

Allahabad High Court

Abdul Hameed vs Mohd. Ishaq on 26 April, 1974

Equivalent citations: AIR 1975 All 166

Author: Mathur

Bench: D Mathur, J Lal, Bakshi, P Prakash, D Jha

JUDGMENT Mathur, C.J.

1. The learned Single Judge hearing the Second Appeal was of opinion that the Full Bench decision of this Court in *Udhoo Dass v. Prem Prakash*, 1963 All LJ 406 = (AIR 1964 All 1) (FB) requires reconsideration and, therefore, referred the following question for consideration by a larger Bench:--

"Whether a person to whom an accommodation governed by the U. P. (Temporary) Control of Rent and Eviction Act, 1947, has been let out by a landlord in contravention of a general order passed by the Magistrate under Section 7 of that Act, is liable to be proceeded against under Section 7-A at the instance of the person in whose favour an allotment order has been passed by the District Magistrate subsequent to the date on which the accommodation was unauthorisedly let out by the landlord to the former person."

The material facts of the case are that the previous tenant, Jamal Waris, was occupying the disputed shop situate in the city of Lucknow without any allotment order, i.e. an order of the District Magistrate under Section 7 (2) of the U. P. (Temporary) Control of Rent and Eviction Act, 1947 (hereinafter referred to 'as the Act') and he vacated the accommodation on 2-6-1967. He was in arrears of rent amounting to Rs. 50. Mohd. Ishaq applied to the District Magistrate on 6-6-1967 for an order of allotment under Section 7 (2) and such an order was passed in his favour on 26-8-1967 and the order was issued on 28-8-1967. Prior to the passing of the allotment order the landlord made a private contract of tenancy with the present appellant, Abdul Hameed, who agreed to pay a monthly rent of Rs. 4 per month and also paid the arrears due from the previous tenant. There is no dispute in that Abdul Hameed occupied the shop before the passing of the allotment order. It is also not in dispute that neither the landlord nor the previous tenant, Jamal Waris, had intimated to the District Magistrate under Section 7 (1) of the Act that the accommodation had fallen vacant.

2. When the District Magistrate took proceedings under Section 7-A of the Act for the eviction of the appellant and for putting the allottee in possession, the appellant instituted the present suit against the allottee Mohd. Ishaq for injunction to restrain him from dispossessing the appellant from the shop. The suit was dismissed by both the courts below and while hearing the second appeal the learned Single Judge made the above reference to a larger Bench.

3. The order of reference reproduced above assumes that there exists a general order 'under Section 7 (2) of the Act passed by the District Magistrate, Lucknow, which forbids the landlords not to let out to any one any accommodation which is or has fallen vacant or is about to fall vacant.

4. The points that arise for consideration are whether any private agreement of tenancy between the landlord and the appellant in contravention of the general order passed by the District Magistrate

under Section 7 (2) of the Act is or is not legal so as to confer rights on him, and whether the occupation of the accommodation by the appellant in pursuance of the agreement of tenancy is, in the eye of law, legal in the sense that the accommodation cannot be deemed to be vacant in respect of which a special order under Section 7 (2) of the Act can be passed by the District Magistrate. Another question for consideration shall be whether for enforcement of the special order under Section 7 (2) of the Act, can action be taken by the District Magistrate under Section 7-A of the Act for the dispossession of the appellant and to put the allottee, namely, Mohd. Ishaq, in possession thereof?

5. In 1963 All LJ 406 = (AIR 1964 All 1) (supra) the Full Bench has expressed the opinion that where the order of allotment was passed after the private tenant had entered into possession of the accommodation, irrespective of whether a general order under Section 7 (2) of the Act does or does not exist, the special order under Section 7 (2), in other words, the allotment order is, not valid and cannot be enforced under Section 7-A. We respectfully differ with the view.

6. We shall like to make it clear that the rule laid down in the Full Bench case can, in our opinion, be applied only to those cases where no general order as contemplated by Section 7 (2) of the Act, not to let out the accommodation without the permission or order of the District Magistrate, has been passed. In such a case there would merely be the direction contained in Section 7 (1) (a) of the Act, but there shall be no restriction on the landlord to himself make a contract with any person for letting out the accommodation. The restriction imposed by Sub-section (2) of Section 7 comes into play only after the District Magistrate passes a general or special order. When no such order exists, the landlord can unhesitatingly exercise the fundamental right guaranteed to him under Article 19 of the Constitution and if he decides to exercise his fundamental right his action cannot be deemed to be illegal simply because the District Magistrate could have passed a general or special order in respect of the accommodation. When a person possesses the fundamental right to use his property in any manner he likes, he need not await the orders of the public authorities and can act under and in accordance with the ordinary law, namely, the Transfer of Property Act and the Contract Act. When the landlord has the right to make a contract in respect of his property and such contract is valid, the accommodation shall be deemed not to be vacant on the date the accommodation is actually occupied by the lessee and when the accommodation is not vacant the District Magistrate cannot have the power under Section 7 (2) to pass any general or special order. Any order of allotment passed after the accommodation has been occupied by the lessee shall in such circumstances be contrary to law and hence unenforceable under Section 7-A.

7. But where the District Magistrate has passed a general order under Section 7 (2) of the Act, directing the landlord not to let out the accommodation without his permission or order, there comes into existence a restriction in the exercise of the aforementioned rights and the question naturally arises whether such a private contract of tenancy is valid and enforceable and also whether the District Magistrate can pass an order of allotment under Section 7 (2) which is enforceable under Section 7-A.

8. Before making comments on the observations made in the Full Bench case of 1963 All LJ 406 = (AIR 1964 All 1) (supra) it will be proper to make our own comments on the provisions of the Act

and also of the Contract Act to clearly indicate the basis of our forming a contrary opinion.

