

Rex Vs. Naln Sukh Das

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Court : Allahabad

Decided On : Dec-01-1948

Reported in : AIR1949All345

Appellant : Rex

Respondent : Naln Sukh Das

Judgement :

Wali Ullah, J.

1. This is an appeal on behalf of the Provincial Government against an appellate order of acquittal of Seth Nain Sukh Das. Seth Nain Sukh Das was prosecuted for contravention of the order of the District Magistrate, Saharanpur, passed under Section 7 (1) of the United Province (Temporary) Control of Rent and Eviction Act (Act in of 1947). He is the owner of a double-storeyed house in mohalla Khalapar, Saharanpur city. He had let out the upper storey of the house to one Mr. Jagannath Bhardwaj, Inspector of the Standard Vacuum Oil Company, at Rs. 25 per month while he himself occupied the lower portion of the house. On the 10th of June 1947, Mr. Bhardwaj vacated the premises. It appears that no intimation of 'falling vacant' of the upper portion of the house was given to the District Magistrate by Nain Sukh Dm either before or after 10th of June 1947. On 6th July 1947, it appears, Mr. Bhardwaj wrote a letter to the Town Rationing Officer, Saharanpur, intimating to him that the house in question had been vacated by him.

It appears that the Town Rationing Officer thereupon had some inquiries made about the premises in question and thereafter a notice was issued to Nain Sukh Das to show cause why he should not be prosecuted for contravening Clause 1 of the order of the District Magistrate dated the 2nd of May 1917. This was on the 6th of August 1947. On the 11th August 1947, Seth Nain Sukh Das submitted his explanation to the Town Rationing Officer. It was to the effect that the vacated portion of the house was in his personal use and that it was not intended to be let out at all. Lastly, it was stated that the case did not fall within the purview of clause 1 of the District Magistrate's order dated the 2nd of May, 1947. Thereafter the District Magistrate, after taking legal advice, sanctioned the prosecution of Seth Nain Sukh Das on the 1st of September 1947. In pursuance of the sanction given by the District Magistrate, a complaint was filed by the Town Rationing Officer on the 3rd of September 1947 which is Ex. P-2. In due course, a summary trial was held in the Court of Thakur Munshi Singh, Magistrate of the first class, as the result of which on the 29th of December 1947 Seth Nain Sukh Das was found guilty under Section 8 of the Act. He was fined Rs. 500 or in default he was to undergo one month's rigorous imprisonment. On appeal, the learned Sessions Judge has agreed with the learned Magistrate with regard to the questions of fact, but he has held that on a proper interpretation of the order of the District Magistrate as well as of Section 7 (1) of the Act, Seth Nain Sukh Das was not guilty of any offence inasmuch as he required the upper portion of the house for occupation by his own son and his wife. In this view of the matter, the learned Sessions Judge allowed the appeal and acquitted the respondent.

2. We have heard Mr. Kanhaiya Lal Misra, the learned Deputy Government Advocate, in support of the appeal, and Mr. D. Sanyal, the learned Counsel for the respondent. The only point which requires consideration in this case is a pure question of law as there is no controversy about the facts found. Mr. Misra has contended that the expression 'falling vacant of any accommodation' in Section 7 (1) of the Act means only this that the accommodation should have either fallen vacant or be about to fall vacant. In other words, his contention is that this expression has no connection whatsoever with the use to which the landlord intends to put the accommodation so vacated. On a plain reading of the provisions of Section 7 (1), it appears that the District Magistrate may, by his order, general

or special, require a landlord to give intimation of the fact that an accommodation has either fallen vacant or is about to fall vacant. Further, he may direct that the letting of the accommodation thereafter to any person shall be in accordance with the directions given by him. In the present case, it is common ground that the respondent, Nain Sukh Das, never gave any intimation to any of the officers named in the order issued by the District Magistrate either before the accommodation actually fell vacant or at a time when it was about to fall vacant. The question whether the accommodation which 'fell vacant' was required for personal use by Nain Sukh Das, is immaterial inasmuch as in 'the provisions of Section 7 (1) no such exception has been provided. We are, therefore, of opinion that the view of the law taken by the learned Sessions Judge was not correct.

3. Mr. Sanyal, the learned Counsel for Nain Sukh Das, has in the end, submitted that Clause (1) of the order issued by the District Magistrate in exercise of the powers conferred by Section 7 was ultra vires the powers of the District Magistrate. His contention is that clause (1) of the order requires the landlord to give intimation whenever "such accommodation is about to fall vacant". This, according to the learned Counsel, could not be done by the District Magistrate in exercise of the powers conferred by Section 7. As we have pointed out above, the expression 'falling vacant of any accommodation', though not very happily worked, is capable of both the interpretations : (i) that the accommodation is about to fall vacant, and (ii) that it has actually fallen vacant. In passing, we may point out that the expression used by the legislature is not 'when accommodation has fallen vacant'. It is 'the falling vacant of any accommodation....' It seems to us that the District Magistrate is given power by this section to order that intimation shall be given by a landlord either when accommodation has fallen vacant, or when it is about to fall vacant. Further, we may note that this Act like so many others was passed by the legislature as an emergency measure, to meet the situation arising out of the great shortage of housing accommodation in the province. The central object of the Act is to invest the District Magistrate with powers to control the letting, or sub-letting of houses within his territorial jurisdiction. It is well settled that an enactment of this character should be interpreted, as far as possible, in conformity with the fundamental canons of interpretation of a statute, in such a manner as to promote the object, or the main purpose of the enactment. In this

view of the matter, we are quite clear in our mind that there is no force in this contention of the learned Counsel. In the present case, Seth Nain Sukh Das never gave any intimation either before or after the accommodation in question had fallen vacant.

4. The result, therefore, is that we allow this appeal, set aside the order of the learned Judge and restore the order of conviction passed by the learned Magistrate.

5. With regard to the sentence, however, we feel that it is not a case where a fine of Rs. 600 should have been imposed upon Nain Suka Das. On the facts, it is quite clear that he honestly believed that it was not necessary for him, in the circumstances, to send any intimation, to the District Magistrate. Further, in the course of his trial before the Magistrate, he stated that he was sorry for the mistake committed by him. Incidentally we may point out that imprisonment in default of payment of fine as directed by the learned Magistrate was one month's rigorous imprisonment. In this respect, the learned Magistrate appears to have overlooked the provisions of Section 8 which prescribes a penalty of only 'simple' imprisonment for a term which may extend to six months. However, in the circumstances of this case, we think a fine of Rs. 50 would meet the ends of justice. The balance of the fine originally imposed on the respondent by the Magistrate shall, if paid, be refunded.