

ALLAHABAD HIGH COURT

R.K. Khandelwal

Vs.

Moti Lal Chawla

Special Appeal No. 13 of 1963, (arising out of writ Petn. No. 190 of 1961), against
judgment of Dwivedi, J
(M.C. Desai, C.J. and R.N. Sharma, J.)

04.12.1962. 07.10.1963

JUDGMENT

Desai, C.J.

1. This is an appeal from a judgment of our brother Dwivedi quashing by certiorari an order passed by a commissioner under Section 7-A(4) of the U.P. (Temporary) Control of Rent and Eviction Act on 6-1-1961 and an order passed by a District Magistrate on 25-1-1961 in compliance with it. The facts are as follows. The accommodation in dispute was allotted by the District Magistrate on 10-12-1955 to one B.K. Singh, who was an inspector in his own office. The Inspector was subsequently transferred to Sitapur and he managed to get the accommodation allotted on 21-5-1956 jointly in his and respondent No. 1 Moti Lal Chawla's names. There was nothing in common. Between the Inspector and Moti Lal Chawla and they did not form any partnership or any other association of persons which could be recognised as one juristic entity. It is clear that Sub Inspector misusing his position as such got the accommodation allotted jointly in his and Moti Lal Chawla's names. He did not need the accommodation after his transfer to Sitapur but wanted to retain some control, the respondent Moti Lal Chawla also did not need any accommodation because admittedly he lives in another mohalla Khyan Ganj. It is regrettable that the District Magistrate passed such a improper allotment order and it shows how provisions of the Rent Control Act are misused by District Magistrates. On 18-7-1953 the appellant applied to the District Magistrate for allotment of the accommodation in His time alleging that it was vacant and that neither the inspector nor Moti Lal Chawla was living in it. While this application was pending Moti Lal Chawla and respondent No. 2 Vishnu Naram Rastogi entered into some sort of a partnership on 5-3-1958 for running a chemist's

Business. On 11-7-1958 the District Magistrate allotted the accommodation to the appellant and on 24-10-1958 the two respondents objected to the allotment order on the ground that they had entered into a partnership to run a chemist's business in the accommodation. The Act has no provision for such an objection and the District Magistrate dismisses it. Then the District Magistrate issued a notice under Section 7A(1) of the Act to the respondents on 26-11-1958 calling upon them to vacate the accommodation. Moti Lal Chawla filed an objection against the notice repeating what he had said in his objection dated 24-10-1958. The District Magistrate on 7-4-1960 after hearing the objection not only withdrew the notice issued by him under Section 7A(1) but also cancelled the allotment order dated 11-10-1958. He presumably acted under the proviso to Section 7A(1). The appellant applied to the Commissioner to revise the order under Section 7A(4) and the Commissioner on 6-1-1961 set it aside on the view that the partnership alleged by the respondents was a bogus partnership set up as a cloak for getting possession over the accommodation and directed the District Magistrate to proceed under Section 7A to get the accommodation vacated by the respondents. This is one of the orders that has been quashed by our learned brother. The respondents applied to the State Government to revise it out in vain. In compliance with it the District Magistrate on 25-1-1961 passed the other order that has been quashed, vacating his earlier order and on 17-8-1961 issued a notice under Section 7A(2) calling upon the respondents to vacate the accommodation by the next day. Thereupon the respondents applied for certiorari and this Court stayed forcible eviction of the respondents during the hearing of the petition. After hearing it our learned brother allowed it on the ground that the Commissioner had no jurisdiction to pass the impugned order of 6-1-1961 because it was held in *Ram Sarup v. Shikhar Chand*,¹ that the words "has wrongly refused to act" in Section 7A(4) are redundant and meaningless and that a Commissioner has jurisdiction to revise an order passed by a District Magistrate only if the District Magistrate had acted illegally or with material irregularity and the District Magistrate here had not acted illegally or with material irregularity when passing the order of 7-4-1960. He also felt doubtful about the correctness of the Commissioner's decision that the partnership set up by the respondents was a sham (one).