9. The object of the Act is "to provide for the continuance during a limited period, of powers to control the letting and the rent of residential and non-residential accommodation and to prevent the eviction of tenants therefrom". Clause (1) of Section 7 (1) of the Act provides that "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". Similarly, Clause (b) of this section places responsibility on the tenant occupying the accommodation to give notice in writing to the District Magistrate of his vacating the accommodation or ceasing to occupy it. Both the landlord and the previous tenant admittedly contravened the provisions of Sub-section (1) of Section 7 for which they can be prosecuted under Section 8 of the Act; but in the absence of a general or special order under Sub-section (2) of Section 7, they cannot be said to have disregarded the provisions of the Act nor an order passed under Section 7. The intimation under sub-section (1) can be for the information of the District Magistrate to enable him to decide whether or not to issue a general or special order under Sub-section (2). Consequently, in the absence of an order under Sub-section (2) the landlord is free to exercise his ordinary rights, that is, to let out the accommodation. Under Sub-section (2) of Section 7 the District Magistrate can pass a general or special order requiring 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. Ordinarily, the District Magistrate shall not pass an order directing the landlord not to let out the accommodation to a specific person. Such an order may be regarded as discriminatory and, therefore, invalid. Consequently, such an order would generally be in a general form directing the landlord not to let out the accommodation to any one without the prior permission or order of the District Magistrate. The special order contemplated by the sub-section would invariably be in favour of a particular person. The difference between the general and special order is thus material.

10. Consequently, where no general order under Section 7 (2) of the Act has been passed, the only liability placed upon the landlord and the previous tenant is to give intimation to the District Magistrate under Section 7 (1) of the vacancy, and for disregard of this statutory provision both can be prosecuted under Section 8 of the Act. However, in view of the fact that Section 7 (1) does not, in any way restrict the power of the landlord to make private contract of tenancy with any person, he can enter into an agreement and if the lessee enters into possession before the passing of the special order under Section 7 (2) that order shall be invalid because on the date of the passing of the order there is no vacancy,--the accommodation being already in the possession of the lessee. But where there exists a general order of the District Magistrate under Section 7 (2) of the Act directing the landlord not to let out the accommodation to any person without the permission or direction of the District Magistrate any private agreement arrived at between the landlord and a third person shall be against the general order of the District Magistrate. If such a private agreement arrived at before the passing of the special order, that is, the order of allotment under Section 7 (2) of the Act, is held to be valid and enforceable, the very object and purpose of the Act shall be defeated. Where the landlord or the previous tenant does not give any intimation under Section 7 (1) of the Act to the District Magistrate, he shall be ignorant of the vacancy and it shall not be possible for him to promptly pass an order of allotment under Section 7 (2) of the Act. Within the intervening period

the landlord can enter into a private agreement with a third person and recover from him any amount of rent. The person with whom the landlord may enter into an agreement shall not necessarily be a person who needs the accommodation the most. Needs of other persons may be more urgent. The result shall be that it shall not be possible for the District Magistrate to allot the accommodation to the most deserving person. Further, it shall be possible for the landlord to enhance the rent in spite of the rent being controlled under the provisions of the Act. To put it differently, if a private agreement arrived at between the landlord and another person, as a result of which the latter is put in possession of the accommodation as a tenant, is regarded as a void and unenforceable transaction, any special order passed by the District Magistrate under Section 7 (2) shall become ineffective and the object and the purpose of the Act shall be completely defeated.

11. Coming to the Contract Act Section 10 thereof provides that "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." Consequently, agreements which are not for a lawful consideration and with the lawful object, or which are expressly declared to be void, are not contract, that is an agreement enforceable under the law. There being no provision in the Act declaring private agreements of tenancy to be void, the later part of Section 10 is inapplicable. Section 23 of the Contract Act, however, lays down which considerations and objects of an agreement are lawful and which are not. The material part of Section 23 runs as below:--

"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;--

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."

12. The expression 'law' has not been defined in the Contract Act, nor in the U. P. General Clauses Act, 1904, but in the Central General Clauses Act, 1897, 'Indian Law' is defined in Section 3 (29) as below:--

" 'Indian law' shall mean any Act, Ordinance, Regulation, rule, order, bye-law or other instrument which before the commencement of the Constitution had the force of law in any Province of India or part thereof, or thereafter has the force of law in any Part A State or Part C State or part thereof, but does not include any Act of Parliament of the United Kingdom or any Order in Council, rule or other instrument made such Act."

This definition is applicable to all the Central Acts and Regulations made after the commencement of the General Clauses Act. The Contract Act was enacted in 1872 before the commencement of the General Clauses Act, 1897. Therefore, this definition is not directly applicable to the Contract Act, but there appears to be no reason why the principles contained in the above definition be not made applicable to even the earlier enactments. 'Law' must, therefore, include not only an Act and Ordinance but also Regulations, rule, order, bye-Law or other instrument which has the force of law.

Similar inference can be drawn from the provisions of the Constitution also. For the purposes of Article 13 of the Constitution the term 'law' includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law. In Article 366(10) the expression 'existing law' has been defined for the purpose of the Constitution, to mean any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation. By virtue of Article 367(1), the General Clauses Act, 1897, is, subject to such adaptations and modifications that may be made therein under Article 372, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India.

13. On the application of the principles contained in the above definition contained in the General Clauses Act, 1897 and the Constitution of India it can safely be laid down that the term 'law' includes an order by a competent authority having the force of law. Consequently, where any agreement is forbidden by an order of the competent authority having the force of law, it shall be an agreement forbidden by law as contemplated by Section 23 of the Contract Act. This shall be irrespective of whether the general or special order of the District Magistrate under Section 7 (2) is or is not an administrative order. It is an order passed under Section 7 (2) of the Act which has the force of law. Such an order has also the sanction of the law because the illegal act is punishable under Section 8 of the Act. Further, as already indicated above, any private agreement in contravention of the general or special order under Section 7 (2) of the Act is of such a nature that, if permitted, it would defeat the provisions of the Act.

