

Ram Surat Singh Vs. Rent Control and Eviction Officer and anr.

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Court : Allahabad

Decided On : Mar-06-1964

Reported in : AIR1965All49

Judge : M.C. Desai, C.J., ;S.K. Verma and ;S.N. Dwivedi, JJ.

Acts : Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 - Sections 7(1), 7(2) and 17; Uttar Pradesh (Temporary) Control of Rent and Eviction Rules - Rule 6

Appeal No. : Writ Petn. Nos. 3651 of 1961, 1570 of 1962, 199 and 255 of 1963

Appellant : Ram Surat Singh

Respondent : Rent Control and Eviction Officer and anr.

Advocate for Def. : H.P. Seth, Adv. and ;Standing Counsel

Advocate for Pet/Ap. : A.P. Pandey, ;A.K. Kirtey, ;S.N. Kacker and ;L.P. Naithani, Adv.

Judgement :

Desai, C.J.

1. I agree with my brother S. K. Verma that the first question should be answered in the negative and the second, in the affirmative. I regret that I cannot agree with my learned brother Dwivedi.

2. The U. P. (Temporary) Control of Rent and victim Act, No. 3 of 1947 has been enacted '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.' The letting is controlled through the provisions contained in Sections 7, 7-A, 7-D and 7-E, the rent is controlled through the provisions in Sections 4, 5 and 6 and eviction of tenants is prevented through the provisions in Sections 3, 7-C, 14 and 15. The preamble only explains why these provisions and other provisions have been enacted; it itself is not an enactment and is not required to be enforced by courts. What is to be enforced by the courts is the provisions contained in the Act and they may resort to the preamble only to remove ambiguities or doubts existing in the provisions. If a provision is clear the preamble becomes irrelevant.

3. In these petitions we are concerned with the provisions relating to the control of letting and the most important provision dealing with this matter is Section 7. Sub-section (1) of it simply requires notice about an accommodation becoming vacant to be given to the District Magistrate and does not by itself impose any control on letting. A notice is to be given to the District Magistrate so that he may pass an order to control the letting of the accommodation in exercise of the power conferred by Sub-section (2). The power conferred by Sub-section (2) is to require by a general or special order, a landlord to let or not to let to any person any accommodation which is vacant, or has fallen, or is about to fall, vacant. The sub-section is unhappily worded. There are two orders that a District Magistrate is empowered to pass, (1) an order requiring a landlord to let an accommodation and (2) an order requiring a landlord not to let an accommodation. An order requiring the letting must in its very nature be an order requiring the letting to a particular person. An order prohibiting the letting would ordinarily be an order prohibiting the letting to any person; there would hardly be any occasion for a District Magistrate's prohibiting the letting to a particular person. A general order is an order addressed to all landlords or to a landlord in respect of all accommodations owned by him. A special order is an order to a particular landlord in respect of a particular accommodation that has fallen vacant or is about to fall vacant. A special order can require the landlord to let the accommodation to a particular person or prohibit him from letting it to 'any person'.

There cannot be a general order requiring a landlord to let the accommodation; if nobody wants it, it is not possible for the landlord to let it out. 'To let' means to enter into a relationship of landlord and tenant through a contract and, as every contract requires the consent of the parties, there cannot be a letting by a landlord unless there is a person willing to be a tenant. Consequently a landlord cannot be ordered just to let his accommodation; if a person wants to take it on lease the landlord may be ordered to let it to him, but a general order 'let it to any person' cannot always be complied with by the landlord & could not, therefore, be within the contemplation of the legislature. The words 'to any person' cannot always go with the words 'to let' and also with the words 'not to let'. An order 'Let to any person' does not, as explained above, make much sense and does not appear to have been within the contemplation of the legislature. As far as prohibition is concerned, the legislature seems to have contemplated the order 'Do not let to any person without my permission' rather than an order 'Do not let to a particular person without my permission'. So in the case of an order to let, a particular person must be specified in it, whereas in the case of an order not to let the words 'to any person' have to be used. The legislature has created confusion by using the words to mean in one case 'a particular person' and in the other case 'to any person'. Whatever may be the defects in the language used in the sub-section the following orders are undisputedly within a District Magistrate's powers:

1. Do not let any accommodation which is or has fallen vacant or is about to fall vacant to any person without my permission.
2. Let such and such accommodation which is or has fallen vacant or is about to fall vacant to such and such person.

An order passed under Sub-section (2) becomes operative, or a question of complying with it arises, only when an accommodation has fallen vacant because it deals with what should be done, or should not be done, after it has become vacant. Since the provision occurs in the same section in which there is the provision about the giving of information about the vacancy of an accommodation and since the Act itself does not define when an accommodation falls vacant it may be assumed that an accommodation falls vacant only in the manner laid down

in Sub-section (1), i.e. when a landlord ceases to occupy it, whether with or without intention to let it, or when the tenancy is terminated, or when the tenant during the continuance of his tenancy vacates or ceases to occupy it, or when the State releases it from requisition. When a tenant vacates or ceases to occupy it or when his tenancy is terminated the accommodation is vacant within the meaning of Sub-section (2) and the District Magistrate becomes empowered to order the landlord to let it to a particular person. Under Rule 3 of the Rules framed by the State Government under Section 17 he is required to make such an order within thirty days of the receipt of the information given to him by the landlord under Sub-section (1). As he becomes empowered to pass such an order as soon as the accommodation falls vacant or he receives intimation about its being about to fall vacant and remains empowered for a period of thirty days from the date of the receipt of the information it must be held that the accommodation remains vacant for thirty days, unless it has been let in compliance with a special order of the District Magistrate. If there has been a general order prohibiting a landlord from letting an accommodation without his permission, no landlord can let an accommodation within this period unless the District Magistrate has passed an order requiring him to let it. Even if there has been no general order the existence in the District Magistrate of the power to order him within thirty days to let the accommodation to a particular person denies any right in him to let it otherwise during this period and, if he still does let it, it does not make the accommodation not vacant. An accommodation that has fallen vacant remains vacant so long as an order by the District Magistrate to let it to a particular person has not been passed or the time within which he can pass such an order has not expired.

4. There are only two kinds of orders contemplated by Sub-section (2), either an order to let or prohibitive order not to let; there is nothing like an order 'occupy yourself' expressly contemplated by the legislature and obviously there was no need for its making a provision for it because if a landlord is prohibited from letting the accommodation he is thereby not prohibited from occupying it himself but left free to occupy it himself. The rights of a landlord as the owner of the accommodation remain intact except so far as they are curtailed by the provisions of the Act. The only restrictions on his powers are exactly those that have been imposed by its provisions. He is not prohibited from occupying an accommodation

himself unless there is an order requiring him to let it to a particular person. No landlord can be compelled to keep his accommodation vacant and can be prevented from occupying it himself even though it is not required to be let. Therefore, an order requiring him not to let an accommodation leaves him free to occupy it himself and consequently the legislature did not provide for an order like 'Occupy yourself'. When a landlord is free to occupy an accommodation himself there is no question of his being permitted to occupy it himself and District Magistrate has not to give him any such permission. If he desires to let a landlord occupy an accommodation himself all that he has to do is to refrain from passing an order under Sub-section (2), or, at the most, to pass an order not to let it to any person. Sub-section (2) only confers power upon a District Magistrate to pass an order; it does not compel him to do it and it is open to him to refrain from passing an order contemplated by it even on receipt of information about vacancy of an accommodation,

A landlord's occupying an accommodation himself is not illegal when there is no general or special order requiring him to let it or when there is a general order requiring him not to let it; therefore, no order releasing the accommodation for his occupation is required. In any case a special order 'Do not let it to any one' is enough. Rule 6 of the Rules made by the Government is, therefore, inappropriately worded; instead of the words 'permit the landlord to occupy it himself' there should have been some such words as 'not require the landlord to let it to any person' Rule 6 should be understood in this sense. Since it is not within the purposes of the Act to empower a District Magistrate to pass any order other than that mentioned in Section 7, Rule 6 should not be interpreted so as to mean that he has the power to pass a different kind of order.

