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SRI KRISHNA KHANNA

v.

ADDITIONAL DISTRICT MAGISTRATE, KANPUR AND ORS.

February 26, 1975.

[K. K. MATHEW, P. N. BHAGWATI AND N. L. UNTWALIA, JJ.]

B *U.P. (Temporary) Control of Rent and Eviction Act, 1947, Sections 3, 7 and 7A and Control of Rent and Eviction Rules, 1949, Rules 3, 4, 5 and 6—Intimation of vacancy by landlord—Allotment order made after expiry of the required period—Allotment order, if invalid.*

Compromise Decree—Compromise void, being unlawful and opposed to public policy—Respondent, if committed fraud in ignoring void compromise while applying for eviction of appellant.

C The appellant who is the owner of the building bearing No. 24/6, Tulsa Kothi, Kanpur, lives in the upper floor of the building with his son and other members of the family. There are two shops in the ground floor in which tenants had been inducted. One of the shops has been in possession of Raghunath Prasad Mehrotra, respondent no. 3 and his brother Kanahyalal Mehrotra who have been carrying on the business of Druggists and Chemists in the said shop as partners of the firm Pioneer Drug Stores. The other shop was in the tenancy of Bata Shoe Company Ltd. Since the said Company had taken D another shop on rent sometime in the year 1961 it was about to vacate the shop in the building of the appellant. He, therefore, filed an application on 7-11-1961 before the Rent Control and Eviction Officer (Rent Controller) with a copy to the District Magistrate, Kanpur under Rule 6 of the Control of Rent and Eviction Rules, 1949 framed under Section 17 of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 praying for the release of the shop in his favour on the ground that he required the accommodation for his own use for establishing a business for his son. On 2-5-1962, respondent No. 3 made an application under section 7(2) of the Act for allotment of the accommoda- E tion to him. There were four more applicants under section 7(2). The shop was actually vacated by Bata Shoe Company on 15-8-1962. On 16-8-1962 intimation was given by the appellant to the Rent Controller about the vacancy of the shop in accordance with section 7(1). The Additional District Magistrate, to whom proceedings had been transferred, made an order on 17-9-1962 refusing to release the shop to the appellant and directed its allotment to respondent No. 3. In pursuance of the order made in his favour, the respondent got actual possession of the shop from the appellant who had occupied the shop in the meantime.

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Before the filing of the application by the third respondent on 2-11-1962 under section 7A of the Act, the appellant had filed on 22-9-1962, suit No. 132/1962 in the Court of First Civil Judge at Kanpur challenging the allotment order of the Additional District Magistrate and the Rent Controller impleading the third respondent as the sole defendant in the suit. A decree for permanent injunction was asked for. Interim injunction was granted. The suit ended in compromise on 11-10-1962. The appellant filed an application G for review on 17-11-1962 before the Rent Controller asking him to review his ex-parte order dated 15-11-1962 made under section 7A of the Act chiefly on two grounds viz. (1) that no notice was served upon the appellant; (2) that the third respondent had obtained the order fradulently by suppressing the fact of compromise entered in Suit No. 132/1962. The Rent Controller refused to review his order and dismissed the application on 8-1-1963. The appellant on the same date *i.e.* on 8-1-1963 filed a petition in the Allahabad High Court under Article 226 of the Constitution to challenge the various orders of allotment and delivery of possession made by respondents 1 and 2 from time to H time. The Writ Petition was dismissed by a learned single Judge on 7-5-1963. Special Appeal No. 254/1963 was dismissed by a Bench of the Allahabad High Court on 3-2-1964. The present appeal was preferred in this Court on grant of certificate by the High Court.

A

It was contended on behalf of the appellant that

(i) The order of allotment having not been made within 30 days of the receipt of the intimation sent by the landlord under section 7(1)(a) of the Act as required by Rule 3 of the Rules was *ultra vires* and void;

(ii) Respondent No. 3 had no right to apply for possession under section 7A of the Act after having entered into a compromise in Suit No. 132/1962; B

(iii) that the order of allotment issued by the Rent Controller was bad as it was mechanically issued on the basis of the order of the Additional District Magistrate and without any application of the mind by the former.

Dismissing the appeal,

HELD : (By Court) C

(i) Section 3 of the Act providing for restrictions on eviction is based on public policy. It is intended to protect the weaker section of the community in general by granting equality of bargaining power. [714D; 718E]

Murlidhar Agarwal and Anr. v *State of Uttar Pradesh and Ors.;* A.I.R. 1974 S.C. 1924, relied on

In *Jiwan Singh* v. *Rajindra Prasad & Anr.*, Civil Appeal No. 999(N) of D 1971 decided on 18-12-1974, this Court held that if the landlord failed to discharge his obligation of giving 7 days' notice in accordance with section 7(1)(a), he lost his right of making a nomination under Rule 4. The District Magistrate has got to make the order of allotment within 30 days of the receipt of the intimation sent by the landlord under section 7(1)(a) of the Act. He has, at the same time, to give notice of his order of allotment to the landlord. If the landlord receives no notice from the District Magistrate within 30 days, which as a matter of construction under Rule 4 must mean shortly after the expiry of 30 days of the receipt by the landlord under section 7(1)(a), of an E order of allotment having been made within that period, he gets a right to nominate a tenant. Ordinarily and generally the District Magistrate shall have to allot the accommodation to the nominee of the landlord but for special reasons to be recorded in writing, he may depart from the nomination made by the landlord and allot the accommodation to some other person, even to a person who was an applicant before him before the expiry of the period of 30 days and due to one reason or the other no order of allotment could be made in his favour within the said period. If, however, the landlord does not make a nomination in accordance with Rule 4 he cannot challenge the order of allotment subsequently made by the District Magistrate on the expiry of the period of 30 days only on the ground of its having been made beyond the time. [715D-E, F-716B; 718E-719F] F