14. One of the recognised forms of subordinate legislation is by issue of a general order by an authority to which such power has been delegated under the enactment. For example, Section 3 of the Essential Commodities Act, 1955, delegates authority to the Central Government to legislate on matters mentioned therein by issue of general orders. The Central Government can further delegate this power to the State Government or any authority or officer subordinate to the State Government. Similarly, the Defence of India Act conferred powers on the Central Government and the State Government to legislate on several matters by issue of general orders. The statutory orders validly issued by the authorities empowered to do so have been held to be 'law' within the meaning of Section 23 of the Act and any agreement made in violation of such order has been held to be void and illegal. See *Sm. Mukul Dutta Gupta v. Indian Airlines Corporation.*, (AIR 1962 Cal 311). Similarly, in *Debi Prasad v. Rup Ram*, (1888) ILR 10 All 577 the, agreement of sub-letting of the licence made punishable as an offence under the Excise Act, was held to be contrary to law within the meaning of Section 23 of the Contract Act and the claim to recover the amount due under such an agreement, unenforceable in a court of law. It may here be mentioned that in this case there was no provision in the Excise Act prohibiting the subletting of the licence; the Excise Act simply made the violation of any condition of a licence granted under the Act a punishable offence. However, one of the conditions of the licence was to prohibit sub-letting the benefits of the licence. A similar view was expressed in *Thithi Pakurudasu v. Bheemudu*, (1903) ILR 26 Mad 430.

15. Consequently, a private agreement of tenancy between the landlord and a third person in contravention of the general or special order of the District Magistrate under Section 7 (2) of the Act

is one which is forbidden by law or is at least of such a nature that, if permitted, it would defeat the provisions of the law. By virtue of Section 23 of the Contract Act the consideration or object of the agreement is unlawful and such an agreement is void. A void agreement is, in the eye of law non-existent and does not confer any right on the parties to the agreement. A void agreement can be disregarded by a third party and, therefore, in a case of the present nature the possession of the so-called lessee being unlawful shall be as trespasser which can be kept out of consideration and the state of affairs existing before he took possession shall come into play. In other words, in respect of an accommodation having been occupied by a person under a private agreement with the landlord, his possession can be overlooked and in the eye of law, the accommodation shall be deemed to be vacant such that the District Magistrate, can pass special order under Section 7 (2), as was done in the present case in favour of Mohd. Ishaq, and if necessary steps under Section 7-A of the Act can be taken to put the allottee into possession of the accommodation.

16. In the Full Bench case of 1963 All LJ 406 = (AIR 1964 All 1) (supra) it was held that the contract of tenancy between the landlord and a third person is not void and consequently where a person has taken possession of the accommodation on the basis of the private agreement of tenancy the accommodation cannot be deemed to be vacant and the District Magistrate has no power to pass an order of allotment under Section 7 (2) and no steps can be taken under Section 7-A to put the allottee in possession. This rule, according to the Full Bench, shall be applicable irrespective of whether any general order under Section 7 (2) had or had not been passed, provided that there was a private agreement of tenancy and the accommodation was occupied before the passing of the allotment order. Further no proceeding under Section 7-A for dispossession of that person can be taken to enforce the order of allotment.

17. Evidently, the Full Bench came to this conclusion being of the view that the tenancy and the relationship of landlord and tenant was not created by the order of the District Magistrate but by subsequent contract between the landlord and tenant. Observations made by Desai, C. J. in this case are:--

"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."

18. A special order under Section 7 (2) is passed often without the consent of the landlord and at occasions against his wishes. Once an allottee is not to the liking of the landlord, the latter would never enter into contract of tenancy with the allottee. Even though the landlord may not enter into a contract of tenancy with the allottee, he can occupy the accommodation and pay rent as contemplated by the law. Consequently, in spite of there being no contract between the landlord and the tenant the possession of the allottee shall be as a tenant and there shall exist a relationship of landlord and tenant. As defined in the Act, landlord is one who is entitled to recover rent while the allottee is a tenant being liable to pay rent to the landlord. The relationship between the two will thus be based not on contract, but under the statutory provisions. The relationship can thus be regarded as one of statutory tenancy. It is true that a statutory tenant does not enjoy all the benefits

and privileges of a lessee as detailed in the Transfer of Property Act, but for so long as he is in occupation of the accommodation he enjoys the status of a tenant and he can easily be called a statutory tenant. See *Anand Nivas Private Ltd. v. Anandji Kalyanji's Pedhi*, (AIR 1965 SC 414).

19. Thus, the District Magistrate has no power to dictate the term of tenancy or to direct the landlord to enter into a contract of tenancy with the allottee, but once the order of allotment is passed and the allottee takes possession of the accommodation, the relationship between the landlord and the allottee acquires the status of landlord and tenant though the relationship is to a large extent, be governed by the special law, namely, the present Act.

20. The Full Bench was also guided by the factor that the making of the private contract of tenancy was prohibited by the District Magistrate and not by the law, and that the order of the District Magistrate may have the force of law but was not a law. The meaning and scope of the term 'law' has already been commented upon above. An order passed by a competent authority under the statutory provisions has the force of law, all the more, when contravention of the provisions of the Act has been made punishable under Section 8 of the Act.

21. The Full Bench also laid stress upon the fact that a lease involves two agreements; one by the landlord agreeing to let his accommodation 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. Desai, C. J. observed that the object of one agreement was to acquire money and the object of the other agreement was to carry on business and neither of the two objects was unlawful within the meaning of Section 23 of the Contract Act. A private agreement of tenancy in contravention to the general and special order under Section 7 (2) of the Act is, already commented upon above, forbidden by law or is of such a nature that if permitted would defeat the provisions of the Act. Consequently, even though otherwise the consideration or object of the agreement may be lawful, being in contravention of the order under Section 7 (2), its consideration or object ceases to be lawful and on account of there being a general or special order under Section 7 (2) becomes a void agreement, which cannot be enforced.