5. Though the word used in Rule 6 is "may" it has the force of 'shall' because the whole purpose behind it is to make it obligatory upon a District Magistrate to allow a landlord to occupy the accommodation required for his own occupation; otherwise there would have been no necessity for the rule. Under section 7(2) itself a District Magistrate has discretion to pass an order 'Do not let to any person' or to refrain from passing any order in respect of an accommodation needed by a landlord for his own occupation. The rule must not be interpreted in such a

manner as to render it superfluous. When an authority is empowered to pass a certain order when certain conditions exist, the power becomes a duty if there is no alternative. Rule 3 can be interpreted to confer discretion only if it contemplates another order to be passed by a District Magistrate. When the conditions mentioned in the rule are such that the District Magistrate is satisfied that the landlord bona fide needs the accommodation for his own personal occupation, which conditions are consistent with an order 'Do not let' and inconsistent with an order 'Let it to X, Y, Z' it means that the only order that can be passed when they exist is 'Do not let it'. When only one kind of order can be passed and the District Magistrate has no choice the provision becomes mandatory. When the rule was not required at all to confer discretionary power upon the District Magistrate the only meaning that can be given to it is that it is mandatory. I do not agree that the rule was made in order to prevent a District Magistrate passing an order 'Do not let to any one' even when the landlord does not desire to occupy it himself. It would be so palpably wrong for a District Magistrate to forbid a landlord from letting an accommodation even when he does not want to occupy it himself that the State Government could not have intended to provide for this contingency. Moreover it would have used different words to express its intention that a landlord should not be forbidden to let an accommodation unless he desires to occupy it himself. The object behind prohibiting an act in a certain circumstance is not achieved by merely permitting another act when that circumstance does not exist. The rule is a positive rule and not a prohibition,

6. I see nothing anomalous or improper in the State Government's directing that whenever a landlord bona fide needs an accommodation for his own occupation the District Magistrate regardless of all circumstances should not order him to let it to any one. After all he is the owner of the accommodation and when he genuinely needs it for own occupation there is no reason why another's needs, however pressing they may be, should have a prior claim. However pressing the other's needs may be, he has no claim against this accommodation or against the landlord and the State Government could very wisely refuse to consider them as against the landlord's needs. No landlord is under an obligation to meet needs of others however pressing they may be; his right as the owner of the accommodation is not subject to the pressing needs of another and it makes no

difference whether the pressing needs are of an individual or of a public authority or institution. If the accommodation is required for a public authority or institution there are other ways of acquiring it and the Control of Rent and Eviction Act was not meant for this purpose. No law can cover all imaginable circumstances; however detailed it may be it can never cover the infinite circumstances that can exist it is, therefore, always possible to show that any mandatory law operates harshly or unreasonably in some imaginable circumstance but this is hardly the correct way of interpreting it or judging its validity. It is not the requirement of the mandatory nature of a rule that it must not operate harshly or unreasonably in any conceivable circumstance. Compulsion is resorted to by the Legislature not because it is always just and reasonable but with view to preventing arbitrariness and uncertainty. A mandatory rule generally in the interests of the public is justified even though it may operate harshly or unreasonably in a rare case. In extreme cases it may be more reasonable to order a landlord to let an accommodation to a particular person even though he bona fide needs it for his own occupation but the State Government could make a rigid rule that a landlord bona fide needing an accommodation for his own occupation should invariably be allowed to occupy it.

7. In *Raman Das v. State of U. P.*, : AIR1952 All703 a Full Bench of this Court observed that when a District Magistrate desires to let the owner occupy the accommodation himself he has not to pass an order under S. 7(2). In *Sri Chhotey Lal v. District Magistrate, Moradabad*, : AIR1952 All913 it was observed that a landlord has to wait for a month at the most before letting out an accommodation to a tenant of his choice and that he himself cannot occupy it in this period even though there is nothing in Section 7(2) expressly prohibiting him from occupying it himself. Bind Basni Prasad, J. said at page 540 (of All LJ): (at p. 916 of AIR) that in view of Rule 6 'a landlord cannot occupy an accommodation unless he has obtained permission to the effect from the District Magistrate'. He made the observation in the context of the facts that the landlord occupied an accommodation as soon as it fell vacant and continued to occupy it in spite of an order by the District Magistrate requiring him to let it to a particular person passed within thirty days of the vacancy. No order was passed by the District Magistrate under Rule 6 nor was there any order under Section 7 (2) requiring him not to let;

his occupation, therefore, became illegal with effect from the date on which he was ordered to let the accommodation to a tenant. He could certainly occupy the accommodation as soon as it fell vacant and so long as no order requiring him to let it was passed by the District Magistrate his occupying it did not mean that the accommodation was not vacant and that the District Magistrate could not pass an order under Section 7(2) to let it to a particular person. What the learned Judge meant by his statement was that the landlord could not continue in occupation after a valid order under Section 7(2) to let it to a particular person. In *State of U.P. v. Manbodhan Lal Srivastava*, : (1958) IILLJ273SC Sinha, J. as he then was, observed

'It is not always correct to say that where the word 'may' has been used, the statute is only permissive or directory in the sense that non-compliance.....will not render the proceeding invalid'.

and relied upon Crawford on Statutory Construction page 516. In *Abida Begam v. Rent Control and Eviction Officer Lucknow*. : AIR1959 All675 Beg and V. D. Bhargava, JJ. said at page 710 (of All LJ): (680 of AIR) that Rule 6 was made 'to preserve the right of the landlord, if he wants to occupy the house himself'. It would hardly be a matter of right if he had to depend upon another's will or discretion. What is meant by landlord's needing an accommodation for own occupation was explained by Mootham C. J. and A.P. Srivastava, J. in *Sukh Swamp v. Rent Control and Eviction Officer, Meerut*, Special Appeal No. 247 of 1957 D/- 26-10-1960 (All) where they observed that all that a District Magistrate has to do under Rule 6 is

'to determine whether the application by the landlord is made in good faith' and that 'unless he comes to the conclusion that the landlord does not require the accommodation for his own personal occupation he is bound to hold that the landlord's need is bona fide'.

In *M.C. Batra v. Lakshnii Insurance Co. Ltd*, : AIR1956 All709 Mootham, C. I. and Hari Shankar, J. saw nothing in the Act to prevent a landlord from receiving possession of an accommodation from the tenant vacating it and from retaining it so long as he is not ordered under Section 7(2) to let it. In *Prem Shankar Pandaya*

v. U. P. Provincial Co-operative Bank, Ltd., : AIR1953 All51 and Onkar Nath v. Chhajju Ram, 1963 All LJ 180 Raghubar Dayal and Agarwala, JJ. and Srivastava and Katju, JJ. respectively held that permitting a landlord to occupy an accommodation himself is implied in the power to issue an order requiring him not to let. What was decided in Jangi Lal v. Rent Control and Eviction Officer, Allahabad, : AIR1954 All126 was that on an accommodation falling vacant the landlord cannot occupy it without any order from the District Magistrate and then contend that his occupation is not in contravention of the order passed subsequently under Section 7(2) requiring him to let it to a particular person.

Julius v. Lord Bishop of Oxford, (1880) 5 AC 214 at p. 244; U. S. v. Otto Thoman (1895) 156 U.S. 353: 39 LE 450 and Province of Bombay v. Khushaldas S. Advani : [1950]1SCR621 are authorities laying down that in public statutes the words 'only directory, permissive, or enabling may have a compulsory force where the thing to be done is for the public benefit' i.e. to effectuate a legal right or for advancement of public justice or 'when the exercise of the power will be in furtherance of the interest of a third person for securing which the power was given'. In State of U.P. v. Jogendra Singh : (1963)1ILLJ444SC Gajendragadkar, J. pointed out that

'where a discretion is conferred upon a public authority coupled with an obligation, the word 'may' which denotes discretion should be construed to mean a command' and that 'it is the context which is decisive'.

V. D. Bhargava, J. held in Gada Dhar Pd. Sharma v. District Magistrate, Lucknow, 1956 Allahabad L. J 694 that the provision of Rule 6 is mandatory. In A. C. Dass v. Town Rationing Officer, 1962 Allahabad L J 553 the Bench of which I was a member was concerned with Rule 7 and not Rule 6 but it came in for consideration along with Rule 7 and I said that Rule 6 was redundant because it was taken to be discretionary. Whether it was discretionary or mandatory did not arise for decision in the case and it was assumed without discussion to be discretionary. In The King v. Mitchell, (1913) 1 KB 561 Ridley, J. said at p. 566:

'If a right is conferred upon person and another person is empowered by the word 'may' to recognize that right that person is not only enabled but obliged to recognize the right, not because the empowering words oblige him, but because it

is in his duty to recognize the right. In that sense it is true to say that 'may' is equivalent to 'must'....'

Lord Coleridge said at p. 568 that

'regard must be had to the surrounding circumstances to discover whether the word 'may' is to have a permissive or a compulsory meaning'.

In *Rock Island County v. United State*, (1865-67) 18 Law Ed 419, Swayne. J. said at p. 423:

'What they are empowered to do for a third person the law requires shall be done. The power is given not for their benefit, but for his. It is placed with the depository to meet the demands of right and to prevent a failure of justice. It is given as a remedy to those entitled to invoke its aid, and who would otherwise be remediless'

In *re, Baker, Nichols v. Baker*, (1890) 44 Ch D 262 Cotton, L. J. said at page 270:

'.....great misconception is caused by saying that in some cases 'may' means 'must'. It never can mean 'must'. . .but it gives a power, and then it may be a question in what cases.....it becomes his duty to exercise it'.

