

THE CENTRAL TALKIES LTD., KANPUR

v.

DWARKA PRASAD.

1961

January 16.

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Rent Control—Ejectment suit with permission of District Magistrate—Additional District Magistrate, if can grant permission—Persona designata—U. P. (Temporary) Control of Rent and Eviction Act, 1947 (U. P. III of 1947), ss. 2(d) and 3—Code of Criminal Procedure, 1898 (V of 1898), s. 10.

Section 3 of the U. P. (Temporary) Control of Rent and Eviction Act, 1947, enabled a landlord to file a suit for eviction of the tenant with the permission of the District Magistrate. Section 2(d) of the Act defined District Magistrate as including an officer authorised by the District Magistrate to perform any of his functions under the Act. By a notification issued under s. 10(2) of the Code of Criminal Procedure the U. P. Government appointed Mr. Seth to be an Additional District Magistrate "with all the powers of a District Magistrate under the said Code and under any other law for the time being in force." The respondent applied to the District Magistrate for permission to file a suit for ejectment against the appellant. The District Magistrate transferred the application to Mr. Seth the Additional District Magistrate who granted the permission. The appellants contended that the permission granted was invalid as the District Magistrate mentioned in s. 3 of the Act was a *persona designata* and the permission could have been granted only by him or by an officer authorised by him to perform his functions and not by the Additional District Magistrate.

Held, that the permission granted by the Additional District Magistrate was valid. The notification issued by the Government invested Mr. Seth with all the powers of the District Magistrate under the Code as well as under any other law including the Eviction Act and he was competent to grant the permission under s. 3. The District Magistrate mentioned in s. 3 was not a *persona designata*. A *persona designata* is a person selected as an individual in his private capacity, and not in his capacity as filling a particular character or office.

Kedar Nath v. Mool Chand, A.I.R. 1953 All. 62, disapproved.

Parthasaradhi Naidu v. Koteswara Rao, (1923) I.L.R. 47 Mad. 369 (F.B.), referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 374 of 1957.

Appeal from the judgment and decree dated September 21, 1955, of the Allahabad High Court in First Appeal No. 251 of 1954 arising out of the judgment

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and decree dated May 24, 1954, of the Civil Judge, Kanpur, in Suit No. 35 of 1949.

A. V. Viswanatha Sastri, G. S. Pathak and Naunit Lal for the appellant.

N. C. Chatterjee, S. N. Andley, J. B. Dadachanji and P. L. Vohra, for the respondent.

1961. January 16. The Judgment of the Court was delivered by

Hidayatullah J.

HIDAYATULLAH, J.—This is an appeal against the judgment and decree of the High Court of Allahabad with a certificate granted by the High Court under Art. 133(1)(b) of the Constitution. The High Court, reversing the decision of the trial Court, decreed the present suit for ejection against the appellants, and also awarded damages to the plaintiff-respondent at the rate of Rs. 593-12-0 per month. The suit was filed by the respondent, Babu Dwarka Prasad, against the appellants, Central Talkies Ltd., Kanpur, and Lala Ram Narain Garg, the Managing Director of the Company.

The facts, briefly stated, are as follows: Dwarka Prasad was the sole owner of a plot of land No.73/22 (old No. 73/28) situated in Collectorgunj, Kanpur. In 1933 an agreement of lease was executed by five persons in favour of Lala Rameshwardas, the predecessor-in-title of Babu Dwarka Prasad, by which the five lessees took over on lease a hall and other constructions, which the lessor agreed to build at a cost of Rs. 16,000/- within four months. It was agreed that, if the lessor was required to spend an amount in excess of Rs. 16,000/-, he would be entitled to interest at the rate of 12 annas per cent. per month from the second party till the end of tenancy. The tenancy was from month to month, and the period of the tenancy was fixed at 5 years in the first instance. This tenancy continued with variations in the amount of rent till the year 1946, and on January 15, 1946, Dwarka Prasad sent a letter to the defendants that the period of lease was to expire on February 28, 1946, and that the Central Talkies Ltd. should vacate the premises by that date. The defendants did not vacate the

premises, and a suit for ejection was filed against the Central Talkies Ltd.

During the pendency of that suit, the United Provinces (Temporary) Control of Rent and Eviction Act, 1947 (referred to in the judgment as the Eviction Act), came into force. Under s. 3 of the Eviction Act, permission of the District Magistrate was required to file in any Civil Court a suit for the eviction of a tenant, except on grounds which were enumerated in the section. Admittedly, that suit was filed on a ground which was not enumerated in the section, and Dwarka Prasad withdrew it. He then applied to the District Magistrate for permission to eject the Central Talkies Ltd., from the premises, and permission was granted by the Additional District Magistrate (Rural Area) on July 7, 1948. It is not necessary to state the pleas which were taken by the defendants in the newly filed suit, because the only point argued before us was that the suit was incompetent, because permission of the District Magistrate as required by s. 3 had not been obtained.