(ii) In the instant case it is not correct to say that the order of allotment made on the 17th September, 1962—two days after the expiry of the period of 30 days was invalid on that account alone. The High Court is also right in its view that no order of allotment was possible to be made in this case before disposal of the landlord's claim under Rule, 6. There is no time limit fixed for G disposal of such a claim. Of course it should be disposed of as quickly as possible, preferably within the period of 30 days mentioned in Rule 3. That being so even in the light of Rule 6 it is difficult to nullify an order of allotment made by the District Magistrate merely on the ground of having been made on the expiry of the period of 30 days. On the facts of this case surely the order of allotment was not invalid. [716D-E; 719F-720B]

(iii) The order of allotment in this case was made by the Additional District Magistrate, respondent No. 1. It may not be quite correct to say that it H was purely an administrative order as has been the view of the High Court in the Special Appeal. But the order was made by him in

A a quasi-judicial manner after hearing the parties concerned and after fully applying his mind. He, being a delegate of the District Magistrate, was competent to make order of allotment. So was the Rent Controller. But the latter merely issued the formal order made by the former. It was not a case where the authority competent to make the order mechanically did it on the direction or in pursuance of an order of a different authority not competent to pass the order. [717G-718B; C-D]

B (ii) *By majority* (Mathew and Untwalia, JJ.)

The appellant filed Civil Suit No. 132/1962 against the third respondent to challenge the order of allotment made in his favour by respondent Nos. 1 and 2. Neither of the said two respondents was impleaded as a defendant in the suit. But that apart, the agreement entered into between the appellant and respondent No. 3 embodied in the compromise petition dated 11-10-1962 was void under section 23 of the Contract Act as it was unlawful and against the C public policy of the Act under the Rules. So long as the Act and the Rules continued in force the control of letting vested in *the District Magistrate and not in the parties.* By an agreement of the kind embodied in the compromise petition the parties could not curtail the powers of the District Magistrate. It was unlawful and against the public policy of the law to do so. Respondent No. 3 committed no fraud in ignoring the void compromise when he applied for eviction of the appellant under section 7A of the Act and for delivery of actual, physical possession to him. [717C-F]

D *Per* Bhagwati, J. (dissenting)

Even if the compromise was unlawful and the consent decree was on that account void, the very fact of the 3rd respondent having submitted to the consent decree, declaring the order of allotment to be invalid and recognising the right of the appellant to occupy the shop for himself *vis-a-vis* the 3rd respondent, was a highly relevant circumstance bearing on the exercise of the discretion of the District Magistrate, and it ought to have been disclosed to the E District Magistrate. It is a well settled proposition of law and this proposition should apply equally in the field of administrative law, that when a party approaches a tribunal for discretionary relief, he must not only come with clean hands but must also show the utmost good faith and disclose all material facts having a bearing on the exercise of discretion of the authority which are within his knowledge. He cannot escape this obligation on the plea that the other side can always, if it so chooses, appear and bring the material facts to the notice of the authority. It is an obligation of confidence which he owes to the authority and this obligation is imposed by law in the larger interests of F administration of justice so that justice, whether dispensed by Civil court or by administrative authority, remains pure and unsullied. The non-disclosure of the fact of consent decree by the 3rd respondent in the application made by him vitiated the order of the Rent Control and Eviction Officer under section 7A. [722C-723B; 724A-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 38 of 1968.

G From the Judgment and Decree dated the 3rd February, 1964 of the Allahabad High Court in Spl. Civil Appeal No. 254 of 1963.

S. T. Desai, S. S. Bhatia, J. P. Goyal and *S. M. Jain,* for the appellant.

Bishan Narain, B. P. Maheshwari and *Suresh Sethi,* for respondent H No. 3.

The Judgment of the Court was delivered by Untwalia, J. P. N. Bhagwati, J. gave a dissenting Opinion.

