**ALLAHABAD HIGH COURT**

Niren Kumar

Vs.

Dist. Judge

Writ Petn. No.4607 of 1973

(N.D. Ojha, J.)

10.10.1976

**ORDER**

**N.D. Ojha, J.**

1. Respondent No. 4 Jamil Ahmad is the landlord of an accommodation of which respondents 5 and 6 were the tenants. Respondent No. 4 filed a suit for ejectment of respondents 5 and 6. The suit was decreed. Before, however, even an application for execution of the decree was made by respondent No. 4 an application was made by respondent No. 5 before the Rent Control and Eviction Officer intimating him that he was going to vacate the accommodation aforesaid. It appears that another application was made by the petitioner for allotment of the said accommodation. An order of allotment was passed by the Rent Control and Eviction Officer in favour of the petitioner on December 21, 1971. Coming to know of the order of allotment respondent No. 4 made an application before the Rent Control and Eviction Officer on January 4, 1972, for setting aside that order. As is apparent from the order of the Rent Control and Eviction Officer dated August 25, 1972, a copy of which has been filed as Annexure IV to the writ petition, the said application had been made on the ground that the accommodation in question was neither vacant nor was likely to fall vacant and that the petitioner and respondents 5 and 6 were in collusion and by practicing fraud obtained the order of allotment referred to above. This application was contested by the petitioner and was dismissed by the Rent Control and Eviction Officer by the aforesaid order dated August 25, 1972. Against that order respondent No. 4 filed an appeal before the District Judge under Section 18 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The appeal was allowed on July 19, 1973, on the finding that the accommodation in question was neither vacant nor was likely to fall

vacant on the date when the order of allotment was passed in favor of the petitioner and consequently the said order was without jurisdiction. It is this order of the District Judge which is sought to be quashed in the present writ petition.

2. Three submissions were made by counsel for the petitioner- (1) that the order of allotment having been passed on December 21, 1971, i.e., before the coming into force of the U. P. Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972, no application for review was maintainable inasmuch as under the old Act, viz., U. P. (Temporary) Control of Rent and Eviction Act, 1947 (U. P. Act III of 1947) there was no provision for filing an application for review against an order of allotment. As such the application which had been made by respondent No. 4 on January 4, 1972, could not have been treated to be an 'application or proceeding' within the meaning of Section 43 (2) (b) of the new Act and could not be decided in accordance with the procedure laid down in Section 43 (2) (b); (2) even the appeal which was filed before the District Judge under Section 18 of the new Act was not maintainable; and (3) that the finding of the District Judge that the accommodation in question was neither vacant nor was likely to fall vacant was erroneous.
3. I will deal with these submissions seriatim.

4. So far as the first submission is concerned it is true that there was no specific provision entitling the Rent Control and Eviction Officer exercising the delegated powers of the District Magistrate to review an order passed by him under Section 7 of the Act. Even so the Rent Control and Eviction Officer was held to be entitled to recall or review an order passed under Section 7 in certain circumstances. Considering the relevant law on the point a Division Bench of this court in *Suraj Narain v. District Magistrate* [1] took the view that no exception can be taken to the general proposition that the power in an administrative officer to pass an order includes the power to reconsider or cancel it and that in exercising this power the officer concerned should use his own free and independent judgment and should not act at the bidding of some one else. It was also decided in the said case that there can be no doubt that ordinarily an order of allotment can be modified or cancelled only if in pursuance of it the allottee has not taken possession. There, however, appears to be no warrant for the assumption that fraud or misrepresentation of the allottee

are the only grounds on which the order of allotment can be cancelled or modified after it has been acted upon. Mistake, ignorance of the real facts, collusion, and inadvertence appear to stand on the same footing as fraud or misrepresentation of facts and can be equally good grounds justifying the modification or the cancellation of an order. If fraud or misrepresentation of the allottee himself is a good ground for the reconsideration of the matter, there appears to be no reason why the allottee should be allowed to take advantage of the fraud or misrepresentation of someone else and to maintain the order of allotment in his favor if it was passed on the basis of that fraud or misrepresentation. If the Officer who passed the order finds that the order has been passed by mistake or under misapprehension of facts and should not have been passed at all there is no reason why he should not have the power to correct his own mistake, and to set matters right. The order does not become sacrosanct and immune from reconsideration simply because the allottee managed to get possession on its basis and was not himself guilty of fraud or misrepresentation. In this view of the matter there can be no manner of doubt that the application which respondent No. 4 had made before the Rent Control and Eviction Officer on January 4, 1972, was maintainable on the facts stated therein. Even though the said application had been made on January 4, 1972, it could not be decided till the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, was passed and was pending on the date of the commencement of the said Act. Section 43 (2) (b) of the new Act provides that notwithstanding the repeal of U. P. Act III of 1947 any application or proceeding pending immediately before the commencement of the new Act before the District Magistrate under Section 7 of the old Act or under Rule 6 of the Control of Rent and Eviction Rules, 1949, made under Section 17 of the old Act shall be disposed of by him in accordance with the provisions of Sections 16 and 17 of the new Act.

