

Smt. Ram Mani Devi Vs. Rent Control and Eviction Officer and ors.

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Court : Allahabad

Decided On : Jan-22-1975

Reported in : AIR1976All517

Judge : K.B. Asthana, C.J., ;Satish Chandra, ;H.N. Seth, ;C.S.P. Singh and ;T.S. Misra, JJ.

Acts : Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 - Sections 7, 7(2) and 7(3); Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 12 and 25

Appeal No. : Civil Misc. Writ No. 4298 of 1971

Appellant : Smt. Ram Mani Devi

Respondent : Rent Control and Eviction Officer and ors.

Advocate for Def. : H.N. Sharma and ;Standing Counsel

Advocate for Pet/Ap. : Bharatji Agarwal, Adv.

Judgement :

T.S. Misra, J.

1. The following question was referred by our learned brother C. S. P. Singh, J., to a larger Bench:

'Whether a vacancy occurs under the provisions of U. P. (Temporary) Control of Rent and Eviction Act 1947 in case a tenant sub-let a portion of his accommodation ?'

2. When the matter was placed before a Full Bench consisting of three Judges it appeared that the question involved a reconsideration of a Full Bench decision of this Court in Mohd. Ishaq v. State of U. P. : AIR1966 All280 and also of some observations made by another Full Bench in R.K. Singh v. State of U. P., (1970 All LJ 592). Since those Full Benches were constituted by three learned Judges it was felt that the aforesaid question should be referred to a larger Bench constituted by at least five Judges. That is how the said question has now come up before this Full Bench.

3. The question referred to us is in an abstract form, hence before seeking an answer to the same it would be appropriate and useful in the first instance to read the material provisions of the U. P. (Temporary) Control of Rent and Eviction Act, 1947, hereinafter referred to as the Act.

4. This Act was brought on the statute with the object of providing for the continuance during the limited period of powers to control the letting and the rent of residential and non-residential accommodations and to prevent the eviction of tenants therefrom. Section 2 contains definitions. The expression 'lease' is defined in Section 2 (b) as to include a sublease. Section 2 (c) defines 'landlord' as a person to whom the rent is payable by the tenant in respect of any accommodation and includes the agent, attorney, heir or assignee of such a person. The expression 'tenant' is defined in Section 2 (g) as the person by whom rent is, or but for a contract, express or implied, would be payable for any accommodation.

5. Section 3 of the Act, which grants protection to the tenants against eviction, provides that subject to any order passed under Sub-section (3) no suit shall without the permission of the District Magistrate, be filed in any civil court against a tenant for his eviction from any accommodation, except on any of the grounds mentioned in clauses (a) to (g) thereof.

6. Section 7 is the crucial section for the purpose of this case. It deals with the control of letting. Under this section, as it originally stood, the District Magistrate could by general or special order require a landlord to give intimation of the falling vacant of any accommodation of which he was a landlord and to let or not to let to any person. It also contained an explanation clause which provided that for the purposes of the section the word 'let' shall include the word 'sub-let'. Section 7 was thereafter amended by the United Provinces (Temporary) Control of Rent and Eviction (Amendment) Act, No. XLIV of 1948 and Sub-section (1) of Section 7 was substituted as follows;

'(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 accommodation to any person;

(b) In any case where in pursuance of an order of the District Magistrate passed, under Clause (a) aforesaid, the vacancy of any accommodation is required to be reported the tenant occupying such accommodation shall, within seven days of his vacating the same, give intimation thereof in writing to the District Magistrate or such officer as the District Magistrate may appoint in this behalf;

Provided that in making first allotment in 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 -- A newly constructed accommodation shall be deemed to be vacant as soon as it is fit for occupation.'

7. Again, by Uttar Pradesh (Temporary) Control of Rent and Eviction Act of 1952, the whole of section 7 was amended and was substituted as follows:

'(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 tenancy or by release from requisition or in any other

manner whatsoever, give notice of the vacancy in writing to the District Magistrate.

(b) Every tenant occupying accommodation shall within 7 days of vacation of such accommodation or ceasing to occupy it give notice thereof in writing to the District Magistrate.

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

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

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

(4) The District Magistrate may on application made to him by the landlord, require a prospective tenant of any accommodation in respect of which an order is made under this section to pay to the landlord an advance rent equal--

(a) to one month's rent where the accommodation is to be let on a monthly basis, and

(b) to one-half of the yearly rent where the accommodation is to be let on a yearly basis

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

8. The predominant object of the provisions of Section 7 (1) and (2) of the Act is that when an accommodation falls vacant by reason of the fact that the landlord has vacated it either as a whole or in part or has ceased to occupy it or the tenant has done so the vacancy should be reported to the District Magistrate within 7 days and the District Magistrate may then, if he so deems fit and proper, keeping in view all the facts and circumstances of the case, pass an order directing the landlord to let or not to let out that accommodation to the person named in the

order. Procedure to have the order passed under Section 7 (2) enforced, is provided in Section 7-A of the Act. Contravention of the provisions of Section 7 is made punishable under Section 8 of the Act. Power to make an order (commonly called an allotment order) can, however, be exercised only when an accommodation has fallen vacant or is likely to fall vacant. According to Sub-section (1) of Section 7 an accommodation falls vacant when it is vacated or has ceased to be occupied by the landlord or the tenant, as the case may be.

There is no difficulty in understanding as to when an accommodation should be considered to have been vacated. It, means actual, complete and physical vacation. When would a landlord or a tenant 'cease' to occupy an accommodation is, however, a matter which requires interpretation. There may be a situation when the tenant may have for a short period gone out with his entire family to stay at a different place keeping the accommodation locked and intending to return after some time. He has, obviously, during this short period, ceased to occupy the accommodation in question and has gone out to occupy another accommodation. But this cessation of occupation, which is backed by the animus to return, would not be covered by the provisions of Sub-section (1) or (2) of Section 7. Again, the tenant may have left the premises to live elsewhere and may also have removed all his belongings therefrom and yet has kept the accommodation under his lock would also not be said to have ceased to occupy inasmuch as he has retained his possession thereof and has neither surrendered his tenancy nor abandoned it. Similarly, if the tenant is forcibly dispossessed by the landlord or any other person, he cannot, in the eye of law, be said to have ceased to occupy the accommodation giving jurisdiction to the District Magistrate to allot it to a third person. To say otherwise, would be putting premium on illegality.