This only means that 'may' with certain circumstances has the effect of 'must', it itself does not mean 'must' but it coupled with certain circumstances has the effect of 'must'. If the authority must act and has no alternative to the act that it 'may' do then it must do the act. It must act and as there is no other way of acting it must do the thing which according to the law it 'may' do. In *Border Rural District Council v. Roberts*, (1950) 1 All ER 370 Somervell, L. J. said at page 377 that

'in certain circumstances, although the word 'may' is used, if the act which the authority or whoever it may be, is given power to do is not done, process is made available to compel it to be done'.

In *Re Shuter*, (1959) 3 All ER 481 it was said that if 'may' is used with the words 'unless sufficient cause is shown to the contrary there is no discretion when sufficient cause is not shown to the contrary. Similarly when an authority which is already possessed of discretion 'may' act in a particular way when certain

circumstances exist, it means that it 'must', the word 'may' used with particular circumstances converts the discretion into obligation.

8. The Act was enacted in February 1947 and Section 7(1) then read as follows:

'The District Magistrate may, by general or special order require a landlord to give intimation of the falling vacant of any accommodation of which he is the landlord and to let or not to let such accommodation to any person'.

The Act was amended in 1948 by Act No. 44 of 1948 and Section 7(1) was substituted as follows:

'7(1)(a) The District Magistrate may, by general or special order, require a landlord to give intimation that any accommodation of which he is the landlord is or has fallen vacant, and to let or not to let such accommodation to any person

(b).....

Provided that in making the first allotment in the case of any accommodation constructed after July 1, 1946, the District Magistrate shall allot it to the owner, if the owner, not being in occupation of any other house owned by him in that municipality or other contiguous area to which the Act applies, genuinely requires such accommodation for his own residence.

Explanation.....'

Rules in exercise of the power conferred by Section 17 were made by the State Government for the first time in 1949 and Rule 6 existed then as it is now. The Act was amended thereafter and the present subsections 7(1) and (2) were enacted and the proviso inserted by Act No. 44 of 1948 to Section 7(1) was deleted. The legislature provided for certain circumstances in order to remove them from the scope of the District Magistrate's discretion. It can be argued with a great deal of force that when it enacted the proviso it left other circumstances within a District Magistrate's discretion, i.e. that a District Magistrate could order a landlord bona fide needing an accommodation for his own occupation to let or not to let it and that, consequently, the State Government had no power to lay down through Rule

6 that he cannot pass the former order and must pass the latter order. When it selected certain circumstances for compelling a District Magistrate to pass an order of one kind it meant that it left the order to be passed in the remaining circumstances at his discretion. If it had desired him to pass an order 'do not let to any one' whenever a landlord bona fide needed an accommodation for his own occupation the proviso would have been general and not restricted to the particular circumstance that the accommodation was constructed after 1-7-1946 and was the only accommodation owned by him in the municipality. All this argument makes sense but whatever could have been said about the nature of Rule 6 when it existed simultaneously with the proviso the position now is altered after the deletion of the proviso and the argument has lost its force. Further even when the proviso existed the clash between it and the mandatory nature of Rule 6 could be avoided by holding, as I shall show later, that the rule should prevail over the proviso. The proviso does not meet the objection why Rule 6, if discretionary, was needed at all when Section 7(1)(a) left full discretion with a District Magistrate. I am therefore, not prepared to say that the previous history of the legislation shows that Rule 6 was not meant to be mandatory.

9. I am unable to hold, as my brother Dwi-vedi holds, that a part of Rule 6 was in conflict with the provisions of Section 7(1) as they stood when it was made and was, therefore, ultra vires the State Government. I have to acknowledge force 'a the argument that could have been advanced against the validity of Rule 6 when it was made but I do not consider that the argument is unanswerable. The proviso singled out a particular circumstance and deprived a District Magistrate of the discretion conferred by Section 7(1) when the circumstance existed. If the State Government had power under Section 17 to make rules to guide a District Magistrate's discretion it could make a rule that in the circumstance he could pass an order contrary to that indicated by the proviso. The proviso could have served the purpose of depriving the State Government of the power of laying down a rule to guide a District Magistrate's discretion when the circumstance existed. This deprivation of the State Government's power to make a rule did not prevent its making a rule having the same effect as the proviso to apply in a wider or more extensive circumstance. In the restricted circumstance of an accommodation constructed after 1-7-1946 by an owner not in occupation of any other house

owned by him in the municipality or in another contiguous area governed by the Act and genuinely required by him for his own residence, the accommodation had to be allowed to be occupied by the owner and the State Government could make a rule that whenever a landlord bona fide needed an accommodation for own personal occupation he should be allowed to occupy it himself. The proviso and Rule 6 aimed at the same thing, namely permitting the landlord to occupy the accommodation himself; the proviso applied in a very restricted field while the rule was applicable in a wider field including that in which the proviso applied. There was nothing anomalous or ultra vires in this.

I am not prepared to say that the rule was ultra vires the State Government because it authorized a District Magistrate to permit a landlord to occupy an accommodation himself even before it fell vacant whereas Section 7(1) was to apply when it was, or had fallen, vacant. While a landlord may not be required to let an accommodation to a particular person before it falls vacant there is nothing absurd or abnormal in a District Magistrate's passing an order in advance that a landlord may occupy an accommodation himself when it falls vacant. The effect of passing such an order is nothing more than that of his refraining from passing any order in respect of the accommodation after it has fallen vacant. He was not bound by Section 7(1) to pass an order and could very well refrain from passing it. If he did not pass it, it was open to the landlord to occupy it himself, especially if there was time fixed for the District Magistrate's passing an order and it expired. If a District Magistrate could simply by refraining from passing an order under Section 7(1) allow a landlord to occupy an accommodation himself I do not see any reason why he could not be authorised by Rule 6 to pass an order permitting him to occupy it himself even before it falls vacant, provided there was a likelihood of its falling vacant.

Rule 6 could not be said to be ultra vires the State Government simply because Section 7(1) was to apply only when an accommodation was, or had fallen vacant. A District Magistrate was empowered by Section 7(1) to order a landlord to let or not to let an accommodation, but it does not follow that the State Government could not authorise him to indicate to a landlord even before an accommodation fell vacant that he would not pass such an order and would let him occupy it

himself. If he was to refrain from passing such an order there was absolutely no harm in his informing the landlord of the fact in advance and no specific power authorising him to do so, or authorising the Government to direct him to do so, was required- Since I find that Rule 6 was not ultra vires when made, I do not consider it necessary to go into the further question whether if it was ultra vires then it remained ultra vires even after the amendment of Section 7(1) removing the cause for the absence of vires

10. Now I come to the question of conflict between Rule 6 and the existing provisions of Section 7(2). When an Act grants discretion to an authority a rule made to give effect to the purposes of the Act and providing that in certain circumstances the discretion should be exercised to a particular way does not necessarily go against the purposes of the Act. There can be no conflict between Section 7(2) and Rule 6 unless it can be predicated that the legislature has through Section 7(2) indicated that even when a landlord bona fide needs an accommodation for his own occupation the District Magistrate has discretion to order him to let it to a particular person Rule 6 would clash with Section 7(2) only if the latter can be said to lay down that even in such a case landlord can be ordered to let the accommodation; I am, however, unable to construe Section 7(2) in this manner. It gives discretion to a District Magistrate to pass an order 'Let it to a particular person' or 'Do not let it to any one' according to the circumstances without at all contemplating that in certain circumstances one order should be passed or may not be passed. The Legislature never indicated through Section 7(2) its mind that a District Magistrate may even when a landlord bona fide needs an accommodation for own occupation order him to let it to a particular person. When it laid down that a District Magistrate may pass one order or the other depending upon circumstances it did not mean that given a particular circumstance the District Magistrate still had the discretion of passing one order or the other. It could well have contemplated that in certain circumstances he should pass one kind of order and in others the other order; since it could not and, therefore, did not specify in which out of myriad possible circumstances one order should be passed or should not be passed, it enacted the general provision that he may pass one order or the other. The State Government's selecting some of the circumstances (namely a landlord's needing an accommodation for his own

occupation and his need being genuine) and laying down that in those circumstances a particular order should be passed cannot on the face of it be said to be in conflict with Section 7(2).