UNTWALIA, J.—There is a building bearing no. 24/6, Tulsa Kothi, situated at Mall in the City of Kanpur. The appellant in this appeal filed by certificate of the Allahabad High Court is the owner of the said building. He lives in the upper floor of the building with his son and other members of the family. There are two shops in the ground floor in which tenants had been inducted. One of the shops has been coming in possession of Raghunath Prasad Mehrotra, respondent no. 3 and his brother Kanahyalal Mehrotra who have been carrying on the business of Druggists and Chemists in the said shop as partners of the firm Pioneer Drug Stores. The other shop was in the tenancy of Bata Shoe Company Ltd. Since the said Company had taken another shop on rent sometime in the year 1961 it was about to vacate the shop in the building of the appellant. He, therefore, filed an application on 7-11-1961 before the Rent Control and Eviction Officer (for brevity, Rent Controller) with a copy to the District Magistrate, Kanpur under Rule 6 of the Control of Rent and Eviction Rules, 1949 framed under section 17 of the U.P. (Temporary) Control of Rent and Eviction Act, 1947—hereinafter called respectively the Rules and the Act praying for the release of the shop in his favour on the ground that he required the accommodation for his own use for establishing a business for his son. On 2-5-1962, respondent no. 3 made an application under section 7(2) of the Act for allotment of the accommodation to him. There were four more applicants under section 7(2). The shop was actually vacated by Bata Shoe Company on 15-8-1962. On 16-8-1962 intimation was given by the appellant to the Rent Controller about the vacancy of the shop in accordance with section 7(1). It may be stated here that the Additional District Magistrate, respondent no. 1 as also the Rent Controller, respondent no. 2 had been authorised by the District Magistrate of Kanpur to exercise powers under the Act. On 18-8-1962 the Rent Controller heard the matters and fixed 27-8-1962 for orders. Due to some reason he felt difficulty in deciding the matter of the release of shop in favour of the appellant or its allotment to any of the five applicants including respondent no. 3. In due course, the District Magistrate transferred the proceedings to the Additional District Magistrate, respondent no. 1. After hearing all the parties concerned he made an order on 17-9-1962 refusing to release the shop to the appellant and directed its allotment to respondent no. 3 Thereupon a formal order of allotment alloting the shop accommodation to respondent no. 3 was issued by the Rent Controller, respondent no. 2 on 18-9-1962.

It appears that the appellant had in the meantime occupied the shop when it was vacated by Bata Shoe Company. Respondent no. 3. therefore filed an application under section 7A of the Act on 2-11-1962, which was allowed by the Rent Controller on 15-11-1962. The order was ex-parte in absence of the appellant as he is said to have not responded to the notice issued and alleged to have been served on him under section 7A(1) of the Act. The shop was got vacated and actual possession delivered to respondent no. 3 with the help of the police force on 16-11-1962 in accordance with section 7A(3) of the Act.

A Before the filing of the application by the third respondent on 2-11-1962 under section 7A of the Act, the appellant had filed on 22-9-1962 Suit No. 132/1962 in the Court of First Civil Judge at Kanpur challenging the allotment order of the Additional District Magistrate and the Rent Controller implementing the third respondent as the sole defendant in the suit. A decree for permanent injunction was asked for. Interim injunction was granted. The suit ended in com-
B promise on 11-10-1962. The terms of the compromise will have to be considered at the appropriate place in this judgment. It may also be noted here that Kanahyalal Mehrotra, brother of the third respondent, filed another suit to challenge the compromise decree dated 11-10-1962 claiming that the order of allotment had been made in favour of the partnership firm and the third respondent had no right to nullify the said order by the compromise. The suit was decreed
C and we were informed at the Bar that an appeal from the decision of the Trial Court is pending.

The appellant filed an application for review on 17-11-1962 before the Rent Controller asking him to review his ex-parte order dated 15-11-1962 made under section 7A of the Act chiefly on two grounds viz. (1) that no notice was served upon the appellant; (2) that
D the third respondent had obtained the order fraudulently by suppressing the fact of compromise entered in Suit No. 132/1962. The Rent Controller refused to review his order and dismissed the application on 8-1-1963. The appellant on the same date i.e. on 8-1-1963 filed a petition in the Allahabad High Court under Article 226 of the Constitution to challenge the various orders of allotment and delivery of possession made by respondents 1 and 2 from time to time. The
E Writ Petition was dismissed by a learned single Judge on 7-5-1963. Special Appeal No. 254/1963 was dismissed by a Bench of the Allahabad High Court on 3-2-1964. The present appeal was preferred in this Court on grant of certificate by the High Court.

The appellant had urged five points before the High Court in the special appeal. Mr. S. T. Desai appearing for him in this Court pressed only 3 points for our consideration in support of this appeal. They
F are: (1) The order of allotment having not been made within 30 days of the receipt of the intimation sent by the landlord under section 7(1) (a) of the Act as required by Rule 3 of the Rules was *ultra vires* and void; (2) Respondent no.3 had no right to apply for possession under section 7A of the Act after having entered into a compromise in Suit No. 132/1962; (3) that the order of allotment issued by the Rent
G Controller was bad as it was mechanically issued on the basis of the order of the Additional District Magistrate and without any application of the mind by the former.

Mr. Bishan Narain, learned counsel for respondent no. 3 submitted that the period of 30 days mentioned in Rule 3 was directory, or, in any view of the matter in the facts and circumstances of this case the order of allotment was not bad on that account. He
H further submitted that the allotment order was in favour of the partnership firm, respondent no. 3 had applied for the allotment as a partner of the firm and the compromise entered into between the appellant

and the said respondent was not binding on the firm. Moreover, it was illegal, null and void. He further argued that there was no substance in the third point urged on behalf of the appellant in as much as the order was really that of the Additional District Magistrate who had made it after fully hearing the parties concerned.

The High Court in appeal has expressed the view that the requirement of passing the order of allotment within the period of 30 days is directory or in any view of the matter on the facts of this case it could not be made before disposing of the appellant's application for release of the accommodation under Rule 6. In the opinion of the High Court the compromise was a fraud on the officers empowered to act under the Statute and was of no avail to the appellant. The order of allotment was in fact made by the Additional District Magistrate and the formality of issuing the order could be done either by him or by the Rent Controller, as it was an administrative order.