Hence, in the case of a tenant the phrase 'ceasing to occupy' must in the context of the Act mean 'ceasing to retain possession in accordance with law' or 'abandoning the accommodation with the intention not to return and occupy or giving up the possession completely and absolutely without retaining any interest therein'. The phrase 'ceasing to occupy' when construed in connection with the landlord connotes 'stopping to use it for his own use and vacating it for being let out'. Hence, in the case of landlord the phrase 'has vacated' or 'has ceased to

occupy' would connote the same thing, that is, the landlord has 'vacated the accommodation for being let out'. There is obviously no difficulty in visualising that situation. However, what would be the position when a tenant withdraws his personal physical user of an accommodation and allows another person to occupy it under a sub-lease. Should it be said that the tenant has 'ceased to occupy' the accommodation. Again, if the tenant sub-lets a portion of his tenanted accommodation should it be said that he has ceased to occupy not only that portion but the entire accommodation even though he is in actual physical occupation of the remaining portion ?

In our view, the tenant will not be said to have 'ceased to occupy' either the whole or a portion thereof when he sublets it. Sub-letting is not completely prohibited by Section 7 or any other provision of the Act. The only requirement is that prior permission in writing of the landlord and the District Magistrate should be had before sub-letting is done. With the prior permission of the landlord and the District Magistrate a sub-lease may be created. But to say that as soon as sub-lease is made and the sub-tenant enters into possession the accommodation falls vacant or that the tenant ceases to occupy it within the meaning of Section 7 (1) or (2) enabling the District Magistrate to allot it to another person is to set up an anomaly. That would set at naught the permission given by the District Magistrate under Sub-section (3). It was not the intention of the Legislature that the District Magistrate by granting the permission under Section 7 (3) to the tenant in chief to sub-let would, on the tenant acting on that permission and subletting the accommodation place the tenant in a precarious position.

Surely, while making a provision for creating a sub-lease the Act did (not ?) devise a mechanism whereby the sub-letting though made in accordance with Sub-section (3) of Section 7 may be used by the District Magistrate as a ground to pass an order of allotment under Sub-section (2). Similarly the Act did not provide that the non-compliance with Sub-section (3) of Section 7 would make it unnecessary for the landlord to file a civil suit for eviction of the tenant and that he could secure the eviction of the tenant by approaching the District Magistrate to have, an order under Sub-section (2) followed by an order under Section 7-A of the Act.

9. Lease of an immovable property is defined under Section 105 of the Transfer of Property Act as a transfer of a right to enjoy such property made for a certain time in consideration for a price paid or promised. Under Section 108 of the Transfer of Property Act the lessee is entitled to be put in possession of the property. A lease is, therefore, a transfer of an interest in land. The lessor parts with his right to enjoy the property during the term of the lease and the lessee gets that right to the exclusion of the lessor. Applying these principles to the case of sub-lease, a right to exclusive possession and enjoyment of the property is conferred on the sub-tenant. If the sub-lease is created after having obtained permission of the District Magistrate and of the landlord the sub-tenant's possession cannot be considered to be unauthorised or illegal. The sub-tenant has a right to maintain his possession to the exclusion of others during the subsistence of his sub-lease. At the same time, the tenant-in-chief retains his right to evict the subtenant and secure possession of the accommodation from him in accordance with law. His relationship with the original landlord vis-a-vis the said accommodation also survives and is not extinguished merely because of the sub-lease.

The possession of an accommodation cannot be recovered by the landlord by filing a suit only against the sub-tenant. The landlord has to implead the tenant-in-chief. Any decree passed in the suit against the tenant-in-chief would bind the sub-tenant. If the tenant-in-chief is ordered to be evicted, then, with him the sub-tenant would also go. This being the position in law, it cannot be said that when an accommodation is sub-let with the prior permission of the landlord and the District Magistrate it has fallen vacant or that the tenant has ceased to occupy it within the meaning of Sub-sections (1) and (2) of Section 7 giving jurisdiction to the District Magistrate to pass an order of allotment in favour of another person and further to execute that order under Section 7-A of the Act. Nor can it be said that when a portion of that accommodation is sub-let the whole accommodation or even the portion concerned has fallen vacant.

10. Now, what would be the position if the tenant-in-chief sub-lets the entire tenanted accommodation or a portion thereof without having previously obtained the written permission of the District Magistrate and the landlord. Such a sub-lease would be hit by Sub-section (3) of Section 7 of the Act and the tenant-in-chief in

that event would be considered to have acted in contravention of that provision. This would give rise to two situations. The landlord would immediately get a right to file a suit for the eviction of the tenant-in-chief without obtaining the permission of the District Magistrate vide Section 3 (e) of the Act.

The tenant might also be prosecuted under Section 8 for having contravened the provisions of Sub-section (3) of Section 7. But the District Magistrate would have no jurisdiction to pass any order under Sub-section (2) of Section 7. A person let into possession of an accommodation by the tenant-in-chief not in the manner laid down under Sub-section (3) of Section 7 would not be a sub-tenant. His possession would then be deemed to be that of a licensee of the tenant-in-chief inasmuch as the interest in the lease-hold property had not been transferred to him in accordance with law. The legal possession of the tenant-in-chief still surviving in him, the accommodation either as a whole or any part thereof would not be deemed to have fallen vacant or to have ceased to be occupied by the tenant-in-chief.

11. For all intents and purposes the tenant-in-chief remains responsible to his landlord. If it were not so, decree for eviction passed against him would not bind the sub-tenant. No vacancy within the meaning of the provisions of Section 7 of U. p. Act III of 1947 can, therefore, be said to occur when an accommodation or any part thereof is sub-let by the tenant-in-chief without complying with the provisions of Sub-section (3) of Section 2 of the Act.

