

PETITIONER:
MUNNI DEVI & ANR.

Vs.

RESPONDENT:
GOKAL CHAND & ORS.

DATE OF JUDGMENT:
12/09/1969

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
GROVER, A.N.

CITATION:
1970 AIR 1727 1970 SCR (2) 363
1970 SCC (2) 879

ACT:

Jurisdictional Fact--Power to allot premises on the existence vacancy--Statute enacting orders passed under the statute shall not be called in question in any court--District Magistrate deciding premises vacant--If final--Court exclusion of Jurisdiction of --U.P. (Temporary) Control of Rent and Eviction Act, 1947, ss. 7, 7A, 16.

HEADNOTE:

By s. 7(2) of the U.P. (Temporary) Control of Rent and Eviction Act, 1947, "the District Magistrate may require a landlord to let or not let to any person any accommodation which is or has fallen vacant" and s. 16 of the Act provides that "no order made under this Act by the State Government or the District Magistrate shall be called in question in any court."

The first appellant applied for an order in ejectment of the first respondent on the plea that he had committed default in paying rent. The District Magistrate held that the respondent was not in occupation of the shop, declared the shop vacant and allotted it to another person. The respondent brought an action in the civil court for a declaration that he was an allottee of the shop and was in possession in that capacity. The trial court held that the appellant never vacated the shop, nor was his tenancy terminated, and was therefore entitled to remain in occupation of the same. An appeal to the District Court and a second appeal to the High Court were unsuccessful. In appeal to this Court, the appellants contended that the suit filed by the respondent was not maintainable, for the Act set up a complete machinery for determining after enquiry whether any premises governed by the Act had fallen vacant. and that by express enactment in s. 16, the order of the District Magistrate was declared final. Rejecting the contention.

HELD: The Legislature while investing the District Magistrate with power to allot the premises to another person on the existence of a vacancy has not made his determination of the preliminary state of facts conclusive. There is nothing in s. 7 or s. 7A which confers jurisdiction

upon the District Magistrate to conclusively determine the facts on the existence of which his jurisdiction arises. Whether there is a vacancy is a jurisdictional fact which could not be decided by him finally. By reaching an erroneous decision, he cannot clothe himself with jurisdiction which he does not possess. It is only when the order is with jurisdiction that the order is not liable to be challenged in a civil court by virtue of s. 16 of the Act. [368 H--369 C]

Reg v. Commissioner of Income-tax, 21 Q.B.D. 313, and Ebrahim Aboobakar & Anr. v. Custodian-General of Evacuee Property, [1952] S.C.R. 696., referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 899 of 1966.
364

Appeal by special leave from the judgment and decree dated May 14, 1965 of the Allahabad High Court in Second Appeal No. 4136 of 1964.

Yogeshwar Prasad and Harder Singh, for the appellants.
S.N. Anand, for the respondents.

The Judgment of the Court was delivered by

Shah, J. Gokal Chand--first respondent in this appeal--was a tenant of shop No. 34/2, Dispensary Road, Dehra Dun, which belongs to Munni Devi--the first appellant in this appeal. Munni Devi applied to the Rent Control & Eviction Officer, Dehra Dun, for an order in ejectment on the plea that Gokal Chand had committed default in paying rent. The R.C. & E. Officer passed an order observing that the tenant did not lead any evidence to show that he had not vacated the shop and it was clear on the evidence that the tenant was not in occupation of the shop and had let it out to one Alladia. He accordingly declared that the shop was vacant.

The R.C. & E. Officer allotted the shop to Kishorilal. Kishorilal then applied to the R.C. & E. Officer that the shop allotted to him was in the illegal occupation of Rawel Chand s/o Gokal Chand. On May 22, 1957, the R.C. & E. Officer declared that Gokal Chand the previous tenant had vacated the shop. and that Rawel Chand was in illegal occupation of the shop. He accordingly issued a notice under s. 7A (3) of the Act.

Gokal Chand then filed a civil suit in the Court of the Munsif, Dehra Dun, for a declaration that he was an allottee and a tenant of the shop and that he was in possession in that capacity. To that suit were impleaded Munni Devi and Kishorilal as party defendants. The Trial Court held that Gokal Chand had at no time vacated the shop, nor was his tenancy terminated. He accordingly made an order declaring that Gokal Chand was an allottee and a tenant of the shop. and was entitled to remain in occupation of the same. An appeal against that order to the District Court was dismissed. A second appeal to the High Court was also unsuccessful.

In this appeal with special leave, counsel for Munni Devi and Kishorilal urges that the order of the civil court was without jurisdiction. Section 3 of the U.P. (Temporary) Control of Rent and Eviction Act, 194-7, imposes certain restrictions on eviction of tenants. By s. 7(1)(a) it is provided:

"Every landlord shall, within 7 days after an accommodation becomes vacant by his ceasing to occupy it or

by the tenant vacating it or otherwise ceasing to occupy it or by termination of a tenancy or by release from requisition or in any other manner whatsoever, give notice of the vacancy in Writing to the District Magistrate."