22. In the Full Bench case an attempt was also made to differentiate between consideration and contract. It was observed that the argument that the consideration for the tenant's agreement was the use of the accommodation and that it was forbidden by law confused consideration with the contract itself. Desai, C. J. further observed that allowing accommodation to be used was not forbidden by any law; but what was prohibited was entering into a contract of tenancy in contravention of an order made under Section 7 (2). An agreement is a contract enforceable before the courts of law only when its consideration is lawful. In other words, when consideration is not lawful, there is no contract and any private agreement forbidden by law or which will defeat the provisions of the Act is void and unenforceable. Once the landlord cannot enter into a contract of tenancy, he cannot permit any one other than the allottee to occupy the accommodation as tenant. There is thus not material difference between allowing an accommodation to be used as tenant and entering into a contract of tenancy.

23. Similarly, Desai, C. J. observed that an order made under Section 7 (2) by a District Magistrate may have the force of law but is not law and that allowing the lessee to occupy the accommodation is an act forbidden by the District Magistrate but not by law within the meaning of Section 23 of the Contract Act. We have already made our comments on this point and for reasons already given above, the order of the District Magistrate under Section 7 (2) having the force of law is for the purpose of Section 23 of the Contract Act a 'law'.

24. The Full Bench placed the order of the District Magistrate under Section 7 (2) of the Act in the same category as an injunction order issued by the courts of law. It is said that the injunction order did not stand in the category of law and on similar grounds the order of the District Magistrate may have the force of law but cannot be treated to be law within the meaning of Section 23. Under Article 19(1)(f) of the Constitution the State Legislature can place reasonable restrictions on the exercise of the right of a citizen to acquire, hold and dispose of property either in the interest of the general public or for the protection of the interest of any scheduled tribe. Where in the interest of general public it is not necessary to impose a restriction throughout the State the State Legislature can delegate this power to a subordinate authority like the District Magistrate and the delegation of power can be in one form or the other. In the instant case, District Magistrates have been given the power to issue a general order under Section 7 (2) of the Act prohibiting the landlord from entering into an agreement of tenancy without his permission or consent. It may be necessary to impose this restriction in, a few districts and not all, or in certain areas of the district. Consequently, an order passed by the District Magistrate under Section 7 (2) is under a delegated authority having the same force as the enactment itself. The order applies to all the persons owning accommodation within the notified area. Such an order cannot have the same value as an injunction order binding merely the parties to the proceeding. An injunction order passed by a civil court is a judicial order which cannot be placed in the category of a statutory order, that is, within the meaning of 'law'. The cases in which it was held that, a sale held in disobedience of an injunction order passed by civil court is not void, can, therefore, be of no help in deciding the points in issue in the instant case.

25. The Full Bench quoted with approval the observations in *A. R. L. P. Firm v. U Po Kyaing*, AIR 1939 Rang 305 where it was observed that 'law' in the phrase 'forbidden by law', meant juridical statute law. In this Rangoon case the applicability of the personal law was in issue and not a statutory order passed by a competent authority to give effect to the intention and the object of the enactment. For reasons already indicated above, we would not be justified to give such a restricted meaning to the term 'law' used in Section 23 of the Contract Act.

26. Before the Full Bench decision in *Udhoo Dass's case*, 1963 AH LJ 406 = (AIR 1964 All 1) (supra) the view of this Court was that an agreement of tenancy made in contravention of the order passed by the District Magistrate under Section 7 (2) is illegal and void. See *Shyam Sunder Lal v. Lakshmi Narain Mathur*, MR 1961 All 347 and *Shamsher Bahadur v. State*, AIR 1964 All 395. A similar view was expressed by a Division Bench in the case of *Ravindra Kumar v. Ram Chand Kohli*, AIR 1973 All 247 wherein the Full Bench case was distinguished on the ground that the contract of tenancy may not be void between the landlord and the lessee but that will not make the possession of the lessee as that of a valid tenant within the meaning of Section 7 (2) of the Act. However in *Ram Lal v. S.M. Singh*, 1962 All LJ 260, Desai, C. J. and S.D. Singh J. took the view later adopted in the Full Bench

case. It may be mentioned that in this case there was no reference to a general order under Section 7 (2) of the Act.

27. The question referred to the Full Bench proceeds with the assumption that there exists a general order passed by the District Magistrate under Section 7 (2) of the U. P. (Temporary) Control of Rent and Eviction Act, 1947. Consequently, while expressing our opinion on the question referred to the larger Bench, we must restrict ourselves to cases where such a general order has been passed. In respect of such cases, we respectfully differ from the view expressed in the above Full Bench case of 1963 All LJ 406 = (AIR 1964 All 1) (supra) and are of opinion that an agreement of tenancy made in violation of the general order issued by the District Magistrate under Section 7 (2) is void and the person to whom an accommodation governed by the U. P. (Temporary) Control of Rent and Eviction Act has been let out under such an agreement is liable to be proceeded against under Section 7-A at the instance of the person in whose favour the allotment order has been passed by the District Magistrate either prior or subsequent to the date on which the accommodation was unauthorisedly let out by the landlord. Our answer to the question referred to this Bench is in the affirmative.

Prem Prakash, J.

28. I concur with my Lord the Chief Justice.

Jagmohan Lal, J.:-- (With P.N. Bakshi, J.) The following point has been referred to this Full Bench:--

"Whether a person to whom an accommodation governed by the U. P. (Temporary) Control of Rent and Eviction Act, 1947, has been let out by a landlord in contravention of a general order passed by the Magistrate under Section 7 of that Act, is liable to be proceeded against under Section 7-A at the instance of the person in whose favour an allotment order has been passed by the District Magistrate subsequent to the date on which the accommodation was unauthorisedly let out by the landlord to the former person."

28. The facts so far as relevant for deciding this reference are that a shop situate in the city of Lucknow governed by the provisions of the U. P. (Temporary) Control of Rent and Eviction Act, 1947 (hereinafter referred to as the Act) was vacated by its former tenant on 2-6-1967. The defendant-respondent Mohd. Ishaq applied to the District Magistrate on 6-6-1967 for an order of allotment under Section 7 (2) and such an order was issued in his favour on 28-8-1967. But prior to that the landlord made a private contract of tenancy with the appellant Abdul Hameed who entered in possession of the shop. After the shop had fallen vacant on 2-6-1967 no intimation of the vacancy was given by the landlord to the District Magistrate under Section 7 (1).