12. Similarly, when the lessee approaches the District Magistrate and the landlord for securing their permission to sub-let, it cannot, be said that the accommodation is about to fall vacant. The District Magistrate may or may not grant the permission sought for. The order granting or refusing to grant the permission to sub-let could be passed under Sub-section (3) and not under Sub-section (2) of Section 7 of the Act. The provisions of Sub-section (2) operate when the landlord or the tenant-in-chief, as the case may be, vacates the accommodation or ceases to occupy it. Such a vacancy also includes a situation when an accommodation is about to fall vacant vide Section 2 (h) of the Act. The District Magistrate then by special or general order may require a landlord to let or not to let to any person that

accommodation. Such an order passed under Section 7 (2) is, however, not final because it is subservient to the final verdict of the State Government under Section 7-F of the Act.

The State Government may in exercise of its powers under Section 7-F revoke or cancel the order passed by the District Magistrate under Section 7 (2) of the Act and in that situation the operative order would be that of the State Government. Sub-section (3) of Section 7 covers a different field. Its provisions are invoked only when a lessee wants to sub-let an accommodation or part thereof in his tenancy and occupation. He has then to obtain the permission of not only the District Magistrate but also his landlord. Unless both of them grant the permission, the accommodation cannot be sub-let. In other words, if either of them refuses to grant the permission, the lessee cannot sub-let the accommodation or any part thereof.

13. Order under Section 7 (2) of the Act is subservient to the order of the State Government under Section 7-F but is not subservient to the will or whim of the landlord. However, if the order of the District Magistrate granting permission to sub-let is said to be passed under Sub-section (2) its operation would be dependent upon the permission of the landlord. The landlord may decline to grant the permission and thereby render the order of the District Magistrate ineffective and infructuous. Similarly, the order of the State Government under Section 7-F may also be rendered ineffective by the landlord by declining to grant the permission to the lessee to sub-let. Certainly, this could not be the intention of the legislature as is evident from the respective provisions of Section 7-F and Sub-sections (2) and (3) of Section 7 of the Act. Under Sub-section (2) the District Magistrate may by order require a landlord to let or not to let an accommodation whereas under Sub-section (3) he may or may not grant permission to the lessee to sub-let to a particular person.

The District Magistrate cannot, however, when the lessee approaches him for the requisite permission, ask the lessee to sub-let the accommodation to a person other than the one to whom the lessee wants to sub-let but he cannot at the same time require the tenant-in-chief to sublet it to any other specified person, the reason being that such an order of the District Magistrate could be set at naught

by the landlord by refusing to grant the permission to sub-let. The field of operation of Sub-section (3) is manifestly quite distinct and different from that of Sub-section (2). Under Section 7-F the State Government may call for the record for the filing of a suit for eviction referred to in Section 3 or requiring any accommodation to be let or not to be let to any person under Section 7 and may make such order as appears to it necessary for the ends of justice. It does not obviously apply to a case of granting or refusing to grant permission to sub-let. From a combined reading of all the provisions it is quite manifest that the order granting or refusing to grant permission to sub-let is covered only by Sub-section (3) of Section 7 and not by Sub-section (2) thereof. The District Magistrate gets jurisdiction to pass an order granting or refusing to grant permission to sub-let only when he is approached by the lessee and not otherwise. He cannot act suo motu.

The order granting or refusing to grant permission to sub-let is passed not in exercise of powers under Sub-section (2), but it is passed under Sub-section (3) of Section 7. Under Sub-section (2) the District Magistrate may act even suo moto and may pass a general order to let or not to let. Can it be said that a District Magistrate may pass a general order that no accommodation would be sub-let within his jurisdiction. In our view, he has no such power or authority, for there is a specific provision in Sub-section (3) for passing only special order granting permission or refusing to grant permission to sub-let and that too when a lessee approaches him for grant of permission. For the reasons stated above, it cannot be held that sub-letting of a portion creates vacancy in respect of that portion and that the power of control under Section 7 (2) arises when a lessee approaches the District Magistrate for securing his permission to sub-let an accommodation.

14. The explanation clause of Section 7 of the Act also does not lead us to a different conclusion. It stipulated that for the purposes of this section the word 'let' shall include the word 'sub-let'. The Explanation clause, however, did not widen the scope of Sub-section (2) of Section 7 so as to invest the District Magistrate with a power to treat an accommodation either whole or in part as vacant and pass an allotment order in respect thereof when that had been sub-let in contravention of the provisions of Sub-section (3). While adding this Explanation clause to Section 7 the object of the legislature seemed to be that the sub-letting should not

be made without the prior permission of the District Magistrate and the landlord as required by Sub-section (3). Under Sub-section (1) a landlord was required to give intimation to the District Magistrate when an accommodation fell vacant. Similarly, a tenant was also required to inform the District Magistrate of his having vacated an accommodation or of ceasing to occupy it.

The District Magistrate then could pass a general or special order directing the landlord to let or not to let that accommodation which has fallen vacant or which is likely to fall vacant. Similarly, if a tenant wanted to sublet any portion of the accommodation in his tenancy he was also required to obtain the requisite permission of the District Magistrate and also of his landlord to do so. Contravention of any of these provisions entailed penal consequences. If, a landlord without obtaining the necessary permission of the District Magistrate let out any accommodation fallen vacant the District Magistrate still had the power to order the landlord to let out the accommodation to another person and to put the allottee into possession by following the procedure laid down in Section 7-A of the Act. If the tenant-in-chief sub-let the accommodation without having previously obtained the permission of the District Magistrate he could be prosecuted under Section 8 of the Act and if the sub-letting was made without permission of the landlord the latter could file a suit for eviction on that ground under Section 3 of the Act.

These two sections were independent of each other and one did not preclude the other. Explanation to Section 7 has to be read harmoniously with the substantial provision of this section and the only way of harmonising the two is to read the Explanation in relation to Sub-section (3) only. The scheme of Section 7 seemed to be that when an accommodation fell vacant or was likely to fall vacant the landlord and the tenant should report the vacancy to the District Magistrate who would proceed to allot the accommodation. The right of the landlord to let out an accommodation was restricted by the condition that he could let out only to that person in whose favour the District Magistrate had passed an order of allotment. Similarly, the right of the tenant-in-chief to sub-let was also made subject to the prior consent in writing of the landlord and the District Magistrate. It is in this context that the Explanation says that the word 'let' shall include the word 'sub-let'.

A literal interpretation is not always the only interpretation of a provision in a statute. It is permissible to look at the setting in which the words are used.

