

Ram Kumar Vs. Baldeo Prasad

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Court : Allahabad

Decided On : Nov-24-1964

Reported in : AIR1965All572

Judge : M.C. Desai, C.J., ;Jagdish Sahai and ;S.N. Dwivedi, JJ.

Acts : Uttar Pradesh Temporary Control of Rent and Eviction Act, 1947 - Sections 3(1), 3(3) and 7F; Uttar Pradesh Temporary Control of Rent and Eviction (Amendment) Act, 1954; [Constitution of India](#) - Article 226; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11

Appeal No. : Second Appeal No. 1/C of 1963

Appellant : Ram Kumar

Respondent : Baldeo Prasad

Advocate for Def. : C.D. Srivastava, ;J. Swarup, ;V. Swarup and ;Keshav Sshai, Adv.

Advocate for Pet/Ap. : S.N. Misra and ;S.K. Tewari, Adv.

Judgement :

J. Sahai, J.

1. This is a defendant-tenant's second appeal and arises out of a suit filed against him by the plaintiff-landlord on the basis of permission granted by the State Government under Section 7-F of the U. P. (Temporary) Control of Rent and Eviction Act (hereafter called the Act) for the ejectment of the appellant from a shop situate in the city of Bareilly. The District Magistrate refused to grant the permission under Section 3 of the Act and the landlord's revision application before the Commissioner, Bareilly, failed. Thereafter he filed a revision application before the State Government which succeeded and the permission was granted. On the grant of the permission a writ petition was filed in this Court challenging the order of the State Government and the right of the plaintiff landlord to file a suit on its basis. That petition was dismissed by Bishambhar Dayal, J. and a special appeal against his decision was dismissed by a Division Bench of this Court consisting of Mukerji and Manchanda, JJ. On a reference by a learned Single Judge the second appeal came up for hearing before a Division Bench which referred the following two questions of law to this Full Bench :

'1. Whether a landlord can file a suit for the ejectment of his tenant upon permission granted by the State Government under Section 7-F of the U. P. (Temporary) Control of Rent and Eviction Act?

2. Whether a decision, given by a Bench of this Court in a special appeal arising out of a petition under Article 228 of the Constitution on the question whether the State Government does or does not have the power to grant permission to a landlord to sue a tenant for a ejectment operates as *res judicata* in a second appeal subsequently filed in this Court?' The whole case is not before us and we are only called upon to answer the two questions referred to us. We will take the questions *seriatim*.

2. It has been contended by Mr. Section N. Misra, on behalf of the defendant-tenant, that Section 3 (1) of the Act clearly provides that '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' and the effect of these words is that no permission can be granted either by the Commissioner or by the State Government and assuming that such a permission is wrongly granted by either of

them the Civil Court cannot take notice of it and cannot entertain a suit on the basis of such a permission. It was submitted that all that the Commissioner and the State Government can do is to issue directions to the District Magistrate to grant the permission or revoke one already granted.

3. It would contribute to a clear understanding of the provisions of Section 3 of the Act if its legislative history was given in brief. The Act was enforced in 1947. At that time there was no provision for a revision application to the Commissioner or one to the State Government. Section 3 of the Act as it then stood, read :

'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 one or more of the following grounds :--

(a)

(b)

(c)

(d)

(e)

(f)

Explanation

The Act was amended in 1952 by means of U. P. Act XXIV of 1952. Section 3 of the principal Act was renumbered as Sub-section 3 (1) and the words 'Subject to any order passed under Sub-section (3)' were inserted before the words 'no suit shall

'(2) The party aggrieved by the order of the District Magistrate granting or refusing to grant the permission referred to in Sub-section (1) may, within 30 days from the date of the order or the date on which it is communicated to him whichever is later, apply to the Commissioner to revise the order.

(3) The Commissioner shall, as far as may be, hear the application within six weeks from the date of its making and if he is satisfied that the District Magistrate has acted illegally or with material irregularity or has wrongly refused to act, he may confirm or set aside the order of the District Magistrate.

(4) The order of the Commissioner passed under Sub-section (3) shall subject to any order passed by the State Government under Section 7-F be final.'

At the same time Section 7-F was introduced in the Act. It reads:--

'7-F. Revision to State Government. The State Government may call for the record of any case granting or refusing to grant permission 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 or directing a person under Section 7 or directing a person to vacate any accommodation under Section 7-A and may make such order as appears to it necessary for the ends of justice.'

The Act was again amended in 1954 by means of U. P. Act No. XVII of 1954. Clause (a) of Sub-section (1) was radically changed and another sub-clause i. e., Clause (g) was added. Besides, Sub-sections (2), (3) and (4) of Section 3 were recast in their present form. After the 1954 amendment the section now reads :--

'3. Restriction on eviction-(1) 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 one or more of the following grounds :--

(a)

(b)

(c)

(d)

(e)

(f)

Explanation

2. Where any application has been made to the District Magistrate for permission to sue a tenant for eviction from any accommodation and the District Magistrate grants or refuses to grant the permission the party aggrieved by his order may, within 30 days from the date on which the order is communicated to him, apply to the Commissioner to revise the order.

3. The Commissioner shall hear the application made under Sub-section (2), as far as may be, within six weeks from the date of making it, and he may, if he is not satisfied as to the correctness, 'legality or propriety of the order passed' by the District Magistrate or as to the 'regularity of proceedings' held before him alter or revise his order, or make such other order as may be just and proper.

4. The order of the Commissioner under Sub-section (3) shall, subject to any order passed by the State Government under Section 7-F be final.'

(Underlined (here into ' ') by us.)

From what we have stated above it is clear that originally (in 1947) there was no provision for the hearing of a revision application by the Commissioner or by the State Government and the words 'subject to any order passed under Sub-section (3)' with which Section 3

(1) of the Act opens did not find place there. The position, therefore, was that it was only the District. Magistrate who could grant permission for 'filing' a suit and neither the Commissioner nor the State Government could do so. That explains why the section mentioned the permission of the District Magistrate alone. Sub-section

(2) of Section 3 of the Act, as it stands on the statute book at present, clearly provides for a revision application being filed against the order passed by the District Magistrate either granting or refusing to grant permission under Sub-section

(1) of Section 3 of the Act. Sub-section

(3) casts a duty upon the Commissioner to hear the application as far as may be within six weeks from the date of making it and he has been authorised to pass any order which he considers just and proper including the one altering, or revising the order passed by the District Magistrate. Under Sub-section

(3) the Commissioner can interfere not only on the ground of jurisdictional or legal error but as would appear from the words underlined also if he considers that the order passed by the District Magistrate was not correct and proper or that the proceedings before him were not regular. There cannot be any manner of doubt that the powers conferred upon the Commissioner are of the widest amplitude and there is nothing which the District Magistrate can do and he cannot do. In this connection it would also be noticed that the scope of Sub-sections

(2) and

(3) of Section 3 of the Act has been very much widened by their recast in 1954. It is clear that whereas originally under Sub-section

(3) the Commissioner could interfere on the ground of the District Magistrate having acted 'illegally or with material irregularity' or having 'wrongly refused to act,' he can now interfere 'if he is not satisfied as to the correctness, legality or propriety of the order passed by the District Magistrate or as to the regularity of proceedings held before him.' Again it is noticeable that whereas formerly the words were 'he may confirm or set aside the order of the District Magistrate', the words now used are 'alter or revise his order, or make such other order as may be just and proper.' Two conclusions clearly follow from the deliberate changes the legislature has made in Section 3 of the Act:

(1) that the Commissioner has been given a power to revise the order of the District Magistrate and

(2) that the power now vested in the Commissioner is of the widest amplitude.

4. An analysis of Section 7-F of the Act also shows that the State Government has been specifically conferred the power to 'call for the record of any case granting or refusing to grant permission for the filing of a suit for eviction referred to in Section 3' and of making 'such order as appears to it necessary for the ends of justice.' There are no restrictions on the powers of the State Government also. In fact there can be no escape from the conclusion that the powers of the Commissioner and the State Government are co-extensive with that of the District Magistrate, See *Lachmeshwar Prasad Shukul v. Keshwar Lal* A I R 1941 F C 51 and *Ebrahim Aboobakar v. Custodian General of Evacuee Property, New Delhi* : [1952]1SCR696 . See also *Nagendra Nath Bora v. Commissioner Hills division* : [1958]1SCR1240 referred to below. It makes no difference that they have been described as revisional and not appellate powers. (See : [1958]1SCR1240). The question, therefore, that requires consideration is whether in spite of the legislative changes and in spite of the existence of Sub-sections (2), (3) and (4) of Section 3 and Section 7-F of the Act, it can still be said that neither the Commissioner nor the State Government can grant permission for filing a suit for the eviction of a tenant and that it is the District Magistrate alone who can do so and further that if the Commissioner or the State Government did grant such a permission that cannot provide a basis for a suit in the civil Court. Having given the matter our anxious consideration we have no doubt that the submission is without any substance.