The object of the Act as its Preamble indicates is to provide for continuance of powers to control the letting and the rent of residential and non-residential accommodation and to prevent the eviction of tenants therefrom. Section 3 providing for restrictions on eviction as held by one of us (Mathew, J.) delivering the judgment on behalf of this Court in the case of *Murlidhar Aggarwal Another* v. *State of Uttar Pradesh and others*(1) is based on Public Policy. It is intended, to protect the weaker section of the community in general by granting equality of bargaining power. The protection is based on public policy. Similarly, the Scheme of the Act as per the provisions contained in Section 7 and 7A and Rules 3 to 6 is to curtail the right and freedom of the landlord to a large extent in the matter of letting out of accommodation. Section 7 provides for control on letting; sub-section (1) of which casts a duty on the landlord to give notice in writing of the vacancy of the accommodation to the District Magistrate. Under sub-section (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 has fallen vacant or is about to fall vacant. The provision of sub-section (2) has to be read in conjunction with the relevant rules. Section 7A empowers the District Magistrate to take action against the unauthorised occupants by directing their eviction and in case of necessity even with force. Proviso to sub-section (1) of Section 7A enjoins upon the District Magistrate not to pass any order of eviction if he is satisfied that there has been undue delay or it is otherwise inexpedient to do so. In order to appreciate the true purport of the law contained in Section 7 of the Act it is necessary to read Rules 3 to 6 of the Rules in full :

> 3. "Allotment Order—The District Magistrate shall make an allotment order within thirty days of the receipt of the intimation sent by the landlord under section 7(1)(a) of the Act and shall give notice thereof to the landlord.
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> 4. Landlord's Right to Let—If the landlord, receives no notice from the District Magistrate within thirty days of the

(1) A.I.R. 1974 S.C. 1924.

receipt by District Magistrate of the intimation given by landlord under section 7(1)(a), the landlord may nominate a tenant and the District Magistrate shall allot the accommodation to his nominee unless, for reasons to be recorded in writing, he forthwith allots the accommodation to other person.

5. Liability for Rent from the date of allotment—The allottee shall, unless he intimates in writing to the District Magistrate his refusal to accept the accommodation within seven days of the receipt of the order, be liable for rent from the date of allotment.

6. Occupation by landlord—When the District Magistrate is satisfied that an accommodation, which has fallen vacant or is likely to fall vacan is bona fide needed by the landlord for his own personal occupation, the District Magistrate may permit the landlord to occupy it himself."

Recently in the case of *Jiwan Singh* v. *Rajindra Prasad & Anr.*(1), judgment of which was delivered by Mathew, J. on behalf of this very Bench on 18-12-1974, it was pointed out that if the landlord failed to discharge his obligation of giving 7 days' notice in accordance with section 7(1)(a), he lost his right of making a nomination under Rule 4. It is to be noticed that on the failure of the District Magistrate to make an allotment order within the period provided in Rule 3 the landlord gets a right to nominate a tenant. The District Magistrate under Rule 4 has got to allot the accommodation to the nominee of the landlord unless for the reasons to be recorded he allots it to somebody else. Under certain circumstances therefore the District Magistrate is empowered to make an order of allotment even after the expiry of the period of 30 days by ignoring the nomination made by the landlord. In such a situation and in the context of the Rules it is difficult to hold that the period fixed for the making of an allotment order in Rule 3 is mandatory in the sense of resulting in the nullification of the order of the District Magistrate if made after the expiry of the period. Without resorting to the well-known expressions of the requirement of the law being mandatory or directory we would rest our view on the plain reading of the language of the Rules. The District Magistrate, as we have said above, has got to make the order of allotment within 30 days of the receipt of the intimation sent by the landlord under section 7(1)(a) of the Act. He has, at the same time, to give notice of his order of allotment to the landlord. If the landlord receives no notice from the District Magistrate within 30 days, which as a matter of construction under Rule 4 must mean shortly after the expiry of 30 days of the receipt by the District Magistrate of the intimation given by the landlord under section 7(1)(a), of an order of allotment having been made within that period, he gets a right to nominate a tenant. Ordinarily and generally the District Magistrate shall have to allot the accommodation to the nominee of the landlord but for special reasons to be recorded in writing, he may depart from the nomination made by the landlord and allot the accommodation to some

(1) Civil Appeal No. 999 (N) of 1971.

other person, even to a person who was an applicant before him before the expiry of the period of 30 days and due to one reason or the other no order of allotment could be made in his favour within the said period. If, however, the landlord does not make a nomination in accordance with Rule 4 he cannot challenge the order of allotment subsequently made by the District Magistrate on the expiry of the period of 30 days only on the ground of its having been made beyond the time.

It is no doubt true that the liability for rent of the allottee begins only from the date of allotment under Rule 5 and the landlord suffers if there is delay in the making of the allotment by the District Magistrate. The landlord may move the legal machinery for forcing the District Magistrate to make the allotment. It may well be that in some case the order of allotment made after undue delay will be found to be bad. In the instant case it is not correct to say that the order of allotment made on the 17th September, 1962—two days after the expiry of the period of 30 days was invalid on that account alone. The High Court is also right in its view that no order of allotment was possible to be made in this case before disposal of the landlord's claim under Rule 6. There is no time limit fixed for disposal such a claim. Of course it should be disposed of as quickly as possible, preferably within the period of 30 days mentioned in Rule 3. That being so even in the light of Rule 6 it is difficult to nullify an order of allotment made by the District Magistrate merely on the ground of having been made on the expiry of the period of 30 days. On the facts of this case surely the order of allotment was not invalid.