2. Under Section 7(2) a District Magistrate may by general or special order require a landlord to let or not to let any person any accommodation which, is or has fallen vacant or is about to fall vacant and no tenant can sublet any portion of, an accommodation in his tenancy except with the permission in writing of the landlord

and of the District Magistrate previously obtained. Sub-Section (1) of Section 7A is to the effect that where an order to let out an accommodation has been duly passed under Section 7(2) and the District Magistrate has reason to believe that any person has in contravention or it occupied the accommodation he may call upon him a show cause within a certain time why he should not be evicted from it provided that he should not pass such an order if he is satisfied that there has been undue delay or that it is otherwise inexpedient to do so. sub-Section (1) is to the effect that if the person fails to appear in reply to the notice issued under Sub-Section (1) or appears but fails to satisfy the District Magistrate that the order under Section 7(2) was not duly passed and that he is, entitled to remain in occupation, the District Magistrate may direct him to vacate within a certain time, if the person does not comply with the order the District Magistrate may evict him forcibly. Sub-Section (4) provides, that no appeal shall lie from an order passed by a District Magistrate under this section but "the Commissioner may revise the said order if he is satisfied that the District Magistrate has acted illegally or with material irregularity or has wrongly refused to act and may make such order as he thinks fit". Under this provision only an order passed by a District Magistrate can be revised by the Commissioner that he acted illegally or that he acted with; material irregularity or that he wrongly refused to act are only the grounds justifying the revision. The orders, contemplated by Section 7A, and which can be revised under this provision, are, (1) calling upon a person in occupation, to show cause why he should not be evicted (an order referred to in Sub-Section (1)), (2) an order directing him to vacate the premises after hearing him or on his failure to appear (an order referred to in Sub-Section (2)) and (3) an order discharging the notice or refusing to call upon the person to vacate the premises under Sub-Section (2) (an implied, order under Sub-Section (2)). The last is an order refusing to act. He may wrongly refuse to pass an order contemplated by Sub-Section (2) and if he writes out an order refusing to pass it, it can be said to be an order refusing to act. One can also say that if on being approached a District Magistrate refuses to pass an order contemplated by Sub-Section (1), it is an order refusing to act. If an application is made to him he has to pass an order and if he refuses to issue a notice or to direct the person to vacate the premises in writing, it is an order refusing to set with in the meaning of Sub-Section (4).

3. 1960 All LJ 810 : (AIR 1361 Allahabad 221) (FB) (Supra) was a case dealing with a District Magistrate a refusal to grant permission to a landlord to file a suit for ejectment of his tenant. The order was set aside by the Commissioner on revision and

the validity of his order was questioned before Mootham, C.J. and Beg and Dhavan, JJ. Section 3(1) forbids a suit being filed without the permission of the District Magistrate and does not deal with any application or order to be passed thereon by the District Magistrate. Sub-Section (2) is to the effect that a party aggrieved "by the order of the District Magistrate granting or refusing to grant the permission may apply to the Commissioner to revise the order. Sub-Section (3) dealing with the Commissioner's powers as it then stood, laid down that if he was satisfied that the District Magistrate "had acted illegally or with material irregularity or has wrongfully refused to act" he could confirm or set aside the District Magistrate's order, Mootham, C.J. Hold that the District Magistrate in the case had acted by making a specific order refusing permission to the landlord and had difficulty in construing the words "wrongfully refused to act" as meaning or including the making of an order refusing to grant permission. According to him "refused to act" means that the District Magistrate refused to take any action on an application for permission. His conclusion that the words have no meaning in law was restricted to the words as used in Section 3(3), and the same cannot be said about the words used in a different context in Section 7-A(4). One of the reasons given by the learned Chief Justice for the interpretation was that Section 3(2) itself provided for an application for revision from an order granting or refusing to grant permission; therefore, refusing to act meant something different from refusing to grant permission. That argument is not available in respect of Section 7-A because there is no right of applying for revision expressly granted against an order refusing to act upon the person in occupation to show cause or to vacate, and Sub-Section (4) could contemplate unjustified inaction on the part of a District Magistrate. Moreover in Section 3(2) the words "has wrongfully refused to act" had to be read with reference to an order granting or refusing to grant the permission whereas in Section 7-A(4) they are to be read with "any order passed by the District Magistrate" and while the former set of words may not be said to include refusal to act, the latter may. Sub-Section (3) of Section 7-A provides for acting by a District Magistrate in the event of the accommodation not being vacated within the time allowed; it provides for his using force to evict, or causing to be evicted, the person in occupation and for putting the person, entitled under Section 7(2), in occupation. It seems to us that not only refusal to act in this manner but also refusal to pass either of the orders mentioned in Sub-Sections (1) and (2) is refusal to act within the meaning of Sub-Section (4) and the Decision in Ram Sarup's case does not govern the instant case. *Chaube Jagadish Prasad v. Ganga Prasad*,² was unnecessarily referred to at the bar. It does not at all deal with the question under consideration. Revisional power under

Section 115, C.P.C., is quite different from the revisional power of a Commissioner under Section 7-A(4); the words "has wrongly refused to act" do not occur in Section 115, C.P.C.