We are not impressed with the submission made by Mr. Misra that even though the language of Sub-section (3) of Section 3 and of Section 7-F of the Act is of the widest amplitude, the provisions must be so read as to authorise the Commissioner and the State Government not to grant any permission or to revoke one granted by the District Magistrate, but only to direct him either to grant one or revoke the permission already granted by him. Such a submission completely militates against the clear, express and unambiguous language of Section 3 (3) and Section 7-F of the Act. No reasons have been brought to our notice which may impel us to ignore the clear language of these provisions or give to the words used meanings which they cannot bear. There is no justification for holding that even though the legislature has used the language of widest amplitude we should give the words used artificial and arbitrarily restricted meanings. It is well settled

that when the text is explicit, the text is conclusive and the first and foremost rule of interpretation of statutes is that 'if the words of the statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature.' (See Maxwell on Interpretation of Statutes, XIth Edition page 2). See also Commr. for Special Purposes of the Income-tax v. J. F. Pemsel, 1891 A C 531 at p. 543, River Wear Commissioners v. Adamson, (1877) 2 A C 743 at p. 778 and Jugal Kishore Saraf v. Raw Cotton Co. Ltd., (S) AIR 1955 S C 376.

5. When a legislature introduces provisions by way of amendment in a statute those provisions must be given full effect and their utility should not be destroyed by artificial methods of construction. After all the opening words of sub-section (1), that is, 'subject to any order passed under Section (3)', Sub-sections (2), (3) and (4) in section 3 and Section 7-F of the Act are on the statute book. Their meanings have got to be ascertained and those provisions cannot simply be dismissed as mere surplusages and ignored. In J. K. Cotton Spinning and Weaving Mills Co. Ltd. v. State of Uttar Pradesh : (1961)ILLJ540SC it was laid down that 'in the interpretation of statutes the Courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect.' At this stage we would also like to reproduce the preambles of Act 24 of 1952 and Act XVII of 1954 so far as relevant for our purposes :

' '1952' And Whereas it is necessary to provide for the continuance of the said Act until September 30, 1954 'and to amend it for the purposes hereinafter appearing;'

1954 And whereas it is necessary to provide for the continuance of the said Act until September 30, 1953, and to 'amend it for the purposes hereinafter appearing';

(Underlined (here into ' ') by us)

The two preambles clearly show that inter alia, the two Acts were passed in order to remedy certain lacunae in the Act and to supplement and add to its provisions. To accept the argument of Mr. Misra would be to defeat the very purpose for which

the amendments were made and to mutilate and annihilate the language of Sub-section (3) of Section 3 and Section 7-F of the Act which to our mind is beyond the competence of any Court. We find support from *Darshan Singh v. State of Punjab* : 1953 CriLJ525 and *Popatlal Shah v. State of Madras* : 1953 CriLJ1105 . Mr. Misra's argument also completely ignores the addition of the words "subject to any order passed under Subsection (3)" with which Section 3 of the Act opens. He has chosen to describe them as legislative jargon and as completely meaningless. We are unable to do so. When a Legislature in all solemnity and deliberately passes successive amendment Acts they cannot be dismissed as mere jargon or mere meaningless phrases and it cannot seriously be said that the legislature was labouring in vain. No decision has been brought to our notice where even after the Legislature had twice or successively amended the Act and added provisions to it, the provisions were held to be completely meaningless and examples of legislative jargon. All that Mr. Misra did was to place reliance upon certain observations of Desai, C. J. in *Dwarka Nath Munshi v. Gayatri Devi*, 1961 All L J 353. We have carefully read that decision and are of the opinion that the Bench did not hold that the words 'subject to any order passed under Sub-section (3)' were mere legislative jargon and meaningless phrases. The only question that the Bench had to consider was whether a suit, on the basis of the permission of the District Magistrate, would become ineffectual if such permission is revoked or cancelled after the suit had been filed.

It is true that Desai, C. J. while deciding that case observed as follows :

"Sub-section (3) only confers upon a Commissioner a power to cancel a permission granted by a District Magistrate; it does not deal at all either with the filing of a suit in a civil Court or with further progress in the suit and it is meaningless to say that a provision that no suit shall be filed without a District Magistrate's permission is subject to an order of a Commissioner cancelling a permission. Unless his order has some connection with the filing of a suit, the provision relating to the filing of a suit cannot be said to be subject to his order. I consider the words 'subject to any order passed under subsection (3)' completely meaningless--an example of legislative jargon. I even doubt if a civil Court can take cognizance of a suit filed not with a District Magistrate's permission but with a

Commissioner's permission obtained under Sub-section (3).'

Mithan Lal, J., the other Judge constituting the Bench, however, did not agree with the learned Chief Justice. In fact he clearly expressed himself in the following words :

'I, with great respects, for the views of my brother, do not agree with him that the provisions to Sub-sections (2) and (3) of Section 3 of the U. P. (Temporary) Control of Rent and Eviction Act do not have any effect on the continuance of the suit instituted after the order of the Collector passed under Sub-section (1), or that the words 'subject to any order passed under Sub-section (3) of that Act do not have the effect of completely nullifying the order of the Collector or that the operation of the afore-mentioned restrictive clause continues only as long as a suit on the permission given by the Collector is not filed.

Sub-section (1) of Section 3 of the U. P. (Temporary) Control of Rent and Eviction Act lays down 'subject to any order passed under Sub-section (3) no suit shall without the permission of the District Magistrate be filed in any Court against a tenant for his eviction from any accommodation except on one or more of the following grounds.' Sub-section (4) lays down: 'The order of the Commissioner shall.....subject to any order passed by the State Government under Section 7-F be final. A perusal of the aforementioned sub-sections will show that the order of the District Magistrate is subject to the order of the Commissioner passed in appeal, while the order of the Commissioner is subject to the order of the State Government passed in revision. Obviously, the order passed by the Collector is not final and consequently the restrictive clause cannot be given a limited meaning. The reasons for my views are'

Firstly, because Mithan Lal, J. categorically disagreed with the observations of the learned Chief Justice and secondly, -because the Bench was not called upon to decide the question whether or not a suit could be filed upon the basis of the permission granted by the Commissioner, the observations of Desai, C. J., though entitled to respect, can only be treated as obiter dicta and for that reason cannot have the authority of a judicial precedent. Mr. Misra is reading the words 'Subject to any order, passed under Sub-section (3)' in isolation from other constituent

parts of the statute. The proper way is to read the whole of Section 3 and Section 7-F of the Act together and to find out the intention of the legislature. In *Ashwini Kumar Ghose v. Arabinda Bose* : [1953]4SCR1 it was held that:

'It is not a sound principle of construction to brush aside words in a statute as in opposite surplusages, if they can have appropriate application in circumstances conceivable within the contemplation of a statute.'

6. We will show later on that when the various relevant provisions are read harmoniously they yield meanings and the legislative intention become clear but before we do so we would like to dispose of the submissions made by Mr. Misra.

7. Mr. Misra also placed reliance upon the following observations of Desai C. J. in *Kailash Chan-dra Jain v. State of U. P.* : AIR1962 All1 :

'In 1961 All L J 353, I said that a permission on the basis of which a civil court can take cognizance of a suit for ejectment can be granted only by the District Magistrate.'

With great respect to the learned Chief Justice we are unable to agree. The other learned judges who constituted the Full Bench do not seem to have subscribed to his view. Besides, the question requiring determination in the case of *K. C. Jain* : AIR1962 All1 (supra) was not as to whether a civil court can take cognizance of a suit for ejectment on the basis of a permission granted by the State Government or the Commissioner. The only questions that the Full Bench had to answer have been given in the opinion of Dwivedi, J. who delivered the leading judgment. The learned Judge observed :--

'At the hearing of the writ petition three questions of law were mooted on behalf of the appellants : (1) since the State Government did not send for the record of the Additional Commissioner it had no power to make the impugned order under Section 7-F, (2) the State Government could not consider any facts which were dehors the records of the Additional District Magistrate and the Additional Commissioner, and (3) the State Government misapprehended that it had no power to review its order.'

The facts of K. C. Jain's case : AIR1962 All1 were very different from those before us. There the State Government passed an order under Section 7-F of the Act permitting the landlord to institute a suit for the ejectment of the tenant. While doing so the State Government did not send for the record of the Additional Commissioner who decided the revision application but sent for that of the Additional District Magistrate who had exercised the power of the District Magistrate under Section 3 of the Act. It was in that context that the three submissions were made before the Full Bench. Consequently, with profound respect to the learned Chief Justice it is clear that his observations reproduced above are only obiter dicta. Mr. Misra then placed before us *Parmeshwar Dayal v. Additional Commissioner, Lucknow*, : AIR1964 All7 and relied upon the following observations occurring at page 300 (of All L J): (at p. 10 of AIR) in the judgment of the learned Chief Justice :

'The only restriction placed by the Act upon a tenant's eviction is that he cannot be sued for eviction without the District Magistrate's permission; no further restriction such as that the District Magistrate should not give permission unless the landlord's need is greater than the tenant's can be read in Section 3 (1).'

Again in this case the question for determination was a different one from the one before us. The question referred for determination to the Full Bench was :--

'Is the order of the District Magistrate and also of the Commissioner and the State Government invalid simply because they did not take into consideration the needs of the tenant ?'