The appellant filed Civil Suit No. 132/1962 against the third respondent to challenge the order of allotment made in his favour by respondent nos. 1 and 2. Neither of the said two respondents was impleaded as a defendant in the suit. But that apart, the agreement entered into between the appellant and respondent no. 3 embodied in the compromise petition dated 11-10-1962 was void under section 23 of the Contract Act as it was unlawful and against the Public Policy of the Act under the Rules. The four terms of the compromise are as under :

(a) "That it is admitted by the defendant that at the expiry of 30 days from the date of intimation, the shop in dispute automatically stood released to the plaintiff and the allotment order dated 18th September, 1962 was not at all effective vis-a-vis the rights of the plaintiff as a landlord to use the said premises.

(b) That the defandant has no objection if the plaintiff continues to utilize the accommodations for his own business or a business of his son whether himself or in partnership with any person and till such time as the plaintiff and his son utilize the accommodation in this manner, the defendant will not be entitled to enforce his allotment order against him.

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(c) That the plaintiff has agreed that if at any time he wants to discontinue the business established by him in the said shop and wants to let out the shop to any person, he will do so in favour of the defendant and unless he refuses to take the lease on reasonable terms, the plaintiff will not let out the shop to any third party.

B

(d) That the shop is already in possession of the plaintiff and the defendant will not be entitled to take any steps till the landlord himself desires to let out the shop to the defendant."

By clause (a) the parties agreed to the statement of the law which in
C our judgment was not sound and correct. It will be hazardous to permit a landlord and a tenant to agree to such a position of law. It was not open to respondent no. 3 to permit the appellant to utilize the accommodation for his own business or business of his son as was done under clause (b). Nor was it open to the appellant to agree to let out the shop, if in future he let it out to anybody, after giving first preference to the third respondent as was agreed to be done
D under clause (c). So long the Act and the Rules continued in force the control of letting vested in the District Magistrate and not in the parties. By an agreement of the kind emobodied in the compromise petition the parties could not curtail the powers of the District Magistrate. It was unlawful and against the public policy of the law to do so. The Public Policy behind the Act and the Rules is to vest the control of letting in the District Magistrate for the benefit of the
E general public or to be more precise such members thereof who were in need of accommodation on rent. In our opinion, therefore, respondent no. 3 committed no fraud in ignoring the void compromise when he applied for eviction of the appellant under section 7A of the Act and for delivery of actual, physical possession to him. We do not accept the alternative argument put forward by Mr. Bishen Narain as correct in respect of the compromise. It was not bad for
F the reason of having been entered into by respondent no. 3 alone. After perusing the application for allotment made by respondent no. 3, the order of allotment made by respondent no. 1 and the order made by respondent no. 2 under section 74(3) of the Act, we have come to the conclusion that the allottee of the accommodation in question was respondent no. 3 although he may have taken it for the purpose of extending his business of Chemists and Druggists run in
G partnership with his brother.

The third submission made on behalf of the appellant has no force and must also be rejected. The order of allotment in this case was made by the Additional District Magistrate, respondent no. 1. It may not be quite correct to say that it was purely an administrative order as has been the view of the High Court in the Special Appeal.
H But the order was made by him in a quasi-judicial manner after hearing the parties concerned and after fully applying his mind. He, being a delegate of the District Magistrate, was competent to make the order of allotment. So was the Rent Controller. But the latter

merely issued the formal order made by the former. It was not a case where the authority competent to make the order mechanically did it on the direction or in pursuance of an order of a different authority not competent to pass the order. In our judgment, therefore, the order of allotment allotting the accommodation to respondent no. 3 was not bad. Nor had the order made by the Rent Controller under section 7A of the Act any infirmity.

In the result the appeal fails and is dismissed. No orders as to cost.

BHAGWATI, J.—I have had the advantage of reading the judgment of brother Untwalia, J. He has discussed the three contentions urged by Mr. S. T. Desai on behalf of the appellant and rejected them. Whilst agreeing with the view taken by him in regard to the first and the third contentions, I find myself unable to subscribe to the view taken by him in regard to the second contention. I shall immediately proceed to give my reasons why I take a different view as regards the second contention, but before I do so, I would like to add a few words in reference to the first contention.

The Act with which we are concerned in this appeal is the United Provinces (Temporary) Control of Rent and Eviction Act, 1947. The object of this Act, as may be gathered from its preamble, is to provide for continuance of powers to control the letting and the rent of residential and non-residential accommodation and to prevent the eviction of tenants from such accommodation. Section 7, which is the material section, enacts various provisions relating to control on letting. It consists of four sub-sections, but of them only two are material. Sub-s. 1(a) requires the landlord to give notice of vacancy to the District Magistrate within seven days after the 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. A similar obligation is laid on the tenant vacating the accommodation under sub-s. 1(b). Sub-s. (2) then proceeds to say that 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. It may be noted that the power conferred on the District Magistrate under sub-section (2) is absolute in terms. The vacant accommodation is placed completely under the control of the District Magistrate and he may require the landlord to let the accommodation to any person nominated by him or he may even make a negative order that the landlord shall not let the accommodation to a particular person. Moreover, this power may be exercised by the District Magistrate at any time. There is no provision in the statute requiring the District Magistrate to exercise this power within a particular time limit. The question is whether there is anything in the Rules which imposes any such limitation on the District Magistrate ? Rule 3 provides that the District