5. It was urged by counsel for the petitioner that the application which had been made by respondent No. 4 on January 4, 1972, was neither an application under Section 7 of the old Act nor proceeding under the said section and as such even though the said application was pending immediately before the commencement of the new Act Section 43 (2) (b) was not attracted. According to learned counsel for the petitioner the word 'proceeding' in Section 43 (2) (b) will include only such steps or procedure recourse to which was necessary to be taken to

decide the application made under Section 7. The word 'proceeding' was according to counsel confined to a pending application. I, however, find myself unable to agree with this submission. If Section 43 (2) (b) is interpreted that way the words 'or proceeding' will become superfluous and meaningless. Once it was provided that any application pending immediately before the commencement of the new Act before the District Magistrate under Section 7 of the old Act shall be disposed of by him in accordance with the provisions of Sections 16 and 17 of this Act, it was not necessary to use the words 'or proceeding' also if those words only meant the steps or procedure recourse to which had to be taken for deciding a pending application. Since a pending application was to be decided in accordance with the provisions of Sections 16 and 17 of this Act the steps and the procedure, recourse to which had to be taken under Sections 16 and 17 for deciding such an application would automatically be available inasmuch as the said application was to be decided in accordance with those sections. It is settled law that no words of a statute are to be held to be superfluous or meaningless unless there are compelling reasons. In my opinion there is no such compelling reason which may impel me to interpret Section 43 (2) (b) in a manner that the words 'or proceeding' may be rendered superfluous or meaningless. On the other hand to me it appears that these words were used by the Legislature with a definite purpose. It is a settled principle of construction of a statute that the Legislature is presumed to know the interpretation put on it by Judicial decisions (see *A. J. Faridi v. Chairman, U. P. Legislative Council,* [2] also see *Kayastha Co. Ltd. v. Sitaram,* [3] As seen above a Division Bench of this court had interpreted the law under the old Act to be that an application for recalling an order of allotment passed under Section 7 was maintainable in certain circumstances. The Legislature would be deemed to be aware that such application being maintainable, most of them would be pending on the date of the commencement of the new Act. There may be other applications, for instance, applications for setting aside *ex parte* orders on showing sufficient cause for non-appearance on the date fixed when such an order may have been passed. To me it appears that in using the words 'or proceeding' the Legislature clearly intended to save all those applications. A perusal of the scheme of the new Act makes it clear that the procedure under the old Act in respect of pending proceedings was abrogated and they were to be decided under the new Act. Section 43 (2) of the Act, supports this view. If that be the situation the acceptance of the interpretation placed on Section 43

(2) (b) of the Act by counsel for the petitioner would run contrary to the legislative intent in this behalf. In *Firm Amar Nath Basheshar Dass v. Tek Chand* [4] it was held that it cannot be gainsaid that one of the duties imposed on the courts in interpreting a particular provision of law, rule or notification is to ascertain the meaning and intendment of the Legislature or of the delegate, which in exercise of the powers conferred on it, has made the rule or notification in question. In doing so, we must always presume that the impugned provision was designed to effectuate a particular object or to meet a particular requirement and not that it was intended to negative that which it sought to achieve. Construing in that light in my opinion the words 'in respect of an application' will have to be added after the word 'proceeding' and before the word 'pending' in Section 43 (2) (b) for purposes of interpreting the said provision so that the purpose of the Legislature could be served and not defeated. In *A. J. Patel v. State of Gujarat* [5] Mr. Justice Bhagwati in paragraph 57 of the report held that

> "it is well setted that where the effect of not implying something which the Legislature has omitted to state in express terms would be to render certain words futile and devoid of meaning, implications can and must be made by the courts for the purpose of gathering the true legislative intent."

Likewise in a case where a certain provision of statute is meaningless or of doubtful meaning it is permissible to courts to add words (see *B. I. G. Insurance Co. Ltd. v. Itbar Singh,).*[6] In *Seaford Court Estates Ltd. v. Asher* [7] Lord Denning on page 164 held that

> "When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social condition which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the Legislature. A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is

woven, but he can and should iron out the creases."