No other question had been referred to the Full Bench and they were not called upon to decide any other matter. For that reason as also for the reason that the other two learned Judges Oak and Section D. Singh, JJ. did not in their judgments subscribe to the observations of the learned Chief Justice leads us to the conclusion that those observations are obiter and cannot be looked upon as the decision of the Full Bench. This case, therefore, also does not help Mr. Misra.

8. Mr. Misra also placed reliance upon *Durga Prasad v. Ramakant*, 1951 All L J 285, *Lala Ram Rabshpal v. Surendra Nath*, 1955 All L J 372 and *Kirpashanker v.*

Banwari Lal : AIR1952 All414 . The first case was decided before the Act was amended in 1952 and 1954. It was observed therein at page 286 by Bind Basni Prasad, J.

'With the grant of permission by the District Magistrate, the bar of the institution of the suit imposed by Section 3 was removed for the plaintiff. Subsequent events cannot re-impose that bar.'

In the second case Gurtu, J. at page 373 said :--

'No doubt, as from the date when the permission was cancelled, it ceased to exist; but from that it does not follow that it must be held that the cancellation had the effect of making the previously granted permission non-existent even before the cancellation. In my view the previously granted permission must be deemed to have lost its force only on the date on which that permission was withdrawn. Section 3 of the Act, as framed, does not require the continuing existence of the District Magistrate's permission to enable the decree to be passed. All that that section says is that no suit shall be filed without the permission of the District Magistrate. If the permission exists when the suit is filed, then the suit is in order and, in my view, the cancellation of the permission later would not retrospectively affect the validity of the filing of the suit.'

In the third case Bind Basni Prasad, J. observed:

'The limited question which arises in the present case is that if permission has been acted upon and a suit has been instituted on its basis and even a decree has been obtained is it competent for the Controller at that stage to recall the permission. I have no doubt in my mind that he has no such authority. The permission he had granted had spent itself.....Certainly it could never have been the intention that by executive orders the decrees of the civil courts could be rendered nugatory.'

As the observations themselves reveal, the facts and the question of law involved in the three cases mentioned above were very different from those before us and we are not called upon to decide the questions that arose in those cases. The

decisions were arrived at on different grounds and it is not necessary for our purposes in this case to go into them. The cases being distinguishable are not relevant for our purposes.

9. Having disposed of the submissions of Mr. Misra we will now proceed to give our conclusions. We have already said above that the powers of the State Government and the Commissioner are coextensive with that of the District Magistrate and that either of them can grant permission to file a suit or to revoke the one granted by the District Magistrate. It is true that in Section 3 of the Act the words 'without the permission of the District Magistrate' stand unaltered and on the basis of those words it has been contended that there is a lacuna in the Act and irrespective of the orders that the State Government or the Commissioner may pass in exercise of the jurisdiction expressly conferred upon them by the Act the civil court will not take cognizance of a suit filed on the basis of a permission granted by either of them.

The argument overlooks the addition of the words 'subject to any order passed under Sub-section (3)' with which Section 3 of the Act opens. It is urged that the expression 'subject to' means 'conditional upon' and for this reliance has been placed upon *K. Balakrishna Chetty & Sons & Co. v. State of Madras*, : [1961]2SCR736 . The relevant portion of that decision reads:--

'On a proper interpretation of the section (Section 5) it (the expression 'subject to') only means that the exemption under the licence is conditional upon the observance of the conditions prescribed and upon the restrictions which are imposed by and under the Act.....'

That judgment does not give an exhaustive meaning of the words 'subject to' and it is clear from the observations of their Lordships that the meanings that they have assigned to the expression have been gathered from the context of the Act and on account of the wordings of Section 5. The expression 'subject to' is sometimes used in the sense of 'without prejudice to'. It is also used in the sense of a proviso to mean 'provided that'. (See *Simon Reuben v. Haji Shaikh Mahomed Shustary* AIR 1922 Bom 404. In our judgment the effect of the words 'subject to any orders passed under Sub-section (3)' read in the context of Sub-sections (2), (3) and (4)

of Section 3 and Section 7-F of the Act is to bring in the legal position that a suit can be filed not only on the basis of the permission of the District Magistrate but also that of the Commissioner or the State Government, obviously the State Government having the last word in the matter.

10. It is true that sub-section 3 (1) has not been artistically drafted and the expression 'subject to any order passed under Sub-section (3)' does not very nicely convey the legislative intention. But then, it is settled law that the errors of drafting cannot result in the words of the legislature being treated as dead letters. See *Mst. Mewa Kunwari v. Bourey* : AIR1934 All388 ; *Salmon v. Duncombe*, (1887) A C 627 and *Oudh Sugar Mills Ltd. Hargoon v. State of U. P.* A I R 1960 All 138 at p. 141 (FB).

11. In *Maxwell on Interpretation of Statutes*, XIth Edition at p. 221 the Learned author states:--

'Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskillfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used.'

In *M. Pentiah v. M. Veeramallappa* : [1961]2SCR295 , their Lordships after quoting the above passage from *Maxwell's Interpretation of Statutes* laid down the same law. Their Lordships also placed reliance upon the following passage from the judgment of Denning L. J. in *Seaford Court Estates Ltd. v. Asher*, 1949-2 All E R 155 at p. 164:--

'When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on constructive task of finding the intention of Parliament.....and then he must supplement the written words so as to give force and life to the intention of the legislature.....A judge should ask himself the question how if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases.'

Even though the amendment to Section 3 (1) of the Act has not been happily worded, the intention of the legislature is clear. If we read the words 'subject to' in the sense of: 'without prejudice to' Sub-section 3 (1) would be liable to be construed as without prejudice to the maintainability of the suit filed on the permission granted by the Commissioner or without affecting the right of the Commissioner to revoke or alter a permission granted by the District Magistrate no suit shall, without the permission of the District Magistrate, be filed in any civil court against a tenant for his eviction from any accommodation except on one or more of the following grounds.' Similarly if the expression 'subject to' is read in the sense of a proviso or as 'provided that' Sub-section 3 (1) of the Act would mean to read 'provided that a suit can be filed on a permission granted by the Commissioner and he has also the power to revoke or alter a permission granted by the District Magistrate, no suit shall without the permission of the District Magistrate be filed against a tenant for his eviction from any accommodation except on one or more of the following grounds

The expression 'subject to' also conveys the idea of a provision yielding place to another-provision or other provisions to which it is made subject. See *South India Corporation (PJ Ltd. v. Secretary Board of Revenue, Trivandrum* : [1964]4SCR280 . In *State of Bihar v. Kameshwar Singh* : [1952]1SCR1020 the words 'subject to' occurring in Entry 36 of List II of the Seventh Schedule of the Constitution were considered and their Lordships observed:--

"The only purpose of the words 'subject to' occurring in Entry 36 is to indicate that legislation under Entry 36 would be subject to any law made by Parliament in exercise of its legislative power under Entry 42 of the Concurrent List. Both legislatures can legislate under Entry 42 but the Parliamentary statute made in exercise of powers under this entry would have preference over a State law in case of repugnancy and it was for this reason that reference was made to Entry 42 in the head of Legislation mentioned in the State List under Entry 38.'

Since the order of the District Magistrate granting or refusing to grant the permission as also the filing of the suit in a civil court is subject to the orders passed by the Commissioner, the order of the Commissioner granting permission or revoking the one granted by the District Magistrate would have the effect not

only of nullifying the order of the District Magistrate granting or refusing to grant permission but in the event of the permission granted by the Commissioner, of bringing into existence a permission on the basis of which a suit can be filed in a civil court. Read in any of the ways mentioned above the intention of the legislature, which is clear, becomes fully plain. While we are so interpreting the expression 'subject to any order passed under sub-section (3)' we are not adding any words to the statute but only trying to find out as to what those words mean in the context of Section 3, inclusive of all the sub-sections. We are only following the rule reiterated in *Mangoo Singh v. Election Tribunal Bareilly*, : [1958]1SCR418 that when the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of according to lexicographers.

The fact that the words 'without the permission of the District Magistrate' have been allowed to stand unaltered ever since the Act was enforced in 1947, does not in our opinion, make any difference. It was not necessary to change them because of the use of the expression 'subject to any order passed under Sub-section (3)' in section 3 (1) of the Act. The required change has been achieved by these words. Sub-section (4) of section 3 of the Act makes the order of the Commissioner subject to any order passed by the State Government under Section 7-F of the Act. Sub-section (1) and Sub-section (4) of Section 3 are integral parts of the same provision. Reading all of them together as a whole, along with Section 7-F of the Act, it is clear that the idea was to permit the filing of a suit-on the basis of the permission granted by the State Government also. It is true that Section 7 F of the Act is an independent provision and its contents do not form part of Section 3 of the Act but that would not make it any the less effective and it must be read harmoniously along with Section 3 of the Act. That the Amending Acts were remedial statutes cannot be doubted. It is elementary that a remedial statute should receive an equitable construction so that cases within the general object and mischief of the Act be brought within the remedy which it provided. It is not possible for us to ignore Sub-sections (2), (3) and (4) of Section 3, the words 'subject to any order passed under Subsection (3)' in Sub-section (1) and Section 7-F of the Act. It was held in *Sirajul Haq, v Sunni Central Board of Waqf, U. P.*, : [1959]1SCR1287 that it is well settled that in construing the provision of a statute

courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective; an attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. In such a case, it is legitimate and even necessary to adopt the rule of liberal construction so as to give meaning, to all parts of the provision and to make the whole of it effective and operative. This is precisely what we are doing in the instant case.

