

(1964) 02 AHC CK 0019
In the Allahabad High Court
Case No : Civil Revision No. 815 of 1958

Bal Gopal Das

APPELLANT

Vs

Mohan Singh and Another

RESPONDENT

Date of Decision : 19-02-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 3
Displaced Persons (Debts Adjustment) Act, 1951 — Section 4, 41

Citation : AIR 1964 All 504

Hon'ble Judges : V. Bhargava, J;S.D. Khare, J;G.C. Mathur, J

Bench : Full Bench

Advocate : G.P. Bhargava, for the Appellant; N. Misra, for the Respondent

Judgement

V. Bhargava, J.—The question referred for the opinion of the Full Bench is -

"Is the Tribunal constituted under the Displaced Persons (Debts Adjustment) Act, 1951 (Act No. LXX of 1951) a Court subordinate to the High Court within the meaning of Section 115 Civil Procedure Code? Does a revision u/s 115 CPC lie against an order passed by such a tribunal?"

2. I have had the benefit of reading the judgments proposed to be delivered by my brothers S. D. Khare and G. C. Mathur, JJ., but I regret I am unable to agree with them. This question came up before me in an earlier case of Sundar Das and Others Vs. Lachman Das, . Having heard learned counsel on the present occasion and having given very careful consideration to the views expressed by my brothers in their proposed judgments, I still find no reason to change the view that was taken by me earlier in the case cited above.

3. In the course of arguments before us. it appears to have been assumed that, whenever a judicial function is being exercised by any person, that person can only be described as, and must belong to, one of the two classes, a Court or a persona designata. I do not consider that these are the only two classes by which such authorities must necessarily be covered. The word "tribunal" has

been used in the Displaced Persons (Debts Adjustment) Act, 1951 (hereinafter referred to as the Act), with which I am concerned, and has also been used in other statutes and. I do not see why every tribunal must necessarily be covered by either the word "Court" or the word "persona designata". The Constitution itself, in Article 227, mentions Courts and tribunals and thus seems to distinguish between a Court and a tribunal without specifically envisaging that every tribunal must necessarily be a persona designata. In my opinion, therefore, it is not at all necessary in this case to go into the question whether a tribunal under the Act is a persona designata or not. The question that is to be seen is whether it is a Court within the meaning of Section 115 Civil Procedure Code.

4. The word "Court" used in Section 115 CPC must necessarily, in my opinion, be held not to cover all different kinds of Courts functioning in the country. The Courts of Sessions and the Courts of Magistrates exercising jurisdiction under the Criminal Procedure Code are also Courts but no one can even suggest that any of them is a Court within the meaning of the word "Court" as used in Section 115 Civil Procedure Code. This Code, in its Preamble, contains an indication of the nature of Courts in respect of which the Legislature enacted the Code. The Preamble refers to Courts of Civil Judicature. Then, in Section 3 Civil Procedure Code, the hierarchy of Courts governed by the Code is mentioned. The question that is, therefore, to be seen is whether a tribunal under the Act functions as a Court of Civil Judicature and whether the provisions of Section 3 of the Code can be applied to such a tribunal in order to determine whether such a tribunal comes under the hierarchy of Courts.

5. When the case is examined in this aspect, it appears to me that a tribunal under the Act cannot be held to be a Court of Civil Judicature capable of being classified in the hierarchy of Courts in accordance with Section 3 of the Code unless it be held that the Civil Courts designated as tribunals continue to function in their capacity as Civil Courts and do not function in a different capacity as tribunals. The Act, it seems to me, specifically distinguishes between the two capacities of such Courts which is quite clear from the provisions of the various sections of the Act.

6. First, there is the definition of the word "tribunal" contained in Section 2(12) of the Act. The tribunal is defined as any Civil Court specified u/s 4 as having authority to exercise jurisdiction under this Act. This definition itself means that once a Civil Court is specified as having authority to exercise jurisdiction under the Act, it starts to function as a tribunal and no longer functions as a regular Civil Court. Had it been the intention that a Civil Court in its capacity as such was to exercise jurisdiction under the Act, there would have been no difficulty in the Legislature omitting to introduce the word "tribunal" and merely laying down that jurisdiction under the Act is to be exercised by the Civil Courts specified by the State Government by a notification in the official gazette.

7. The next two sections that may be considered are Sections 25 and 26 of the Act. Section 25 lays down that all proceedings under the Act shall be regulated

by the provisions contained in the Civil Procedure Code. It is significant that the language used in this section confines the applicability of the CPC to the limited extent that proceedings under the Act are to be regulated by its provisions. The CPC has not as such been made applicable to the tribunals. It is not laid down that the CPC shall govern the jurisdiction and proceedings of the tribunals under the Act. The significance attaches to the circumstances that provision has been made only for regulating proceedings under the Act in accordance with the provisions of the CPC which means that once a proceeding under the Act has been initiated, thereafter the provisions of the CPC are made applicable to that proceeding but initiation of proceedings has to take place under the Act and not under the Civil Procedure Code.

This is particularly significant because, u/s 115 of the Code, a proceeding is initiated by the High Court calling for a record, whether that order is made suo mota or on the application of an interested party moving the High Court in that behalf. Such initiation of proceedings in respect of rights governed by the Act is not envisaged in the language of Section 25 of the Act. That also appears to be the reason why, in Section 26 of the Act, provision had to be specifically made for the purpose of applying the provisions of the CPC relating to the signing and verification of pleadings to applications, schedules and written statements filed under the Act. If a tribunal were to be held to be a Civil Court under the CPC no such separate provision should have been needed.