Neither Sub-section (3) nor the Explanation stipulated that a sub-tenancy not made in accordance with Sub-section (3) would be deemed to create a vacancy of the accommodation so as to give jurisdiction to the District Magistrate to pass an order of allotment under Sub-section (2) and take further action under Section 7-A against the tenant-in-chief and the (sub-tenant. The creation of sub-tenancy was not totally prohibited by Sub-section (3). It merely laid down certain conditions on the fulfilment of which a sublease could be brought about; creation of sub-lease, without the compliance of those conditions however, did not have the effect of determining the right of the tenant-in-chief in the property leased to him or even depriving him of his right to secure possession of the accommodation sub-let by him by ejectment of his subtenant. The interest of the tenant-in-chief in the leased property would not be completely lost by the creation of sublease whether the sub-lease was created in accordance with or in contravention of Sub-section (3) of Section 7 of the Act.

14-A. Further Section 7 of the Act cannot be read aside from other provisions of the Act. It has to be read in harmony with Section 3 which imposed restrictions on the right of the landlord to file a suit against the tenant for his eviction. It provided that no such suit shall be filed without the permission of the District Magistrate except on any ground mentioned in Clauses (a) to (g) thereof, one of the grounds being that the tenant had on or after the 1st day of October, 1946, sub-let the whole or any portion of the accommodation without the permission of the landlord. If the sub-letting was done with the permission of the landlord though not with the permission of the District Magistrate a suit for eviction of the tenant on the ground of sub-letting would not lie. But that would not give a jurisdiction to the District Magistrate to treat the accommodation vacant, allot it to another person and evict the tenant therefrom.

The contract of tenancy between landlord and the tenant is single and indivisible. This characteristic of the contract is not impaired when the lessee sub-lets a portion of the accommodation. The contract of tenancy with the landlord still

remains single and indivisible. In the absence of a specific provision incorporated in the U. P. Act III of 1947 the District Magistrate had no power to break up this unity of contract of letting by treating the portion of the accommodation which is sub-let as vacant and allotting it to another person nor could he create a new contract between the landlord and tenant with regard to the remaining portion.

15. The U. P. (Temporary) Control of Rent and Eviction Act III of 1947 now stands repealed and is replaced by the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act XIII of 1972 which has come into force with effect from 15th July, 1972. The obvious reason for bringing this new Act seems to be that it was felt by the Legislature that the scope of the U. P. Act III of 1947 was not wide enough to cover the present day situations. Section 12 of the aforesaid Act XIII of 1972 attempts to give more comprehensive approach to the question of vacancy of the accommodation. It reads: '(1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if--

(a) he has substantially removed his effects therefrom, or

(b) he has allowed it to be occupied by any person who is not a member of his family, or

(c) in the case of a residential building, he as well as members of his family have taken up residence, not being temporary residence, elsewhere.

(2) In the case of a non-residential building, where a tenant carrying on business in the building, admits a person who is not a member of the family as a partner or a new partner, as the case may be the tenant shall be deemed to have ceased to occupy the building.

(3) In the case of residential building, if the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, notified area or town area in which the building under tenancy is situate, he shall be deemed to have ceased to occupy the building under his tenancy;

Provided that if the tenant or any member of his family had built any such residential building before the date of commencement of this Act, then such tenant shall be deemed to have ceased to occupy the building under his tenancy upon the expiration of a period of one year from the said date.

(4) Any building or part which a landlord or tenant has ceased to occupy within the meaning of Sub-section (1), or Sub-section (2), or Sub-section (3) shall for the purposes of this Chapter, be deemed to be vacant.'

16. Section 25 of the said Act deals with sub-letting. It prohibits subletting of the whole of the building. Sub-section (2) of Section 25, however, permits a tenant to sub-let a part of the building with the permission of the District Magistrate and of the landlord. There is an explanation clause to Section 25 as well which stipulates that for the purposes of that section,

(1) where the tenant ceases, within the meaning of Clause (b) of Sub-section (1) or Sub-section (2) of Section 12, to occupy the building or any part thereof he shall be deemed to have sub-let that building or part;

(ii) lodging a person in a hotel or a lodging house shall not amount to subletting.

17. It was urged by Sri Raja Ram Agarwal, the learned counsel for the petitioners that by enacting Sections 25 and 12 of the U. P. Act XIII of 1972 with regard to the question of sub-letting and the cessation of occupation the legislature has made it clear what was implicit in Section 7 of the U. P. Act III of 1947. At any rate, the aid of the repealing Act may be taken in construing the provisions of Section 7 of the repealed Act. In our view this contention has no substance. It is a recognised rule of interpretation that when the repeal of an Act is followed by a fresh legislation on the same subject the Court must look into the provisions of the new Act but that only for the purposes of determining whether they indicate a different intention. The line of inquiry would be not whether the new Act keeps alive the old rights and liabilities but; whether it manifests any intention to destroy them. Unless the new statute or regulation specifically or by necessary implications affects rights created under the old law those rights must be held to continue in force even after the new statute or regulation comes into force (See *State of Punjab v. Mohar Singh*, 1955

SCR 893 = (AIR 1955 SC 84) and Jindas Oil Mills v. G. E. Co. Ltd. : [1969]3SCR836 .

Where the intention of the legislature is clear and unambiguous there is no need to call into aid any rule of statutory construction or any legal presumption. Where there is any ambiguity in the earlier legislation subsequent legislation may be looked at for the proper construction of a similar provision in the earlier Act and the language employed in the repealing Act may be relied upon as a parliamentary exposition of the earlier Act provided the language employed in the earlier Act is ambiguous. In I.T. Officer, Kanpur v. Mani Ram : [1969]72ITR203(SC) the Supreme Court laid, down that generally speaking a subsequent Act of parliament affords no useful guide to the meaning of another Act which came into existence before the later one was ever framed. Under special circumstances, the law does however admit of a subsequent Act to be resorted to for this purpose but the conditions under which the later Act may be resorted to for the interpretation of the earlier Act are strict; both must be laws on the same subject and the part of the earlier Act which it is sought to construe must be ambiguous and capable of different meaning.

