section 10 read with Section 23 of the Contract Act".

14. The facts of the case are that, the shop in dispute is owned by Smt. Rajeshwari Devi, respondent No, 2. Prem Prakash Kapoor, respondent No. 1, appears to have been admitted by the landlady as a tenant of the shop on or about 1-2-1952. An allotment order was passed in favor of the appellant on 20-2-1952. It means that respondent No. 1 had been in occupation of the shop as a tenant before the appellant secured an allotment order. It has not been shown that the District Magistrate of Kanpur had passed before 1-2-1952 a general order prohibiting landlords from letting out accommodation without his permission. It no general or special order of the District Magistrate was in existence on. 1-2-1952, the question of disobedience of any such order on 1-2-1952, does not arise. In the circumstances of the present case the question formulated by the Division Bench does not arise. However, since the point is of general importance, I proceed to give my answer to the question.

15. The question has to be discussed in the light of the provisions of the U.P. (Temporary) Control of Rent and Eviction Act and the Indian Contract Act. It will be convenient to refer to the two Acts as the Rent Control Act, and the Contract Act respectively. According to the Contract Act, certain agreements are void. According to Section 10 of the Contract Act, an agreement constitutes a contract, unless the agreement is void. Validity of the tenancy under consideration has been questioned. I, therefore, take it trial, the expression 'contract of tenancy' in the question formulated by the Division Bench may be understood in the sense of "agreement of tenancy".

16. Section 7 of the Rent Control Act deals with control on letting. According to Sub-Section (1) of Section 7, landlords and tenants have to report vacancies to the District Magistrate. Sub-Section (2) of Section 7 states :-

"The District Magistrate may by general or special order require a landlord to let or not to let to any person any accommodation which is or has fallen vacant or is about to fall vacant".

Sub-Section (3) deals with sub-letting. In the present case the question of sub-letting does not arise. The Rent Control Act does not contain any specific provision to the effect that, a landlord must not let out accommodation without previous permission from the District Magistrate.

17. Section 10 of the Contract Act describes what agreements are contracts. Section 10 states :-

"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void."

18. According to Section 11 of the Contract Act, every person, who is not a minor or lunatic or otherwise disqualified, is competent to contract. For purposes of the present reference, we may assume that the agreement of tenancy was by the free consent of parties, who were competent to contract.

19. Sections 24 to 30 of the Contract Act deal with void agreements. According to Section 24, agreements are void, if considerations and objects are partly unlawful. Section 25 deals with an agreement without consideration. Section 25 relates to an "agreement in restraint of marriage. Section 27 deals with an agreement in restraint of trade. Section 28 governs agreements in restraint of legal proceedings. Under Section 29, agreements are void for uncertainty. According to Section 30, agreements by way of wager are void. Sections 25 to 30 of the Contract Act have no application in the present case.

20. Section 23 of the Contract Act describes what considerations and objects are lawful and which are not lawful. Section 23 of the Contract Act states :

"The consideration or object of an agreement is lawful, unless - it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void".

21. Section 23 has got five clauses. Clause (iii) deals with fraudulent transactions. No question of fraud arises in the present case. The transaction under consideration does not involve injury to the person or property of another person. So clause (iv) also does not apply. The main question for consideration in the present case is whether the agreement of tenancy is hit by clauses (i), (ii) and (v) of Section 23 Contract Act.

22. In "*Ramandyudu v. Seetharamayya*,⁸ the facts were these. Under clause 27 of a certain notification issued under the Madras Abkari Act, partnership in Abkari business was prohibited unless previous permission of the Collector had been obtained. A promissory note was executed for advances to be made by the plaintiff for a partnership. The plaintiff was a partner in the firm. Defendant No. 1 obtained a license without obtaining the Collector's permission to work in partnership, it was held by a Full Bench of Madras High Court that, the object of the partnership was to carry on business in contravention of clause 27 of the Government notification. The plaintiff's suit on the promissory note was, therefore, dismissed.

23. In *Moti Chand v. Ikram Ullah Khan*,⁹ it was held that, the policy of the Agra Tenancy Act is to secure and preserve to a proprietor whose proprietary rights in a Mahal or in any portion of it is transferred otherwise than by gift or exchange between co-sharers in the Mahal, a right of occupancy in his Sir Lands and in lands continuously cultivated by him for 12 years at the date of the transfer, irrespective of whether he wishes it to be secured and preserved to him or not and notwithstanding any agreement to the contrary between him and the transferee. This policy is not to be defeated by any ingenious devices, arrangements or agreement of relinquishment by a vendor of his Sir lands, or for a reduction of purchase money on the vendor's failing or refusing to relinquish such lands. All such devices, arrangements and agreements in contravention of the policy are illegal and void.

24. In *Makund Lal v. Mt. Sunita*,¹⁰ it was held that, an agreement for possessory mortgage or occupancy holdings was void under Section 23 Contract Act.