29. When the District Magistrate took proceedings under Section 7-A of the Act for the eviction of the appellant and putting the respondent in possession in enforcement of the allotment order dated 28-8-1967 passed in his favour, the appellant instituted the suit out of which the second appeal in which this reference has been made arose, seeking an injunction to restrain the allottee Mohd. Ishaq respondent from dispossessing the appellant from the said shop. The suit was dismissed by the trial

court. That decree was affirmed in appeal by the lower appellate court. The plaintiff then filed a second appeal in this Court. While hearing the second appeal the Single Judge being of the opinion that an earlier Full Bench decision of this Court in 1963 All LJ 406 = (AIR 1964 All 1) (FB) required re-consideration made the above reference to this larger Full Bench. The reference assumes that there is a general order passed by the District Magistrate, Lucknow which forbids the landlords from letting out any accommodation to any person without his permission or an allotment order passed by him. That such a general order exists in respect of this district would also be evident from a decision of this Court in AIR 1964 All 395 in which that order dated 22-5-1947 passed by the then District Magistrate, Lucknow has been extracted.

30. We have therefore to see whether the private letting out of the accommodation by the landlord to the plaintiff-appellant in contravention of the said general order passed by the District Magistrate is illegal so as to confer no rights on him. Secondly whether the occupation of the accommodation by the appellant in pursuance of that illegal agreement of tenancy made by the Landlord is no occupation in the eye of law and the accommodation shall be deemed to be vacant which could be allotted by the District Magistrate to the respondent under his allotment order issued on 28-8-1967. Lastly, we have to consider whether in order to enforce his order of allotment and put the respondent in occupation of the accommodation the District Magistrate could take proceedings against the appellant under Section 7-A by way of ejecting him and using necessary force, if required, for this purpose. The relevant provisions of the Act are contained in Sections 7, 7-A and 8. The material portion of Section 7 is as follows ;

"(1) (a) Every landlord shall, within seven 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 tenancy or by release from requisition or in any other manner whatsoever, give notice of the vacancy in writing to the District Magistrate.

(b) Every tenant occupying accommodation shall within seven days of vacation of such accommodation or ceasing to occupy it give notice thereof in writing to the District Magistrate,

(c) The notice given under Clause (a) or (b) shall contain such, particulars as may be prescribed.

(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.

Section 7-A provides:

"(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 that no order under this section shall be passed if the District Magistrate is satisfied that there has been undue delay or it is otherwise inexpedient to do so.

(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.

(3) Upon the making of the order under Sub-section (2), the person against whom the order is made and every person claiming under him shall vacate the accommodation. If the accommodation is not vacated within the time allowed or such extended period, as the District Magistrate may grant, the District Magistrate may evict or cause to be evicted the person or persons and use such force as may be necessary for carrying out the order, and also put the person, entitled under Sub-section (2) of Section 7, in occupation of the accommodation.

Sub-section (1) of Section 8 provides:

"Any person who contravenes any of the provisions of this Act, or any order made in pursuance thereof, shall be punishable on conviction with simple imprisonment for a term which may extend to six months or with fine upto Rs. 5,000 or with both."

31. The general order passed by the District Magistrate under Sub-section (2) of Section 7 is usually in the form of directing the landlords in general not to let out any accommodation without his written permission. A special order contemplated by the said sub-section relates to specific accommodation and is passed in favour of a particular person which in terms of this sub-section requires the landlord to let out the accommodation to the person in whose favour that order has been passed. This order is popularly known as allotment order. The State Government has also designated such an order passed by the District Magistrate under Section 7 (2) as allotment order in Rule 3 of the Rules known as the Control of Rent and Eviction Rules, 1949 framed under Section 17 of the Act.

32. Before proceeding to consider the points as formulated above the facts of the case in 1963 All LJ 406 = (AIR 1964 All 1) (FB) as mentioned in the judgment of Oak J. (as he then was) may also be noticed. In that case also a shop was let out by the landlord to Prem Prakash respondent in that appeal on 1-2-1952. Subsequently an allotment order was passed in favour of the appellant Udhoo Dass on 20-2-1952. Prem Prakash had entered in occupation of the shop on the basis of the private tenancy made by the landlord before the appellant Udhoo Dass and secured the allotment order. It had not been shown in that case that any general order forbidding the landlords to let out accommodation without the permission of the District Magistrate had been passed by the District Magistrate, Kanpur where the accommodation was situate, before 1-2-1952. On those facts the private contract of tenancy between the landlord and Prem Prakash could not be said to have been made in contravention of any general or special order passed by the District Magistrate under

Section 7 (2) for the simple reason that before 1-2-1952 no such order was in existence.

33. The mere fact that under Section 7 (1) (a) every landlord is required to give intimation of the vacancy of any accommodation to the District Magistrate does not mean that there was any restriction imposed on this common law right to let out that accommodation to any person of his choice. The giving of this intimation may be only for the purpose of record or with a view to enable the District Magistrate, if he so liked to pass an allotment order under Section 7 (2) in favour of some person. But before such an allotment order is actually passed the landlord is not prohibited by Section 7 (1) itself or this sub-section read with Rules 3 and 4 of the aforesaid Rules from letting out the accommodation privately. In fact the landlord after intimating the vacation to the District Magistrate need not wait for any length of time before letting out the accommodation or ask the District Magistrate if he intended to allot it to some one else. If he privately lets out the accommodation to any person before an allotment order is actually passed by the District Magistrate that allotment order would be infructuous and void as there was no vacancy at that time. Such an allotment order could not be enforced by the District Magistrate by taking recourse to the procedure prescribed under Section 7-A.

