

from 1.8.2013 to 30.9.2014 without salary. Therefore, even the impugned order is set-aside, Court cannot direct to appoint him as Assistant Teacher. He has not worked since 2014 till he has reached the age of superannuation i.e. 62 years (2019) i.e. 5 to 6 years. Meanwhile, he has pursued his L.L.B. Degree and now he is a practising Advocate of this Court. The period for which he has not worked will be considered as “No work No Pay”.

21. In the aforesaid circumstances and in the interest of justice, this writ petition is disposed of with following directions:

(a) Impugned orders dated 1.10.2014, 10.3.2016 and 23.10.2018 are set-aside.

(b) Petitioner is entitled for payment of salary from 1.8.2013 to 30.9.2014, when undisputedly, he has worked and his salary for said period shall be paid within a period of 8 weeks.

(c) No direction for reinstatement even on notional basis could be passed.

(d) A lump sum compensation/cost is determined as Rs.2.5 lakhs to be paid by respondents within 12 weeks to the petitioner.

(e) Mr. Yatindra, learned Amicus Curiae has assisted the Court in a very proper manner and for that High Court Legal, Services Committee, Allahabad will pay Rs.5500/ to him within four weeks.

(2025) 5 ILRA 1085

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 07.05.2025

BEFORE

THE HON'BLE PANKAJ BHATIA, J.

Writ-A No. 1000115 of 2014

Puran Singh

...Petitioner

Versus

District Judge Lucknow & Ors.

...Respondents

Counsel for the Petitioner:

Heera Lal Srivastava, Amit Jaiswal, Apoorva Tewari

Counsel for the Respondents:

U.N. Misra, Ramesh Chandra Pathak

A. Tenancy Law – UP Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 – Section 30 (1) – Scope of power – Deposit of rent – No adjudication on relationship of landlord and tenant, how far vitiate the impugned order – Held, S. 30 itself does not confer any adjudicatory powers upon the Munsif for deciding the relationship of landlord and tenant, otherwise the use of word '*claiming to be tenant*' would be of no purpose – No power of adjudication have been granted to the Munsif by virtue of S. 30 of the Act and even if the deposit is made by a person claiming himself to be a tenant, and is actually not a tenant, the benefit of deposit u/s 30 would clearly not be available to him in suitable proceedings initiated by the landlord and contested by the tenant/ person in occupation and not a tenant. (Para 11 and 13)

Writ petition dismissed. (E-1)

List of Cases cited:

1. M/s S. Chand & Co. Vs IInd A.D.J.; 1985 (1) ARC 251
2. Moolchand Motuman Tekwani Vs A.D.J.; 1985 (2) ARC 142
3. St. Jones School Vs Special Judge, E.C. Act; 1999 (1) ARC 588
4. Chatur Mohan & ors. Vs Ram Behari Dixit; 1964 All LJ 256
5. Anwar Ali Vs A.D.J.; 2002 (2) ARC 562
6. Rajendra Kumar Karnwal Vs Smt. Kailash Garg; 2005(4) AWC 3858J

7. Fateh Chand Vs B.S. Goel; 1967 ALJ 979
8. Girdhari Lal Mehta Vs District Judge Varanasi; 1984 (1) ARC 126
9. Chatur Mohan & ors. Vs Ram Behari Dixit; 1964 All LJ 256; 1963 SCC OnLine All 55

(Delivered by Hon'ble Pankaj Bhatia, J.)

1. Heard Sri Apoorva Tiwari the counsel for the petitioner. No one is present on behalf the respondents.

2. The present petition has been filed by the petitioner challenging the order dated 29.04.2014 which was passed on an application under section 30(1) of the U.P. Act No. 13 of 1972 as well as the order dated 15.09.2014 passed by the District Judge in Civil Revision No.222 of 2014 whereby the revision preferred against the order dated 29.04.2014 was dismissed.