A Magistrate shall make an allotment order within thirty days of the receipt of the intimation sent by the landlord under s. 7(1)(a) and shall give notice thereof to the landlord. This Rule obviously contemplates that the District Magistrate must make an order requiring the landlord to let the accommodation to a specified person within thirty days of the receipt of the intimation of vacancy from the land-
B lord. But does it also carry with it by necessary implication a negative prohibition that if the District Magistrate does not make such an order within the stipulated time, he shall be precluded from making such order thereafter. We do not think so. The only consequence of the District Magistrate not making an order of allotment within the period of thirty days is that set out in Rule 4. It confers a right on the landlord to nominate a tenant and where the landlord makes such
C a nomination, the District Magistrate is bound to allot the accommodation to such nominee "unless for reasons to be recorded in writing he forthwith allots the accommodation to other persons". It is significant to note that Rule 4 does not provide that if the District Magistrate fails to make an order of allotment within the period of thirty days, the landlord may occupy the accommodation himself. The only right which enures to the landlord in such a case is to
D nominate a tenant. This he may do or may not do depending on his volition. But he does not get a right to occupy the accommodation for himself. Moreover, even where the landlord nominates a tenant, the District Magistrate may, for reasons to be recorded in writing, disregard such nomination and allot the accommodation to another person notwithstanding the expiration of the period of thirty days. It would, therefore, be seen that the time limit of thirty days is not
E intended to operate as a fetter on the right of the District Magistrate to make an order of allotment in the sense that he cannot thereafter make such an order. The only reason why the period of thirty days is provided is that thereafter the landlord gets a right to nominate a tenant, though even this right can be displaced by the District Magistrate in a proper case. But if for some reason, the landlord does not exercise this right and nominate a tenant, the power of the District
F Magistrate to make an order of allotment conferred under s. 7(1)(a) is not affected. There is nothing in the Rules which says that the landlord shall be entitled to occupy the accommodation himself or that the District Magistrate shall be precluded from making an order of allotment after the expiration of the period of thirty days. Rule 4 in fact indicates to the contrary. And so also does Rule 6. That rule provides that if the landlord wants the accommodation *bona fide*
G for his own personal occupation, he must obtain permission of the District Magistrate to occupy it himself. This provision also suggests that the landlord does not become entitled to occupy the accommodation himself on the expiration of the period of thirty days, but he can do so only if the necessary permission is granted by the District Magistrate. If is, therefore, clear, on a conspectus of the provisions contained in s. 7, sub-ss. (1) and (2) Rules 3, 4 and 6, that
H even if an order of allotment is not made by the District Magistrate within the period of thirty days, the landlord does not become entitled to occupy the accommodation himself in defeasance of the power of the District Magistrate to make an order of allotment and the Dist-

rict Magistrate can, notwithstanding the expiration of the period of thirty days, make an order of allotment under s. 7(1)(a). The validity of the order of allotment made by the District Magistrate in favour of the third respondent could not, therefore, be assailed on the ground that it was made after the expiration of thirty days from the receipt of intimation of vacancy from the appellant.

I would now turn to examine the third contention on which I find myself in disagreement with my learned brother Untwalia, J. The facts which bear on this contention are fully set out in the judgment of my learned brother Untwalia, J. and I need not reiterate them. It would be enough for my purpose to state that Civil Suit No. 132 of 1962 was filed by the appellant against the 3rd respondent in the Court of the First Civil Judge, Kanpur challenging the validity of the order of allotment made by the District Magistrate in favour of the 3rd respondent. Immediately on filing the suit, the appellant obtained an injunction restraining the 3rd respondent from taking any steps to enforce the order of allotment or to interfere with the possession of the appellant in respect of the shop. The result was that the 3rd respondent was prevented from obtaining possession of the shop from the appellant and he could not even move the District Magistrate for evicting the appellant and handing over possession of the shop to him. The 3rd respondent, therefore, within a few days after the suit was filed and the injunction was obtained, entered into a compromise with the appellant for settlement of the suit and the terms of this compromise were as follows :

"(a) That it is admitted by the defendant that at the expiry of 30 days from the date of intimation, the shop in dispute automatically stood released to the plaintiff and the allotment order dated 18th September, 1962 was not at all effective vis-a-vis the rights of the plaintiff as a landlord to use the said premises.

(b) That the defendant has no objection if the plaintiff continues to utilize the accommodations for his own business or a business of his son whether himself or in partnership with any person and till such time as the plaintiff and his son utilize the accommodation in this manner, the defendant will not be entitled to enforce his allotment order against him.

(c) That the plaintiff has agreed that if at any time he wants to discontinue the business established by him in the said shop and wants to let out the shop to any person, he will do so in favour of the defendant and unless he refuses to take the lease on reasonable terms, the plaintiff will not let out the shop to any third party.

(d) That the shop is already in possession of the plaintiff and the defendant will not be entitled to take any steps till the landlord himself desires to let out the shop to the defendant."