4. It was argued on behalf of the respondents that there was no vacancy when the District Magistrate allotted the accommodation to the appellant on 11-10-1958. They also contended, on the authority of *Ram Lal v. Shiv Mani Singh*,³ to which one of us was a party that if a person had already entered into occupation of an accommodation under a contract of lease with the land-lord before an order under Section 7 (2) is passed he cannot be said to be in occupation in contravention of the order passed under Section 7(2) and cannot be called upon to show cause under Section 7-A(1) why he should not be evicted from the accommodation. We do not agree that the accommodation was not vacant on 11-10-1958; merely because an allotment order had been passed on 21-5-1956. It could not be said to be not vacant. Even if an order under Section 7(2) is passed an accommodation can remain vacant if the person in whose favor it is passed does not accept lease from the landlord. An order under Section 7(2) simply requires a landlord to let out the accommodation to the person named in the order; it does not by its own force constitute him a tenant. So in spite of such an order no lease may come into existence if the person named in the order does not accept a lease. Here the persons named in the order were B.K. Singh and Moti Lal Chawla and they did not jointly take lease of the accommodation from the landlord. Moreover it was alleged by the appellant in his application that they did not live in the accommodation and so it was vacant as against them. The very fact that Moti Lal Chawla and respondent No. 2 entered into partnership of 5-8-1958 for occupying the accommodation shows that it was not occupied by B.K. Singh and Moti Lal Chawla and that it was vacant to be occupied by the partnership. The partnership could not occupy the accommodation unless it was vacant. It could not occupy it under the order passed on 21-3-1955 in the names of B.K. Singh and Moti Lal Chawla because it was a legal entity distinct from that of H.J. Singh Moti Lal Chawla. 1962 All LJ 260 was irrelevant in this case because it has not been asserted that the alleged partnership entered into the occupation of the accommodation under a contract of lease with the landlord prior to 11-10-1958. The mere formation of a partnership did not mean occupation under a contract of lease with the landlord.

5. The District Magistrate had no jurisdiction whatsoever to allot the accommodation jointly to two persons who did not constitute a single legal personality. He could allot

the accommodation to a partnership or to a company or to any other association of persons, but had no jurisdiction to compel two persons to share an accommodation. B.K. Singh and Moti Lal Chawla did not constitute one person under the law and, therefore, the accommodation could not have been allotted to them. The allotment order in their favor was null and void.

6. Sri Dhaon contended that an application under Section 7-A(1) can be made by an allottee (e.g. a person in whose favor an allotment order is passed) only in the person in occupation occupied the accommodation in contravention of the allotment order, i.e. occupied it after the allotment order. It is true that an obvious instance of occupation in contravention of an allotment order is occupation, after an allotment order is passed, by a person other than the allottee, but we are not satisfied that it is the only instance of occupation in contravention of an allotment order. If a person occupies an accommodation before an allotment order is passed and continues to be in occupation after it is passed he can be said to occupy it in contravention of it if it is not passed in his favor. Continuing in occupation is occupying and occupation may become an occupation in contravention of an allotment order after it has commenced. If occupation commenced earlier is inconsistent with an allotment order under which another person has been given a right to occupy it, it is occupation in contravention. Any other interpretation would render the beneficial provision of Section 7A(1) unavailable in many cases. A person cannot thwart an allottee by occupying an accommodation before an allotment order is passed. If Section 7-A does not give him a remedy, there is no other provision which will, not even Section 8. Remedy by a regular suit for ejectment of the occupant even if available is in practice no remedy. In *Chhotey Lal v. District Magistrate Moradabad*,⁴ it was held that continuing occupation is occupying in contravention of an allotment order. This decision was approved in 1962 All LJ 260 at p. 262.