3. The facts in brief are that the respondent no.3 on 12.10.2011 filed an application under section 30(1) of the U.P. Act No.13 of 1972 claiming himself to be the tenant of the premises situate at 338, 5th Street, Rajendra Nagar, Lucknow and also claimed that the petitioner was the landlord. It was alleged that the rent of the premises was Rs.100/- per month and was being deposited as the petitioner had refused to accept the same. The said application was registered as Misc. Application No. 126 of 2011 (Annexure no.3). In reply to the said application, the petitioner filed his objection on 15.03.2014 stating that he was not the owner of the property in question and there existed no relationship of landlord and tenant in between the petitioner and the respondent no.3. It was also stated that the property in question was owned and possessed by the society namely Pioneer Montessori School

and the respondent no.3 was never inducted as a tenant by the petitioner or by the society. It was also taken as a defense that the respondent no.3 was engaged for some construction work in the School and was allowed some rooms for storing the raw materials etc. and thereafter he was trying to retain occupation of the rooms allegedly claiming himself to be the tenant. The said application filed by the respondent no.3 was allowed by the Court vide order dated 29.04.2014 with direction that the respondent no. 3 may deposit the amount at his own risk. It was also observed that the petitioner had no right to file objection and in any case the same could not be decided in exercise of the power under section 30(1) of the U.P. Act No.13 of 1972. Aggrieved against the said order, the petitioner preferred a revision under section 115 of the CPC. The said revision came to be dismissed on 15.09.2014 as not maintainable.

4. Challenging the said two judgments, Sri Apoorva Tiwari appearing on behalf of the petitioner, extensively argues that both the orders were bad in law. He argues that it was incumbent upon the Civil Judge to have decided the preliminary issue with regard to the claim of tenancy by the respondent no.3 and in any case, ought to have considered the objections. It is further argued that the Munsif while passing order under section 30(1) of the Act was exercising his original jurisdiction as a court and it was not a 'persona designata' and as such, his order was revisable under section 115 of the CPC.

5. The counsel for the petitioner has extensively relied upon the judgment in the case of **M/s S. Chand & Co. vs. Hnd Additional District Judge; 1985 (1) ARC 251** to argue that a revision would lie

against the order of a Munsif. Reliance is also placed on the judgment in the case of **Moolchand Motuman Tekwani vs. Additional District Judge; 1985 (2) ARC 142** to argue that a revision would lie. He has also placed reliance on **St. Jones School vs. Special Judge, E.C. Act; 1999 (1) ARC 588** and **Chatur Mohan and others vs. Ram Behari Dixit; 1964 All LJ 256** to argue that a revision would lie.

6. The counsel for the petitioner has fairly placed before this court the judgments which are contrary and held that no revision would lie against an order passed under Section 30, the same being in the case of **Anwar Ali v. Additional District Judge; 2002 (2) ARC 562** and **Rajendra Kumar Karnwal vs. Smt. Kailash Garg; 2005(4) AWC 3858J**

7. Reliance is also placed upon the judgment in the case of **Fateh Chand vs. B.S. Goel; 1967 ALJ 979** to argue that the Munsif had the jurisdiction to decide the objections and has also placed a contrary judgment in the case of **Girdhari Lal Mehta vs. District Judge Varanasi; 1984 (1) ARC 126** to place before this court that it has been decided in the said case that the landlord has no right to file objection for deciding whether the person depositing the rent is not a tenant.

8. In the light of the said, the contentions have to be considered. It is essential to note that U.P. Act No.13 of 1972 was enacted for controlling the rights of landlord specifically the right to letting out the premises, rent and eviction of tenants in respect of the buildings specified and covered in the said Act. Section 30 of the U.P. Act No. 13 of 1972, prescribed as under :

"13. Restrictions on occupation of building without allotment or Release.