If Section 43 (2) (b) is interpreted in the above manner it is not only an application under Section 7 of the old Act which was pending on the commencement of the new Act before the District Magistrate which will have to be decided in accordance with the provisions of Sections 16 and 17 of the new Act, every such proceeding will have to be decided in a similar manner which was in respect of an application under Section 7 of the old Act and was pending on the crucial date. If the words 'in respect of an application' are supplemented as aforesaid it will not only save the words 'or proceeding' from being rendered redundant and meaningless but it will also give 'force and life' to the intention of the Legislature in the words of Lord Denning in Seaford Court Estates Ltd.'s case (supra). The view which I take also finds support from the decision of a learned single Judge of this court in *Rameshwar Prasad v. 1st Addl. District Judge* [8]

6. In view of the foregoing discussions I am of opinion that the provision of Section 43 (2) (b) of the new Act were attracted to the application made by respondent No. 4 on January 4, 1972, and the said application had to be decided in accordance with the provisions of Sections 16 and 17 of the new Act.

7. Elaborating his second submission counsel for the petitioner urged that the appeal which had been filed by respondent No. 4 before the District Judge against the order of the Rent Control and Eviction Officer dated August 25, 1972, was not maintainable for two reasons (1) that the said order could not be said to be an order under Section 16 of the Act within the meaning of Section 18 which contains the provision for appeal, and (2) that respondent No. 4 cannot be said to be a person aggrieved inasmuch as unless he had already made an application for release of the accommodation in question in his favor it was immaterial for him as to who was the person in whose favor an order of allotment was passed in respect thereof. I am unable to agree with this submission either. In so far as the first part of the submission is concerned I am of opinion that the order dated August 25, 1972, would fall under sub-section (5) of Section 16 of the Act which reads:

> "(5) (a) Where the landlord or any other person claiming to be lawful occupant of the building or any part thereof comprised in the allotment or

release order satisfies the District Magistrate that such order was not made in accordance with clause (a) or clause (b), as the case may be, of sub-section (1) the District Magistrate may review the order:

Provided that no application under this clause shall be entertained later than seven days after the eviction of such person.

(b) Where the District Magistrate on review under this sub-section sets aside or modifies his order of allotment or release, he shall put or cause to be put the applicant, if already evicted, back into possession of the building, and may for that purpose use or cause to be used such force as may be necessary."

8. According to counsel for the petitioner the words 'claiming to be lawful occupant' in sub-section (5) of Section 16 would govern not only any other person but also the landlord. It was urged that since the instant case the landlord could not be said to be a person who was in lawful occupation of the building, sub-section (5) was not applicable. In my opinion if this construction is put to sub-section (5), no landlord would be in position to make an application for setting aside an order of allotment passed under clause (a) of Section 16 (1) of the Act. In those cases where the accommodation has actually fallen vacant and has been occupied by the landlord, his occupation would be lawful in his capacity of being the owner of the property only till an order of allotment has been passed in respect of the said accommodation. The moment an order of allotment is passed which has the effect of issuing a direction to the landlord to let out the accommodation to the allottee the landlord is bound to place the allottee in possession over the accommodation. If he fails to do so and continues to occupy the property his continuance would become unlawful. Likewise, if it is a case falling under Section 12 of the Act, viz., even though the accommodation has not actually been vacated by the sitting tenant but in respect of which a deemed vacancy can be presumed the landlord will not be in position to make an application under sub-section (5) inasmuch as he is not actually occupying the house. The distinction between possession and occupation is well settled. When the Legislature specifically conferred a right on the landlord to make an application for setting aside an order of allotment passed under Section 16 (1) (a) that right cannot be negatived by interpreting the said sub-section in a manner as suggested by counsel for the petitioner. In my opinion the words 'claiming to be lawful occupant' apply only to other

persons. They do not apply to the landlord. The matter can be looked at from another angle. Had the intention of the Legislature been, as has been submitted by counsel for the petitioner, the words 'the landlord or any other' would not have used at all. In place of these words the word 'any' could have served the purpose. In that event sub-section (5) would have started with the words 'where any person claiming to be lawful occupant'. I am, therefore, of opinion that the application which had been made by respondent No. 4 on January 4, 1972, would be an application of the nature contemplated by sub-section (5) of Section 16 of the Act and the order of the Rent Control and Eviction Officer dated August 26, 1972. would in view of Section 43 (2) (b) be one under Section 16 (5) and would accordingly be appealable under Section 18 of the Act.

9. Coming to the second limb of the submission made by counsel for the petitioner in this behalf it would be seen that the expression 'aggrieved person' denotes an elastic, and to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him (see ***J.*** *M. Desai v. Roshan Kumar,*[9] *).* In *Ebrahim Aboobakar v. Custodian General* [10] it was held that when a person is given a right to raise a contest in a certain matter and his contention is negatived then he is certainly a person aggrieved by the order disallowing his contention. As seen above both under the old Act in certain contingencies and under Section 16 (5) of the new Act a landlord has been given a right to raise a contest in respect of the validity of an order of allotment. If he makes an application in exercise of that right and an order is passed dismissing his application he would certainly be a person aggrieved and would be entitled to file an appeal against the said order. I am, therefore, of opinion that even the second submission made by counsel for the petitioner that the appeal filed by respondent No. 4 was not maintainable has no force.