34. If however the landlord had not actually exercised his right of letting out the accommodation privately to any person before an order of allotment order was passed by the District Magistrate under Section 7 (2), his freedom of action in this matter comes to an end and after that he is bound to comply with that order and to let out the accommodation to the allottee and not to any other person. If he lets out the accommodation to any other person in violation of that allotment order, the tenant would not acquire any rights under the agreement of tenancy and he would be liable to be ejected by the District Magistrate under Section 7-A. After ejecting him the District Magistrate can put the allottee in possession. So on the facts of Udhoo Dass's case the private contract of tenancy between the landlord and the tenant Prem Prakash was valid. To that extent I am in respectful agreement with the view expressed by the Full Bench in that case.

35. The reference that was made to that Bench however proceeded on the assumption that there was a general order passed by the District Magistrate under Section 7 (2) forbidding the landlords to let out any accommodation without his written permission. The learned Judges therefore proceeded to consider the question if a private agreement of tenancy entered into between the landlord and a tenant, though made in contravention of general order of the District Magistrate, created a valid tenancy and the tenant was not liable to be ejected by the District Magistrate by taking recourse to provisions of Section 7-A. On this aspect of the matter the Full Bench propounded the following propositions of law:

1. If besides a general order passed by the District Magistrate prohibiting all landlords from letting out any accommodation without his permission, an order of allotment has also been passed by him in favour of X and the landlord in violation of both these orders lets out the accommodation to Y, the contract of tenancy between the landlord and Y shall not be void. But in that case the District Magistrate besides prosecuting these persons under Section 8, can take proceedings under Section 7-A and after dispossessing Y can enforce his order of allotment in favour of X.

2. If however the allotment order in favour of X is passed by the District Magistrate subsequent to the accommodation having already been let out to Y by the landlord, though in violation of the general order passed by the District Magistrate, neither the contract of tenancy is void nor the District Magistrate can take proceedings under Section 7-A and dispossess Y to enforce the order of allotment in favour of X. All that can be done in such a case is to prosecute and punish the landlord under Section 8 and possibly the tenant also under the same section read with Section 11 of the Act.

36. With all respects to the learned Judges I am wholly unable to subscribe to the second proposition. Even with regard to the first proposition I find it difficult to agree with the view that an agreement of tenancy made by the landlord in violation of the general order of the District Magistrate is not void and illegal. In fact if the agreement of tenancy between the landlord and the tenant is held to be valid it is difficult to hold that the tenant is still liable to be proceeded against under Section 7-A. I shall now examine the reasons given by the Full Bench in support of its view and state my own reasons for the different view.

37. The reasons given by the Full Bench in support of its view may be summarised as follows :

1. An order of allotment passed by the District Magistrate under Section 7 (2) only directs the landlord to let out the accommodation to the allottee. After that it is for the landlord to enter into a contract of tenancy with the allottee. But if he does not do so, the allotment order by itself does not create the relationship of landlord and tenant.

2. For the breach of an order passed by the District Magistrate under Section 7 (2) the landlord may be prosecuted and punished under Section 8 and possibly the tenant to whom the accommodation is let out by the landlord in contravention of that order can also be punished under Section 8 read with Section 11 of the Act if the necessary ingredients of abetment are established. But that does not render the contract void.

3. A contract prohibited by law is of course an illegal and unenforceable contract. But there is no provision whatsoever in the Act rendering a contract of tenancy made by a landlord and another person in contravention of an order passed by the District Magistrate under Section 7 (2) void or even illegal.

4. The making of a private contract of tenancy in such cases is prohibited by the District Magistrate and not by law.

5. An order made by the District Magistrate under Section 7 (2) is not law. According to Desai C. J. such an order may have the force of law but is not law for the purposes of Section 23 of the Contract Act. According to Oak J. it is only an administrative order or it can at best be placed on the same footing as an injunction order passed by the civil court in a case instituted in that court. A sale made by a person in disobedience of an injunction order issued against him by the Civil Court directing him not sell the property has not been held to be a void sale. On the same principle, a private agreement of tenancy made by the landlord in contravention of a general order passed by the District Magistrate under Section 7 (2) does not render the agreement of tenancy void.

6. The term 'law' occurring in the phrase 'forbidden by law' used in the first phrase of Section 23, Contract Act, means juridical statute law and not an order like the general order passed by a District Magistrate under Section 7 (2).

7. Neither the consideration nor the object of an agreement of tenancy made by landlord in contravention of a general order passed by the District Magistrate under Section 7 (2) is of such a nature that, if permitted, it would defeat the provisions of any law. Such an agreement may defeat the object of the Act but it does not defeat any provision of the Act.

8. In some cases proceedings under Section 7-A can also be taken by the District Magistrate if the letting has been done after an allotment order was passed in defiance of that order as well as a general order passed by the District Magistrate. But if the letting had been done only in contravention of general order and the order of allotment was passed subsequent to such private letting proceedings under Section 7-A also cannot be taken. In such a case the only action that can be taken against the landlord and the tenant is criminal action under Sections 8 and 11.

38. I shall examine these reasons seriatim.

1. It is true that a special order passed by the District Magistrate under Section 7 (2) which is popularly known as an order of allotment is in terms of this sub-section a direction issued to the landlord to let out the accommodation to the allottee. But it is not quite correct to say that the relationship of landlord and tenant can be created only when the landlord is pleased to enter in a contract of tenancy with the allottee and that if he is not willing to do so for reasons best known to him no tenancy is created. If an allotment order has been validly passed and the allottee lawfully enters or is put in possession, a statutory tenancy is created even though the landlord without any justification refuses to enter in a contract of tenancy with him. Reference may be made to *Anand Niyas (P.) Ltd. v. Anandji Kalyanji's Pedhi*, AIR 1965 SC 414.