There is nothing in the provisions of the Act to suggest that a landlord even though bona fide needing an accommodation for his own occupation may not be allowed to occupy it himself; it is not one of the aims and objects of the Act to prevent a landlord's occupying an accommodation himself even though he wants to occupy it himself and does not want to profiteer or to take unconscionable advantage of the shortage of accommodation. Therefore, providing that a landlord should be allowed to occupy an accommodation himself in circumstances against which the Act was not directed cannot be said to be not giving effect to the purposes of the Act. When the Act gave discretion to a District Magistrate, guiding the discretion in a manner not inconsistent with the purposes of the Act was within the power conferred by Section 17 upon the State Government. Since the Act is aimed at preventing rack-renting and ejecting tenants with a view to indulging in rack-renting it is within the purposes of the Act not to interfere with a landlord's genuine desire to occupy an accommodation himself when there is no question of preventing rack-renting or ejectment with a view to indulge in rack-renting. Directing a District Magistrate to respect a landlord's wishes when there is no question of his indulging in rack-renting is carrying out the purposes of the Act. One test for deciding whether a rule is inconsistent with a provision of the Act is to read the two together and see if a conflict between them becomes apparent. Reading Rule 6 along with Section 7(2) does not show any conflict between them. Even if it could be said that reading Rule 6 together with Section 7(1)(b) as it stood in 1949 when the Rules were made would show some conflict (inasmuch as the proviso laid down that in certain circumstances a District Magistrate must allow a landlord bona fide needing an accommodation for his own occupation to occupy it whereas the rule provides that in every circumstance he must be allowed to do so) the position now is that no conflict appears when Section 7(2) is read with Rule 6. Rule 8 interpreted to be a mandatory rule before the deletion of the proviso might have been open to attack as being ultra vires but is not open to such an attack after the deletion. There is good reason for thinking that the proviso was deleted because of the rule that every landlord bona fide needing an accommodation for

his own occupation must be allowed to occupy it.

The discretion conferred by Section 7(2) is not arbitrary as it would have been if the Legislature had intended that in any given circumstances the District Magistrate had the choice of passing one order or the other. The Legislature certainly intended that in some circumstances one order is the proper order to be passed and in some the other order is the proper order to be passed but since it did not specify which circumstances belong to the former set and which to the latter set it enacted the omnibus provision giving a District Magistrate discretion to pass one order or the other. Rule 6 is not the only mandatory provision in the Rules. Rules 3, 4, 5, 7 and 8 are clearly mandatory rules made by the State Government and none of them has been found to be invalid on this ground. Rule 6 has been found to be valid in the cases of Sri Chhotey Lal, : AIR1952 All913 and Abida Begam, : AIR1959 All675 . In Institute of Patent Agents v. Lockwood, 1894 AC 347 and Minister of Health v. The King, 1931 AC 49(sic) it was held by the House of Lords that a rule, i(sic) is to be of the same effect as if it had been contained in the Act is to be treated as a part of the Act for all purposes of construction or obligation or otherwise, that if there arises a conflict between a rule and a provision of the Act it is to be resolved in the same way as a conflict between two provisions of the Act, that the court has to try and reconcile them as best as it may and that (sic) it fails it must be determined which is to be the leading provision and which the subordinate provision and which must give way to the other. So a rule is not to be struck down as ultra vires merely because it might clash with a provision of the Act.

11. In the result I agree with my brother Verma that Rule 6 is mandatory and not ultra vires the State Government

12. I do not accept the contention of Sri Kirty to writ petition No. 3651 of 1961 that the Act applies only if a landlord intends to let an accommodation and has no application when he wants to occupy it himself. Letting can be controlled even if a landlord does not intend to let the accommodation.

S.K. Verma, J.

13. A Division Bench of this Court has referred two questions for the consideration of a larger Bench and this Full Bench has been constituted for that purpose. The two questions referred by the Division Bench are these:

'1. Is Rule 6 framed under Section 17 of the Act invalid being beyond the rule making power conferred on the State Government under Section 17 of the Act?

2. Are the provisions contained in Rule 6 of Rules framed under Section 17 of the Act mandatory such that if the District Magistrate is satisfied that the landlord requires the accommodation for his own personal occupation, he must in each and every case permit him to occupy the accommodation?'

Rule 6 framed under Section 17 of the U. P. (Temporary) Control of Rent and Eviction Act, 1947 (hereinafter referred to as the Act), the vires of which is being challenged, reads as follows:

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

Section 7(2) of the Act reads as follows:

'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.'

14. The attack on the vires of Rule 6 is based on the ground that Section 7(2) of the Act gives complete discretion to the District Magistrate to require a landlord to let or not to let to any person any accommodation which has fallen vacant or is likely to fall vacant and Rule 6 is inconsistent with Section 7(2) of the Act, as it purports to fetter that discretion by requiring him to pass an order permitting the landlord to occupy the accommodation if he needs it bona fide for his own personal occupation. Rule 6 has been framed by the State Government under powers conferred upon it by Section 17 of the Act which reads as follows:

'17. The State Government may, after pre-Rules making power. (sic)vious publication by notification in the official Gazette, make rules to give effect to the purposes of this Act'

15. The first question, therefore, that arises is whether the object of Rule 6 is to give effect to the purposes of the Act. This brings me to a consideration of the question as to what are 'the purposes of the Act'. The purposes of the Act are fairly obvious. During World War II there was a shortage of accommodation and owners of houses tried to take advantage of the situation by obtaining as high a rent as possible for accommodation owned by them. The Defence of India Rules--Rule 81(2)(bb)--tried to put a check on this propensity on the part of the landlords. At the end of the War the emergency ceased and, therefore, it became necessary to pass the Act. The preamble of the Act reads as follows:

'Whereas the orders made under Clause (bb) of Sub-rule (2) of Rule 81 of the Defence of India Rules will, in consequence of the revocation of the Pro-clamation of Emergency made under Sub-section (1) of Section 102 of the Government of India Act, 1935, cease to have effect after September 30, 1946;

And whereas due to the shortage of accommodation in the United Provinces It is expedient to provide for the continuance during a limited period of powers to control the letting and the rent of such accommodation and to prevent the eviction of tenants therefrom.'

16. The preamble shows that the aim of the Legislature was to control the letting and the rent of accommodation and to prevent the eviction of tenants therefrom. It is quite obvious that the aim of the Legislature was not to extinguish all rights of landlords in the houses that they owned and it has also not done so. The object was to prevent rack-renting and ejectment of tenants for the purpose of rack-renting. In other words, the Legislature aimed at preventing unscrupulous and avaricious landlords from charging exorbitant rent from new tenants and evicting existing tenants who refused to agree to the enhancement of their rent. Subject to the restriction that the Legislature felt necessary to impose, the rights of the landlords have been left intact. There is nothing in the Act to justify the inference that the District Magistrate was in no case to consider the needs of the landlord at

all and that all he was required to do was to direct him to let or not to let the accommodation. In fact, if the District Magistrate directed the landlord not to let the accommodation to any one, it would mean that the landlord could occupy it himself without contravening any of the provisions of the Act. There could, obviously, arise a situation where the District Magistrate might feel that there was no attempt on the part of the landlord to let the premises out simply for the purpose of exacting rent at a high rate but he required the accommodation genuinely for his own personal need. There is nothing in Section 7(2) of the Act to guide the District Magistrate as to how his discretion should be exercised. It was, therefore, necessary to frame a rule for the guidance of the District Magistrate when he was satisfied that the landlord was not trying to charge higher rent but he required the accommodation genuinely for his own personal need. It was contended by the learned counsel for the opposite parties that occupation of an accommodation by the landlord was not contemplated by the Act at all.

In my opinion this contention is without force. In the provisions of the Act which contemplate and provide for the control of letting, rent and eviction of tenants, it is implicit that a situation may arise when the landlord himself may genuinely require the accommodation for his own personal need. Rule 6, therefore, was framed to meet the situation. The rule, therefore, far from laying down anything inconsistent with the purposes of the Act, aims at giving effect to the purposes of the Act. Once it is held that the object of the rule is to give effect to the purposes of the Act, it would be futile to contend that it is inconsistent with any of the provisions of the Act.

17. I should also like to point out that it is the duty of the courts, if possible, to put such an interpretation on enactments and rules as would uphold them rather than destroy them. The construction should be such *ut res magis valeat quam pareat*. This principle of construction is so elementary that I consider it wholly unnecessary to encumber this judgment by reference to well known works on the interpretation of statutes.

18. I have already mentioned above that the Act does not aim at extinguishing the rights of landlords. Those rights remain intact except to the extent to which they

have been restricted or curtailed by the provisions of the Act. What I mean to say is that rights of property must be respected and preserved unless the Legislature expressly abolishes them. In consequence, statutes which appear to encroach upon those rights must be strictly construed. In Maxwell's Interpretation of Statutes (11th Edition) at pages 275 and 276 one finds the following passage;

'Statutes which encroach on the rights of the subject, whether as regards person or property, are similarly subject to a strict construction in the sense before explained. It is a recognised rule that they should be interpreted, if possible, so as to respect such rights. A statute under which a house owner is being deprived of his rights to property should be construed strictly against the local authority.'