10. In support of the last submission that the finding of the District Judge that the accommodation in question was neither vacant nor was likely to fall vacant,

and, therefore, the Rent Control and Eviction Officer did not have any jurisdiction to pass the order of allotment dated December 21, 1971, in favor of the petitioner, counsel for the petitioner placed reliance on the following observations made in *Babulal v. Sheonath Das*:- [11]

> "The declared intention of the tenant that he was about to vacate the accommodation coupled with the decree for ejectment show that on February 20, 1957, the accommodation was on the point of becoming vacant or was about to fall vacant."

11. It is settled law in regard to precedents that a judgment has to be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to exposition of whole law but governed or qualified by the particular facts of the case in which such expressions are to be found. (See *Punjab Co-operative Bank Ltd. v. Commr. of Income-tax* [12] For the proposition that decisions have to be construed in the light of the facts of the particular case reference may also be made to *Fateh Kunwar v. Durbijai Singh* [13] *Jwala Mohan v. State* [14] and *S. V. Kondaskar v. V. M. Deshpande,* [15] Construed in that light it would be seen that in Babulal's case (supra) an application for execution had been made and a warrant for ejectment had also been issued. Both the landlord and the tenant represented to the authority concerned that the accommodation was likely to fall vacant. It was in this context that the aforesaid observations were made in the said case. Coming to the facts of the instant case it would be seen that here even an application for execution of the decree was not made by respondent No. 4 much less to say of any warrant for ejectment being issued by the execution court. The only thing which was done was that an application was made by respondent No. 5 namely by one of the co-tenants before the Rent Control and Eviction Officer that he was going to vacate the accommodation, he alone was not the sole tenant. He was a co-tenant along with respondent No. 6. A similar intimation as the one given by respondent No. 5 was not given by respondent No. 6 also. The landlord's case consistently has been that the accommodation neither fell vacant nor was likely to fall vacant. It is in this context that the question as to whether the accommodation was vacant or was likely to fall vacant on December 21, 1971, when the order of allotment was passed in favour of the petitioner has to be construed. In *Lachmi Narain v. Rent Control*

*and Eviction Officer* [16] a Division Bench of this court held that an accommodation cannot be said to be about to fall vacant simply because an ejectment decree had been passed against the tenant. So long as the executing court had not issued a warrant for delivery of possession it could not be said that the shop was about to fall vacant and the District Magistrate had no jurisdiction to issue an order of allotment. The law as laid down by this court in Lachmi Narain's case (supra) would be applicable to the facts of the instant case. Applying that law I am of opinion that the District Judge was right in taking the view, that the accommodation in question was neither vacant nor was likely to fall vacant on December 21, 1971, when the order of allotment was passed in favor of the petitioner and that the said order was without jurisdiction. That a particular accommodation should either be vacant or should be likely to fell vacant was a condition precedent to the passing of an order of allotment in respect of that accommodation under Section 7 of the old Act. This was so to speak a jurisdictional fact. Even under the new Act an accommodation can be allotted only if it is or has fallen vacant which will include deemed vacant under Section 12 of the new Act. If the accommodation in question was not at all vacant nor was likely to fall vacant the order of allotment would be without jurisdiction and could validly be set aside on this ground alone as has been done by the District Judge in the instant case.

12. In this connection it was also urged by counsel for the petitioner that in the present proceedings both respondents 5 and 6 had taken the stand that both of them had offered to deliver possession to the landlord respondent No. 4 but he refused to take possession on the pretext that he would take delivery of possession in execution of the decree and that the District Judge has not considered this aspect of the matter. In respect of this submission suffice it to say that nowhere it has been stated in the writ petition that this plea was raised before the District Judge and yet he failed to consider it. The petitioner as such is not entitled to raise this point for the first time at this stage.

13. No other point has been pressed.

14. I find no merit in this writ petition. It is accordingly dismissed with costs. The petitioner is, however, granted one month's time to vacate the accommodation.

Petition dismissed.

Cases Referred.

1. (1958 All LJ 283)
2. AIR 1963 All 75 (DB)
3. AIR 1929 All 625 at page 630 (FB)
4. AIR 1972 SC 1548
5. (AIR 1965 Guj 23) (FB)
6. AIR 1959 SC 1331
7. (1949 (2) All England Reporter 155)
8. (AIR 1976 All 323)
9. AIR 1976 SC 578
10. (AIR 1952 SC 319)
11. (AIR 1967 SC 1329)
12. (AIR 1940 PC 230)
13. (AIR 1952 All 942) (FB)
14. (AIR 1963 All 161 para 7) (FB)
15. (AIR 1972 SC 878 at p. 885)
16. (1962 All LJ 213)