2. The landlord and tenant, of course incur criminal liability under Sections 8 and 11 by making a private agreement of tenancy in contravention of a general order passed by the District Magistrate. But criminal action against them is not the only remedy provided under the Act. The person in occupation of the accommodation under such agreement is liable to be ordered to vacate the premises under Sub-section (2) of Section 7-A. This sub-section clearly provides that the District Magistrate may take this action 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. This shows that the criminal action against the offenders, who defy the general order of the District Magistrate, taken under Section 8 and civil action taken under Sub-section (2) of Section 7-A are not mutually exclusive but are complementary remedies to rectify the breach committed by them. The point worth noticing is that the legislature has placed the breach of the order passed by the District Magistrate under Section 7 (2) on the same footing as the breach of any other provision of the Act itself for the purposes of punishing the offender. Further Sub-section (2) of Section 7-A provides that unless the offender satisfies the District Magistrate that the order under Section 7 (2) was not duly passed, he will be directed by the District Magistrate to vacate the premises. This shows that the legislature itself has provided in the Act the remedial action against the offender for breach of a duly passed order under

Section 7 (2).

3. The distinction between an agreement which may be forbidden by law and one which is merely declared to be void was pointed out by the Full Bench in *Dip Narain v. Nageshwar Prasad*, AIR 1930 All 1 (FB). A contract forbidden by law is not only a void contract but it is illegal. Such a contract cannot become valid even if parties can agree to it as was held by this Court in *Gouri Datt v. Bandhu*, AIR 1929 All 394. In that case it was also held that it is seldom that an Act can be construed to declare something unlawful unless that Act provides a penalty for breach of the provision. In the present case the Act by itself does not contain any provision prohibiting the landlord and another person from entering in a contract of tenancy. But delegates that power to the District Magistrate to impose such a restriction by issuing a general or special order under Section 7 (2). Once that order has been passed by the authority to whom power has been delegated under Section 7 (2) that order is effective and binding on all concerned like any other provision contained in the Act itself. Since the Act itself provides a penalty for breach of such an order it follows that an agreement of tenancy made in violation of that Order would be illegal.

4. Desai C. J. concedes that it is the act of entering into a contract of tenancy in contravention of an order made under Section 7 (2) by the District Magistrate that may be said to be prohibited. But it is an act forbidden by the District Magistrate and not by law within the meaning of Section 23. The District Magistrate does not prohibit the making of such a private contract of tenancy by making request to the landlord. He does so by passing a statutory Order under Section 7 (2) which is law within the meaning of Section 23, Contract Act as we shall just see.

5. It may be stated that even if the making of a contract is prohibited by a provision having the force of law, a contract made in violation of such provision will be an illegal contract. However, to say that a general Order passed by the District Magistrate under Section 7 (2) is only an administrative order or to place it on the same footing as an injunction order passed by the Civil Court in a particular case, is to overlook the essential legal character of delegated legislation. In modern times, a large volume of law is made through subordinate or delegated legislation which takes the form of rules, regulations, bye-laws etc. The term 'law' has not been defined in the Contract Act. But Section 3(29) of the General Clauses Act, 1897 contains the following definition of the expression 'Indian law'.

" "Indian law" shall mean any Act, Ordinance, Regulation, Rule, Order, bye-law or other instrument which before the commencement of the Constitution had the force of law in any Province of India or part thereof, or thereafter has the force of law in any Part A State or Part C State or part thereof, but does not include any Act of Parliament of the United Kingdom or any Order in Council, rule or instrument made under such Act."

The definition of law which was not perhaps brought to the notice of the Full Bench, clearly includes subordinate legislation also within its ambit. One of the recognised forms of subordinate legislation is a general Order issued by an authority to which power to issue such orders has been delegated by the statute itself. Section 3 of the Essential Commodities Act, 1955 delegates authority to the Central Government to legislate on matters mentioned therein by issue of general orders. The Central Government can further delegate this power to the State Government or any authority or officer

subordinate to the State Government. Similarly the Defence of India Act conferred powers on the Central Government and the State Government to legislate on several matters by issue of general orders. The statutory orders validly issued by the authorities empowered to do so have been held to be 'law' within the meaning of Section 23, Contract Act and any agreement made in violation of such Order has been held to be void and illegal. Reference may be made to *Sita Ram v. Kunj Lal*, AIR 1963 All 206 and *Mukul v Indian Air Lines Corporation*, AIR 1962 Cal 311.

In (1888) ILR 10 All 577 the plaintiff was granted a licence by the excise authorities under Section 42 of the Excise Act, 1881, to manufacture and sell country liquor which contained a condition against subletting the benefits of the licence. In the Act itself there was no such prohibition and it simply provided that the violation of any condition of a licence granted under the Act would be a punishable offence. The plaintiff sublet the licence to the defendants in violation of that condition and the defendants executed an agreement to pay to the plaintiff Rs. 1,500. When the plaintiff filed a suit to recover the money on the basis of that agreement, it was held that the subletting of the licence having been made punishable as an offence is to be deemed as an act contrary to law within the meaning of Section 23, Contract Act and the claim to recover the amount due under such an agreement could not therefore be enforceable in a court of law. The same view was taken by the Madras High Court in (1903) ILR 26 Mad 430.

The courts do not legislate and they only adjudicate on individual disputes in accordance with law. So an injunction order passed by a civil court cannot be deemed as statutory Order. The cases in which it has been held that a sale held in disobedience of an injunction order passed by Civil Court is not void, are therefore of no help in deciding the point under consideration.

6. In AIR 1939 Rang 305 (FB) the question was whether a person who had become a monk under the Buddhist law could buy and sell property though under the personal law governing such a monk there was a prohibition for monks being engaged in a trade. The monk having entered in a trade agreement the question arose whether the agreement was void under Section 23, Contract Act. It was held that the expression 'the provisions of any law' used in the second clause of Section 23 were comprehensive enough to include the provisions of Buddhist law also governing the monks though the expression 'law' used in the first clause of that section means only juridical law, i.e. law enacted by legislature. Juridical law would include not only Acts and Ordinances but also subordinate legislation in the form of statutory rules, regulations, orders, bye-laws etc. This decision is not an authority to propound the proposition that subordinate legislation is excluded from the term 'law' used in the first clause of Section 23.