8. The next relevant Section 28 of the Act contains a very clear indication that the Legislature, when passing this Act, had in view the distinction between a tribunal and Civil Court. If there was no distinction between a tribunal and the Civil Court specified as a tribunal, Section 28 of the Act would have been completely redundant because a decree passed by a Civil Court could certainly be executed by that Court under the Civil Procedure Code. It seems to me desirable to reproduce Section 28 of the Act in full because the language used in it very clearly shows that the Legislature, when constituting the tribunal, intended it to be a distinct and separate entity from a Civil Court. Section 28 is as follows:-

"28--It shall be competent for the Civil Court, which has been specified as the tribunal for the purposes of this Act, to execute any decree or order passed by it as the tribunal in the same manner as it could have done if it were a decree or order passed by it as a Civil Court"

The first significant expression is "any decree or order passed by it as the tribunal" This expression means that, when a Civil Court specified as a tribunal, passes a decree or order, that decree or order is described in this section as one passed in its capacity as a tribunal, which description would have been unnecessary if the capacity as a tribunal had not been different from the capacity as a Civil Court. In the later part of this section where the power of execution is given, it is laid down that the tribunal is to execute the decree or order in the same manner as it could have done if, it were a decree or order passed by it as a

Civil Court. Thus a fiction of law is introduced to the effect that, for purposes" of execution, the tribunal is to treat the decree or order passed by it in that capacity as a decree or order passed by it in the capacity of a Civil Court. This provision was only necessitated because a distinction was sought to be made clearly between a tribunal under the Act and a Civil Court. The Legislature clearly indicated that the tribunal functioning under the Act did not function as a Civil Court under "the Civil Procedure Code.

9. Then, in Section 35 of the Act, provision has been made for taxation of lawyers" fees When giving the power to the tribunal to direct payment of costs in respect of fees to any legal practitioner employed in any proceeding before it the provision made is that the tribunal is to be guided by the rules for the time being in force regulating the payment of such costs in proceedings of a similar nature before the ordinary Civil Courts and there is the additional bar that the tribunal shall not award more than one-half of what, in its opinion, the costs before the Civil Court would have been. If the Civil Court designated as a tribunal were functioning in its capacity as such and not as a distinct and different entity, there was no need to lay down that the tribunal is to be guided by the rules in force regulating the payment of such costs in proceedings before the ordinary civil Courts. All that need have been laid down was the limitation that the costs awarded shall not exceed one-half of the costs which can be awarded by a Civil Court in its capacity as such.

10. Lastly, there is the provision contained in Section 40 of the Act where a right of appeal is granted against an order made in the course of execution of any decree or order of the tribunal. Here, again, the right of appeal is granted by equating the order made by a tribunal with an order passed in the course of execution of a decree or order of a civil Court. No such provision need have been made if the tribunal had been functioning as a Civil Court while dealing with all proceedings under the Act including proceedings for execution of a decree or order.

11. In this connection, it has been urged that if the tribunal was not a Civil Court, there was no need for making a provision in Section 54 of the Act, faying down that nothing contained in Order XXXVIII of the First Schedule to the CPC relating to arrest and attachment before judgment, shall apply to any proceeding under this Act. It seems to me that the need for introducing this provision arose because, in Section 25 of the Act, provision was first made that all proceedings under the Act shall be regulated by the provisions contained in the Civil Procedure Code. Once a proceeding under the Act is governed by the Civil Procedure Code, an application tried by a tribunal us a suit would confer upon the tribunal the jurisdiction to exercise all the powers laid down in the CPC for the purpose of regulating that proceeding. Order XXXVIII of the Firs! Schedule to the CPC only contains provisions relating to powers that can be exercised by a Court before which a suit is pending and the powers are exercised as a part of regulation of proceedings before the Court. The Legislature, it seems, desired

that, though all the proceedings before the tribunal under the Act were to be governed by the CPC the tribunal had to be barred from ordering arrest and attachment before judgment and, consequently, had to enact this Section 54 as an -exception to Section 25 of the Act.

12. Reliance has been placed on behalf of the applicant on a decision of their Lordships of the Privy Council in *Rajah Nilmoni Singh Deo Bahadur v. Taranath Mookerjee* 9 Ind App 174 (PC). The principle laid down by their Lordships of the Privy Council was as follows:-

"It must be allowed that in those sections there is a certain distinction between the Civil Courts there spoken of and the Rent Courts established by the Act, and that the Civil Courts referred to in Section 77 and the kindred sections mean Civil Courts exercising all the powers of Civil Courts, as distinguished from the Rent Courts which only exercise powers over suits of a limited class. In that sense there is a distinction between the terms; but it is entirely another question whether the Rent Court does not remain a Civil Court in the sense that it is deciding on purely civil questions between persons seeking their Civil rights, and whether being a Civil Court in that sense, it does not fall within the provisions of Act VIII of 1859. It is hardly necessary to refer to those provisions in detail, because there is no dispute but that, if the Rent Court is a Civil Court within Act VIII of 1859, the Collector has u/s 284, the power of transferring his decrees for execution into another district."