Where a landlord or tenant ceases to occupy a building or part thereof, no person shall occupy it in any capacity on his behalf, or otherwise than under an order of allotment or release under Section 16, and if a person so purports to occupy it he shall, without prejudice to the provisions of Section 31, be deemed to be an unauthorised occupant of such building or part."

9. It is also essential to note that the mandate of Section 37 and Section 38 which are as under :

37. Finality and presumption. -
(1) No order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

(2) Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act, a Court shall, unless the contrary is proved, presume that such order was so made by that authority.

38. Act to override T. P. Act and Civil Procedure Code -*The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Transfer of Property Act, 1882 (Act No. IV of 1882), or in the Code of Civil Procedure, 1908 (Act No. V of 1908)."*

10. On a plain reading of the mandate of Section 30 of the Act, it transpires that the Section was enacted for a person who seeks to deposit any rent, which has been refused by the landlord and claims himself to be the tenant. The phrase '*claiming to be a tenant*' is of importance. The mandate of section 30 is only to see that the tenant, cannot be permitted to escape from his liability to deposit the rent in the event landlord refuses to accept the same and

thus, it was also enacted to ensure that the tenant is not liable to be evicted on the ground of non-payment of rent when the landlord himself refuses to accept the same. Similarly, in the event, of dispute with regard to entitlement of rent, it propose to give the protection to the tenant and also further empowered the Court to ensure that the deposited rent, is paid to the landlord.

11. A perusal of the said provision makes it clear that the said section itself does not confer any adjudicatory powers upon the Munsif for deciding the relationship of landlord and tenant, otherwise the use of word '*claiming to be tenant*' would be of no purpose. No power of adjudication have been granted to the Munsif by virtue of Section 30 of the Act and even if the deposit is made by a person claiming himself to be a tenant, and is actually not a tenant, the benefit of deposit under Section 30 would clearly not be available to him in suitable proceedings initiated by the landlord and contested by the tenant/ person in occupation and not a tenant. All the issues with regard to relationship of landlord and tenant have to be adjudicated in the respective proceedings initiated by the landlord under Chapter II to IV or Chapter V of the U.P. Act No.13 of 1972.

12. The judgments cited by the counsel for the petitioner, are in relation to the interpretation of the Act, which was enacted prior in point of time and was subsequently repealed when the U.P. Act no.13 of 1972 was enacted being The U.P. (Temporary) Control of Rent and Eviction Act, 1947. It is claimed that in the said Act, Section 7(c) was *pari materia* to section 30 and was referred to in the Full Bench Judgment in the case of **Chatur Mohan and others vs. Ram Behari Dixit; 1964**

All LJ 256; 1963 SCC OnLine All 55. The counsel for the petitioner has emphasizes on the observations made by the Full Bench in paras 7 to 10, 13 to 15 and 42 to 51, which are as under :

"7. A persona designata differs from a legal tribunal in this that its "determinations are not to be treated as judgments of a legal tribunal"; per Lord Atkinson in Balakrishna Udayar v. Vasudeva Aiyar [(44) I.A. 261 at p. 269.] . A persona designata is "a person pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character"; see Ram Milan v. Bansi Lal [A.I.R. 1958 M.P. 203.] and Central Talkies Ltd. v. Dwarika Prasad [A.I.R. 1961 S.C. 606.] . According to the Supreme Court he is a person selected to act in his private capacity and not in his capacity to act as a Judge; he exerciscs special jurisdiction distinct from the jurisdiction that he may be possessing under another statute. I have given reason for my view that the legislature has selected a Munsif to exercise the jurisdiction conferred by Sec. 7-E not in his private capacity but in his capacity to act as the presiding officer of a Munsif's court. Gularn Nizamuddin v. Akhlar Husain Khan [1933 A.L.J. 971.] , Municipal Corporation of Rangoon v. M.A. Shankur [A.I.R. 1926 Ran. 25.] , Municipality of Sholapur v. Tuljaram Krishnasa Chavan [A.I.R. 1931 Bom. 682.] should not be interpreted as laying down a hard and fast rule that when jurisdiction is conferred upon the presiding officer of a court and not upon the court itself he acts as a persona designata. "One has got to look to the entire provision for the purpose of determining whether the matter is to be heard by the Judicial Officer as a Court or in his own personal capacity;" Kiron