Sri Raja Ram Agarwal, the learned counsel for the petitioner could not show that the provisions of any of the Sub-sections of Section 7 of U. P. Act III of 1947 were ambiguous. In fact, the language of that section is quite clear and unambiguous. That being so, there is no need to call into aid the provisions of the repealing Act for the interpretation of the provisions of any sub-section of Section 7 of the repealed Act. Sections 12 and 25 of the repealing Act XIII of 1972 are not retrospective in character and do not affect any right or privilege accrued under the repealed provision of Section 7 of the earlier Act.

18. In Mohd. ishaq v. State of U. P. (: AIR1966 All280 presuming that an accommodation is vacated by the tenant-in-chief by his sub-letting it to another person the Full Bench was required to consider as to whether the District Magistrate could direct the tenant-in-chief to sublet it to another person or his landlord, i.e., the owner of the accommodation, to let it to another person under Section 7 (2) of the Act. The Full Bench was not required to consider as to whether

a tenant-in-chief would be deemed to have vacated the accommodation when he sub-let a portion of the premises in his possession. In fact, it was presumed for the sake of the question referred to the Full Bench that the tenant-in-chief on his sub-letting the accommodation had vacated it.

M. C. Desai, C. J., took the extreme view in holding that ordinarily when there is a sub-letting of portion it amounts to the tenant-in-chief's vacating the whole accommodation and that when the tenant sub-lets an accommodation or a portion without the required permission a vacancy arises. According to him when a tenant-in-chief vacated an accommodation by sub-letting it, it is the owner who is to be ordered and not the tenant-in-chief and that an order under Section 7 (2) could be issued to the owner of the accommodation to let out and not to the tenant-in-chief to sublet it. The majority consisting of Sahgal and Lakshmi Prashad, JJ., however, came to a different conclusion. According to them no vacancy would arise if a portion of the accommodation was sub-let. That might give a right to the landlord to file a suit under Section 3 of the Act to evict the tenant-in-chief but it would not be a case to attract Sub-section (2) of Section 7.

Sahgal, J. disagreeing with Desai, C. J. held that in case where a portion of an accommodation had been sub-let by a tenant-in-chief to a sub-tenant and that portion was vacated by the sub-tenant then the provision of Sub-section (2) of Section 7 would be attracted as between the tenant and the sub-tenant so far as that accommodation was concerned but as to the whole accommodation the provisions of Section 7 (2) would be attracted as between the owner and the tenant-in-chief when the accommodation is vacated either as a whole or in instalments. He, however, noticed that the question that had been referred to the Full Bench for determination assumed that the accommodation had been vacated as a whole by the tenant-in-chief by sub-letting it to another person.

He concluded that the provisions of Sub-section (2) of Section 7 would be attracted and as the landlord of that portion was the owner himself the order of the District Magistrate under Sub-section (2) of Section 7 had to be addressed to the owner and not to the tenant-in-chief. Lakshmi Prasad, J., also noticed that the question as framed assumed that there had occurred a vacancy. He was of the

view that where a tenant would cease to occupy an accommodation by sub-letting it, he would bring about a vacancy which would give rise to an occasion for the exercise of the power conferred on a District Magistrate by Section 7 (2). With greatest respect we find ourselves unable to subscribe to the extreme view taken by M. C. Desai, C. J. We also find ourselves unable to hold that when a tenant-in-chief sub-lets the whole of the accommodation a vacancy arises giving rise to an occasion for the exercise of the power conferred on a District Magistrate by Section 7 (2) of the Act.

It may, however, be noticed that the Full Bench proceeded to examine the question assuming that there had occurred a vacancy when the tenant-in-chief sub-let the accommodation to another person. In view of that assumption of fact the Full Bench answered the question that when a tenant-in-chief vacated an accommodation by sub-letting it to another person the District Magistrate had to pass an order under Section 7 (2) of the Act to the owner to let it to another person, the owner being the landlord of the accommodation and not to the tenant-in-chief. In our view no vacancy arises when a tenant-in-chief sub-lets either the whole accommodation or a portion thereof and, therefore, there would also not arise an occasion for the District Magistrate to exercise his power under Section 7 (2) of the Act.

19. In the case of R.K. Singh v. State of U. P., 1970 All LJ 592 (FB) the scope of the term 'accommodation' came to be examined. In the view that we have expressed we do not feel it necessary to re-examine the scope of that term inasmuch as there- would occur no vacancy whether the tenant-in-chief sublets the whole of the accommodation or a portion thereof.

20. The decisions in R.A. Agarwal v. State of U P., 1964 All LJ 491 and Smt. A. Devi v. R. C. Officer, 1972 All LJ 843 are more in point. In R. A. Agarwal's case G. C. 'Mathur, J., observed that if Sub-sections (1) and (2) of Section 7 were applicable to an accommodation vacated by a sub-tenant, then Sub-section (3) would become redundant as in that case the District Magistrate could allot an accommodation to any person and no question will arise under Sub-section (3) of seeking the permission of the District Magistrate and of the landlord. To an

accommodation vacated by a sub-tenant the provisions of Sub-section (3) of Section 7 apply and the provisions of Sub-sections (1) and (2) of that section would not apply. With respect we are in full agreement with this view. In Smt. A. Devi's case (supra) one of us (Satish Chandra, J.) speaking for the Division Bench observed:--

'Further, if the Legislature intended that an order of allotment could be passed in a case of sub-letting the language of Sub-section (3) would not have been so markedly different than the language of Sub-section (2). Under Sub-section (2) the District Magistrate is authorised to pass an order directing the landlord to let or not to let an accommodation while under Sub-section (3) he has been given merely the power to permit a tenant to sub-let. Clearly the sub-letting contemplated by Sub-section (3) is at the initiative of the tenant and is dependent upon the concurrence of the landlord and of the District Magistrate. The District Magistrate cannot unilaterally by an order of allotment create a valid sub-tenancy. This would show that the District Magistrate has no power to make an order of allotment in relation to a portion of an accommodation even where the tenant has illegally sub-let the portion. In such a situation the tenant-in-chief can be prosecuted under Section 8 of the Act for violating Section 7 (3), while the landlord can resort to his right to sue for the eviction of the tenant under Clause (e) of Section 3 on the ground of sub-letting without his permission. In our opinion, even if from a highly technical point of view, a notional vacancy arises when a tenant sub-lets a portion, such notional vacancy will not attract Section 7 (2). No order of allotment can be passed in respect of such a portion.'