In applying this ruling, I think we have to keep in view the circumstances that their Lordships of the Privy Council, in that case, were dealing with the limited question whether a rent Court constituted under Act X of 1859 was competent to transfer its decree passed by it in accordance with the provisions of Act VIII of 1859. It was for this limited purpose that their Lordships of the Privy Council held that the rent Court must be deemed to be a Civil Court. There was no general observation in that case that a rent Court has to be deemed to be a Civil Court for purposes of all the provisions of Act VIII of 1859 and to me it seems that such an extension of the decision given by their Lordships of the Privy Council will result in considerable anomaly. If it could justifiably be held that their Lordships meant to say that the rent Court was a Civil Court for purposes of all the provisions of Act VIII of 1859, it would mean that that rent Court would be a Civil Court even for the purpose of Section 1 which defines the jurisdiction of Civil Courts to take cognizance.

A rent Court which was constituted for the limited purpose of exercising jurisdiction under Act X of 1859, could, on this interpretation take cognizance of all suits of a civil nature. This anomaly can only be resolved by holding the view that, the rent Court having been constituted under Act X of 1859, it was not to be treated as a Civil Court for purposes of all the provisions of Act VIII of 1859 and at least not for the purpose of taking cognizance of suits under Section 1 of Act VIII of 1859; In fact, it appears that their Lordships of the Privy Council were merely laying down the principle that, once the rent Court under Act X of 1859

was competently seized of any proceeding, such as a proceeding for execution of a decree, or was competent to take proceedings under that Act, the Court to be deemed to be a Civil Court for the limited purpose of exercising incidental powers required by that Court to effectively carry out its functions of dealing with those proceedings. In cases where it was necessary to execute a decree by transferring it to another district because the judgment-debtor possessed property in that district, it was held that the rent Court could exercise powers of the Civil Court in that behalf I am unable to interpret that decision as laying down that the rent Court under Act X of 1859 was held to be a Civil Court for all the purposes of Act VIII of 1859.

13. In this connection, I may take notice of the recent rent enactments in this State, such as the U. P. Tenancy Act of 1939 and the U. P. Zamindari Abolition and Land Reforms Act, 1950 (U. P. Act No. 1 of 1951). These two enactments also created Courts with limited jurisdiction to deal with matters relating to rent and revenue of agricultural land as also disputes relating to rights about agricultural land. It seems to me that those Courts cannot all of them be held to be Civil Courts for all the purposes of the CPC of 1908 because, if they were to be held to be Civil Courts for purposes of this code as a whole, they would be competent u/s 9 of the CPC of 1908 to take cognizance of all suits of a civil nature and have jurisdiction to try those suits unless the cognizance was expressly or impliedly barred. I am, therefore, of the opinion that the decision given by their Lordships of the Privy Council in the case cited above cannot be interpreted as laying down that a Court constituted under a special Act relating to rent or revenue would be a Civil Court for all the purposes of the Civil Procedure Code. It would certainly not be a Court for the purpose of taking cognizance in accordance with the provisions of the CPC and from that would also follow the further consequence that other Courts mentioned in the CPC as competent to entertain appeals or revisions would not be the Courts entitled to exercise those powers in respect of decisions given by those Courts constituted under the rent or revenue Act,

14. This position becomes still clearer when the provisions of Section 3 CPC are carefully examined. That section lays down what is to be the hierarchy of Courts for purposes of the Civil Procedure Code. The provision is that the district Court is subordinate to the High Court and every Civil Court of a grade inferior to that of a district Court and every Court of Small Causes is subordinate to the High Court and the district Court. In case it is held that a Court constituted under the U. P. Tenancy Act or the U. P. Zamindari Abolition and Land Reforms Act is a Civil Court for purposes of Section 3 of the Civil Procedure Code, the question will arise what is its position in the hierarchy of Courts laid down in Section 3 of the Code. The Court of an Assistant Collector cannot possibly be a district Court; can it then be held that it is a Civil Court of a grade inferior to that of a district Court and such it is subordinate to both the High Court and the district Court? This question becomes still more difficult to answer if notice is taken of the fact that the U. P. Tenancy Act and the U. P. Zamindari Abolition and Land Reforms Act

envisage existence of Courts not only of Assistant Collectors but also of Collectors. Commissioners and Board of Revenue. They also exercise jurisdiction as regular Courts though mostly in the capacity of appellate or revisional Courts. It seems to me to be impossible to hold that the Board of Revenue or the Commissioner can be held to be a Civil Court within the meaning of Section 3 of the Code and a Court subordinate to the High Court and the district Court. None of them can be held to be a district Court and as such subordinate to the High Court.

It is true that, in some cases, where a decision is given in a suit by an Assistant Collector, the appeal lies to the District Judge and the district Court is thus the appellate authority but the same Assistant Collector decides suits of a different nature in which the appeal lies not to the District Judge but to the Collector, the Commissioner or the Board of Revenue, so that the district Court, in respect of those suits, does not come into the picture even as an appellate Court. As an example, suits for ejectment from agricultural land, no doubt, involve disputes of a civil nature and all questions involved and decided would be purely questions of a civil nature relating to civil rights of parties but, even in such suits, when an Assistant Collector gives a decision, the appeal does not lie to the District Judge. The first appellate authority is the Commissioner and the second appellate authority is the Board of Revenue. I do not think that it can be held that, when exercising jurisdiction in respect of such a suit, the Assistant Collector, the Commissioner and the Board of Revenue can be held to be Civil Courts even for the purpose of Section 3 of the Code.