In fact the authorities go so far as to hold that in interpreting a statute a court would go even to the length of adding words to the section if it is necessary to do so in order to give a construction which is reasonable and which helps to achieve the object for which the section was enacted. See *Nana Lal Zaver v. Bombay Life Assurance Co., Ltd.* A. I. R. 1949 Bom 50 and *Provincial Government C. P. and Berar v. Habib Mohd.* A. I. R. 1947 Nag 45. See also *Ramchandra v. Ram Lal* A. I. R. 1940 All. 500 where it was held that though normally nothing is to be added or taken away from the statute it is permissible to do so when it appears to the court that the legislature intended something which it omitted to express. In fact in *Ramaswamy Nadar v. State of Madras* : 1958 CriLJ228 both the parties wanted certain words to be added to a particular provision though they put rival words in the field. SinhaJ., observed as follows:--

'It was also argued on behalf of the appellant that this being a penal statute, the words of the statute should be very strictly construed, but even so, the necessity for supplying certain additional words is there in either view of the matter.'

And some additional words were read in the section. It is well settled that when there is any doubt with regard to the meaning of the words used in a statute, they must be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained. In order, therefore, to come to a decision as to the true meaning of a word used in a statute one has to enquire as to the subject matter of the enactment and the object which the Legislature had in view. See

State of Uttar Pradesh v. C. Tobit : 1958 CriLJ809 . The Courts can even depart from the grammatical construction and modify the root meanings of the words used in a statute in order to achieve the object of the Act. See Western India Theatres Ltd. v. Municipal Corporation, Poona : AIR 1959 SC586 and Maxwell on Interpretation of Statutes, XI Edn., p. 221. Therefore the argument that the words 'subject to any order passed under Sub-section (3)' are meaningless because the rules of grammar do not permit any meaning being given to them in the context in which they are used, in our judgment, is not correct,

12. We are not impressed with Mr. Misra's submission that the Civil Court has only to see whether or not there is a permission granted by the District Magistrate. Surely, Mr. Misra does not contend that the Civil Court is not expected to read the relevant provisions in the Act and to find out the true import of Section 3 and other relevant provisions of the Statute.

13. For the reasons mentioned above we are clearly of the opinion that a suit can validly be filed on the basis of a permission granted by the State Government. We find support for this view from Jamiluddin Khan v. Niaz Ahmad : AIR1964 All393 . Our answer to the first question, therefore, is in the affirmative.

14. Coming to the second question referred to us, we would like to point out that in the writ petition grounds Nos. 3, 4 and 5 are as follows :

'3. Because the order of the State opposite party No. 1 is unjust erroneous and inoperative because the order has not taken the respective needs of the tenant-applicant and the landlord-opposite party no. 4 into consideration and the same is liable to be quashed on the ground.

4. Because the State, opposite party, No. 1, could not upset the quasi-judicial order of the Commissioner.

5. Because the state, opposite party No. 1 has no right to grant permission under Section 3 of the U. P. Rent Control and Eviction Act.'

The prayer in the petition is in the following terms :

'It is therefore most respectfully prayed that this Hon'ble Court may be pleased to issue writ, direction or order to quash the order of State of opposite party No. 1 dated 21-2-1961 setting aside the order of the Commissioner dated 19-5-1959 and granting permission under Section 3 of the U. P. Rent Control and Eviction Act to opposite party No. 4 in respect of premises No. 9/280, Subzimandi, Bareilly and allow the petition with costs and grant such other relief as this Hon'ble Court may deem fit and proper in the case.'

15. The submission made before Bishambhar Dayal, J. who heard the writ petition was that the State Government had no jurisdiction to grant the permission. The learned Judge observed as follows :

'The contention of the learned counsel for the applicant-tenant is that the State Government had no power to grant the permission. I am wholly unable to agree with that contention. Section 7 (f) clearly provides as follows :

.....

The powers of the State Government under this section are wide enough to include an order granting permission to the landlord to eject the tenant.'

It cannot, therefore, be denied that the point now raised by means of question No. 2 was canvassed before Bishambhar Dayal, J. and he recorded a judicial finding in respect of the same. In the appeal before Mukerji and Manchanda, JJ., also, the same point was urged. The learned Judges have observed that :

'This permission which the State Government granted under its powers under Section 7-F of the Control of Rent and Eviction Act was challenged on the ground that the State Government had no such power and further on the ground that even if the State Government had the power it exercised that power in an arbitrary fashion,'

The learned Judges rejected this submission in the following words :

'In our opinion neither of the two points have any substance. The power which the State Government had was clear cut and wide enough to cover a case where

permission was refused. There was no question of any arbitrariness. The State Government gave the appellant an opportunity of showing cause against the order which the State Government pro-posed to make and did make.'

16. It is therefore clear that the appellate Bench also recorded a decision on this point. We do not see any reason why that being the position, the plea that the State Government had no jurisdiction to grant permission and that permission could not be the basis of filing a suit was not barred by res judicata. It is well settled that the principle of res judicata extends even to cases started by means of writ petitions. (See *Daryao v. State of U. P.* : [1981]130ITR28(SC) , *Phool Chand v. Chandra Shanker* : AIR 1964 SC782 , *Mohan Lal v, Benoy Krishna* : [1953]4SCR377 and *Raj Lakshmi Dasi v. Banamali Sen*, : [1953]4SCR154).

17. Mr. Section N. Misra has contended that there can be no res Judicata on a question of law and has placed reliance upon *Sita Ram Sakharam v. Laxman Vishnu* AIR 1921 Bom. 87 (2). In that case the plaintiff had filed a suit for recovery of Rs. 229-12-6 being the value of the Mamul Inam dues in kind as set forth in the plaint for the years 1915-16 and 1916-17. He alleged that he and some Bhaubands of his had come to acquire a moiety of the village of Kasar Kolwan from the original Inamdars who were entitled to rent in specie and kind from the body of Khots of the village, that the plaintiff had a four-annas share in the Inam, that the defendant was managing Khot of eight annas for the first year mentioned and four annas for the second year and so was liable to pay the rent which had consistently been paid from Mamul times. The defendant pleaded that the plaintiff was an Inamdar of the royal share of the revenue and was therefore only entitled to the survey assessment as the survey settlement had been introduced into the village. The trial court found that the contention of the defendant that the plaintiff could only recover survey assessment and not Mamul rent in kind or its money value was barred by res judicata by virtue of the decision in a previous Suit No. 160 of 1892, In that case, Macleod, C. J., with whom Shah, J. agreed, observed :

"But it is contended that a question of law can never be res judicata and certainly in *Chamanlal v. Bapubhai*, (ILR 22 Bom 669) Parsons, J., went so far as to lay down this rule without any qualification. But I think that the dictum can only be

considered with reference to the facts of the case then before the Court. There the question was whether the period prescribed by the Indian Limitation Act for a particular kind of relief was three years or twelve years, and it might be said that in cases of recurring liability such as for maintenance or rent, a Court would not be bound by a previous decision on a question of limitation, as the relief asked for would be for a different period and the Court would be entitled to decide for itself whether the suit was barred by the Limitation Act or not. The real test appears to me to be not whether the cause of action is the same, as obviously a part of the cause of action in recurring suits for maintenance or rent would be different, but whether the title on which the plaintiff sued in later suit had been substantially and directly in issue in the previous suit. Obviously if a plaintiff sued for rent on the basis of a particular lease and succeeded, the tenant would be barred from disputing the plaintiff's title in a later suit for rent for a different period.'

In that case Fawcett, J., disagreeing with Macleod C. J. and Shah, J. observed :

'I am against laying absolutely that the decision in the appeal arising out of Suit No. 100 of 1892 is not *res judicata* in the present suit. I feel some doubt whether a distinction can be rightly drawn between a decision on an abstract question of law such as the proper construction to be put on Section 216 of the Bombay Land Revenue Code, and on a concrete question, such as the construction of a particular document entered into between the parties to a suit. There can, I think, be no doubt that such a distinction cannot be drawn in cases where parties seek to litigate again the very same cause of action as has been decided against them in a prior suit.'

18. It would be noticed that the facts of that case were very different from those before us. In that case the cause of action was recurring and in the earlier decision there was no finding with regard to the plaintiff's right to maintain the suit. In the case before us, this Court has already held in the writ proceedings both at the original as also the appellate stage that the suit giving rise to this appeal was validly filed on the basis of the permission granted by the State Government. The Bombay case, therefore, cannot be of any help to Mr. Misra. In fact in that case the Bombay High Court clearly pointed out that what was not binding is a decision

on an abstract question of law but a decision on a question of law in respect of certain question of fact would always operate as res judicata in a subsequent suit between the same parties.

19. The same court in Savitri Ramayya v. Holebasappa AIR 1932 Bom 257, definitely held that an adjudication upon a point of law on the same subject matter in a former suit would operate as res judicata in a later suit.