Chandra Bose v. Kalidas Chatterji [A.I.R. 1943 Cal. 247.] . “Whether an act is to be performed by the one or the other is generally to be determined by the character of the act, rather than by such designation. Whenever the power or duty imposed is found from a consideration of the object and purposes of the act to be one which is more properly the function of the court, it will be so construed; and whenever it is manifest that the legislature meant the judge, and not the court, that meaning will be applied to the words in order to carry out the legislative intent; see 14 Am. Jur., “Courts”, para. 4.

8. In *Din Dayal v. Ved Prakash* [C.R. No. 1034 of 1955.] our brother Dwivedi held that a Munsif acting under Sec. 7-E acts as a *persona designata* because an order directing a landlord to carry out repairs within a certain time is unlike an order normally issued by a court. With great respect I do not agree. He relied upon the principle that a court cannot issue a mandatory injunction for the doing of an act which cannot be supervised by it. Sec. 55 of the Specific Relief Act (see illustrations (a) and (b)) and Sec. 133 of the Criminal Procedure Code permit mandatory injunctions similar to a mandatory injunction contemplated by Sec. 7-E to be issued and yet undoubtedly the authorities issuing them are courts.

9. I am of the opinion that S.C. Banerji v. Ram Kumar Das [C.R. No. 992 of 1958 decided by Mukerji and Uniyal, JJ., on 6-4-1962.] and Mustafa Husain v. Sewa Ram Bodh Raj [C.R. No. 1212 of 1955.] decided on 20-4-1961 by V. Bhargava, J. do not lay down the correct law. I respectfully agree with the view taken in the case of *Daulat Ram Sawhney v. Trilokinath* [S.A. No. 1889 of 1955 decided by Beg and Srivastava, JJ., on 18-8-1961.] and hold that a Munsif exercising

jurisdiction under Sec. 7-E acts as a court and not as a *persona designata*. His order is, therefore, revisable by this Court under Sec. 115, C.P.C. I would answer the question in the affirmative.

Pathak, J.:—10. The question referred for decision is:

“Whether a Munsif while acting under the provisions of Sec. 7-E of the U.P. Control of Rent and Eviction Act acts as a mere *persona designata* or as a Court and whether a revision against an order passed under Sec. 7-E of the Act is maintainable?”

13. What we are really called upon to decide is whether the Munsif acting under Sec. 7-E is a Court. If he acts as a Court, there can be no doubt that as such Court he is subordinate to the High Court within the meaning of Sec. 115 of the Code of Civil Procedure and, therefore, a revision against an order passed under Sec. 7-E would be maintainable.

14. The question whether an adjudicating authority is a Court or a *persona designata* depends, as Mootham, C.J. observed in *Kedar Nath v. Sri S.N. Misra* [1957 A.L.J. 379.] upon:

“Whether the enactment confers on an existing court a jurisdiction which it formerly did not possess, or whether it creates for a particular purpose a special tribunal which derives its entire authority from the enactment itself.....”

Is it a case where additional jurisdiction has been conferred upon an already existing Court or one where the statute creates a tribunal and vests special jurisdiction in it so that but for the statute it would not only be devoid of jurisdiction but be non-existent in law as such tribunal?

This is a question not capable of conclusive determination by any mechanical rules or rigid criteria. The resolution of the problem will depend upon the consideration of several circumstances

which may vary from case to case, and the answer must necessarily be given by reference to the over-all context in which the jurisdiction has been conferred.