15. The language of Section 3 of the Code lays emphasis on the hierarchy of Courts "for purposes of the Code of Civil Procedure". Consequently, it appears to me that the correct interpretation of Section 3 of the Code is that, for purposes of the Code, only the district Court and the Civil Courts, which are subordinate to the district Court, are to be treated as Courts of civil judicature satisfying the provisions of Section 3 of the Code. It is also significant that the U. P. Tenancy Act and the U. P. Zamindari Abolition and Land Reforms Act nowhere contain any provision specifically stating that any Courts functioning under those acts are subordinate either to the High Court or the district Court "for purposes of the Code of Civil Procedure". This is precisely the position in regard to the Displaced Persons (Debts Adjustment) Act. There is no provision in the Act laying down that the tribunals functioning under the Act are to be subordinate to the High Court for purposes of the Civil Procedure Code. They are, no doubt, made subordinate under the Act in the sense that the appeal lies to the High Court but they are not subordinate in the sense in which the word "subordinate" has been used in Section 3 of Civil Procedure Code.

It further seems to me that the expression "any Court subordinate to such High Court" used in Section 115 CPC refers to the subordination mentioned in Section 3 of the Code. The High Court can exercise its revisional powers only in cases which have been decided by some Court which is subordinate to the High Court

in accordance with the provisions of Section 3 of the Code. In the alternative, of course, the High Court could have exercised similar powers of revision in case decided by any other Courts provided those Courts were specifically made subordinate to the High Court for purposes of the Civil Procedure Code. As I have said earlier, there is no provision in the Act, with which I am concerned, laying down that a Tribunal is to be a Court subordinate to the High Court for purposes of the Civil Procedure. The High Court's jurisdiction to take cognizance u/s 115 CPC cannot therefore, extend to initiating proceedings at its own instance or entertaining proceedings at the instance of a party in respect of cases decided by a tribunal functioning under the Act

16. In this connection, I may also mention that the Civil Procedure Code, as it exists to-day, is different from the Code as it was in force at the time when their Lordships of the Privy Council gave the decision in the case cited above. Act VIII of 1859 had no provision similar to the provision contained in Section 3 CPC 1908. Further, there was also no provision similar to Section 115 Civil Procedure Code. The question of subordination of Courts did not, at that stage, therefore, arise, nor were their Lordships concerned with such a question. On the other hand, the judgment of their Lordships of the Privy Council, read as a whole, indicates that their Lordships held the view that the rent Court could exercise jurisdiction of a Civil Court to transfer decrees for execution because, under the earlier code governing the enforcement of judgments in places beyond the jurisdiction of Courts pronouncing them, no distinction had been made between one Court and another and, under that earlier law, judgments of all Courts could be enforced in one and the same manner.

It was further held that Act VIII of 1830 expressed the same intention that all Courts entertaining civil suits of any kind should have the power of transferring their decrees for execution into another district. This was the special circumstance that led their Lordships of the Privy Council to hold that the rent Courts under Act X of 1859 were to be treated as Civil Courts for the purpose of transferring decrees for execution. No such circumstances exist when we are required to deal with the question whether some Court constituted for a special purpose by an Act is a Civil Court for purposes of Section 3 CPC and is further a Court subordinate to the High Court for purposes of Section 115 of the Code. In my opinion, therefore, this decision of their Lordships of the Privy Council does not support the proposition put forward on behalf of the applicant.

17. Reference has also been made to a decision of the Madras High Court in *Rajah of Venkatagiri Vs. Shaik Mahaboob Saheb and Others*, In that case, it was held:

"There can be little doubt that the Sub-Col lector and the District Collector were hearing and determining disputes of a civil nature and there is no reason why all the proceedings before them should not be regarded as civil proceedings and the Courts as Civil Courts for the purposes of Section 3 of the Code."

In order to express this opinion, the learned Judge of the Madras High Court relied on the observations of their Lordships of the Privy Council in the case of 9 Ind App 174 (PC). As I have indicated above, the decision of the Privy Council related to the limited question of jurisdiction of rent Courts to transfer decrees for execution and there was no pronouncement that those Courts were Civil Courts for all the purposes of the CPC which could be the effect of holding them to be Civil Courts u/s 3 of the Code. In fact, in the CPC then in force as Act VIII of 1859, there was no provision similar to that contained in Section 3 of the Code of 1908. Further, the learned Judges of the Madras High Court do not seem to have examined the question of applicability of Section 3 of the Code in greater detail so as to determine whether the Sub-Collector and the District Collector u/s 3 Civil Procedure Code, if treated as Courts for purposes of Section 3 of the Code, would be classified as district Courts or as Civil Courts other than District Courts who must then necessarily be held to be subordinate to the District Courts. With respect, therefore, I am constrained to say that I differ from the view taken in that case.

18. For purposes of analogy, reference has also been made to two Full Bench cases of AIR 1942 458 (Oudh) and Mt. Ram Siri Vs. M. Iqbal Bahadur In which it was held that the Court of an Assistant Collector under the U. P. Agriculturists' Relief Act is a Civil Court. In both these cases, it was held that the High Court was competent to entertain an application for revision u/s 115 CPC against the decision of an Assistant Collector empowered u/s 12 of the U. P. Agriculturists' Relief Act or exercising jurisdiction for amendment of decrees u/s 5 (1) of the U. P. Agriculturists' Relief Act. With all respect, I find myself in some difficulty in following the views expressed in those two cases, because in neither of those two cases were the provisions of Section 3 CPC discussed in detail to see where an Assistant Collector would be placed in the hierarchy of Civil Courts and, further, there was also no examination of the consequence that would follow from the decision in respect of the jurisdiction of such an Assistant Collector to exercise the functions of a Civil Court. On the other hand, reference may be made to a later five Judge Full Bench decision of this Court in Niader Vs. Khazan and Others where also the question arose of the jurisdiction that an Assistant Collector seized of the proceedings u/s 12 of the U. P. Agriculturists' Relief Act could exercise.