Sub-sections (2) & (3) of s. 7 provide:

"(2) 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.

(3) No tenant shall sub-let any portion of the; accommodation in his tenancy except with the permission in writing of the landlord and of the District Magistrate previously

X X
obtained."

Section 7A which was added by Act 24 of 1952 provides, in so far as it is material:

"(1) Where in pursuance of an order of the District Magistrate under sub-section (2) of section 7, the vacancy of any accommodation is required to be reported and is not reported, or where an order requiring any accommodation to be let or not to be let has been duly passed under sub-section (2) of Section 7 and the District Magistrate believes or has reason to believe that any person has in contravention of the said order, occupied the accommodation or any part thereof, he may call upon the person in occupation to show cause, within a time to be fixed by him, why he should not be evicted therefrom:

Provided

(2) If such person fails to appear in reply to the notice served under sub-section (1) or, if he appears but fails to satisfy the; District Magistrate that the order under sub-section (2) of Section 7 was not duly passed and that he is entitled to remain in occupation of the accommodation the District Magistrate may, without prejudice to any other action which may be taken against him under this Act or any other law for the time being in force, direct him to vacate the premises within a period to be specified."

Section 16 of the Act provides:

"No order made under this Act by the State Government or the District Magistrate shall be called in question in any Court."

366

Counsel for the appellants urged that the suit filed by Gokal Chand was not maintainable, for the Act sets up a complete machinery for determining after enquiry whether any premises governed by the Act have.. fallen vacant, and for making an order calling upon the; person or persons in wrongful occupation to vacate and deliver possession of the premises, and that by express enactment in s. 16, the order of the District Magistrate is declared final. We are unable to agree with that contention. Lord Esher, M.R., in Reg. v. Commissioner of Income-tax(1), observed:

"When an inferior court or tribunal or body which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider

what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The legislature may entrust the tribunal or body with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists, as well as the jurisdiction, and on finding that it does exist, to

proceed

further to do something more. When the legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned it is erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends, and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction."

This rule was approved by this Court in *Ebrahim A boobakar and Ant. v. Custodian-General of Evacuee Property* (2).

Munni Devi applied for an order in ejectment against Gokal Chand on the plea that he had committed default in paying rent. The R.C. & E. Officer held that Gokal Chand had vacated the premise and had inducted a sub-tenant. The Legislature has in-

(1) 21 C.B.D. 313.

(2) [1952] S.C.R. 696.

367

vested the District Magistrate with power on the existence of a vacancy to allot the premises to another person, but the Legislature has not made the determination of the preliminary state of facts by the District Magistrate conclusive. The jurisdiction to pass an order in ejectment only arises if there is a vacancy. The right of a tenant in possession is a valuable right and there is nothing in s. 7 or s. 7A which confers jurisdiction upon the District Magistrate to conclusively determine the facts on the existence of which his jurisdiction arises. Undoubtedly he has jurisdiction to make orders under ss. 7 & 7A of the Act, if there be a vacancy. But whether there is a vacancy is a jurisdictional fact which could not be decided by him finally. By reaching an erroneous decision, he cannot clothe himself with jurisdiction which he does not possess. It is only when the order is with jurisdiction that the order is not liable to be challenged in a Civil Court by virtue of s.

16 of the Act.

In *Chaube Jagdish Prasad v. Ganga Prasad Chaturvedi*(1), the respondent had obtained on rent the "accommodation" in dispute from the appellant. The appellant submitted an application under s. 3A of the U.P. (Temporary) Control of Rent and Eviction Act,

947, to the House Allotment Officer (on whom the power of the District Magistrate was conferred) for increase in rent. That Officer passed an order increasing the rent payable by the tenant on the ground that there was a new construction. The appellant then instituted a suit under s. 5 (4) of the Act for the enhancement of "reasonable annual rent". The respondent contended, inter alia, that there was no new construction of "accommodation" after June 30, 1946, and that, therefore, the suit was not maintainable. The Trial Court found that there was a new "accommodation" and the Court could determine its rent under s. 5(4). In revision, the High Court held that though the construction was new, the "accommodation" in the occupation of the respondent was not new. and therefore s. 3A of the Act was inapplicable. In appeal, this Court held that a wrong decision made by the House Allotment Officer who exercised the power of the District Magistrate under s. 3A of the Act or an order made by him in excess of his power under that section could be rectified by a suit under s. 5(4) of the Act.

In the present case the civil court has come to the conclusion that Gokal Chand had never vacated the shop and no vacancy had occurred. By wrongly deciding that Gokal Chand had vacated the shop, the District Magistrate had no power to pass orders directing forcible ejection and allotting the shop to another person. The appeal fails and is dismissed with costs.

Y.P. Appeal dismissed.

(1) (1959) Supp. (1) S.C.R. 733.

368