21. In our view, the above is the correct exposition of law.

22. Our answer to the question, therefore, is that no vacancy would occur under the provisions of the U. P. (Temporary) Control of Rent and Eviction Act in case a tenant sub-lets a portion of his accommodation.

23. Let the answer be laid before the Bench concerned.

C. S. P. Singh, J. (Majority view)

24. I agree.

K. B. Asthana, C. J. (Majority view)

25. I also agree.

Satish Chandra, J. (for himself and H. N. Seth, J.) (Minority view)

26. At the hearing of this writ petition a learned single Judge felt that one of the questions arising in the case was whether a vacancy is caused when the tenant sublets only a portion of the accommodation in his possession. Finding that there was a conflict between the decisions in Harbans Singh Sethi v. Rent Control and Eviction Officer, Nainital, AIR 1966 All 621 and Smt. Amiya Devi v. Rent Control Officer, 1972 All LJ 843 on this point the learned Judge referred the following question of law to a larger Bench:--

'Whether a vacancy occurs under the provisions of the U. P. (Temporary) Control of Rent and Eviction Act, 1947 in case a tenant has sub-let a portion of his accommodation ?'

27. The case was laid before a Full Bench of three Judges. The Full Bench felt that the decision of the referred question involved reconsideration of a Full Bench decision of this Court in Mohd. Ishaq v. State of U P. : AIR1966 All280 and also some observations of another Full Bench in R. K. Singh v. State of U. P., 1970 All LJ 592 (FB). On this view the Full Bench referred the case to a still larger Bench. That is how the matter has been placed before this Full Bench.

28. The decision in Harbans Singh Sethi, (AIR 1966 All 621) followed the Full Bench in Mohd. Ishaq's case : AIR1966 All280 .

29. The question of law referred to this Full Bench requires consideration of the impact and implications of several provisions of the U. P. (Temporary) Control of Rent and Eviction Act, 1947. As long ago as Heydon's case (1584) 3 Co Rep 7a. Lord Coke said 'that for the sure and true interpretation of all statutes in general, be they penal or beneficial, restrictive or enlarging of the common law, four things have to be discerned and considered; (a) What was the common law before the

Act (b) What was the mischief and defect for which the common law did not provide (c) What remedy the parliament had resolved and appointed to cure the disease of the commonwealth (d) The true reason for the remedy.' And the function of the Judge is to so construe the provisions as to suppress the mischief and advance the remedy. This golden rule of interpretation has been consistently followed. See *River Wear Commissioners v. Adamson*, (1877) 2 AC 743 = (57 LJQB 193) (203), *State of West Bengal v. Nripendra Nat* : (1968)ILLJ270SC , *Meghraj Kothari v. Delimitation Commission* : [1967]1SCR400 ; *I.T. Commr. v. Sodra Devi* : [1957]32ITR615(SC) , *Prashar v. Vasantsen Dwarika Das* : [1963]49ITR1(SC) , *Bengal Immunity Co. Ltd. v. State of Bihar* : [1955]2SCR603 and *M.P. Sunderaramier and Co. v. State of Andhra Pradesh* : [1958]1SCR1422 .

30. The second world war started in 1939. After a few years it was felt that there was a progressively greater shortage of house accommodation in the various cities of this State. The Transfer of Property Act gave the landlords an unrestricted right of letting and evicting tenants. To overcome the difficulty the Defence of India Act, 1939 was employed to issue orders to control letting of accommodations as well as preventing eviction of tenants. The Defence of India Act expired on 30th September, 1946. The Governor of this State on October 1, 1946 promulgated the U. P. (Temporary) Control of Rent and Eviction Ordinance No. III of 1946. The preamble of this Ordinance stated that the Governor is satisfied that circumstances exist which render it necessary to provide immediately for the continuance during a limited period of powers to control the letting and the rent of such accommodations and to prevent the eviction of tenants therefrom. Section 9 of this Ordinance provided for control of letting. Sub-section (1) is material. It stated;--

'9. (1) 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.

Explanation:-- For the purposes of this section the word 'landlord' shall not include a 'tenant'. The Explanation made it clear that subletting was not under the control of the District Magistrate.

31. The Ordinance was repealed and re-enacted by the U.P. (Temporary) Control of Rent and Eviction Act No. III of 1947 which was deemed to have come into force on 1st October, 1946. The Act defined the term 'lease' to include a sublease, and 'tenant' to include a sub-tenant. Section 7 related to control of letting. It stated:--

'7. Control of letting -- (1) The Dist. 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.

(2) The Dist. Magistrate, may, on application being made to him by the landlord, require a prospective tenant of any accommodation in respect of which an order is made under this section to pay to the landlord an advance of rent equal--

(a) to one month's rent where the accommodation is to be let on a monthly basis, and

(b) to one-half of the yearly rent where accommodation is to be let on a yearly basis.

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

The word 'let' occurred both in Sub-section (1) as well as in Sub-section (2) of Section 7. The Explanation made it clear that the District Magistrate had power not only to control letting, but also sub-letting. In this matter, the Act made a clear departure from the policy of the Ordinance.

32. The Governor passed the U. P. Control of Rent and Eviction (Continuance and Amendment) Ordinance, 1948. By Section 3 of this Ordinance a new section, namely, Section 7-A was introduced in the principal Act. This authorised the District Magistrate to evict an unauthorised occupant of an accommodation in respect of which an order had been passed under Section 7 (1). Since an order under Section 7 (1) could be passed in respect of sub-letting the power under Section 7-A to eject was available in such cases also. Thus, the position was that

letting and sub-letting were both controlled by the District Magistrate, under Section 7. Illegal sub-letting entitled the District Magistrate to evict the unauthorised occupant under Section 7-A. The landlord could evict the tenant for sub-letting without his permission (vide Section 3 (e)). In addition, the tenant who sub-lets without an order under Section 7 (1) could be prosecuted and fined or imprisoned under Section 8 of the Act.

33. The U. P. (Temporary) Control of Rent and Eviction (Amendment) Act, 1952 (Act No. XXIV of 1952) repealed and re-enacted the whole of Section 7 as follows :--

'7.1 (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.

(b) Every tenant occupying accommodation shall within 7 days of vacation of such accommodation or ceasing to occupy it give notice thereof in writing to the District Magistrate.