In that case, the mortgage sought to be redeemed was invalid, being a mortgage of an occupancy holding. It was held that, although the mortgagor was entitled to seek the relief for possession against the mortgagee in a properly constituted suit in a Civil Court, it was not open to him to obtain that relief by redemption under the restricted and special jurisdiction conferred upon the Court u/s 12 of the U. P. Agriculturists' Relief Act. This decision clearly implied that the Court of the Assistant Collector exercising jurisdiction u/s 12 of the U. P. Agriculturists' Relief Act was not a Civil Court for all the purposes of the CPC and at least not for the purpose of taking cognizance of suits for possession brought by a mortgagor in respect of an illegal mortgage claiming the relief on the principle of

equity by restoring the benefits received by him in the form of mortgage money. Thus this later Gve Judge Full Bench decision has the effect of overruling the earlier three Judge Full Bench decisions holding that the Court of an Assistant Collector functioning u/s 12 of the U. P. Agriculturists' Relief Act was a Civil Court. Again, I think that such a Court could only be held to be a Civil Court in the limited meaning of deciding a civil dispute, proceedings before which could be governed by the CPC but it could not be held to be a Civil Court for purposes of Sections 3 and 9 CPC and, consequently, also not a Civil Court subordinate to the High Court for purposes of Section 115 of the Code.

19. In this connection, my attention was drawn to two Division Bench decisions of this Court in which contrary views were taken which necessitated this reference to a Full Bench. These two decisions have already been noticed by my brother, G. C. Mathur, J., being the cases of Ishwar Singh v. Mohan Singh, Civil Revn. No. 602 of 1956, D/- 11-3-1958 (All) by a Bench of Roy and B. Dayal, JJ., and Lal Chand Vs. Bharat Nidhi Ltd., decided by a Bench consisting of Desai, C. J. and Ramabhadran, J. It does not appear to me to be necessary to make any comments in detail on the views expressed in these two decisions as I have already given my reasons for the view that a tribunal under the Act is not a Civil Court within the meaning of Sections 3 and 115 Civil Procedure Code. I would, therefore, answer the question referred to the Full Bench as follows:-

"A Tribunal constituted under the Displaced Persons (Debts Adjustment) Act, 1951 (Act No. LXX of 1951) is not a Court subordinate to the High Court within the meaning of Section 115 CPC and no revision lies u/s 115 CPC against an order passed by such a Tribunal."

S. D. Khare, J.

20. A revision application was filed against an order passed by the Additional Civil Judge, acting as a "Tribunal" specified u/s 4 of the Displaced Persons (Debts Adjustment) Act, 1951, (hereinafter referred to as "the Act"). The valuation of the case was less than Rs. 5,000/- and no appeal lay against that order (vide Section 41 of the Act). The defendant against whom the order was made, therefore, filed an application in revision against that order and the point that has been formulated for the decision of the Full Bench is as follows:-

"Is the Tribunal constituted under the Displaced Persons (Debts Adjustment) Act, No. 70 of 1951, a Court subordinate to the High Court within the meaning of Section 115 Civil Procedure Code. Does a revision u/s 115 CPC lie against an order passed by such Tribunal?"

The reference became necessary because there is a divergence of opinion between two Division Benches of this Court on the point which is for our consideration. In the case of Civil Revn. No. 602 of 1956, D/- 11-3-1958 (All) one Division Bench of this Court answered this question in the affirmative, while in the case of Lal Chand Vs. Bharat Nidhi Ltd., another Division Bench of this Court, to whose notice the decision in Ishwar Singh's case, Civil Revn. No. 602

of 1956, D/-11-3-1958 (All) was not brought, has answered this question in the negative. It was observed by Desai, C. J., that the Tribunal specified u/s 4 of the Act is not a Court but a persona designata.

21. Prior to these Division Bench decisions there had been a Single Judge decision of this Court by one of us in the case of Sundar Das and Others Vs. Lachman Das, answering the point before us in the negative, and it was held that the tribunal is not a Civil Court subordinate to the High Court for the purposes of Section 115 Civil Procedure Code, the Single Judge decision was overruled by the Division Bench case of Civil Revn. No. 602 of 1956, D/- 11-3-1958 (All) but was approved in the case of Lal Chand Vs. Bharat Nidhi Ltd., , which further held that the Tribunal constituted u/s 4 of the Act was not a "Court" but a persona designate.

22. The point referred to the Full Bench can therefore be split up into four parts, namely-

(a) Whether the Tribunal specified in Section 4 of the Act is a "Court" or a persona designata?

(b) If a "Court", whether the Tribunal is a "Civil Court"?

(c) If a "Civil Court", whether the Tribunal is subordinate to the High Court for the purposes of revisional jurisdiction u/s 115 Civil Procedure Code?

(d) Whether a revision lies from any order passed by the Tribunal?

23. The word "Court" has not been defined in the Act. It would, therefore, be relevant to notice the definition of the word "Court" available elsewhere. Stephen in his commentary on the Laws of England, 18th Edition, Vol. III, Ch. XXVI. pp 491 and 492 defines the word "Court" as the place where justice is judicially administered. According to Stephen generally in every civil judicial proceeding there must be at least three constituent parts, the actor, reus and judex; the actor or plain-tiff who complains of an injury done, the reus or defendant who is called upon to make satisfaction for it, and the judex or judicial power which is to examine the truth of the fact and to determine the law arising upon the fact and if any injury appears to have been done to ascertain and by its officers to apply the remedy.