On the face of it Section 7(2) of the Act confers unfettered power and it is impossible to imagine that the Legislature intended to confer such a power. Section 7(2) of the Act and Rule 6 must, therefore, be harmoniously interpreted and if such a principle of construction is adopted, there is really no conflict at all and it must be held that the rule was necessary for giving effect to the purposes of the Act. I am, therefore, in respectful agreement with the decisions reported in : AIR1952 All913 and : AIR1959 All675 . I should also like to refer to the Full Bench decision in : AIR1952 All703 . An attempt was made to challenge the vires of Rule 6 and Malik C. J. at page 211 (of ALJ): (at p. 705 of AIR) observed as follows:

'Learned counsel has urged that this rule is ultra vires and the District Magistrate cannot let the landlord occupy the premises. He must let it out to a tenant. This argument, we are afraid, does not take account of the last few words of Section 7(1)(a) which provide that the District Magistrate shall decide whether the accommodation is to be let or not to be let.'

19. The next question which falls for determination is whether Rule 6 is mandatory or recommendatory. I have already held above that Rule 6 is not ultra vires. On that view of the matter, the rule must be deemed to be part of the Act. In National Telephone Co. v. Baker, 1893-2 Ch 186 at p. 203 it was observed as follows:

'It is within the competence of the Legislature to delegate its authority; and, when once that delegated authority has been properly exercised by the agent to whom it

is entrusted, the sanction is that of the Legislature itself, just as much as if it had been expressed in the first instance in an Act of Parliament.'

20. In *State of Uttar Pradesh v. Babu Ram Upadhyaya* : 1961 CriLJ773 their Lordships of the Supreme Court cited with approval the following passage from Maxwell 'On the Interpretation of Statutes' 10th Edn. at pp. 50 and 51:

'Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction or obligation'.

Rule 6 having been held to be valid and *intra vires* must, therefore, be deemed to be part of the Act, and, if it is part of the Act, then it must be held to be like any other provision of the Act. Section 7(2) of the Act contemplates an infinite variety of circumstances and situations, and authorises the District Magistrate to pass an order directing the landlord to let or not to let the accommodation in question. Rule 6 contemplates the existence of a certain set of circumstances and provides that when that set of circumstances exists the discretion conferred upon the District Magistrate under Section 7(2) of the Act should be exercised in a particular manner. Rule 6, therefore, provides for a specific situation and directs the District Magistrate to exercise his discretion under Section 7(2) of the Act in a particular manner when the situation contemplated by Rule 6 is found to exist to his satisfaction. There is no dearth of instances in which wide power is conferred by one provision of the law and subsequent provisions mention particular sets of circumstances in which that power has to be exercised in a particular manner. In my view Rule 6 does nothing more than this. It tells a District Magistrate, 'You have discretion to require a landlord to let or not to let an accommodation, but if you are satisfied that the landlord requires it for his own genuine need you will allow him to occupy it.' Such a provision cannot be said to be repugnant to or inconsistent with any of the provisions of the Act and, on that hypothesis, the District Magistrate is bound to give effect to it. The order that the District Magistrate passes under Rule 6 is, in law, an order under Section 7(2) of the Act see 1963 All LJ 180 at p. 184, but it is passed in obedience to the guidance given

by Rule 6. In *Parmeshwar Dayal v. Additional Commissioner Lucknow*, : AIR1964 All7 Desai C. J. observed as follows:

'There is nothing in Section 7, under which he (the District Magistrate) passes an order, to suggest that he will decide the dispute on the balance of needs. Rule 6 of the rules framed by the State Government in exercise of the powers conferred by Section 17, makes it clear that he should permit the landlord to occupy the accommodation if he, bona fide, needs it for his personal occupation. Though the word used in the rule is 'may' it has the force of 'shall'. because the rule was not required at all to enable the District Magistrate to permit the landlord to occupy it. If the landlord needs the accommodation (he needs it if he in fact i.e. 'bona fide' needs it) he must be allowed to occupy it, and this is consistent with the view that his need is not to be balanced against the other claimants and is not to be refused on the ground that the other claimants' need is greater.'

I find myself in respectful agreement with the observations cited above. Section 7(2) of the Act gives the District Magistrate ample discretion. What was the point in framing a rule which would achieve nothing more than what was already there in Section 7(2) of the Act? The mere fact, therefore, that the State Government by virtue of the powers conferred upon it by Section 17 of the Act framed Rule 3 leads to the irresistible inference that the rule is mandatory and, if the circumstances contemplated by the rule exist, the District Magistrate has no option but to act in accordance with the provisions of the rule.

21. For the reasons given above my answer to the first question is in the negative and to the second question is in the affirmative.

Dwivedi, J.

I am obliged to My Lord the Chief Justice and Verma, J. for sending in advance their judgments to me. I have read them with great care and attention, but I regret I am unable to agree.

22. The 2 questions referred to us have been mentioned in the judgment of Verma, J., and I need not restate them.

23. It will be useful before discussing the questions to set out the material changes that the U. P. (Temporary) Control of Rent and Eviction Act, 1947, (hereinbelow called the Act) and the Rules made thereunder have undergone from time to time. According to Section 2(a) (iii) of the unamend-ed Act the word 'accommodation' did 'not include any newly constructed building or part of a building which was incomplete on the first day of July 1946'. Section 7, in so far as it is pertinent, read:

'The District Magistrate may, by general or special order, require a landlord to give intimation of the falling vacant of any accommodation of which he is the landlord, and to let or not to let such accommodation to any person.'

24. The U. P. (Temporary) Control of Rent and Eviction (Amendment) Act, 1948 amended Section 2(a)(iii) so as to inchicle in the definition of 'accommodation' a building constructed after July 1, 1946. It also amended Section 7. The amended Section 1 materially read:

(1)(a) 'The District Magistrate may, by general or special order, require a landlord to give intimation that any accommodation of which he is the landlord is or has fallen vacant, and to let or not to let such accommodation to any person

(1) (b)

Provided that in making the first allotment in the case of any accommodation constructed after July 1, 1946, the District Magistrate shall allot it to the owner, if the owner, not being in occupation of any other house owned by him in that municipality or other contiguous area to which the Act applies, genuinely requires such accommodation for his own residence.'

25. In March 1951 the legislature passed another amending Act. This Act added the following Section 1-A to the Act:

'Nothing in this Act shall apply to any building or part of a building which was under erection or was constructed on or after 1st January 1951'

26. The next amending Act, passed in September 1952, made several amendments in the Act. Section 7 as amended by it materially reads:

(1)(a) '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.

(2) The District Magistrate may, by general or special order, require a landlord to let or not to let to any person any accommodation which is or has fallen vacant or is about to fall vacant.

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

.....

Explanation: For purposes of this section the word 'let' shall include the word 'sub-let'.

27. Section 17, under which the rules have been made, pertinently reads.

'The State Government may, make rules to give effect to the purposes of the Act.'

28. There are now ten rules altogether. Of them Rule 6 alone is important for our purpose. It was made in September 1949, and reads:

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

29. Q. 1: There is a fundamental difference between the constitutional law of England and of India. Under the former the Legislature is the sovereign law-giver Lord Fitzgerald's phrase 'plenitude of powers' in *Hodge v. Queen*, (1883) 9 AC 117, seems to be reminiscent of Marsiglio of Padua's expression 'plenitude potestatis.' under the latter the legislature exercises legislative authority subject to certain

positive and negative checks imposed on it by the Constitution. From this basic distinction there ensue some important consequences. The vires of an Act of the English legislature is non-justiciable; not so of the legislature in India. This Court may declare an Act ultra vires if it were found not to be consistent with the Constitution. Again, the English Parliament may delegate the business of subordinate law-making in very broad and indefinite terms; and it may also throw the armour of judicial immunity around the subordinate laws by some such expedient as 'of the same effect as if they were contained in this Act' 1894 AC 347 or as 'shall have effect as if enacted in this Act' 1931 AC 494. The legislature in India may do nothing of the kind. Neither can it delegate unguided and unfettered power of subordinate law-making nor can it screen from judicial review an ultra vires rule. As the Court can declare a statute ultra vires, a fortiori the Court can also declare ultra vires a rule made under it. The English cases already referred to are, therefore, no good guide to us. Indeed the Act does not even endeavour to invoke any of those mantras.