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

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

(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.

(4) The District Magistrate may, on application made to him by the landlord, require a prospective tenant of any accommodation in respect of which an order is made under this section to pay to the landlord an advance of rent equal--

(a) to one month's rent where the accommodation is to be let on a monthly basis; and

(b) to one-half of the yearly rent where the accommodation is to be let on a yearly basis.

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

34. By another amendment made in Section 7-A for the words and figures 'Sub-section (1) of Section 7' the words 'Sub-section (2) of Section 7' wherever occurring, were substituted.

35. Till this amendment, Section 7 (1) referred to an accommodation 'falling vacant'. The new Section 7 (1) elaborated the situation in which an accommodation can fall vacant; one such being 'ceasing to occupy'. The power of control was conferred by Sub-section (2) of Section 7. The old Explanation continued and maintained the position that the control was over letting as well as subletting. Though maintaining all the preexisting provisions in regard to subletting the Legislature added by Sub-section (3) a new provision dealing with subletting. This authorised the tenant to sublet with the previous written permission of the landlord and the District Magistrate.

36. Sub-section (2) of Section 7 enabled the District Magistrate to require the landlord to let or not to let when an accommodation is vacant. The question whether a vacancy arises when a tenant sub-lets came up for consideration before a Full Bench of this Court in Mohd. Ishaq v. State of U. P. : AIR1966 All280 (supra). Desai, C. J., held that on subletting, a vacancy arises unless the subletting is of negligible portion. In other cases the sub-letting will create a vacancy in regard to the whole accommodation and an order of allotment under Sub-section (2) could be passed in respect of the whole of the accommodation and could be addressed to the owner of the accommodation and not to the tenant-in-chief. The learned Judge noticed the special provision under Sub-section (3) with regard to sub-letting but held that since a vacancy arises the power under Sub-section (2) to allot accrues. In cases where the District Magistrate had given

permission to the tenant to sub-let, he would not exercise the power under Sub-section (2). The learned Judge disagreed with the view taken by him in *Dr. A.C. Dass v. T. R. O and D S O.*, Lucknow, (1962 All LJ 553) that the vacancy arising on the sub-letting enables the District Magistrate to pass an order under Section 7 (2) addressing it to the tenant-in-chief instead of the owner. Sahgal, J., emphasised; 'In the way the question has been formulated it has to be assumed that on sub-letting the accommodation has become vacant'. Sahgal, J., held that when a tenant sub-lets a portion and the subtenant vacates it, a vacancy occurs, Sub-section (2) of Section 7 is attracted, but operates between the tenant and the subtenant. But if the whole accommodation has been sub-let then there is a vacancy in respect of it and the District Magistrate can pass an order under Section 7 (2) to the owner to let to another person. Lakshmi Prasad, J., observed that the question as framed and referred to them assumes that there has been a vacancy by reason of sub-letting. In other words, the question referred to them assumes that occasion for the exercise of power under Section 7 (2) exists and what has to be resolved is that the order is to be addressed to the owner landlord or to the tenant-in-chief. To him, the question referred appeared to proceed on the basis that the whole accommodation has been sub-let and, therefore, the learned Judge did not go into the question as to what will be the position if only a portion of the accommodation has been sub-let. He ultimately held that in the situation the order of allotment has to go to the owner-landlord.

37. This decision was followed by a Division Bench in *Harbans Singh Sethi v. Rent Control Officer*, (AIR 1966 All 621) (supra). It was held that when the tenant-in-chief sub-lets the whole or part of the accommodation a vacancy arises and the District Magistrate can order to the owner to let it to another person. This was on the view that even if the tenant sub-lets a part, the whole accommodation falls vacant. In *Ram Autar Agarwal v. State of U. P.*, 1964 All LJ 491, G. C. Mathur, J., held that Sub-sections (1) and (2) of Section 7 do not contemplate a vacancy occurring on a subtenant vacating any accommodation in his occupation. To a vacancy occurring on the vacation of an accommodation by a sub-tenant Sub-section (3) of Section 7 applies. If such a vacancy were covered by Sub-sections (1) and (2) then there was no necessity to enact Sub-section (3) also.

38. In *Smt. Amiya Devi v. Rent Control Officer*, (1972 All LJ 843) (supra) a Division Bench of which I was a member, took the view that on sub-letting, no vacancy occurs with the result that an order of allotment under Section 7 (2) cannot be passed. Even where a tenant illegally sub-lets a portion, the District Magistrate cannot pass an allotment order.

39. All these decisions took the position that whenever a vacancy arises the power of allotment under Section 7 (2) is attracted and becomes exercisable in the manner provided under Sub-section (2), namely, by passing an order of allotment to the owner landlord. Desai, C. J., attempted to reconcile Sub-sections (2) and (3) by saying that if the District Magistrate had permitted sub-tenancy he would not pass an order of allotment under Section 7 (2) (though in law he could do so). G. C. Mathur, J. as well as I tried to resolve the tangle by holding that in cases of subletting no vacancy arises with the result that the power to allot under Section 7 (2) is not attracted at all.

40. On reconsideration I feel that the true position is slightly different. In *N.C. Agarwal v. Krishna Lal Mehra* : AIR1961 All104 a Full Bench of this Court held that the law relating to the landlord and tenants is contained in the Transfer of Property Act and the same continues in force except to the extent it is altered by the U. P. (Temporary) Control of Rent and Eviction Act, 1947. An accommodation covered by the Rent Control Act in certain matters remains governed by the Transfer of Property Act in all other respects. The landlord has the right to let the accommodation to a tenant. The accommodation is the property which is the subject-matter of the lease. The landlord fixes the dimensions of this unit. Once a particular unit has been let, it becomes an accommodation and it is this unit of the accommodation which is to be governed by the Rent Control Act subsequently. The decision in *Brij Kishore v. Rent Control Officer*. : AIR1954 All428 held that the District Magistrate cannot split an accommodation and order letting of one portion to one person and another portion to another. But it was pointed out that an owner can split an accommodation by changing the dimensions of the property let. Section 105 of the Transfer of Property Act defines a lease to mean a transfer of right to enjoy such property. Under Section 108 of the Transfer of Property Act the lessee is entitled to exclusive possession of the demised property. A tenant, in the

absence of a contract to the contrary, has the right to sub-let the demised property. When he sub-lets, the sub-tenant acquires a right to be in exclusive possession of the property sub-let to him, even to the exclusion of the tenant-in-chief. It is apparent that when a subtenant takes possession, the tenant-in-chief, in fact, ceases to occupy the accommodation sub-let by him. The tenant-in-chief having ceased to occupy, the subject-matter of sub-tenancy has become vacant in fact, and also within meaning of Sub-section (1) of Section 7.