A The learned Civil Judge, presumably on the view that the compromise between the parties was lawful, passed a decree in terms of the compromise on 11th October, 1962 under Order XXIII, rule 3 of the Code of Civil Procedure. One consequence of this consent decree was that the injunction against the 3rd respondent came to an end. The 3rd respondent, thus freed from the inhibitory mandate of the injunction, immediately proceeded to make an application B to the Rent Control and Eviction Officer on 2nd November, 1962 under s. 7A for an order directing the appellant to vacate the shop on the ground that he was in occupation of it in contravention of the order of allotment made in favour of the 3rd respondent. The application was in effect and substance one for enforcement of the order of allotment under s. 7A. Now, under the consent decree the C order of allotment was declared void and ineffective and the right of the appellant to use the shop for his personal occupation was recognized vis-a-vis the 3rd respondent, but the 3rd respondent did not disclose this fact in the application, nor did he make any reference in it to the consent decree. There was a dispute between the parties in regard to the service of the notice of the application on the appellant, but it was found by the Rent Control and Eviction Officer, D as also by the High Court in the writ petition, out of which the present appeal has arisen, that the appellant refused to accept the notice of the application and hence we must proceed on the basis that the notice of the application was duly served on the appellant. The appellant did not appear at the hearing of the application and proceeding ex parte, the Rent Control and Eviction Officer passed an order dated 15th November, 1962 directing that the appellant be E evicted from the shop and the 3rd respondent be put in possession of the same. Though this order was not contemplated to be executed before 18th November, 1962, the appellant was forcibly evicted from the shop in pursuance of the order on 16th November, 1962 and possession of the shop was immediately on the same day handed over to the 3rd respondent. The appellant applied for a review of the order to the Rent Control and Eviction Officer but the F application for review was rejected on 8th January, 1963. This led to the filing of the writ petition out of which the present appeal has arisen before us.

The principal question which arises for consideration on these facts is as to whether the order passed by the Rent Control and Eviction Officer under s. 7A was vitiated by reason of non-disclosure of the fact of consent decree by the 3rd respondent in the application G made by him. It would be convenient at this stage to refer to the relevant provisions of s. 7A under which the application was made by the 3rd respondent. Section 7A was introduced in the Act at a later point of time in order to arm the District Magistrate with the power to enforce the order of allotment made by him. Sub-s. (1) of that section provided inter alia that "where an order requiring any accommodation to be let or not to be let has been duly passed H 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 said 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." There is a proviso to this sub-section which is very material and it says 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." Therefore, it is not in every case where a person is in occupation of accommodation in contravention of an order of allotment that the District Magistrate is required to make an order evicting such person and putting the allottee in possession of the accommodation. The District Magistrate has a discretion in the matter and if he finds that there has been undue delay on the part of the allottee or that on the facts and circumstances it is inexpedient to make such an order, he may decline to do so. It must, therefore, follow *a fortiorari* that all the facts and circumstances bearing on the exercise of his discretion should be before the District Magistrate in order to enable him to exercise his discretion in a just and proper manner. Now, in the present case, there can be no doubt that the fact of consent decree having been obtained by the parties in the suit was a very material fact which could have considerable bearing on the question whether it was inexpedient to make an order under s. 7A. The 3rd respondent having himself agreed with the appellant and obtained consent decree in the suit, that the order of allotment in his favour was void and ineffective and the appellant could occupy the shop for himself, there can be no doubt that this piece of conduct, unless satisfactorily explained, was bound to have its impact on the exercise of discretion by the District Magistrate. The District Magistrate would certainly ask himself: "why should I exercise my discretion in favour of a person who has himself conceded in the consent decree obtained from the Civil Court that the order of allotment in his favour is invalid and he has no objection to landlord occupying the accommodation?" Such conduct on the part of the 3rd respondent could be inspired only by one of two reasons. It may be that the 3rd respondent submitted to the consent decree because the wanted to get rid of the injunction issued against him by the Civil Court. So long as the injunction stood, he could not obtain possession even by moving the District Magistrate under s. 7A. He, therefore, resorted to this device for the purpose of getting the injunction out of his way, so that thereafter he could make an application to the District Magistrate under s. 7A suppressing the fact of the consent decree and take a chance of obtaining an order of eviction under that section. Or, it is possible that at some point of time subsequent to the passing of the consent decree, the 3rd respondent was advised that the consent decree was void and inoperative and it did not preclude him from making an application to the District Magistrate and obtaining an order of eviction under s. 7A. In either case, he ought to have disclosed the fact of the consent decree in the application made by him under s. 7A. If he thought that the consent decree was valid, then obviously non-disclosure of it by him in the application made to the District Magistrate was fraudulent, for it is difficult to see how he could have possibly persuaded himself to believe that, notwithstanding the consent decree, he could make such an application. The inference in that case would be irresistible that he submitted to the consent decree for

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A the purpose of getting rid of the injunction, so that he could thereafter obtain an order of eviction from the District Magistrate by keeping back the fact of the consent decree from him. But even if I take a charitable view of the conduct of the 3rd respondent and assume that after the passing of the consent decree, he was advised that the consent decree was null and void, I cannot exonerate him from blameworthiness in not disclosing the fact of the consent decree in the application made by him to the District Magistrate.