30. Broadly speaking a rule may be declared ultra vires if it transgresses the parent Act or the grand-parent Constitution. The doctrine of ultra vires in relation to an Act has three aspects; scope, form and purpose. A rule may be ultra vires if it has overstepped the scope of the parent Act, or if it has been promulgated in breach of some mandatory statutory provision prescribing the procedure of rule-making. The latter is often called as procedural ultra vires. A rule is also ultra vires if it fraudulently seeks to accomplish a purpose which is not envisaged by the Act. It is then said to have been made in the colourable exercise of power, and, being fraud upon the Act, is ultra vires. The aspect of 'purpose' is really a corollary of the aspect of 'scope', but it has often been treated as a separate aspect. In the present case we are concerned only with the aspect of 'scope'.

31. One more matter of theory, and then I pass on to Rule 6. A rule may be conceived in excess of power or may on subsequent changes in the Act, etc., become contaminated with that vice. In the former event it is still-born or void ab ini-tio; in the latter event it is valid and operative until it happens to trespass the scope of the Act. From that moment it becomes null and void.

32. There are two passages in the judgment of My Lord the Chief Justice which seem to me to suggest that a rule, void at its birth, revives automatically if and when subsequent alteration in the Act makes it conformable to the Act. With great respect I am unable to agree with him. I think that a rule, void at its birth for excess of power, is beyond self-redemption; it has got to be re-enacted. The doctrine of eclipse would not come to its rescue. The Supreme Court has applied the doctrine of eclipse to the pre-constitution enactments for the obvious reason that such an enactment remains valid and operative as against non-citizens all the time but is void and inoperative as against citizens on account of its inconsistency with their fundamental rights. As soon as the conflict between it and the fundamental rights of citizens is resolved by a subsequent constitutional amendment, the partial shadow over it is removed and it begins operating against citizens also. It may be observed that a pre-constitution enactment is not wholly lifeless during the eclipse. But a post-constitution enactment is wholly lifeless if it is inconsistent at its birth with the fundamental rights of persons. In *Saghir Ahmad v. State of U. P.* : [1955]1SCR707 the Supreme Court declined to apply the doctrine of eclipse to the U. P. Road Transport Act, 1951, which the Court held to be violative of Article 19(1)(g) of the Constitution, though a subsequent amendment of Article 19(6) had reconciled the Act to Article 19(1)(g), Mukherjea, J., speaking for the Court, observed:

'The amendment of the Constitution, which came later, cannot be invoked to validate an earlier legislation which must be regarded as unconstitutional when it was passed. As Professor Cooley has stated in his work on Constitutional Limitations 'a statute void for unconstitutionality is dead and cannot be vitalised by a subsequent amendment of the Constitution removing the constitutional objection but must be re-enacted' We think that this is sound law....' (page 728 of SCR):(at p. 739 of AIR (emphasis (here into ' ') is mine).

33. The relation between a rule and an Act bears close affinity to the relation between the Act and the Constitution. Accordingly I can conceive of no explanation why a void rule shall not be governed by the self-same principle. In *U.P. State v. Murtaza Ali* : AIR1961 All477 a Full Bench of which My Lord the Chief Justice and I were also members, held that a regulation made in 1946 by the

State Government under Section 297 of the Municipalities Act was ultra vires. Section 297 was amended after 1946, and the regulation was within the bounds of the amended section. It was argued that the regulation was revived by the amendment. The Full Bench unanimously re-pelled the argument. My Lord the Chief Justice then said:

'I also agree with my learned brother that the amendment made in Section 297(1)(k), subsequent to the making of the impugned regulations, will not breathe life into them, if they were lifeless when enacted. The eclipse theory may apply to a law that became void under Article 13 of the Constitution but not to a law which was ultra vires the authority when it was made... the former could be revitalised but not the latter.

I do not agree with the appellant's counsel that the regulations were not still-born,..... In my view they were completely lifeless when made in 1946;.....' 1961 All LJ 287 (at p. 290 of All LJ): (at pp. 479-480 of AIR).

34. I think that this Bench is bound by that Full Bench decision.

35. Section 17 empowers the State Government to make rules 'to give effect to the purposes of the Act.' To give effect to the purposes of the Act is 'to enable its provisions to be effectively administered': *Carbines v. Powell* : AIR 1961 All 477 . This power will authorise the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provisions. But such a power will not support attempts to widen the purposes of the Act, to add new and different means of carrying them out or to depart from or vary the plan which the legislature has adopted to attain its ends. *Shanahan v. Scott*, 96 Com-WLR 245. In other words a subordinate law cannot substantially modify the scheme or policy of the Act.

36. In the light of the foregoing discussion I shall now examine the vires of Rule 6. The rule has apparently been enacted to give effect to the provisions of Section 7. Accordingly it should be tested on the touchstone of Section 7 as it stood on September 17, 1949, which is its birth-day. Section 7, as (sic) it then stood, was the one inserted by the 1948 amending Act, and comprised a proviso which was later

deleted by the 1952 amending Act Section 7, as it then stood, was never referred to the Court in any case including the present one, and I discovered it after arguments had finished. Accordingly I felt uninhibited by authority.

37. In view of the proviso I feel little difficulty in holding that Rule 6, subject to further discussion, is within the purview of Section 7. The proviso aside, the rule will also be comprehended within the expression 'not to let to any person' in Section 7(1)(a).

38. Section 7(1)(a) consisted of two parts: (1) the District Magistrate could, by general or special order direct a landlord to inform him when an accommodation of which he was the landlord was vacant or has fallen vacant; (2) the District Magistrate could ask the landlord to let or not to let such accommodation, that is the accommodation which was vacant or has fallen vacant. The section did not empower the District Magistrate to let an accommodation which was likely to fall vacant. 'Section 7 (sic) comes into play only when an accommodation is or has fallen vacant. Since the accommodation has not fallen vacant, the three orders passed by the Rent Control and Eviction Officer were invalid.' *Badri Prasad Tripathi v. District Magistrate* : AIR 1952 All 832. After that decision the legislature amended Section 7 in 1952 so as to bestow power on the District Magistrate to let an accommodation which is 'about to fall vacant.'

38A. Rule 6 enables the District Magistrate to release to the landlord an accommodation which 'has fallen vacant' or 'is likely to fall vacant'. As regards the latter class of accommodation the rule was beyond the scope of Section 7(1)(a) and was born ultra vires. The 1952 amendment would not resuscitate that portion of the rule; it has got to be re-enacted. And this has not been done so far. In the result Rule 6 would not apply to an accommodation which is about to fall vacant.

39. The portion of the rule, which I have held to be ultra vires, is severable from the rest of the rule. In my opinion the rule thus salvaged is intra vires provided it is interpreted as permissive. If the word 'may' in the rule is to be read as 'shall', as the plurality opinions hold, the rule as a whole would in my opinion be ultra vires.

40. What is the legislature's scheme or policy about the control of letting of accommodation? The legislature formulated its policy or scheme in Section 7. Letting of accommodation, which was vacant or has fallen vacant, was to be regulated. It has nominated the District Magistrate as its trusted agent for the execution of this policy. It has chosen in its wisdom to give him a positive mandate only regarding the first allotment of an accommodation built after June 1, 1946; in that single case he must allot it to the owner if he requires it for his residence. In all other cases including the case where the owner requires a newly-built accommodation for his business etc. it has left the regulation of letting to the discretion of the District Magistrate. It felt that it was neither possible nor prudent to strait-jacket his discretion.

41. Discretion means choice; choice necessarily implies freedom to consider the pros and cons of a problem and then to take a decision on the best course of action. So while the legislature has constituted the District Magistrate a free agent, Rule 6, if mandatory, would predetermine his will; while the legislature has contemplated that the landlord's application for the release of the accommodation should stimulate in the District Magistrate's mind a chain of ideation of contrast and comparison of the competing needs, of their relation to the public interest, which, I conceive, is the ultimate end of the Act and of their order and equitable regulation during an acute famine of housing, Rule 6 would make him an automaton, a mindless slot-machine Rule 6, if mandatory, would thus vary the scheme of Section 7; and the variation would be as radical as the variation in *Raj Narain Singh v. Chairman Patna Administration Committee, Patna* : [1955]1SCR290 . In this case the Supreme Court declared as ultra vires a notification which extended an existing Act to an area with a modification having the effect of changing its policy. Bose, J. observed:

'The Act of 1922 applied to the whole of Bihar and Orissa and one of its essential features is that no Municipality competent to tax shall be thrust upon a locality without giving its inhabitants a chance of being heard and of being given an opportunity to object..... In our opinion this is a matter of policy, We are not able to brush this aside as negligible and it cannot, in our opinion, be left to an executive authority to tear up this guarantee in disregard of the legislature's

solemnly expressed mandate. To do so would be to change the policy of the law and that, the majority in the Delhi Laws Act case say, cannot be done by a delegated Authority, (page 302 of SCR): (at p. 574 of AIR).'