It may also be pointed out that the expression 'law' as used in Part III of the Constitution has been denned in Clause (3) of Article 13 on similar lines as Section 3(29) of the General Clauses Act so as to include subordinate legislation also in its purview. The Supreme Court in *Narendra Kumar v. Union of India*, AIR 1960 SC 430 held that a statutory order issued by the Central Government under Section 3 of the Essential Commodities Act known as Non-Ferrous Metal Control Order, 1958 was a law within the meaning of Article 13 and for its validity it had to satisfy the requirement contained in Clause (2) of this Article.

Similarly a regulation which is another form of subordinate legislation framed under the Mines Act was held by the Supreme Court in *Chief Inspector of Mines v. K.C. Thapar*, AIR 1961 SC 838 as 'law' within the meaning of Article 20(1) of the Constitution. I am therefore of the opinion that a statutory order like a general Order passed by a District Magistrate under Section 7 (2) of the Act is law within the meaning of Section 23, Contract Act.

7. If an agreement made by a landlord with a person in violation of a general Order issued by the District Magistrate under Section 7 (2) is held as a valid contract it would not only defeat the purpose of the Act but would also make the provisions of that Act as contained in Section 7 read with Rule 3 and Section 7-A nugatory. In that case it would be open to a landlord not to intimate the vacancy to the District Magistrate under Sub-section (1) of Section 7 and to let out the accommodation to any person whom he likes at any rent as agreed upon between him and that person and thereby disabling the District Magistrate from allotting the accommodation to a person whom he thinks it should be allotted under Rule 3 within a period of thirty days of the receipt of the intimation sent by the landlord under Section 7 (1) (a) and thereafter the District Magistrate would also be helpless to dispossess that person by taking recourse to the proceedings under Section 7-A. If such a contract is allowed to stand, it would defeat the provisions of the Act within the meaning of clause two of Section 23.

8. If an accommodation has been let out by the landlord in violation of a general Order issued by the District Magistrate under Sub-section (2) the tenant can evidently be proceeded against under Section 7-A. There is no reason to draw a line that such proceedings can be taken only if besides a general order an order of allotment has also been passed by the District Magistrate prior to that subletting. In my opinion, the proceedings under Section 7-A against a person to whom the accommodation has been let out by the landlord in violation of the general Order are not dependent on the passing of an order of allotment. Even without passing such an order of allotment the District Magistrate can dispossess that tenant by following the procedure laid down in Section 7-A and thereafter he can allot it to any person whom he thinks proper. If however he has already passed an order of allotment in favour of any person whether before or after the accommodation had been let out by the landlord to the tenant the proceedings under Section 7-A can nevertheless be taken and after dispossessing that tenant the allottee can be put in possession in enforcement of that allotment order.

39. I may now consider some cases specifically relating to this matter. In *Waman Shrinivas v. R.B. and Co.*, AIR 1959 SC 689 an accommodation had been let out by the landlord in violation of Section 15 of Bombay Hotel and Lodging House Rates Control Act, 1947 which prohibited subletting and made it unlawful for a tenant to assign or transfer his interest in the premises let to him. It was held that the agreement of sub-tenancy made in violation of Section 15 was void and unenforceable. The mere fact that in that case the prohibition was contained in the Act itself while the prohibition in the present case is contained in subordinate legislation in the form of a general Order issued by the District Magistrate, does not make any difference. Once a statutory order in exercise of the delegated authority had been validly passed by the authority competent to do so that order has as much the force of law as the provisions contained in the Act itself.

40. Before the Full Bench in Udhoo Dass's case 1963 All LJ 406 = (AIR 1964 All 1) the view taken by this Court was that an agreement of tenancy made in contravention of an order passed by the District Magistrate under Section 7 (2) was illegal and void. Reference may be made to the decision in AIR 1961 All 347 and AIR 1964 All 395 (supra). In 1962 All LJ 260 it was held that if a person has already entered into occupation of an accommodation under a contract of lease with the landlord before an order under Sub-section (2) of Section 7 has been passed by the District Magistrate, he cannot be said to be in occupation of an accommodation 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 may not be evicted from that accommodation. The contravention of a prior general order under Section 7 (1) was not considered in this case.

41. Even after the Full Bench decision, a Division Bench of this Court consisting of Satish Chandra and P.N. Bakshi JJ. held in the case of AIR 1973 All 247 that where a general order has been passed by the District Magistrate under Section 7 (2) prohibiting the landlord from letting out any accommodation then, without an allotment order the letting in defiance of such a general order would be unauthorised and in the eyes of Law there was vacancy; and the Rent Control and Eviction Officer had jurisdiction to make an allotment order in respect of the premises. In my opinion, this view though it runs counter to the view of the Full Bench in Udhoo Dass's case 1963 All LJ 406 = (AIR 1964 All 1) (FB) is correct view. The learned Judges instead of formally recording a dissent against that Full Bench decision and referring to a larger Bench chose to observe that the Full Bench was not of material assistance in deciding the point involved in that case. It was for this reason that the present reference to a larger Bench was felt necessary. I am therefore of the opinion that an agreement of tenancy made in violation of a general order issued by the District Magistrate under Section 7 (2) is void and the person to whom accommodation has been let out under such agreement is liable to be proceeded against under Section 7-A at the instance of the person in whose favour an allotment order has been passed by the District Magistrate either prior or subsequent to the date on which the accommodation was unauthorisedly let out by the landlord to the former person or by the District Magistrate suo motu even in the absence of such allotment order. The reference should therefore be answered in the affirmative.

D.N. Jha, J.

41-A. I concur with Hon'ble Jagmohan Lal J.

BY THE COURT

42. The question referred to the Full Bench is answered in the affirmative, namely, that a person to whom an accommodation governed by the U. P. (Temporary) Control of Rent and Eviction Act, 1947 has been let out by the landlord in contravention of the general order passed by the District Magistrate under Section 7 (2) of the Act is liable to be proceeded against under Section 7-A at the instance of the person in whose favour an allotment order was passed by the District Magistrate even though that allotment order was passed subsequent to the accommodation being unauthorisedly let out and occupied by the former person.