20. So far as this Court is concerned, it is well settled that the cause of action and the parties being the same, a decision on a question of law in an earlier suit would operate as res judicata in a later suit. (See Phundo v. Jangi Nath, ILR 15 All 327, Behari Lal v. Majid Ali, ILR 24 All 138, Ganga v. Mahmud-un-nissa Begam : AIR1925 All761 , Raja Ram v. Narain Das : AIR1927 All206 and Kub Lal v. Gulzari Lal : AIR1927 All297 .

21. For the reasons mentioned above, we answer question No. 2 also in the affirmative against the tenant-appellant and in favour of the respondent-landlord.

Desai, C.J.

22. I regret having to differ from the judgment of my brothers Jagdish Sahai and Dwivedi; I answer both the questions in negative.

23. What is meant by question No. 1 is whether a court can entertain a suit by a landlord for ejectment of his tenant on permission granted by the State Government in exercise of the jurisdiction conferred upon it by Section 7-F of the U. P. (Temporary) Control of Rent and Eviction Act when none of the grounds mentioned in Section 3 (1) (a) exists. The question raised is of the court's power to entertain such a suit; all that a landlord can ever do is the physical act of presenting a plaint before the court and this act can always be done by him so long as he is physically and mentally fit.

24. I had an occasion to analysing the provisions of Section 3 in Bashi Ram v. Mantri Lal, Second Appeal No. : AIR1965 All498 and I stand by what I said there.

25. It is better to start with ascertainment of the meaning of Sub-sections (2) and (3) of Section 3; the former sub-section gives a right of appeal and the latter describes the orders that the appellate authority (viz. the Commissioner) can pass on appeal. The right of appeal is given from an order of a District Magistrate granting or refusing to grant permission for a landlord's filing a suit for his tenant's ejectment in the absence of any of the grounds mentioned in Clause (a) of Sub-section (1). In this case we are not concerned with an appeal from a District Magistrate's order granting the permission and the effect of the Commissioner's order either maintaining it or cancelling it. What we get from Sub-section (2) is simply this that an appeal lies from a District Magistrate's order refusing to grant the permission. What we get from Subsection (3) is that the Commissioner can 'alter or reverse his order or make such other order as may be just and proper.' This power includes the power of granting the permission and the power of directing the District Magistrate to grant the permission. Though the word in the sub-section is 'or' it is not used to connect alternatives and is used in the sense of 'and'; what is meant is that a Commissioner can reverse the District Magistrate's order and make such other order as may be just and proper. Even otherwise, the power to alter includes the power to substitute another order in its place, whether finally disposing of the case or remanding it to the District Magistrate with a certain direction. The effect of the provisions of the two sub-sections taken together is that the Commissioner can grant the permission or direct the District Magistrate to grant it. It is important to note that not only is this the effect of the provisions but also there is no other effect. The provisions say not a word about the effect or utility of the permission granted by the Commissioner, if he himself grants it. They do not lay down whether the permission is of any benefit to the landlord or can be taken notice of by a Court. They do not lay down expressly or impliedly that a court notwithstanding the provisions of Sub-section (1) can entertain a suit by the landlord on the permission granted by the Commissioner. They do not lay this down even impliedly because there are no words used in them which can be interpreted to achieve this result. They do not deal at all with the effect of any permission.

26. What I have said with regard to the provisions of Sub-sections (2) and (3) applies with equal force to the provisions of Sub-section (4) read with Section 7-F.

Just as Sub-sections (2) and (3) deal with the right of appeal from a District Magistrate's order and the power of the Commissioner to pass orders on appeal, so also Section 7-F deals with the State Government's power to revise an order passed by the Commissioner. Sub-section (4) simply makes the Commissioner's order final subject to any order that may be passed by the State Government under Section 7-F. It is unnecessary to go into the question what is meant by the legislature by saying that the Commissioner's order is 'final'. Section 7-F confers upon the State Government the power to examine the record of a case granting or refusing to grant permission for the filing of a suit and to make such other order as appears to it necessary for the ends of justice. As in the case of Sub-section (3) of Section 3 it is open to the State Government, in a case of refusal, to grant the permission itself or to direct the District Magistrate to grant it. 'Such order as appears to it necessary for the ends of justice' includes an order granting the permission as well as an order remanding the case to the District Magistrate with a direction to grant it. Section 7-F does not lay down anything about the effect of the permission if granted by the State Government itself or the right of a Court to entertain a suit on such permission in the absence of any of the grounds mentioned in Sub-section (1) (a) of Section 3; As in the case of the permission granted by the Commissioner on appeal, the effect of the permission granted by the State Government and whether it enables a Court to entertain the landlord's suit for ejectment of his tenant depend upon the provisions of Sub-section (1) of Section 3.

27. Sub-section (1) is the only question that deals with the effect of the permission and consequently question No. 1 has to be answered on a consideration of only its provisions. No other provision enters into the consideration at all. My learned brothers are of the view that Sub-section (3) of Section 3 and Section 7-F are relevant but they have not referred to any words used in them which have anything to do with the question whether a suit can be filed in a Court by a landlord for his tenant's ejectment. The provision in Sub-section (1) is couched in simple words which cause no difficulty in understanding it. Ignoring for the time being the opening words 'subject to any order passed under Sub-section (3)' what it means is that a suit cannot be filed without the District Magistrate's permission. Without the provision a suit could be filed without anybody's permission and the effect of

Sub-section (1) is to curtail this right of a landlord by requiring him to obtain the District Magistrate's permission. The provision is 'no suit shall without the permission of the District Magistrate be filed' and means that the District Magistrate's permission is a sine qua non for the filing of a suit. No matter what other authorities have granted the permission and no matter how high they are, if the District Magistrate's permission does not exist the suit cannot be filed. Consequently even if there is the permission granted by the Commissioner or even the State Government, but there is no permission granted by the District Magistrate the sub-section prohibits the filing of a suit. Though the prohibition is expressed to be on an act to be done by a landlord, it is really on an act to be done by the Court. A suit cannot be filed in a Court unless it is received by the Court and, therefore, the prohibition, is that a Court cannot entertain a suit if there is no permission of the District Magistrate.

The sub-section takes no account of any other authority's permission. No artificial meaning has been given to the words 'the permission of the District Magistrate'; they mean the permission granted by the District Magistrate and do not include any permission granted by the Commissioner or the State Government. It is immaterial that the Commissioner or the State Government grants the permission on an appeal or on revision against the District Magistrate's refusal to grant the permission and it is immaterial that the Commissioner or the State Government does so in exercise of a jurisdiction conferred against the District Magistrate's refusal to grant the permission; neither of these circumstances converts his or its permission into 'permission of the District Magistrate.' The position is undoubtedly different when he or it remands the case to the District Magistrate and the District Magistrate grants the permission in compliance with the direction given by him or it; in that case there comes into existence 'permission of the District Magistrate' even though under legal compulsion. What is required by Sub-section (1) is his permission; it is irrelevant to consider in what circumstances he grants it and whether he grants it under legal compulsion from a superior authority or not. Thus the clear meaning of the words 'no suit shall...following grounds' in Sub-section (1) is that a Court will entertain a suit only if there exists the District Magistrate's permission and will not entertain it if there exists only the Commissioner's or the State Government's permission.

28. My learned brothers say that the powers conferred upon the Commissioner and the State Government under Sub-sections (3) and (4) read with Section 7-F are very wide and are co-extensive with a District Magistrate's power but the question before us is not of the powers conferred upon the Commissioner and the State Government but of the ban imposed on a Court's entertaining a suit for ejectment of a tenant. The conferment of a power to do an act does not carry with it any implication that the act has got a certain value utility or effect. Mere conferment of a power to grant a permission for a suit to eject a tenant does not mean that a Court can entertain the suit on the permission if under another provision it is prohibited from entertaining it if another condition is not fulfilled. The condition that is required to be fulfilled is that there is a District Magistrate's permission and empowering the Commissioner or the State Government to grant the permission does not mean that the Court can entertain a suit in the absence of a District Magistrate's permission if there is the Commissioner's or the State Government's permission.

What is the effect of an act done in exercise of a power granted depends not upon the provision granting the power but upon another provision. Consequently what is the effect of the permission granted by the Commissioner or the State Government depends not upon the provisions of Sub-section (3) and Section 7-F but upon the provisions of Sub-section (1). What is required is a provision addressed to the Court and not a provision addressed to the Commissioner or the State Government ; we are concerned with the power or duty of a Court in which a suit is filed and neither Sub-section (3) nor Section 7-F deals with this matter. Suppose Sub-section (1) simply laid down that a District Magistrate can grant permission to a landlord to file a suit for ejectment of his tenant; could it be said that this provision by itself meant that no suit can be filed except with the District Magistrate's permission? I do not think anybody would answer the question in the affirmative; everybody would ask 'where is the provision that no suit can be filed except with the District Magistrate's permission?' It is to supply the answer and not by way of abundant caution, that Sub-section (1) contains the provision that no suit can be filed except with the District Magistrate's permission. The question that would be asked by one after reading the provisions of Sections 3 and 7-F 'Yes, the Commissioner or the State Government may grant permission, but where is the

provision that a suit can be filed with his or its permission even though there is no District Magistrate's permission? It was no use conferring upon them the power to grant the permission in the absence of a provision laying down that a suit can be filed upon the permission.