42. There is, I think, little difference between the 'policy' and the 'scheme' of an Act.

43. It is a fallacy to suppose that Rule 6 is limited in its scope to the owner-landlord; it would also apply to the case of a landlord who is a mortgagee with the right of possession or to a lessee who has sub-let (see the definition of the landlord in the Act and Section 7. Again, a landlord may be an owner who has built the premises or an owner or mortgagee with the right of possession who has bargained for transfer of the premises during the subsistence of a lease, The landlord's need for his children's doll-house or for a guest-house may clash with the medically supported need of an asthmatic patient to live in an open and uncongested locality; or his need for shifting his business-office with the need of the Civil Surgeon whose house has been suddenly swept away by a flood; or his need for opening a liquor-shop in the vicinity of an army concentration with the need of a homeless brigadier. In all those cases the District Magistrate would have to give decisive weightage to the property-interest of the landlord and would have no discretion but to allot the premises to him even though he may think that the need of his rival is more exigent and that allotment to the rival is more conducive to public interest. Rule 6 severely curtails his discretion. And that cannot be done by a subordinate law-maker (*Ram Autar v. Rent Control and Eviction Officer, Jhansi* : AIR1959 All377 . Rule 3 provides that the District Magistrate shall allot a premises within 30 days of his receiving an intimation from the landlord under Section 7(1)(a). A learned Single Judge held that Rule 3 was mandatory, and after the expiry of 30 days the District Magistrate lost power to allot the premises. A Division Bench of the Court disagreed with him, and held that the rule was only directory. Speaking for the Court Mootham C. J. said:

'Under Section 17 of the Act the State Government is empowered to make rules 'to give effect to the purposes of this Act.' The purposes of the Act are to control the letting and the rent of available accommodation and to prevent the eviction of

tenants therefrom, and we are unable to hold that a rule which severely restricts the powers of a District Magistrate to control the letting of accommodation conferred upon him by the Act can properly be described as a rule giving effect to the purposes of the latter (page 9 of All LJ): (at p. 378 of AIR).'

After noticing the context the learned Chief Justice went on to say:

'.....it appears to us that if the jurisdiction of the District Magistrate to make an allotment order ceases automatically at the expiry of that period, the result will be to frustrate rather than advance the purposes of the Act'.

44. In *Shivdev Singh v. State of Punjab* : [1963]3SCR426 the validity of the proviso to Rule 31(4)(b) made under the Pepsu Tenancy and Agricultural Land Act, 1955 was challenged before the Supreme Court, Section 32-A of the Act fixed the limit of land which may be held by a person for cultivation. Section 32-K exempted from the purview of Section 32-A an efficiently managed farm which consists of a compact block of land on which heavy investment or permanent structural improvements have been made and whose break-up is likely to lead to a fall in production, Section 32-P provides for the constitution of a Commission for the purpose of advising the State Government in respect of exemption of farms under Section 32-K. It also provides that the advice of the Commission shall be binding on the State Government. There is a further provision in it that the Commissioner shall in giving the advice be guided by the provisions of the Act and the rules made thereunder. Section 52 empowers the State Government to make rules to carry out the purposes of the Act. Rule 31 was made in exercise of that power. It formulates certain rigid standards which are to be applied by the Commission in determining whether Section 32-K will apply to a farm. The proviso to the rule laid down a 'mathematical formula' for allotting marks for yield, and the Commission could not consider other relevant factors, such as the quality of land, natural calamity or rotation of crops. Striking down the proviso Wanchoo J. said:

'Now when Section 32-K(1)(iv) read with Section 32-P provided for the appointment of a Commission to advise on the question of exemption under Section 32-K (1)(iv), the intention of the legislature obviously was that the Commission will take into account all factors which should be properly taken into

account in giving its advice We are therefore of opinion that the proviso to Rule 31(4)(b) inasmuch as it obliges the Commission to apply Schedule C on a mathematical basis goes beyond the provisions of Section 32-K'. (page 374).

45. In *State of Uttar Pradesh v. Vijay Anand Maharaj* : [1962]45ITR414(SC) it was argued that on account of Section 11 of the U. P. Agricultural Income Tax (Amendment) Act (XIV of 1956) the High Court was bound to review its order under Article 226 of the Constitution. Section 11 provided that the Court before whom the application for review is given, shall review the proceedings. It was held by the Supreme Court that the word 'Court' in Section 11 should not be construed to comprehend the High Court in the exercise of writ jurisdiction. Subba Rao, J. observed:

'While Article 226 confers a discretionary power on the High Court, the second part of Section 11 of the Act enjoins on the High Court to make an order in a particular way. We should not give such a construction to the section as would bring it into conflict with Article 226 of the Constitution and which would have the effect of invalidating it to that extent.' (at page 952).

46. As reading 'shall' for 'may' in Rule 6 would bring it into conflict with Section 7 and render it invalid, I am of opinion that the word 'may' should be given its natural meaning.

47. I would like to make it clear that if the rule were to enjoin on the District Magistrate what he himself in the reasonable exercise of discretion would do, then it may be construed as mandatory. It would then not impinge on the legislative scheme or policy underlying Section 7. For example it may be reenacted in some such language as 'All other things being equal between the landlord of an accommodation and other applicants the District Magistrate may permit the landlord to occupy the accommodation which has fallen vacant or is about to fall vacant, if he is satisfied that the landlord bona fide needs the accommodation for his own occupation.' The re-enacted rule can now be extended to an accommodation which is about to fall vacant as Section 7 has been correspondingly amended in 1952.

48. Re-Question 2--Sri Pande has vigorously tried to maintain that Rule 6 is mandatory and not permissive. He has pressed on us to read 'may' as 'shall' and has supported his arguments by case law.

49. The question whether an enactment is absolute or permissive has frequently arisen in courts of law, and the cases bearing on the question are numerous and varied, and many of them difficult to reconcile. I, therefore, propose to consider the question at first independently of the cases cited at the bar.

50. The question about the obligatory or permissive nature of an enactment is a question of legal construction. It is always the function of true legal construction to ascertain the mind of the lawgiver. His mind cannot be objectively x-rayed but his words are the signals of his mind, and the interpreter should seek for their import in order to know his mind. Words have their natural and ordinary meaning, but sometimes they acquire an artificial meaning. 'Malice', 'negligence' 'may' and 'shall' are a few illustrations. The interpreter should therefore endeavour to understand the word-signals not merely in their isolation but also in their combination. He should read them atomically as well as molecularly. And as all mental activity is purposive, the object of the law-giver should also illumine his word-signals.

51. One may look at the problem in another way. According to philosophy an object or phenomenon exists in space and time and for a value. You know the object or phenomenon if you have understood it in its space-time-value relationship. An enactment is a social phenomenon, and the philosopher's triad of space-time-value, I conceive, becomes in legal construction the lawyer's triad of context-history-object. If you wish to understand a law, you have to examine its context, its history and its object. The context-history-object rule is a fundamental rule of construction and ancient too, Heydon's case, (1584) 7 ER 637. History may perhaps be subsumed under context, for it is nothing but the temporal background of the law. And thus in the end we are left with the dyad of the context-object. The interpreter should accord primacy to the context and object of the enactment in eliciting the intention of the lawmaker and in determining whether an enactment is obligatory or enabling H.N. Rishbud v. State of Delhi : 1955 CriLJ526 , Hari Vishnu Kamath v. Ahmad Ishaque : [1955]1SCR1104 .

52. Let us now turn to the context of Rule 6. Rule 1 prescribes the title of the rules, and Rule 2 is the definition clause. They are not material for our purpose. Rules 3, 4, 5, 7, 8, 9, and 10 invariably use the auxiliary verb 'shall', and accordingly the use of the auxiliary verb 'may' in Rule 8 is not, I think, without purpose or unwitting. The proviso to Rule 8 provides that if a portion of an accommodation which was not let out before is let out by the District Magistrate at the desire of the landlord, the District Magistrate shall, at any time after such allotment, on being satisfied on the application of the landlord that he requires the accommodation for his personal residence, grant him permission under Section 3 of the Act for ejectment of the tenant.' There seems to be some echo of Rule 9 in the proviso, but while the proviso uses the word 'shall', Rule 6 uses 'may'. To my mind the rule-making authority has made here a deliberate choice of verbs. It has intended to make the proviso mandatory and the rule permissive.

53. The reason for the different choice is, I think, two-fold. Firstly, while the proviso is intended to satisfy the landlord's need for residence, Rule 6 embraces his need for other purposes; secondly, while the former applies to a premises which have never been antecedently let out, the latter applies to a premises which have been let before. The difference in the need of the landlord and in the character of the premises is sufficient explanation for making the latter permissive.