25. In *Sundrabai v. Manohar*,¹¹ a police officer purchased land in his mother's name. Under Section 33 of the Police Act, police officers were forbidden from purchasing land. It was held that the transaction was void.

26. In some of these cases the agreements were in contravention of express provisions of certain statutes. None, of those cases relates to an agreement, which violated an administrative order issued under some statute.

27. AIR 1961 Allahabad 347 is a direct authority on the point under consideration. In that case it was held by a Division Bench of this Court that, an agreement for letting of accommodation in contravention of an order passed under Section 7 (2) of U.P. Act

No. III of 1947, if permitted, would defeat the provisions and, in fact, the very purpose of the Act. Further, such contracts are opposed to public policy which is to control letting in view of the scarcity of accommodation and also to control rents that may be demanded in respect of buildings constructed before January 1951. Such an agreement is void.

28. We may assume that an agreement contravening an order passed by the District Magistrate under Section 7 (2) of the Rent Control Act defeats the purpose of the Act. But it does not follow that, the agreement also defeats the provisions of the Act. It is possible to defeat the purpose of the Act without infringing any provision of the Act. A man is entitled to arrange his affairs in such manner as to derive benefit for himself without violating any provision of law. I do not see how the act of letting out a shop is opposed to public policy.

29. In ILR 9 All 497 it was held that, the effect of a temporary injunction granted under Section 492 C.P.C. is not to make a subsequent mortgage of the property in question illegal and void under Section 23 of the Contract Act. The same view was taken in ILR 25 All 431. In AIR 1929 Oudh 235 it was held that, sale held in execution of a decree in spite of an injunction is not void on that ground.

30. It appears that it was the settled view of Allahabad High Court and Oudh Chief Court that, disobedience of an injunction issued by a Court does not attract Section 23 of the Contract Act. There is no good reason why an administrative order authorized by a statute should be placed on a higher footing than an injunction issued by the Civil Court.

31. In AIR 1939 Rangoon 305 (FB) it was held by a Full Bench of Rangoon High Court that, the word 'law' as used in clause (i) of Section 23 of the Contract Act means juridical law, that is, law enacted by any competent Legislature; and the word 'law' as used in clause (ii) means personal or customary law.

32. According to clause (3) of Article 13 of the constitution 'law' includes an order having force of law. But that definition is for purposes of Article 13 only. Indian Contract Act is Act No. IX of 1872. That was long before the Constitution of India was drafted. The definition of 'law' contained in Article 13 of the Constitution can have no application for the interpretation of Section 23 of the Contract Act.

33. I think, the term 'law' in clauses (i) and (ii) of Section 23, Contract Act should be understood in a somewhat limited sense. The term 'law' obviously covers statute law it is perhaps possible to include statutory rules also. But I do not think that Administrative orders issued under a statute are covered by the term 'law' used in clauses (i) and (ii) of Section 237 Contract Act. I have already shown that the agreement of tenancy under consideration does not infringe any specific provision of the Rent Control Act.

34. The fifth clause of Section 23, Contract Act deals with cases where consideration or object of an agreement is immoral or opposed to public policy. No question of immorality arises in the present case. Nor is the agreement of tenancy opposed to public policy. Control of letting is not an end in itself. Such control is meant for fair distribution of houses and shops among residents of the locality. If a landlord lets out his shop to an honest and law abiding resident of the locality, it cannot be said that the transaction is opposed to public policy. The agreement of tenancy is not hit by any of the five clauses of Section 23, Contract Act.

35. The object of the agreement was to secure accommodation for the tenant and to enable the landlord to get rent. The object of the agreement is lawful, the consideration from the side of the landlord is facility given to the tenant to occupy the shop. The consideration from the side of the tenant is rent payable to the landlord. Both the considerations are lawful. No part of the consideration or object of the agreement is unlawful. So Section 24 of the Contract Act has also no application.

36. Now we return to Section 10 of the Contract Act, we have seen that the consideration and the object of the agreement is lawful. So the agreement of tenancy amounts to a contract under Section 10 of the Contract Act. In other words, the agreement of tenancy is valid, it is not void under Section 10 read with Section 23 of the Contract Act.

37. In my opinion, the answer to the question referred to the Full Bench is in the negative.

Pathak, J.

38. I have perused the judgments of my Lord the Chief Justice and my brother Oak and cannot usefully add to what they have said. I agree that the question referred must be answered in the negative.

Reference answered in the negative.

Cases Referred.

1. 1961 All LJ 831: (AIR 1962 All 147 (FB))
2. 1962 All LJ 260
3. AIR 1939 Rang 305 (FB)
4. ILR 9 All 497
5. ILR 25 All 431
6. AIR 1929 Oudh 235
7. 1961 All LJ 333: AIR 1961 All 347
8. AIR 1935 Mad 440 (FB)
9. AIR 1916 PC 59
10. AIR 1931 All 461
11. AIR 1933 Bom 262