29. I do not agree with my learned brothers that Sub-section (3) and Section 7-F confer power upon the Commissioner and the State Government respectively to grant the permission. The words used in the provisions are certainly wide but their width is undoubtedly limited by the context in, or the object for, which the powers have been conferred upon them. Certainly they have not the power to decide any question other than that of the permission for a suit to eject the tenant and one would look for this limitation in the provisions in vain. Similarly there is the implied limitation that they have not the power to grant the permission when there is no provision that a suit can be filed upon it. It follows that what they can and should do, on finding that the District Magistrate improperly or illegally refused the permission, is to remand the case to him with a direction to grant it.

30. To say that the conferment upon the Commissioner and the State Government of the power to grant the permission means that a suit can be filed upon such permission is not interpreting the words used in Sub-section (3) and 3. 7-F but interpolating words in them. Interpretation is within the jurisdiction of a Court but not interpolation, certainly not after the adoption of the doctrine of separation of powers in our Constitution. When the Court interprets it interprets the words of the statute by selecting one out of several meanings they are capable of bearing ; when it interpolates it adds words to the statute. In interpolating it acts like a juggler producing something out of nothing. Courts have been warned again and again by highest authorities against interpolating words and thereby usurping the legislative function.

In *Smt. Renula Bose v. Manmalha Nath* , it was held to be contrary to all rules of construction to read words into an Act which are not there unless it is absolutely necessary to do so. Brandeis J. said in *Ebert v. Poston*, (1924) 69 Law Ed 435 : 266 U S 548 at p. 438 that 'the judicial function to be exercised in construing a statute is limited to ascertaining the intention of the legislature therein expressed.

A casus omissus does not justify judicial legislation.' In *Queen v. Damarell*, (1868) 3 Q B 50 Lush J. observed that an important exception cannot be interpolated in a statute. That a suit can be filed with the Commissioner's or the State Government's permission is an important exception to the provision in Sub-section (1) laying down that no suit can be filed except with the District Magistrate's permission and cannot be interpolated. Brewar J. said in *U. S. v. Coldenberg*, (1897) 42 Law Ed 394 : 168 U S 95 at p. 398-

'The Courts have no function of legislation ... No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute.'

Frankfurter J. in 'Reflections on Reading Statutes' in "An Autobiography of the Supreme Court," pp. 311-12 writes :

'A Judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy making might wisely suggest, construction must eschew interpolation He must not read in by way of creation.'

In the end I find nothing in Sub-section (3) and in Section 7-F laying down that a suit can be filed with the Commissioner's or the State Government's permission.

31. Now I come to the words 'subject to any order passed under Sub-section (3)'. As I pointed out in *Bashi Ram's case*, : AIR1965 All498 , (supra) these words govern the whole provision 'no suit shall ... the following grounds' and not only a portion of it such as 'the permission of the District Magistrate.' What they mean is that the prohibition of a Court's entertaining a suit without the District Magistrate's permission is subject to an order of the Commissioner. Naturally it would be subject to an order of the Commissioner only if it deals with its power (or duty) to entertain a suit without the District Magistrate's permission. If the order does not at all relate to this power of the Court it does not affect the prohibition. If the Commissioner simply grants the permission for the filing of a suit it does not affect or remove the prohibition on its power to entertain a suit without the District Magistrate's permission. The only order which can affect the prohibition is an order that it can entertain a suit even without the District Magistrate's permission, but this

is not the order passed either in the instant case or generally in any case.

The order generally passed is one granting the permission and not that a Court may entertain a suit without the District Magistrate's permission or with the Commissioner's (or the State Government's) permission. If the Commissioner passes an order that the landlord's suit may be entertained even though there is no District Magistrate's permission (his saying that he grants the permission for the filing of a suit serves the same purpose) it is certainly an order which conflicts with the main provision of Sub-section (1) and since the latter is subject to the Commissioner's order, the former will prevail and not the latter and the suit will, and must, be entertained by the Court. But the Commissioner has not been conferred the power to pass such an order; his power is confined to considering the merits of the District Magistrate's order refusing the permission. In an appeal from his order refusing the permission he cannot pass an order that the provision requiring the District Magistrate's permission itself will not apply. In exercise of his appellate jurisdiction he can set aside the District Magistrate's order and pass an order which has the effect of bringing into existence the District Magistrate's permission but cannot pass an order which has the effect of changing the provision in Sub-section (1). Therefore, he cannot pass an order that the Court can entertain the landlord's suit even without the District Magistrate's permission.

32. There is no difficulty in understanding what is meant by 'subject to.' These words solve the problem of priority--the problem arising out of several conflicting or irreconcilable provisions. They supply the answer to the question which out of several conflicting or irreconcilable provisions should be adopted or followed. They lay down which of the such provisions has priority, or prevails over or supersedes, the others and do not change the language or the meaning of any of them. The provisions retain their meanings but one of them is made to prevail over the others and to be adopted or followed. What my learned brothers, however, have done is to use these words to change the meaning of the provisions contained in Sub-section (1) and Sub-section (3) by interpolating words in one or the other. What the words mean in the instant case is that if there is an order by the Commissioner conflicting with the provision that no suit can be filed without the District Magistrate's permission the order will prevail and not the provision or that

the provision will prevail only if there is no Commissioner's order to the contrary. The only order that can be contrary to the provision is that a suit can be filed without the District Magistrate's permission. The provision is not necessarily contrary to saying that the Commissioner may permit a suit to be filed. The order passed in the instant case is that the landlord was permitted to sue the tenant and not that his suit could be entertained even without the District Magistrate's permission. The Commissioner has no power to direct the Court to do or not to do anything; the District Magistrate has no such power and the Commissioner has not any greater powers than he has. Therefore, he cannot direct the Court to entertain the suit even though there is no District Magistrate's permission; all that he can say, if at all, is that it might entertain it.

Such an order does not conflict with the provision that it cannot, i.e., should not, entertain it. I have no hesitation in saying that the words 'subject to any order' cannot bring into existence "the legal position" that a suit can be filed with the Commissioner's or the State Government's permission also. One may read the words 'subject to' in the sense of 'without prejudice to' but one cannot read them to mean 'without prejudice to the maintainability of the suit filed on the permission granted by the Commissioner.' All this addition is completely outside the scope of the meaning of the words and is nothing but interpolation for which there can be no justification. My learned brothers are also prepared to read the words to mean "provided that" but they cannot be read in this sense because they denote a condition or an exception which requires a complete sentence. The words 'provided that' must be followed by a sentence whereas the words 'subject to' are to be followed by a noun or a nominal clause. Here they are followed by a noun and, therefore, they cannot be read in the sense of 'provided that.' In interpreting the words my learned brothers have even altered the words that follow them even though they do not call for any interpretation. There is no difficulty in understanding 'any order passed under Sub-section (3).'

33. The interpretation that I have placed upon the words in the cases of *Bashi Ram*, : AIR1965 All498 and *Dwarka Nath Munshi*, 1961 All LJ 353 does not render them a mere surplusage or ignore them. If the District Magistrate's permission is cancelled by the Commissioner the suit cannot be filed; the cancellation of the

permission by the Commissioner's order under Sub-section (3) has the effect of rendering the suit, if filed after the cancellation of a suit filed without the District Magistrate's permission and this is the effect of the use of the words 'subject to'. Otherwise a landlord could file a suit even after the cancellation of the District Magistrate's permission by the Commissioner under Sub-section (3) on the ground that there was the District Magistrate's permission at one time. It can be said that by the use of these words the District Magistrate's permission is rendered non-existent though the words cannot be said to be very happy. The trouble is that the legislature has used the words to give priority to a certain order without conferring power for the passing of the order. The order that would be required is one allowing a suit to be filed without the District Magistrate's permission but no power has been conferred upon the Commissioner to pass such an order. It is because of this fact that I said in the case of Dwarka Nath Munshi that the words are meaningless and an example of legislative jargon.

If the legislature intended that a suit can be filed with the Commissioner's permission the intention is not carried out by its adding the words 'subject to any order passed under Sub-section (3)' and Sub-sections (2) and (3). It is said that the words 'subject to any order passed under Sub-section (3)' were added by the legislature with a certain purpose but the legislature has not indicated what its purpose was and if it has failed to enact a provision to achieve it it is not for the courts to enact it. Lord Watson said in *Salomon v. Salomon and Co.*, (1897) A C 22 at p. 38 :

'Intention of the Legislature is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended. . . can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication.'

The Privy Council laid down in *Crawford v. Spooner*, 4 Moo Ind App 179 (PC) that 'we cannot add the Legislature's defective phrasing of the Statute; we cannot add,

and mead, and, by construction) makeup deficiencies which are left there.' Lord Brougham observed in *Fordyce v. Bridges*, (1847) 1 H L C 1 at p. 4 that

'We must ascertain that intention from the words of the statute, and not from any general inferences to be drawn from the nature of the objects dealt with by the statute.'