15. Now it is well settled that although a tribunal may have many of the trappings of a Court, it may nevertheless not be a Court in the strict sense of exercising judicial power, and the mere existence of certain attributes, normally associated with Courts, would not necessarily confer that status upon such tribunal. In *Shell Co. of Australia v. Federal Commissioner of Taxation* [L.R. (1931) A.C. 275.] the Judicial Committee observed:—

“A tribunal is not necessarily a Court in this strict sense because it gives a final decision. 2. Nor because it hears witnesses on oath. 3. Nor because two or more contending parties appear before it between whom it has to decide. 4. Nor because it gives decisions which affect the rights of subjects. 5. Nor because there is an appeal to a Court. 6. Nor because it is a body to which a matter is referred by another body.”

These principles have been applied in *Bharat Bank Ltd. v. The Employees of the Bharat Bank Ltd.* [A.I.R. 1950 S.C. 188.], *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunujala* [A.I.R. 1961 S.C. 1669.] *Smt. Ujjam Bai v. State of Uttar Pradesh* [A.I.R. 1962 S.C. 1621.] .

And, Bennet, J., in *Gulam Nizamuddin v. Akhtar Husain Khan* [1933 A.L.J. 971.], observed:

“the fact that a presiding officer of a civil court is appointed to preside over an election court will not make the election court a civil court.”

Oak, J.:—42. I have read the judgments prepared by the learned Chief Justice and my learned brother' Pathak, J. In my opinion, a Munsif acting under Sec.

7-E of the U.P. (Temp.) Control of Rent and Eviction Act, 1947 (hereafter referred to as the Act) is a Court.

43. Under Sec: 7-E of the Act, a Munsif having jurisdiction may direct a landlord to tarry out certain repairs. According to sub-Sec. (8) of Sec. 7-E, as it stood originally, an appeal lay from the order of the Munsif under sub-Sec. (5) or sub-Sec. (6) as if it were a decree. According to sub-Sec. (8) of Sec. 7-E, as it stands now, no appeal shall lie from the order of the Munsif passed under sub-Secs. (5) sub-Secs. (6) of Sec. 7-E. If Sec. 7-E is considered in isolation, it would be difficult to say whether the Munsif is a Court or a *persona designata*. In order to appreciate the true status of the Munsif under Sec. 7-E, one has to consider the general scheme and other provisions of the Act.

44. According to the preamble of the Act, the object of this legislation was to control the letting and the rent of accommodations, and to prevent the eviction of tenants. Under Sec. 3 of the Act, a District Magistrate may grant a landlord permission to file a suit against a tenant for his eviction. Under section 5 of the Act, a landlord or a tenant may institute a suit for fixation of rent. Such a suit has to be filed in the Court of the Munsif or in the Court of the Civil Judge, according to the valuation of the subject-matter. Under Sec. 7 of the Act, a District Magistrate may pass orders about allotment of houses. Under Sec. 7-B, the landlord may apply to the Munsif having territorial jurisdiction for the recovery of arrears of rent and for ejection of the tenant. Under Sec. 7-C of the Act, the tenant may deposit rent in the Court of the Munsif having jurisdiction. Under Sec. 7-D, the District Magistrate can direct a landlord to restore amenities to a tenant. Under Sec. 7-E of the Act, the

Munsif having jurisdiction may order a landlord to carry out repairs.