24. Section 3 of the Indian Evidence Act (No. 1 of 1872) defines "Court" as including all judges and Magistrates and all persons except arbitrators legally authorised to take evidence. This definition has, however, been held not to be exhaustive, framed only for the purposes of the Evidence Act, and is not, therefore, to be extended where such an extension is not warranted.

25. Sections 19 and 20 Indian Penal Code define the word "Court" and the "Court of Justice" as given below:-

"19. The word "Judge" denotes not only every person who is officially designated as a Judge but also every person who is empowered by law to give, in any legal

proceeding, civil or criminal, a definitive judgment or a judgment, which, if not appealed against, would be definitive or a judgment which, if affirmed by some other authority, would be definitive, or who is one of the body of persons which body of persons is empowered by law to give such a judgment.

20. The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone or a body of Judges which is empowered by law to act judicially as a body when such Judge or body of Judges is acting judicially."

26. In the case of Maqbool Hussain Vs. The State of Bombay, the test of a judicial tribunal as laid down in the following passage from Cooper v. Wilson (1987) 2 KB 309 at p. 340, was approved by the Supreme Court-

"A true judicial decision presupposes an existing dispute between two or more parties and then involves four requisites:- (1) The presentation (not necessarily orally) of their case by the parties to the dispute; (2) If the dispute between there is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) If the dispute between them is a question of law the submission of legal argument by the parties, and (4) A decision which disposes of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law".

27. Maqbool Hussain Vs. The State of Bombay, was followed in the case of S.A. Venkataraman Vs. The Union of India (UOI) and Another, where a Constitution Bench of the Supreme Court again laid down that both finality and authoritativeness were the essential tests of judicial pronouncement.

28. The same principle was reaffirmed in the case of Brajnandan Sinha Vs. Jyoti Narain, , and it was upon a consideration of these very principles that a Commissioner appointed under the Public Servants (Inquiries) Act, 1850, was not held to be a "Court" within the meaning of the terms as used in the Contempt of Courts Act. The main reason for arriving at that conclusion was that the Commissioner under the aforesaid Act was not empowered to decide the matter briefly but was required only to submit his recommendations to Government which alone was competent to pass final orders.

29. In the case of Shri Virindar Kumar Satyawadi Vs. The State of Punjab, stress was laid on another essential requisite of a "Court" and it was held that the Returning Officer who decided on validity of nomination paper under sub-section (2) of Section 36 of the Representation of the People Act. 1951. is not a "Court". While arriving at that conclusion the Supreme Court observed:-

"What distinguishes a Court from a quasi- judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and

to adduce Evidence in proof of it.

And it also imports an obligation on the part of the authority to decide the matter on a consideration of the, evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court."

In the case of a "tribunal" constituted u/s 4 of the Act all the four requisites necessary for calling it a "Court" are to be found, as will be clear from the scheme of the Act.

30. Sub-section (12) of Section 2 of the Act defines the term "Tribunal" as follows:-

" "Tribunal" means any Civil Court specified u/s 4 as having authority to exercise jurisdiction under this Act".

Tribunals competent to exercise jurisdiction under the Act are constituted u/s 4 of the Act, which reads as follows:-

"The State Government may, by notification in the official gazette, specify any Civil Court or class of Civil Courts as the tribunal or tribunals having authority to exercise jurisdiction under this Act and may define the areas in which and the extent to which such jurisdiction may be exercised".

31. The Notification, No. 6454/VII-81-C-51, dated 24th December 1951. issued by the State Government specified Civil Judges (and in districts where there is no Civil Judge, the District Judge) to be the authority competent to exercise jurisdiction within their respective jurisdiction.

32. Chapter II of the Act (Sections 5 to 28) deals with debt adjustment proceedings. It is provided under that Chapter how the application is to be made, how the objections are to be filed by the respondents and how the claims are to be preferred by the creditors. Section 14 of the Act provides for the procedure on displaced creditor's petition and envisages a situation where a decree may be passed against displaced debtors. Section 23 provides for simplified procedure for the determination of any individual debt which does not exceed Rs. 5,000/-.

33. Chapter III (Sections 29 to 42) of the Act provides for reliefs, and it is laid down u/s 30 of the Act that no displaced person shall be liable to arrest or imprisonment in execution of any decree passed either before or after the commencement of the Act. Section 31 of the Act lays down that Section 60 CPC will apply with certain modifications. Variation of maintenance allowance, extension of period of limitation and curtailment of period of limitation for execution of certain decrees are provided for under Sections 34, 36 and 37 of the Act. Section 40 of the Act makes a general provision relating to appeals and provides that appeals shall lie to the High Court. Section 41 of the Act makes it

clear that where the subject-matter of the appeal relates to the amount of a debt and such amount on appeal is less than Rs. 5,000/- no appeal shall lie.

34. The last Chapter in the Act (Sections 43 to 59) deals with miscellaneous matters. Section 54 provides that Order 38 (arrest and attachment before judgment) of the First Schedule to the CPC will not apply to any proceeding under the Act. Section 50 lays down that the displaced debtor is not to be deemed an insolvent.

35. As regards execution of decrees. Section 28 of the Act provides that "it shall be competent for the Civil Court which has been specified as a Tribunal for the purposes of this Act to execute any decree or order passed by it as the Tribunal in the same manner as it could have done if it were a decree or order passed by it as a Civil Court."