The Divisional Bench of the High Court held that the suit was competent. The two learned Judges, who heard the appeal, reached the same conclusion, though on slightly different grounds. Raghubar Dayal, J. held that the Additional District Magistrate, who granted permission, was empowered by the Provincial Government under s. 10(2) of the Code of Criminal Procedure to exercise all the powers of a District Magistrate under the Code and all the laws for the time being in force, and the requirements of s. 3 were complied with. Brij Mohan Lal, J. came to the conclusion that the District Magistrate by transferring the case to the Additional District Magistrate (Rural Area) had authorised him to perform his functions under the Act in this behalf and that the Additional District Magistrate, being thus included in the definition of "District Magistrate" under s. 2(d), was competent to grant the permission. Concurring, therefore, that the suit was instituted with the permission of the District Magistrate as required by the Eviction Act, the Divisional Bench held that the suit was competent.

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It may be pointed out that, at first, the application for permission was made over by the District Magistrate to Mr. Hadi Hasan, who was also an Additional District Magistrate; but the latter sent the case back to the District Magistrate asking for a transfer, because he had been approached on behalf of the defendants. The District Magistrate thereafter passed an order on February 11, 1948, to the following effect :

“Transferred to Additional District Magistrate (R.A.) for disposal.”

The application for permission was disposed of by Mr. Brijpal Singh Seth, Additional District Magistrate (Rural Area), on July 7, 1948. This Officer, who was previously a City Magistrate, Kanpur, was appointed an Additional District Magistrate by Notification No. 3400/II-276-48 dated May 22, 1948. The material portion of this Notification read as follows :

“With effect from the date on which he takes over charge Shri Brijpal Singh Seth, City Magistrate, Kanpur, is appointed *vice* Shri Sheo Ramdas Saksena—

(a) under sub-section (2) of section 10 of the Code of Criminal Procedure, 1898 (Act V of 1898), to be an Additional District Magistrate of Kanpur District, with jurisdiction extending over the whole of the said district and with all the powers of a District Magistrate under the said Code and under any other law for the time being in force...”

The appellants contended before us that both the reasons given by the Divisional Bench of the High Court were not valid, and that the suit was not brought in accordance with the Eviction Act. At first, the appellants wished to raise a question as to the invalidity of the notice; but during the course of the arguments, that ground was expressly abandoned. The case was thus argued only on the footing that the permission given by Mr. Brijpal Singh Seth did not comply with s. 3 of the Eviction Act.

The material portion of s. 3, as it stood on the relevant date, read as follows :

“No suit shall, without the permission of the District Magistrate, be filed in any civil court

against a tenant for his eviction from any accommodation, except on one or more of the following grounds..."

"District Magistrate" is defined by s. 2(d) of the Act, which reads :

"'District Magistrate' includes an officer authorised by the District Magistrate to perform any of his functions under this Act."

The argument of the appellants was that the District Magistrate mentioned in s. 3 was a *persona designata*, and that either he or an officer authorised by him to perform his functions could grant permission. According to them, in view of the provisions quoted above and in view also of the provisions of s. 1(2) of the Code of Criminal Procedure, no Additional District Magistrate was competent to grant the permission, unless authorised to do so by the District Magistrate. The order of the District Magistrate by which the case was made over to the Additional District Magistrate (Rural Area) was characterised as a mere transfer and not an authorisation. It was contended that a transfer could only take place to a person possessing jurisdiction, and that jurisdiction under the present Act was confined only to the District Magistrate or an officer authorised by him. The transfer of the case, it was contended, did not constitute such authorisation. Reliance was placed on the decision of a learned single Judge of the Allahabad High Court reported in *Kedar Nath v. Mool Chand* (1) and on the decision of the Nagpur High Court referred to therein, *P. K. Tare v. Emperor* (2).

Section 10 of the Code of Criminal Procedure, at the relevant time, provided as follows :

"10(1). In every district outside the presidency-towns the Provincial Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

(2) The Provincial Government may appoint any Magistrate of the first class to be an Additional District Magistrate and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code or under any

(1) A.I.R. 1953 All. 62.

(2) A.I.R. 1943 Nag. 26.

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other law for the time being in force, as the Provincial Government may direct.”