45. To grant permission for filing a suit for ejectment of a tenant and to allot houses are administrative functions. These duties have been assigned to the District Magistrate. To fix rent for an accommodation and to take action against a tenant for the recovery of rent and for ejectment are functions of judicial nature. At certain places in the Act the Munsif has been expressly referred to as a Court. But nowhere in the Act do we find any reference to the District Magistrate as a Court. Under the Act, the District Magistrate functions as an administrative officer. Courts of District Magistrates are constituted under Secs. 6 and 10 of the Code of Criminal Procedure. But it cannot be seriously maintained that, a District Magistrate functioning under the Act is a criminal Court. It is well recognized that the District Magistrate or the Collector is the chief executive officer of a district. It is in that capacity that certain duties have been assigned to the District Magistrate under the Act. In “Central Talkies Ltd. v. Dwarka Prasad [A.I.R. 1961 S.C. 606.] it was held that, under the Act the District Magistrate is not a *persona designata*. But that case does not lay down that, under the Act the District Magistrate is a Court. Sec. 16 of the Act lays down that no order made under this Act by the State Government or the District Magistrate shall be called in question in any Court. Sec. 16 makes no reference to a Munsif or a Civil Judge. Sec. 16 suggests that an order passed by a Munsif under the Act may be called in question in a Court of law. The legislature appears to have placed the State Government and the District Magistrate on one hand and the Munsif and the Civil Judge on the other hand, on different footings.

46. Sec. 7-B throws much light on the status of a Munsif under the Act. Under sub-Sec. (1) of Sec. 7-B, “the landlord may make an application to the Munsif having territorial jurisdiction for an order of ejectment of the tenant from the accommodation.” Under sub-Sec. (3), the Munsif serves a notice on the tenant calling upon him to pay up the arrears of rent. Sub-Sec. (5) lays down that, if the tenant does not deposit lent and does not file any objection, the Munsif shall order the tenant's eviction. Sub-Sec. (7) of Sec. 7-B states:-

“If the tenant appears in reply to the notice under sub-Sec. (3) and files an objection, the Munsif shall inform the applicant that he may, subject to the payment of the court fee....., have the application treated as a plaint in a suit for recovery of arrears of rent alone”

According to sub-Sec. (8), if the applicant pays the necessary court fee, the application has to be treated as a plaint and the proceedings as a suit. It is to be noted that the same Munsif has to deal with the entire proceeding from sub-Sec. (1) to sub-Sec. (8) of Sec. 7-B of the Act. Under sub-Sec. (8), the application has to be treated as a plaint, and the proceedings constitute a suit. It is obvious that the Munsif acting under sub-Sec. (8) of Sec. 7-B is a Civil Court. It is unreasonable to suppose that, a Munsif has one character under sub-Sec. (1), and another character under sub-Sec. (8). The status of the Munsif must be the same throughout the proceeding under Sec. 7-B of the Act. The status of the Munsif cannot alter, simply because the landlord has paid court-fee in order to convert the application into a plaint. Throughout the proceeding under Sec. 7-B of the Act, the Munsif is a Civil Court.

47. *Mr. Vishnu Kumar Gupta appearing for the opposite party, pointed out two matters in support of his contention that under Sec. 7-E of the Act the Munsif is a persona designata. Mr. V.K. Gupta firstly pointed out that, under Sec. 7-E of the Act, the Munsif having territorial jurisdiction has unlimited pecuniary jurisdiction. It was, therefore, contended that, he cannot be a Civil Court under the Bengal, Agra and Assam Civil Courts Act, 1887 (hereafter referred to as the Civil Courts Act). Mr. V.K. Gupta pointed out that, under Sec. 19 of the Civil Courts Act, a Munsif has limited jurisdiction. It has, however, to be noted that, even under Sec. 19 of the Civil Courts Act all Munsifs have not got the same pecuniary jurisdiction. The jurisdiction of one Munsif may be up to Rs. 2,000/-. Another Munsif may have jurisdiction up to Rs. 5,000/-. It was open to the legislature to confer on Munsif unlimited pecuniary jurisdiction for purposes of U.P. Act No. III of 1947.*

48. *Secondly, it was contended by Mr. V.K. Gupta that, in order to recover money spent by a tenant for repairs under Sec. 7-E of the Act, the tenant has to file a separate suit against the landlord to recover the amount as a debt. The material provision as contained in sub-Sec. (6) of Sec. 7-E is this:*

“It shall thereafter be lawful for the tenant to make such repairs and to deduct the cost thereof from the rent, or to recover it otherwise from the landlord as if it were a debt due to him by the landlord.”