36. In other respects the entire CPC has been made applicable to the proceedings under the Act, as will be clear from Section 25 of the Act which reads as follows:-

"Save as otherwise expressly provided in this Act or in any rules made thereunder, all proceedings under this Act shall be regulated by the provisions contained in the CPC 1908".

37. All the essential ingredients to constitute a Court being present, there can be no doubt that the Tribunal specified u/s 4 of the Act is a "Court".

38. The next question that arises for consideration is whether the aforesaid "Tribunal" is a "Civil Court" within the meaning of the Civil Procedure Code.

39. The term "Civil Court" has nowhere been defined in the Civil Procedure Code. The term "Civil Court" should, therefore, include all Courts exercising jurisdiction of a civil nature and governed by the Civil Procedure Code. The Tribunal constituted u/s 4 of the Act will satisfy both these conditions.

40. A perusal of the Act shows that Sub-section (12) of Section 2 of the Act defines the Tribunal as "any Civil Court..... The actual words used are "Tribunal means any Civil Court specified u/s 4 as having authority to exercise jurisdiction under the Act".

41. There should, therefore, be no difficulty in holding that the Tribunal constituted under Section 4 of the Act is a Civil Court. All that can be said against the Tribunal being a "Civil Court" is that

(i) it is not included in the hierarchy of Civil Courts commonly known as the Courts of Munsifs, Civil Judges, Judges, Small Causes and District Judges;

(ii) it has got its own separate name (i. e. Tribunal) and prima facie a separate entity; and

(iii) Section 28 of the Act goes to the length of stating that it will be open to the Civil Court constituted as Tribunal to execute any decree or order passed by it

as the "Tribunal" in the same manner as it could have done if it were a decree or order passed by it as a Civil Court

It may be said that Section 28 would have been unnecessary if the Tribunal had no separate entity, that is to say, not different from "Civil Court" specified u/s 4 of the Act as authority to exercise jurisdiction under the Act.

42. In my opinion there is no force in any of these contentions. The hierarchy of Courts (that of Munsif, Civil Judge, Judge, Small Causes, and District Judge) is not specified under the Civil Procedure Code. All that Section 3 CPC provides is that for the purposes of the CPC the District Court will be subordinate to the High Court, and every Civil Court of a grade interior to that of a District Court and every Court of Small Causes is Subordinate to the High Court and District Court. The hierarchy of Civil Courts (that of Munsifs, Subordinate --now Civil Judges, (Additional Judges and District Judges) is only to be found in the Bengal, Agra and Assam, Civil Courts Act, 1887. It is, therefore, clear that the Courts of Munsifs, Civil Judges, Judges, Small Causes, and District Judges, may not be the only Civil Courts for the purposes of Section 3 of the Civil Procedure Code.

43. The U. P. Agriculturists Relief Act, 1934, gives jurisdiction under the aforesaid Act to "Court" meaning thereby "Civil Court" (vide Sub-section (5) of Section 2) and including "the Collector" (Vide Section 10 of the aforesaid Act). It was held in the Full Bench case of *Shah Chaturbhuj Vs. Shah Mauji Ram*, that such Courts were "Civil Courts", In the Full Bench cases of 1942 All WR C. C. 325: (AIR 1942 Oudh 458) the Assistant Collector, empowered u/s 12 of the U. P. Agriculturists' Relief Act to decide cases relating to mortgages of the value of Rs. 500/- or less was held to be a Civil Court.

44. In the case of AIR 1944 Mad 139 it was held that the orders passed by the Sub-Collector and the District Collector (both revenue Courts) in a proceeding under sub-section (4) of Section 15 of the Madras Agriculturists' Relief Act, 1938, were to be considered as orders passed by a Civil Court.

45. I have, therefore, no hesitation in holding that the Tribunal constituted u/s 4 of the Act, even if it is held to have a separate entity of its own, is a Court of Civil judicature, i.e., a "Civil Court".

46. I, however am of the view that the Tribunal" constituted u/s 4 of the Act does not, in reality, have an entity different from that of the "Civil Court", specified as authority to exercise jurisdiction under the Act, that the specification u/s 4 of the Act merely involves that the authority of the Civil Court (Civil Judge or the District Judge, as the case may be) is enlarged so that it exercises jurisdiction under the Act also. In my opinion the word Tribunal" has been used and other phraseology has been employed merely for the purposes of drafting to avoid confusion, so that the decrees passed by the Civil Court exercising jurisdiction under the Act, which is a special Act applicable to displaced persons only, might be readily differentiated from its decrees passed under the common law of the land. That became necessary because certain special powers (e. g., of

reduction of debts of the displaced persons) and certain special restrictions (e. g., not executing the decree by the arrest of the debtor) are the special features of the Act.

47. In view of what has been said in the preceding paragraphs, I hold that a Tribunal constituted u/s 4 of the Act is a Civil Court.

48. The next point that arises for consideration is whether Tribunals constituted u/s 4 of the Act are subordinate to the High Court for the purposes of revisional jurisdiction u/s 115 Civil Procedure Code. This question may well be considered from two view points. My view is that the "Tribunal" is nothing but the Civil Court (the Court of the Civil Judge, or the District Judge, as the case may be) specified to exercise jurisdiction under the Act, and has no separate entity. The other view, which has not been accepted by me, may be that the Tribunal has a separate entity. Even then, as already held by me, it will be a "Civil Court" (though different from the Civil Court specified as Tribunal). In either case, the subordination of the Tribunal to the High Court will be there. In the first case, the subordination to the High Court is already there (vide Section 3 Civil Procedure Code) and is well recognised. In the second case also, the subordination of the Tribunal to the High Court will be there in view of the provisions of Section 3 Civil Procedure Code read with Preamble and Sub-section (4) of Section 2 CPC and Sub section (24) of Section 3 of the General Clauses Act.