'The court is not to allow conjectural interpretations to usurp the place of judicial exposition'--see *Wigram V. C.* quoted by William, J. in *Harding v. Preece*, (1882) 9 Q B D 281 at p. 298. The doctrine of legislature's intention has been rightly criticised by D, J. Payne in 'The intention of the Legislature in the Interpretation of Statutes' in (1956) 10 Current Legal Problems, 96, He points out that it fosters the belief that the duty of the court is obviously to search for and give effect to the legislature's intention and is, therefore, a fatal obstacle to any real improvement in the technique of interpretation of statutes, that the court is not concerned with the intention as a historical fact and that the legislature being a composite body cannot have a single state of mind and so cannot have a single intention. At p. 104 he said that 'the words are not crystals neither are they portmanteaus into which can be squeezed any meaning whatever.' I agree with his conclusion at p. 111 that there would be improvement in the law of interpretation if the Judges were to abandon the myth of legislative intention.

Another critic of the doctrine is Prof. Max Radin; he describes it as 'an illegitimate transference to law of concepts proper enough in literature and theology' in his article on statutory interpretation in (1929-30) 43 H L R 883 at p. 870. He asserts that the law maker does not exist, that a legislature certainly has no intention whatever in connection with words which some two or three men drafted, that the intention of the legislature is undiscoverable in any real sense, that even if we discover the intention it is powerless to bind us because the legislature has a specialized function temporarily assigned to it, viz. to pass statutes and not to impose their will and that consequently where it has uttered the words of a statute it is *functus officio* because this is what legislating means. Interpretation is an act which requires an existing determinate event--the issue to be litigated and the determinate event comes into existence after the legislature has passed the Act.

As regards the statement that intention must be expressed in the statute the learned Professor thinks it better to do without the statement because if the intent is not in the expression it is nowhere and once the expression is before the court the intention becomes irrelevant. Professor Landis criticised this view of the learned Professor vide his note on statutory interpretation in the same volume of the Harvard Law Review at p. 386 but conceded that the gravest sins are perpetrated in the name of the intent of the legislature by the courts when the meaning at the legislature is not discoverable. I find that one more is being added today.

Sub-sections (1) and (3) do not contain any words suggesting the legislature's intention to allow a suit to be filed with the permission of the Commissioner or the State Government granted under Sub-section (3) or Section 7-F. It is nothing but speculation that this was the intention and there are no words used which can bear this meaning. When the Commissioner or the State Government can remand the case to the District Magistrate with a direction to grant the permission there is absolutely no justification for saying that this was not intended by the legislature and that it instead intended that the permission granted by the Commissioner or the State Government will allow the suit to be filed. As stated by Day J. in *United States v. Lexington Mill, & Elevator Co.*, (1913) 58 Law. Ed., 658 at p. 662, 'the province of construction lies wholly within the domain of ambiguity.' 'What is an ambiguity has been explained by Viscount Simonds in *Kirkness v. John Hudson & Co., Ltd.*, (1955) AC 696 where he observed that if the Judge at the end of the day 'forms his own clear judgment and does not think that the words are 'fairly and equally open to diverse meanings' he is not entitled to say that there is an ambiguity.' J. L. Montrpse in his comments on this observation said that 'if words in a particular context do in fact convey to different readers a range of meanings derived from not fanciful speculation or mistakes about linguistic usage, but from true knowledge about the use of words, they are ambiguous'; see 78 Law Quarterly Review, 361.

Judged in the light of these pronouncements I find no ambiguity in the words 'subject to any order passed under Sub-section (3)' and in the provisions of Sub-section (3) describing what orders can be passed by the Commissioner on appeal.

Canons of interpretation are not rules of law but merely axioms of experience (see Frankfurter J., in *U. S. v. Universal C.I.T. Credit Corporation*, (1952) 97 Law Ed. 260 : 344 U S 218. *Mastro Plastics Corporation v. N.L.R. Board*, (1955) 100 Law Ed 309: 350 U. S. 270 and *Angurbala v. Debabrata*, : [1951]2SCR1125 . The Court should take the words in their natural and orderly sense; this is a universally accepted rule. A departure from grammatical construction is justified only when it would be repugnant to the intention of the Act or would lead to some manifest absurdity or to some inconsistency; see *Inland Revenue Commissioners v. L.B. (Holdings) Ltd.* (1946) 1 All E R 598 and *Crooks v. Harrelson*, (1930) 75 Law Ed 156: 282 U.S. 55, where Sutherland j., said at page 175 that the absurdity must be so gross as to shock the general common sense and there must be something to make plain the intention of the legislature that the letter of the statute is not to prevail. No anomaly results from the interpretation that I place upon the provisions of Sub-section (1) and Sub-section (3) and no case is made out for twisting the words used in them. A construction which would lead to an anomaly is to be avoided only so far as the words and the context fairly and reasonably permit and the desirability of avoiding such a result must not be allowed to give to the language used a meaning which it cannot fairly and reasonably bear because the function of the court is interpretation and not legislation; Bee Lord Greene in *Mohindar Singh v. The King*, (1950) A C 345. A warning against the Court's creating an imaginary ambiguity in order later to clear it up by long and tedious process of settled analysis was sounded by Bhandari C. J., in *Firm L. Hazari Mal Kuthiala v. Income Tax Officer, Special Circle, Ambala Cantt.* .

My learned brothers have referred to the history of legislation but I do not find any assistance given by it in interpreting the words 'subject to any order passed under Sub-section (3)' and the words of Sub-section (3). Legislative history is relevant only when there is an ambiguity or conflict with the purpose behind the enactment, vide *United States v. Public Utilities Commission*, (1953) 97 Law Ed 1020 : 345 U S 295. and *Mountain Park Coals Ltd. v. Minister of National Revenue*, (1952) Ex. C. R. (Canada), 560. In the latter case Thorson President said at p. 564 that the parliamentary history of an enactment is not admissible to explain its meaning and relied upon Maxwell on 'Interpretation of Statutes,' 9th Edn., p. 29. My learned brothers have also observed that in no case a provision enacted after several

amendments has been held to be meaningless but it does not follow that the words 'subject to any order passed under Sub-section (3)' in the instant case cannot be held to be meaningless. Whether the words are meaningless or not does not depend upon whether the Act has undergone frequent amendments or not. After all these words and the provisions of Sub-section (3) have not been amended again and again. The Heydon Rule referred to by my learned brothers has no application in the instant case. They have cited a number of other decisions but the rules of interpretation run in pairs as one jurist has observed or run with the hare and hunt with the hound as another jurist has observed, as is obvious from the citation of other authorities by me.

34. Whatever might be said about the effect of the permission granted by the Commissioner under Sub-section (3) the effect of the permission granted by the State Government under Section 7F is nil. The prohibition contained in Sub-section (1) on a Court's entertaining a suit without the District Magistrate's permission is subject only to an order passed under Sub-section (3), e. g., only to an order passed by the Commissioner; it is not subject to any other order such as that passed by the State Government under Section 7 F. A contrary order passed by the Commissioner is the only exception; a contrary order passed by the State Government is not an exception and it is not open to a Court to treat it as an exception. The Court has no power to add words and even if it had, no imperative necessity exists for adding them. The provisions of Section 7F are not rendered nugatory by a refusal to consider the prohibition contained in Sub-section (1) as subject also to an order passed under Section 7F because the State Government can very well exercise the jurisdiction conferred upon it by Section 7F by directing the District Magistrate to grant the permission, in which case there will not arise any necessity of considering what orders the prohibition is subject to. My learned brothers have advanced the view that "order passed under Sub-section (3)" includes an order passed under Section 7F but have not given any convincing reason for this view.

Sub-section (3) deals, exclusively with an order passed by the Commissioner and by no stretch of imagination can it be said to include an order passed by the State Government under Section 7F. Further as I pointed out in the case of Bashi Ram, :

AIR1965 All498 , (supra), Section 7F deals with revision of an order refusing to grant permission 'referred to in Section 3,' e. g., the District Magistrate's permission for the filing of a suit and not the Commissioner's refusal to grant the permission. Only Sub-section (1) refers to permission for the filing of a suit and that reference is exclusively to the District Magistrate's permission. There is no reference to the Commissioner's permission for the filing of a suit and consequently it can be urged that the State Government has no power to revise the Commissioner's order refusing the permission. If the State Government has no power to revise the Commissioner's order, the reference in Sub-section (1) to an 'order under Sub-section (3)' cannot possibly be to an order passed by the State Government. It under Section 7F the State Government's power is restricted to revising the District Magistrate's order and not the Commissioner's order, the order passed by it has no connection with the Commissioner's order and cannot be included in it. Further, the power conferred under Section 7. F is that of revising an order and the doctrine of merger does not apply. It can be said that an order merges in an order passed by an authority on appeal from it but an order cannot be said to merge in an order passed by a revising authority. Appellate Jurisdiction is distinct from revisional jurisdiction. Consequently even if the State Government had power to revise the Commissioner's order it could not be said that it merged in the State Government's order passed on revision. Even if it did merge, the result would be that the Commissioner's order lost its identity on account of the merger and not that the State Government's order lost its identity and there came into existence an order under Section 7-F and not an order under Sub-section (3). The doctrine of merger would bring about the disappearance of the order under Sub-section (3) rather than that of the order under Section 7-F.