According to this provision, a tenant may recover the cost of repairs in two ways. Either he may adjust the expenditure against rent payable by him. Or the tenant may treat that expenditure as a debt due to him by the landlord. This provision has little bearing on the status of

the Munsif under sub-Secs. (5) and (6) of Sec. 7-E.

49. *In National Telephone Company v. His Majesty's Postmaster-General [1913 A.C. 546.], Viscount Alaldane, L.C. observed that, “when a question is stated to be referred to an established Court without more it imports that the ordinary incidents of the procedure of that Court are to attach.”*

The broad scheme under the Act is this. Duties under the Act have been divided into two groups. Administrative duties have been assigned to the District Magistrate. Functions of judicial nature have been assigned to Munsifs and Civil Judges. Courts of Munsifs are constituted under the Civil Courts Act. There is a presumption that Munsifs under U.P. Act No. III of 1947 are also Civil Courts. There is no clear indication in the Act that, a Munsif is a persona designata on the contrary the Act contains several references to Munsifs as Courts. In the Act we come across three different expressions: (i) the Munsif having jurisdiction, (ii) the Munsif having territorial jurisdiction, and (iii) the Court of the munsif having jurisdiction. The three expressions appear to have been used in the Act indiscriminately. The three expressions refer to the “same authority. The expression “the Court of the Munsif having jurisdiction” obviously refers to the authority as a Civil Court. The other two expressions also appear to have been used in the same sense. The expression “Munsif having jurisdiction” used in sub-Sec. (4) of Sec. 7-E of the Act is equivalent to the expression, “the Court of the Munsif having territorial jurisdiction.”

50. *In view of all these considerations, I have come to the conclusion that, a Munsif functioning under Sec. 7-E of the U.P. (Temp.) Control of*

Rent and Eviction Act, 1947 is a Civil Court subordinate to the High Court. Consequently, the present Civil Revision under Sec. 115, C.P.C. is maintainable.

By the Court:— 51. For the reasons given in our judgments we hold that a Munsif exercising jurisdiction under Sec. 7-E of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 is a Civil Court and not a persona designata and that an order passed by him is revisable by this Court under Sec. 115, C.P.C.

Question answered."

13. The said Full Bench judgment may not be of much avail to the petitioner as what was referred to the Full Bench was the nature of power of Munsif conferred upon him by virtue of Section 7-E of the U.P. (Temporary) Control of Rent and Eviction Act, 1947. The said Full Bench was constituted to consider the scope of powers conferred upon the Magistrate by virtue of Section 7-E of the U.P. (Temporary) Control of Rent and Eviction Act, 1947. The specific question raised was whether the Munsif exercising the power under section 7-E would be a court exercising the power or would be a 'persona designata', the Full Court formed a view that the Munsif performing the functions conferred by virtue of Section 7-E of the Act would be a court and the order passed would be revisable under section 115 of the CPC; in the present case, no such issue arises. In the present case also, the Munsif performing the functions conferred by virtue of Section 30 would clearly be a court and would not be a 'persona designata', however, the scope of powers conferred would be confined to the mandate of Section 30 of the Act. It is not required to record any categorical finding with regard to relationship of landlord and tenant as is being sought to be argued

before this Court. The said order would also not be revisable as after the enactment of U.P. Act no.13 of 1972, the appellate and the revisional power were specifically conferred under Section 22 or Section 18 of U.P. Act No.13 of 1972. The CPC was expressly overridden by virtue of Section 38, as such, holding that a revision would lie against the said order, would be amounting to complete misreading of the U.P. Act No.13 of 1972 and would be in direct conflict with Section 38 of the U.P. Act no.13 of 1972.