54. A mandatory Rule 6 also does not dovetail with Section 7, as already discussed under question No. 1.

55. In short, the context of the rule shows that it is permissive.

56. There seems to be nothing in the object of the rule to make it mandatory. The needs of a landlord may vary in nature and urgency, he may require a premises for residence or business; for his children's doll-house or for a lumber-room; for a guest-house or for office. He may keenly feel these needs and press for their priority. An Imperious Rule 6 would constrain the District Magistrate to comply with some of his rather fanciful needs during an emergency when many people are homeless. Shelter, after food, is man's primordial necessity. It is, I think, for this reason that the rule maker has chosen 'may'. The District Magistrate is enabled to weigh the need of the landlord and compare it with the need of other applicants

and then to decide whom to allot the premises.

57. It has been emphasised that a permissive Rule 6 would only reiterate what Section 7 has already provided for, and would be redundant. This argument does not appeal to me for two reasons. Firstly, it is not wholly correct to say that a permissive Rule 6 would be redundant. My Lord the Chief Justice has examined this argument in the light of Section 7 as it stood after its amendment in 1952. I respectfully think that the argument should be tested in the light of Section 7 as it was on the eve of the birth of Rule 6, that is, as it was in September 1949. I have earlier quoted the section as it then stood. It may be observed that then it gave no power to the District Magistrate to let an accommodation which was likely to fall vacant. This power was given to him by the 1952 amendment. Rule 6, however, allows the District Magistrate to release to the landlord an accommodation which is likely to fall vacant. Quoad the accommodation likely to fall vacant Rule 6 cannot be said to have been redundant at the time of its enactment. Secondly, I think that the rule of interpretation regarding the presumption against redundancy strictly applies to the case of one and the same law-maker, and not to different lawmakers. While Section 7 is enacted by the legislature, Rule 6 is enacted by the State Government. The two authorities are entirely distinct and discreet.

58. Man knows his own mind unmistakably. He has an instinctive fondness for economy of effort. It is therefore presumed that the lawmaker would not waste his words in surplusage or tautology. But it may not be presumed, at least readily that the subordinate law-making authority has understood the mind of the legislator with downright exactitude. His knowledge, as of a court of law, is interpretative and necessarily secondary. Any imperfect understanding of the parent law--specially of its ambiguities and implications--is liable to make him repetitive and superfluous. Accordingly the presumption against redundancy in his case should not be as strong as in the case of the legislator. In the present case the presumption is easily dislodged. Rule 6 itself proclaims aloud the State Government's wrong understanding of Section 7(1)(a) in as far as it seeks to deal with accommodation which is likely to fall vacant. I have already shown that this part of the rule has overstepped the scope of Section 7(1)(a). The residue of the rule may be superfluous, but it is not difficult to speculate upon an explanation for it. While

Section 7(1)(a) is written in broad and indistinct strokes, the proviso to it gives a neat and plain mandate to the District Magistrate to make the first allotment of an accommodation which has been built after June 1, 1946, to the landlord for his own residence. It is not improbable that some of the District Magistrates and landlords might have apprehended that Section 7(1)(a), specially in the context of the proviso, gave no power to the former to allot an accommodation which has been built before that date and was vacant or has fallen vacant. In this connection it is worthwhile to recall the difficulty felt by various learned Judges of the Court in supporting the validity of the rule.

In Ram Autar's case, : AIR1959 All377 there is an obiter dictum of two learned Judges that there is no express power in the Act to justify the rule; in the case of Raman Das, : AIR1952 All703 the Full Bench justified it by the words 'not to let' in Section 7(1)(a); in Pandaya's case, : AIR1953 All51 a Division Bench justified it by construing the words 'not to let such accommodation to any person' as including 'the case of not letting the accommodation to any person in order that the landlord may occupy the accommodation himself.....' Accordingly it is not improper to suppose that Rule 6 was enacted to dissipate the said misapprehension of the District Magistrates and landlords. It is well known that sometimes the legislature does indulge in surplusage in order to allay public misgivings or to give clear guidance to the administrative officers if there is a penumbra of vagueness in the enactment.

59. I am unable to agree with my Lord the Chief Justice that the proviso to Section 7(1)(a) was repealed in 1952 as the legislature felt that Rule 6 has made it superfluous. The sphere and vision of the proviso and the rule are not overlapping; they are completely different. While the proviso applies to an accommodation which has been constructed after July 1, 1946 and is ready for its first allotment, the rule applies to an accommodation which, whether constructed before or after July 1, 1946, is ready for another allotment. In March 1951 the U. P. (Temporary) Control of Rent and Eviction (Amendment) Act (No. IX of 1951) in Section 1-A to the Act which excluded from the purview of the Act any building erected on or after January 1, 1951. After this amendment the scope of the proviso was constricted to the buildings erected between July 2, 1946 and December 31, 1950. The

amendment deleting the proviso was made in September 1952. It seems to me that somewhere between March 1951 and September 1952 the legislature was informed that the buildings erected during the said period were already occupied by landlords or tenants and none of them was available for the first allotment. The proviso had become otiose and was accordingly deleted.

60. I shall now discuss the cases cited by Sri Pande in support of his argument that tt. 6 grants power coupled with a duty. He has particularly relied on the dictum of Lord Cairns in the *Julius* case, (1880) 5 AC 214:

'But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so. (pages 222-223).

61. It is proper to bear in mind the caution of Lord Selborne:

'My Lords, the use of inexact language in the statement of reasons for judicial reasons, (though nothing may turn upon it in particular cases determined upon sound principles) is sometimes liable to become a starting point in other cases towards erroneous conclusion.' (at page 235).

62. And Lord Penzance said thus:

'Passing, therefore, from definitions which are apt not to be uniform, and which are with difficulty so framed as to be applicable to all cases, I think it far more satisfactory that your Lordships should look at what the Courts in previous cases have done rather than what the learned Judges may have said.....' (page 231).

63. Incidentally I may venture to suggest--though not without great diffidence--that the dictum of Lord Cairns appears to me to be incomplete in one respect: there may be something in the nature of the donee of the power which may show that the power is coupled with a duty.

64. The actual decision in the case was that the enactment was permissive,

65. In (1890) 44 Ch D 262 also the enactment was held to be permissive. In 1913-1 KB 561 'may' was read as 'shall' to protect personal liberty. In 1950-1 All ER 370 the enactment was held to be permissive, and in 1959-3 All ER 481 another enactment was held to be mandatory to protect personal liberty. In (1865-87) 18 Law Ed 419 certain local authorities were given power to levy a rate on the inhabitants for the purpose of paying up the outstanding debts. The Supreme Court held that the power was not discretionary. The object of the enactment was to protect private rights : [1950]1SCR621 does not appear to be relevant. In : (1958)11LLJ273SC the word 'shall' was read as 'may' because among other reasons the enactment was not made for the benefit of any person or class of persons. In Collector of Manghyr v. Keshav Prasad Goenka : [1963]1SCR98 a provision was held to be mandatory to protect the rights of a person.

66. To sum up, it is evident from all these cases that there the object of an enactment is the protection of the rights of a person or class of persons, it is, subject to the context, held generally to be imperative. For otherwise the law's object would be frustrated. Ayyangar J has observed:

'The question whether any requirement is mandatory or directory has to be decided not merely on the basis of any specific provision (sic) but on the purpose for which the requirement has been enacted, particularly in the context of the other provisions of the Act and the general scheme there-of. It would, inter alia, depend on whether the requirement is insisted on as a protection for the safeguarding of the right of liberty of person or of property which the action might involve.' (at page 1701).

67. The Act and Rule 6 have not been enacted for the protection of private rights; they have been enacted to serve public interest at some cost of private rights. Enactments which were held to be imperative in the cited cases were designed to safeguard private rights.

68. It has not been urged that Section 7, without a mandatory Rule 6, would be unconstitutional. In Abida Begum's case : AIR1959 All675 it was said that Section

7(2) without rules would infringe the fundamental right of the owner. This view is not consistent with the decision of the Full Bench in the case of Raman Das : AIR1952 All703 . In that case the Court has held that Section 7 imposes a reasonable restriction on the citizen's right of property. The Full Bench decision was not brought to the notice of the learned Judges.

69. My answers to the two questions are: Question 1.--The portion of Rule 6 which relates to an accommodation which is likely to fall vacant is ultra vires. The rest of the rule is valid. Question 2.--Rule 6 is permissive and not mandatory.

S.K. Verma, J.

70. In accordance with the opinion of the majority, the first question is answered in the negative and the second question in the affirmative.

The writ petition will now be listed before the Bench concerned along with the answers to the questions referred to the Full Bench.

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