I do not think that it is open to a party against whom a decree has been passed by a court of law, whether by consent or in invitum, to arrogate to himself the right of adjudging that the decree is a nullity and to disregard or to disobey it on that hypothesis. It is true that a consent decree is based on an agreement between the parties and, as pointed out in *Wentworth* v. *Bullen*,(1) "the contract of the parties is not the less a contract, and subject to the incidents of a contract, because there is superadded the command of the Judge." It would, therefore, seem to be incontrovertible that a consent decree can be avoided or declared void on the same grounds as a contract. If the compromise on which the consent decree is based is induced by fraud, mistake, undue influence or any other ground which would avoid a contract, the consent decree would be liable to be set aside but that would have to be done by the aggrieved party by filing a suit. So long as the consent decree is not set aside in such suit, it would be binding on the parties as such as a decree in invitum and it would not be open to either party to disregard or disobey it. Similarly, if the compromise is unlawful, Order XXIII, rule 3 prohibits the court from passing a decree in accordance with it and even if such decree is passed because neither party raises an objection, it would be void. But the question is : can a party to a litigation be permitted to decide for himself that the consent decree is void and on that view ignore it altogether as if it did not exist? I do not think so. Whether the compromise is unlawful so as to render the consent decree void must be left to the determination of the appropriate authority before whom the question may arise and it cannot be allowed to be determined by a party himself according to his personal judgment. Such a question may raise difficult and complex issues. It is not always easy to determine whether an agreement is unlawful as being opposed to public policy or contrary to law. The decision of such issues requires a certain amount of legal training and skill and objectivity of approach and these are matters "hardly fit for final determination by the self-interest of a party". They must be left to the judgment of the appropriate authority "and not the personal judgment of one of the parties". That is both a postulate and a requirement of the democratic form of government. It was pointed out by Frankfurter, J., in *United States* v. *United Mine Workers of America*(2) : "No one, no matter how exalted his public office or how righteous his private motive, can be judge in his own case." Otherwise society will be ruled not by law but by brute power. "If one man can be allowed to determine for himself what is law, every man can. That means first chaos,

(1) (1829) 9 B & C 1840 N. (2) 330 U.S. 258; 91 Law. Ed. 884.

then tyranny." Legal process is an essential part of the democratic process. Therefore, to my mind, there can be no doubt that if the 3rd respondent was of the view that the compromise was unlawful and the consent decree was on that account void, he should have taken appropriate proceedings in the civil court and got the consent decree declared void before making an application to the District Magistrate under s. 7A, or at the least, disclosed the fact of the consent decree to the District Magistrate in his application under s. 7A and pointed out to the District Magistrate that the consent decree was void on the ground that the compromise was against public policy or contrary to the Act and did not, therefore, preclude the third respondent from making an application for enforcement of the order of allotment nor did it stand in the way of the District Magistrate in making an order of eviction in favour of the 3rd respondent. The District Magistrate could not be asked to enforce the order of allotment in favour of the 3rd respondent unless the consent decree, holding the order of allotment to be invalid, was first found to be void, because, if it was valid, it would be binding on the 3rd respondent and he could not, in that event, seek the order of eviction in his favour. This was, therefore, a material fact which ought to have been disclosed by the 3rd respondent in the application made by him under s. 7A. But on this ground alone I would not be inclined to quash and set aside the order made by the Rent Control and Eviction Officer as delegate of the District Magistrate under s. 7A because, as pointed out by my learned brother Untwalia, J., in his judgment, and there I agree with him, that the consent decree was void by reason of the compromise being against the public policy of the law and hence there would be no point in interfering with the order of the Rent Control and Eviction Officer on this ground.

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There is, however, one other aspect of this question which requires consideration. It cannot be seriously disputed, and I have already referred to the aspect a little earlier, that the District Magistrate had a discretion under s. 7A not to enforce an order of allotment, if he thought that, on the facts and circumstances of the case, it was inexpedient to do so. Even if the compromise was unlawful and the consent decree was on that account void, the very fact of the 3rd respondent having submitted to the consent decree, declaring the order of allotment to be invalid and recognising the right of the appellant to occupy the shop for himself *vis-a-vis* the 3rd respondent, was a highly relevant circumstance bearing on the exercise of the discretion of the District Magistrate, and it ought to have been disclosed to the District Magistrate. It is a well settled proposition of law and this proposition should apply equally in the field of administrative law, that when a party approaches a tribunal for discretionary relief, he must not only come with clean hands but must also show the utmost good faith disclose all material facts having a hearing on the exercise of discretion of the authority which are within his knowledge. He cannot escape this obligation on the plea that the other side can always, if it so chooses, appear and bring the material facts to the notice of the

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A authority. It is an obligation of confidence which he owes to the authority and this obligation is imposed by law in the larger interests of administration of justice so that justice, whether dispensed by civil court or by administrative authority, remains pure and unsullied. I am, therefore, of the opinion that the non-disclosure of the fact of consent decree by the 3rd respondent in the application made by him B vitiated the order of the Rent Control and Eviction Officer under s. 7A.

I would, therefore, allow the appeal and quash and set aside the order made by the Rent Control and Eviction Officer as delegate of the District Magistrate under s. 7A and direct the 3rd respondent to hand over possession of the shop to the appellant. It would be open to the District Magistrate to take such action under s. 7, sub-s. (2) C as he thinks fit including making of an order of allotment in favour of any person he thinks proper. The District Magistrate may even, if he so thinks fit, make a fresh order of allotment in favour of the 3rd respondent. Each party will bear and pay his own costs of this litigation.

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ORDER

In view of the majority judgment the Appeal is dismissed with no order as to costs.

V. M. K.