14. As regards the powers of Munsif under Section 30 of the Act, the law was clearly elaborated in **Girdhari Lal Mehta (supra)** wherein the finding was recorded in para 5 which is as under :

"5. From widening of the Section it is apparent that the Legislature being conscious of the difficulty that arose under earlier Act deliberately extended the benefit even to those persons who claimand to be tenant so that the landlord by his own conduct of refusal to accept the rent may not create a situation by not permitting the claimant to deposit in court and subsequently even if the person is found to be tenant to turn to his advantage by claiming default in payment for this period. It is true that before accepting the deposit the Munsif who is conferred with the jurisdiction under sub-sec. (3) of S. 30 to accept the claim has to be prima facie satisfied but the satisfaction is only of the fact that the person who made application was a person claiming to be a tenant of the building. The law does not require anything further. At least it does not contemplate adjudication. And how is the order prejudiced to the landlord. If the person claiming to be tenant deposits it but ultimately it is found that he is not the

tenant then he does not become so by order under this Section. Benefit of sub-sec. (6) shall be available only to a person who is found to be tenant. An order which is passed without hearing or even notice obviously cannot operate as res judicata. In Haji Abdul Karim's case (1978 (UP) RCC 691) this aspect has been brought elaborately. Distinction between nature of jurisdiction exercised u/s 7E of old Act and in Rule 6 was also pointed out. It was held that no assistance could be derived from Raj Kumar's case (AIR 1971 All 273) to establish that order under S. 30 operated as res judicata. Nor can the order be said to suffer from infirmity of not being a reasoned order. By very nature of jurisdiction exercised the order is not required to be detailed like a judgment. It must exhibit application of mind. To that there appears to be no doubt."

16. In view of the reasoning recorded above, the writ petition lacks merit and is **dismissed**. The writ petition also deserves to be dismissed as the petitioner before this Court neither claims to be a landlord nor is a landlord and as such, the order impugned has no effect on him.

17. It is further clarified that mere deposit of rent under section 30 of the Act by the respondent no.3 would not grant any benefit in any proceedings that are instituted against him for his eviction or otherwise by the landlord/owner.

(2025) 5 ILRA 1094
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.05.2025

BEFORE

THE HON'BLE DINESH PATHAK, J.

Writ C No. 2373 of 2024

Ms Marion Biotech Pvt. Ltd. ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Neeja Srivastava, Sr. Advocate, Veerendra Singh

Counsel for the Respondents:

A.S.G.I., C.S.C., R.P.S. Chauhan

Constitution of India, Article 226 - Drugs and Cosmetics Act, 1940 - Sections 4, 16, 17, 17A, 17B, 25(3) - Drugs and Cosmetics Rules, 1945 - Rule 85(3) - Functus Officio and Review Jurisdiction - Petitioner

challenged the order dated 04.10.2023, which allowed a review application and suspended the appellate order dated 11.08.2023, reviving petitioner's drug license (Form 25 and Form 28) except for drugs using Propylene Glycol, due to substandard DOK-1 Max Syrup linked to child deaths in Uzbekistan. Petitioner argued the Appellate Authority lacked jurisdiction to review its order absent statutory provisions, became functus officio post-appeal, and passed the review order ex parte, violating Section 25(3) of the Act. Respondents contended the review was justified due to public interest, substandard drugs containing excess Diethylene Glycol (DEG) and Ethylene Glycol (EG), and misrepresentation of Uzbekistan court orders, citing inherent powers to correct fraud, per *Indian Bank vs. Satyam Fibres*. The court held that the Appellate Authority, having decided the appeal, became functus officio under Rule 85(3), and no statutory review power existed under the Act or Rules. No fraud, forgery, or misrepresentation was established, as all facts, including Uzbekistan court orders and drug deficiencies, were known during the appeal, per *Naresh Kumar vs. Government (NCT of Delhi)* and *Patel Narshi Thakershi vs. Pradyuman Singhji*. The review order, passed ex parte on the same day as the application, lacked new evidence or legal basis. Writ petition allowed, review order quashed. (Paras 15-33)

Writ petition allowed.