The Notification, which was issued about Mr. Brijpal Singh Seth and which has been quoted already, invested him with all the powers of the District Magistrate under the Code of Criminal Procedure as well as under any other law for the time being in force. He was thus competent to deal with an application under the Act for permission to file a civil suit without special authorisation from the District Magistrate. Learned counsel for the appellants contended that the definition of “District Magistrate” clearly showed that in addition to the District Magistrate, only an officer specially authorised by him could act under the Eviction Act, and he referred to sub-s. (2) of s. 1 of the Code of Criminal Procedure, which provided:

“It extends to the whole of British India; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force...”

The argument was that the special jurisdiction created by the Eviction Act was not affected by s. 10(2) of the Code, in view of the provisions of this sub-section. The argument overlooks the words “in the absence of any specific provision to the contrary”, and because there is in the Code of Criminal Procedure such a provision in s. 10(2), sub-s. (2) of s. 1 is excluded, and an Additional District Magistrate must be regarded as possessing the powers under any other law including the Eviction Act.

The argument that the District Magistrate was a *persona designata* cannot be accepted. Under the definition of “District Magistrate”, the special authorisation by the District Magistrate had the effect of creating officers exercising the powers of a District Magistrate under the Eviction Act. To that extent, those officers would, on authorisation, be equated to the District Magistrate. A *persona designata* is “a

person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character." (See Osborn's Concise Law Dictionary, 4th Edn., p. 253). In the words of Schwabe, C.J., in *Parthasaradhi Naidu v. Koteswara Rao* (1), *personae designatae* are "persons selected to act in their private capacity and not in their capacity as Judges." The same consideration applies also to a well-known officer like the District Magistrate named by virtue of his office, and whose powers the Additional District Magistrate can also exercise and who can create other officers equal to himself for the purposes of the Eviction Act. The decision of Sapru, J., in the Allahabad case, with respect, was erroneous.

Reference was made to the definition of "District Magistrate" in the United Provinces (Temporary) Accommodation Requisition Act, 1947, which includes an "Additional District Magistrate". This definition has been made wide for obvious reasons, because under s. 10(2) of the Code of Criminal Procedure, the Additional District Magistrate has to be specially empowered. By including the Additional District Magistrate in the definition of "District Magistrate", power is conferred by the Requisition Act itself whether or not the Provincial Government specially empowers any particular Additional District Magistrate in that behalf. The Eviction Act, on the other hand, gave power to the District Magistrate to authorise officers other than the Additional District Magistrates empowered by the Provincial Government, by defining the term "District Magistrate" differently.

1 In view of the above, it is hardly necessary to go into the reasons given by Brij Mohan Lal, J.; but even those reasons are, with all due respect, equally valid. By the act of transferring the case to the Additional District Magistrate, the District Magistrate must be deemed to have authorised him to exercise his powers under s. 3 of the Eviction Act. However, it is not necessary to rely upon this aspect of the case because, in our opinion, s. 10(2) of the Code of

(1) (1923) I.L.R. 47 Mad. 369, 373 (F.B.).

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Criminal Procedure gave ample powers to Mr. Brijpal Singh Seth to accord permission for bringing the suit, and the order of the District Magistrate, even if treated as a transfer, was valid.

In the result, the appeal fails, and is dismissed with costs.

Appeal dismissed.

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January 17.

NATIONAL CEMENT MINES INDUSTRIES, LTD.

v.

COMMISSIONER OF INCOME-TAX,
WEST BENGAL, CALCUTTA.

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Income-tax—Conveyance with reservation of rights—Category of—Receipts under the conveyance, if income or capital.

The appellants were carrying on the business of cement and lime manufacture and supply thereof. By a deed dated May 7, 1935, the appellants conveyed to the Associated Cement Ltd. the rights which had vested in them under an earlier conveyance made in their favour by a company known as Karanpura Co. Under the deed the appellants reserved to themselves the right to receive from the Associated Cement Company a sum equal to thirteen annas in respect of every ton of cement sold by it which shall have been manufactured from the limestone won by it from the lands transferred and comprised in the leases and agreements.

Pursuant to this stipulation in the year of account, the appellants received from the Associated Cement Ltd. Rs. 77,820. The Income-tax Officer included this amount in the total assessable income of the appellants in the assesment year and his order was confirmed by the Appellate Assistant Commissioner and by the Income-tax Appellate Tribunal. The contention of the appellants before the High Court in a reference under s. 66 of the Indian Income-tax Act that on a proper construction of the deed and on the facts and circumstances of the case the sum of Rs. 77,820 did not represent receipt of a revenue nature in the hands of the appellants and was not assessable as such, was negatived.

Held, that the deed did not incorporate a transaction of either sale or lease. The conveyance was subject to several restrictions and the appellants retained in part, rights in the land conveyed. The transaction was substantially a transaction for sharing the profits of the commercial activities of the Associated Cement Ltd. and the receipt under cl. I of the deed was of the nature of income and not capital and as such assessable to tax.