41. Section 7 (1) speaks of an accommodation falling vacant by, inter alia, the tenant ceasing to occupy. The landlord initially has the right to determine the dimensions of the accommodation. Similarly, when the tenant having a right to sub-let, exercises the right, he determines the dimensions of the portion which he will sub-let. The portion given to the sub-tenant becomes a distinct accommodation because it is the subject-matter of an independent contract of lease creating an interest in that portion only in the sub-tenant. Since the Rent Control Act recognises and deals with sub-leases and sub-tenants, the subject-matter of the sub-tenancy would be an accommodation governed by the Act.

42. Prior to the Amending Act of 1952, Section 7 (2) as it then stood, spoke

of letting as well as sub-letting. The District Magistrate had power to pass an order requiring the tenant-in-chief to sub-let or not to sub-let, in the same manner as he could require the landlord to let or not to let to a tenant. By the Amending Act of 1952 the Legislature maintained the power of the District Magistrate to control letting as well as sub-letting, but yet added Sub-section (3). Obviously, the Legislature placed sub-lettings on a different pedestal. In the case of letting the District Magistrate could unilaterally pass an order of allotment. Such an order operated irrespective of the consent of the landlord; but with regard to sub-letting, Sub-section (3) expressly provided that sub-letting could be done by a tenant and with the previous permission of the landlord as well as the District Magistrate. The initiative vesting in the District Magistrate was taken away. He was confined to granting or refusing to grant permission to a tenant to sub-let. It is evident that by introducing Sub-section (3) the Legislature specified the manner in which the District Magistrate was to proceed in cases of sub-letting.

43. The power of control with regard to letting, which in view of the Explanation includes sub-letting, continued under Sub-section (2), but Sub-section (3) provided the method in which the power given by Sub-section (2) is to be exercised by the District Magistrate. Sub-section (3) does not confer any power. It channelises the power of control and provides the procedure for its exercise. In other words, the power of control which was exercisable under Sub-section (2) by passing an order requiring the landlord to let or not to let, is in the case of subletting to be exercised by passing an order granting or refusing permission to a tenant to sub-let. The passing of an order granting permission to a tenant would be tantamount to an order requiring the landlord (which in relation to a sub-letting would mean the tenant) to let. If the permission is refused it will mean that the District Magistrate has passed an order requiring the landlord (that is, the tenant-in-chief) not to let. The position is that the District Magistrate by passing an order under Section 7 (3) granting or refusing to grant the permission, in law, exercises the power of control given by Section 7 (2). Once such an order has been passed, the power is exhausted; and there will be no occasion for the District Magistrate to exercise that power again in respect of the same sub-letting. The vacancy occurs when a tenant intends to sub-let and applies for permission to the District Magistrate. The act of sub-letting, after the requisite permissions have been obtained, fills that vacancy. This very act of sub-letting could not create another vacancy. There will hence be no occasion for the District Magistrate to pass a fresh order under Section 7 (2) for the portion sub-let, much less for the whole accommodation.

44. In case the sub-tenant goes, and the tenant wishes to re-sub-let that or any other portion, he will have to apply for permission and the same procedure will follow. If the tenant does not wish to sub-let again he will regain possession of the sub-let portion and continue in possession of the whole in accordance with his original allotment order under Section 7 (2). In such cases, the District Magistrate will have no occasion to pass another order under Section 7 (2) because he cannot superimpose' any one on a sitting tenant.

45. This construction brings illegal sub-lettings within the purview of the controlling power of the District Magistrate as before the Amending Act of 1952. If a tenant sub-lets without the requisite permission he contravenes Sub-section (3). The sub-

tenant will be an unauthorised occupant. He will be in possession in contravention of the allotment order passed in favour of the tenant-in-chief. He will be liable to be evicted under Section 7-A. The controlling power of the District Magistrate under Section 7-A will get frustrated if it is held that no vacancy arises on subletting. The sub-tenant cannot be characterised as a person in occupation in contravention of the allotment order so as to become liable to be ejected under Section 7-A.

46. The U. P. (Temporary) Control of Rent and Eviction Act, 1947, was replaced by the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act (Act No. 13 of 1972). This Act came into force on 15th July, 1972. Clause (b) of Sub-section (1) of Section 12 of this Act provides that a landlord or tenant of a building shall be deemed to have ceased to occupy the building or part thereof if he has allowed it to be occupied by any person who is not a member of his family. Section 25 (2) permits a tenant to sub-let a part of the accommodation with the permission of the District Magistrate and the landlord. The Explanation to this section provides that for the purposes of this section where the tenant ceases, within the meaning of Clause (b) of Sub-section (1) or Sub-section (2) of Section 12, to occupy the building or any part thereof he shall be deemed to have sub-let that building or part thereof. The new Act carries the Legislative policy of the 1947 Act to control sub-letting, but in a more clear and explicit language.

47. The question of law referred to us raises the problem whether a vacancy occurs on sub-letting so that the power under Section 7 (2) is attracted, because that was the precise point upon which there was a conflict of opinion. In order to clearly bring out the purpose of the reference I would reframe the question as follows:--

'Whether sub-letting of a portion of an accommodation creates vacancy so as to attract the controlling power of the District Magistrate under Section 7 (2), and if so, what order can the District Magistrate pass?'

48. I would answer this question by saying that sub-letting of a portion creates vacancy in respect of that portion. The power of control under Section 7 (2) arises, but such power can be exercised by the District Magistrate only by granting or refusing permission to the tenant to sub-let, as provided by Sub-section (3).

BY THE COURT

49. In view of the majority opinion the question referred to this Full Bench is answered in the negative.

50. Let the papers be laid before the appropriate Bench with this answer. Answered in negative.

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