And lastly there is no bar on the State Government's revising a District Magistrate's order without intervention by the Commissioner; the jurisdiction of the State Government is not made dependent upon the Commissioner's having been approached to exercise his jurisdiction first under Sub-section (3). A landlord aggrieved by the District Magistrate's refusal to grant him the permission can very well approach the State Government direct with a request to revise it, in which case it can never be said that the order passed by the State Government is an order under Sub-section (3). That the Commissioner's order is final subject to an

order passed by the State Government is a wholly irrelevant fact; it has nothing to do with the meaning of the words 'order passed under Sub-section (3).' The identity of an order is one thing and its finality, quite another; the words 'order passed under Sub-section (3)' raise a question of identity and not of finality. Therefore, in interpreting the words one has not to read Sub-section (4) and, if one has not to read Sub-section (4) Section 7-F will not be brought into the picture at all. The very fact that the Legislature had used the words 'subject to any order passed under Sub-section (3)' means that the doctrine of merger does not apply. If the Commissioner's order is deemed to include the State Government's order there would be all the greater reason for saying that the District Magistrate's order includes the Commissioner's order and there would have been no necessity for the Legislature's using the words. It is not for me to speculate why the Legislature made the provision in Sub-section (1) subject only to an order passed under Sub-section (3) and did not make it subject also to an order passed under Section 7-F. I am prepared to assume that it was a case of casus omissus but it is not my duty to fill the blank left by the Legislature, even if negligently. It is always open to the Legislature to fill it itself.

35. My learned brothers have rejected the argument that a court will look only at the District Magistrate's permission by saying that it cannot shut its eyes to other provisions. No other provision requires a court to look at the permission granted by any other authority. Interpreting a provision, even if erroneously is not shutting eyes to it.

36. My conclusion from all this discussion is that a court is bound to reject a plaint of a suit by a landlord for ejectment of his tenant from an accommodation if he has not obtained the District Magistrate's permission for it, that the Commissioner's permission will not do and that the State Government's permission will do still less. Here there was no permission by the District Magistrate nor even by the Commissioner. Even if Section 7-F empowers the State Government to grant the permission for the act referred to in Sub-section (1) of Section 3 the court is not required to take notice of it. The State Government has simply granted the permission; it has not passed an order that a court may entertain a suit by the landlord even though he has not obtained the District

Magistrate's permission. So the learned Munsif ought not to have entertained the suit.

37. Coming to the second question, I dissent from the view of my learned brothers that the order passed by this Court on a petition for certiorari for the quashing of the State Government's order under Section 7-F operates as res judicata. Neither the principle of res judicata embodied in Section 11, Civil P. C., nor the common law principle issue-estoppel applies. The earlier proceeding was a proceeding for certiorari in this court and it was not competent to try the landlord's suit for ejectment. Only the learned Munsif was competent to try it. This Court has no original jurisdiction to try a suit. Section 24, Civil P. C. allows it to try a suit after withdrawing it on an application by a party and after notice to the parties. So long as there is no application before it and it has not withdrawn it after notice to the parties it has no jurisdiction to try it. When this Court tries a suit after applying the provisions of Section 24 it tries it not because it is competent to try it but because special power has been given to it to try it as it has complied with certain conditions. Then the parties in this Court were different from the parties in the suit before the learned Munsif. The essential parties in this Court were, the tenant who was the applicant and the State Government whose order was sought to be quashed. Certiorari goes to the authority in charge of the record of the proceedings to be quashed and that was the State Government in the present case. The landlord, in whose favour the impugned order had been passed, was impleaded as a party but the real contest was between the tenant and the State Government and not between the tenant and the landlord. Lastly, Section 11 deals with trial of a suit and also trial of an issue and in the instant case we are concerned with the trial of an issue because this Court had not tried the suit of the landlord for ejectment of the tenant in the proceeding for certiorari. The issues that arose directly and substantially in the certiorari proceeding can never be said to be the issues that arose directly and substantially in the suit before the learned Munsif. The question that arose in the certiorari proceeding was whether the State Government had jurisdiction to pass the order granting permission and whether it did so without committing any mani-fest error of law; this Court was not at all concerned with the question whether the order was of any value (or utility or effect) or correct or legal. If it was within the jurisdiction of the State Government and it

followed the prescribed procedure and did not commit any manifest error of law this Court was bound to dismiss the petition for certiorari. The question that arose before the learned Munsif, e. g. whether he could entertain the suit filed with the permission of the State Government was an entirely distinct question which never arose before this Court.

In the certiorari proceeding this Court was not at all concerned with the question whether with the permission of the State Government a suit could be filed in a court or not'. Naturally this question could arise for the first time when the suit was filed; it would have been premature to consider it earlier. What was the value of the permission granted by the State Government was to be seen only by the court at the time when the suit was filed before it. If the State Government had jurisdiction to grant the permission this Court was bound to maintain its order, even though no suit could be filed upon it. It could not quash the permission simply on the ground that it was useless or that no suit could be filed on its basis. What was the utility of the permission was a question that did not directly and substantially arise at all in the certiorari proceeding. Even if it was raised it was raised irrelevantly and whatever observations were made in regard to it by this Court were by way of obiter. For the applicability of Section 11 a question must have directly and substantially arisen in this Court. It takes into account not the question actually raised by the parties but the questions which directly and substantially arose.

38. What I have said about the non-applicability of Section 11 holds good for the non-applicability of the common law doctrine of issue-estoppel also. The issue about the value of the permission granted by the State Government was quite irrelevant in the certiorari proceeding and the tenant could not succeed in getting the permission quashed simply on the ground that it would not enable a suit for ejectment to be filed. The tenant was bound to fail in the certiorari proceeding when he failed to show lack of jurisdiction or a manifest error of law. The additional finding given by this Court that the permission granted by the State Government was not useless was a gratuitous finding and was not a finding as against the tenant because he could not appeal against it. The question whether a suit could be filed with the State Government's permission does not appear to have been

raised before the State Government in the revisional proceeding and if it did not give any finding on it this Court had no jurisdiction to give a finding on it for the first time. A certiorari proceeding is not an original jurisdiction in which a question can be raised for the first time. The State Government would not itself have been concerned with the question of the value of the permission granted by it because that was the matter to be considered for the first time by the court in which the suit was filed and consequently this Court also in the certiorari proceeding would not have been concerned with it. So it cannot be said that the issue about the value of the State Government's permission arose before this Court in the certiorari proceeding and as it did not arise, there could not be in the eye of law, any finding on it and no question of issue-estoppel could arise in a subsequent proceeding. Certiorari was sought on the ground of the State Government's having no jurisdiction to grant the permission, not on the ground that no suit could be filed with the permission. So the matter of the value of the permission was not even raised before this Court. This Court could only decide that the State Government had the jurisdiction, and not that a suit could be filed with the permission. The State Government's order granting the permission did not bind the learned Munsif, and it was for him to decide whether the suit could be filed on its strength. The State Government's order did not act as *res judicata*; and it follows that this Court's order refusing certiorari against it also could not. The order did not receive any force or effect, not possessed previously, from this Court's refusal to quash it. This Court simply refused to quash it; it had no jurisdiction to, and did not, add anything to it. I am completely at a loss to understand how the Court still holds that the refusal to quash operates as *res judicata* to bar the learned Munsif's deciding whether the suit could be filed with the State Government's permission or not.

39. The basis of the rule of *res judicata* is *in-interest reipublicae ut sit finis litium*, but there is an essential condition that the decision is 'directly upon the point,' vide *Duchess of Kingston's case*, 2 Smith Lead Cas (13th Ed) 644 and : [1962]1SCR574 . It is immaterial in what court or what form the former proceeding took place 'provided it was really for the same cause;' see *Duchess of Kingston's case*, 2 Smith L C (13th Ed). : [1962]1SCR574 . My learned-brothers have relied upon the decision in *Daryao's case* but it does not help them at all; it only lays down that a decision in a former writ proceeding that the petitioner had no

fundamental right, or that it was not infringed, or that it was validly infringed operates as res judicata, when any of these questions arises in a subsequent writ petition. Accordingly what could operate as res Judicata in the instant case is the decision of this Court that the State Government had jurisdiction to grant the permission, but this does not conclude the matter because the question of the value of the permission still remains. Similarly : [1953]4SCR154 is quite wrongly relied upon by my learned brothers; it decided that a decision on a question of title by a District Judge in a Land Acquisition Act proceeding operates as res judicata in a subsequent suit on the basis of title. There was a complete identity between the matter directly and substantially in issue in the two proceedings in that case. (1953) S C R 377 : (AIR 1953 S C 85) was still more irrelevant; it dealt with Section 11, Civil P. C. as applicable to the failure to raise a plea in an earlier execution proceeding, and not with the question whether an order passed in a petition for a writ can operate as res judicata.

40. The questions should be answered in the negative but since my learned brothers are of the contrary opinion it will prevail and they will be answered in the affirmative.

BY THE COURT

41. In view of the Majority opinion both the questions are answered in the affirmative against the tenant-appellant and in favour of the respondent-landlord. The case will now go back to the Bench concerned for hearing of the appeal at an early date.

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