7. Another contention advanced by Sri Dhaon was that an application under Sub-Section (4) of Section 7-A can be made only by the person who has been ordered to be evicted under Sub-Section (2). There is nothing in the language of Sub-Section 7-A to support the contention. The right of revision is granted not to a particular party, but against a particular order, namely an order passed under Section 7-A. No party or person has been denied the right to apply under Sub-Section (4) and, therefore, it cannot be said that an allottee has no right to apply under it. The words "any order" used in Sub-Section (4) are wide enough to include any of the orders that can be

passed under Sub-Section (1) or Sub-Section (2) of Section 7-A. In the alternative Sri Dhavan contended that even if an allottee can file an application under Sub-Section (4), the appellant ceased to be an allottee on account of the allotment order in his favour being cancelled by the District Magistrate and was not an allottee on the date on which he applied under Sub-Section (4). We cannot accept this contention also, Section 7-A has been enacted in the interest of an allottee; the object is to enable to be put in possession in implementation of an allotment order after evicting a person in occupation without any allotment order. The proceeding starts with an application under Sub-Section (1) by an allottee and ends with an order passed by the Commissioner under Sub-Section (4). It is enough if at the time of making an application under Sub-Section (1) the applicant is an allottee; if he is an allottee he has a right to go through the proceeding right up to the revision stage mentioned in Sub-Section (4). In a proceeding under Section 7-A the allotment order passed in his favour cannot be attacked and cannot be set aside. The District Magistrate has only to decide whether the person in occupation should be called upon to vacate and whether he should be evicted or not; he is not called upon to decide whether the allotment order was valid or correct or not and he has no jurisdiction to cancel it. Even if he finds that an allotment order was invalid it is enough for him to refrain from passing an order under Sub-Section (2) calling upon the person in occupation to vacate within a certain time and from using force to evict him in the event of his failing to comply with his order; he has not to go further and cancel the allotment order. Therefore, the cancellation of the allotment order in the instant case by the District Magistrate was without jurisdiction and could be attacked collaterally before the Commissioner in the application under Sub-Section (4). The appellant could claim in his application that notwithstanding the null and void order cancelling the allotment order he remained an allottee entitled to the benefit of the provisions of Section 7-A. If the District Magistrate had simply refrained from calling upon respondents 1 and 2 from vacating the accommodation under Sub-Section (2), the appellant would undoubtedly have been entitled to apply to the Commissioner under Sub-Section (4) and the mere fact that the District Magistrate added an order cancelling the allotment order in his favour cannot deprive him of the right. It is not given to the District Magistrate to deprive a person in this manner of the statutory right to apply in revision. It is true that no revision lies to the Commissioner against an allotment order, but it cannot be said that no revision lies when an allotment order is cancelled without any jurisdiction in a proceeding under Section 7-A. A Commissioner may have no jurisdiction to set aside an allotment order but he has jurisdiction, when acting under Sub-Section (4), to

recognize an allotment order and to implement it by ordering the allottee to be put into possession after eviction of the person in occupation, it is open to him to ignore cancellation of the allotment order passed by the District Magistrate without jurisdiction; his ignoring it does not amount to exercising jurisdiction not conferred upon him against an order under Section 7(2). Actually the Act does not contain any provision for cancellation of an allotment order and, therefore, no provision for revision of such an order.

8. Whether the alleged partnership was a real partnership or a fictitious partnership was essentially a question of fact. The Commissioner found that it was a fictitious partnership and his finding being of fact could not be set aside by our learned brother in a proceeding for certiorari. The finding was within the jurisdiction of the Commissioner and being one of fact could not be said to be manifestly illegal. The manner in which the partnership was set up and the circumstances in which the accommodation was sought to be usurped by B.K. Singh and Moti Lal Chawla hardly left any room for doubt that it was a fictitious partnership. Further even if the partnership had been formed it acquired no right whatsoever to occupy the accommodation which was not allotted to it. Only B.K. Singh and Moti Lal Chawla jointly had a right to occupy it and neither Moti Lal Chawla exclusively nor he in partnership with respondent No. 2.

9. The order passed by the Commissioner, was not without jurisdiction and did not suffer from any manifest error of law and could not be quashed by certiorari. The other order passed by the District Magistrate did not suffer from any infirmity and was a consequential order to that passed by the Commissioner; therefore it also could not be quashed by certiorari. Both were just orders, which should not have been set aside by certiorari.

10. We allow this appeal, set aside the order passed by Dwivedi, J. and dismiss the respondent's petition for certiorari with costs throughout.

Appeal allowed.

Cases Referred.

1. 1960 All LJ 810: (AIR 1961 All 221) (FB)

2. AIR 1959 SC 492
3. 1962 All LJ 260
4. AIR 1952 All 913