49. The preamble to the CPC indicates that it is an Act to consolidate and amend the law relating to the procedure of the Courts of Civil Judicature. Sub-section (4) of Section 2 of the CPC defines a district Court as the principal Civil Court of original jurisdiction in a district, and Sub-section (24) of Section 3 of the General Clauses Act says that

"High Court used with reference to civil proceedings shall mean the highest Civil Court of appeal (not including the Supreme Court)".

50. A consideration of the aforesaid provisions makes it clear that Section 3 CPC must be interpreted as a comprehensive declaration as a matter of corollary of the subordination of all "Courts of Civil Judicature" to the District Court in a district area and to the High Court in the area of the State.

51. Three cases might be cited in support of what has been said in the preceding paragraphs. Two cases are under the Agriculturists' Relief Act (one of the U. P. Act No. 27 of 1934 and the other of Madras Act No. IV of 1938). In the U. P., Act of 1934 the term used for Courts exercising jurisdiction under the said Act is "Court" which term under Sub-section (5) of Section 2 of the aforesaid Act has been defined as "Civil Court" and u/s 10 of the same Act includes "the Collector". It was held in the case of 1942 All WR C. C. 325 : (AIR 1942 Oudh 438 FB). that the Assistant Collector empowered u/s 12 to decide cases relating to mortgages of the valuation of Rs. 500/- or less was a "Civil Court" and it was held that a revision application lay to the High Court against a decision of the appellate Court in such proceedings.

52. A similar view was expressed by the Allahabad High Court in the Full Bench case of Shah Chaturbhuj Vs. Shah Mauji Ram, in which it was held that a "Court" exercising jurisdiction under the provisions of the Agriculturists' Relief Act is subordinate to the High Court and applications in revision lie to the High Court from the orders of such Court.

53. The case of the AIR 1944 Mad 139 was under the Madras Agriculturists' Relief Act, 1938. It was held in that case that the orders passed by the "Sub-Collector" and the "District Collector" (Revenue Courts) in a proceeding under Sub-section (4) of Section 15 of the Madras Agriculturists' Relief Act, 1938, were to be considered as orders passed by a "Civil Court" and the revision application against such orders lay to the High Court. It was also observed that the subordination of all Courts of civil judicature to the District Court in a district area and to the High Court in a State is clearly there and that it will be very difficult to suppose that the Legislature in enacting as a part of the consolidating Code a provision dealing with the subordination of Courts in the hierarchy of Civil Courts in the country could possibly have left out of account an important class of Courts dealing with particular kind of civil proceedings as assigned to them by special or local laws.

54. The subordination of the Tribunal constituted u/s 4 of the Act to the High Court is also evident from the fact that u/s 40 of the Act appeals from the decisions of the Tribunal lie to the High Court. It was held in the Full Bench cases of Makhan Lal and Others Vs. Secy. of State and Ram Saran Tewari Vs. Raj Bahadur Varma and Others, that where appeals lie from the order of a particular Court or Tribunal to the High Court the subordination of that Court or Tribunal to the High Court is clearly envisaged.

55. I would, therefore, hold that the Tribunal is subordinate to the High Court for the purposes of exercising revisional jurisdiction u/s 115 Civil Procedure Code.

56. In view of the findings recorded above, revision application will lie to the High Court from an order passed under the Act by the Tribunal in cases of less than Rs. 5,000/- valuation that is to say, in cases in which no appeal lies, for the simple reason that

(i) the whole of the CPC (including Section 115) has been made applicable to the proceedings before the Tribunal, and

(ii) the jurisdiction to be exercised by the High Court u/s 115 CPC has not been barred by any provision of the Act.

57. It is true that Section 41 of the Act by providing that no appeal shall lie against an order of the Tribunal in cases of the valuation of Rs. 5,000/- or less, makes the order of the Tribunal passed in such cases final. However, that cannot have the effect of taking away the revisional jurisdiction of the High Court in such cases.

58. The Full Bench case of Shah Chaturbhuj Vs. Shah Mauji Ram, is a clear

authority on that point.

59. I would, therefore, answer the reference in the affirmative.

C.C. Mathur, J.

60. The following question has been referred for the opinion of this Full Bench:

"Is the Tribunal constituted under the Displaced Persons (Debts Adjustment) Act, 1951 (LXX of 1951) a Court subordinate to the High Court within the meaning of Section 115, Civil Procedure Code? Does a revision u/s 115 Civil Procedure Code, lie against an order passed by such a Tribunal?

61. The Opposite Party Mohan Singh preferred a claim for a sum of Rs. 3702/- with interest at 12 per cent. per annum against the applicant u/s 13 of the Displaced Persons (Debts Adjustment) Act, 1951 (hereinafter referred to as the Act). This claim was preferred before the Tribunal, Dehradun. On February 2, 1956, the Tribunal decreed the claim for a sum of Rs. 2,782/-. Against this decree the applicant preferred a revision u/s 115 CPC in this Court and this Court allowed the revision and remanded the case for retrial directing the consideration of an issue which had not been raised earlier. On August 13, 1958, the Tribunal passed a decree for a sum of Rs. 2782/- with pendente lite and future interest at 3 per cent. per annum and awarded proportionate costs. It is against this decree that the present revision has been filed before this Court.

62. At the hearing of this revision before a learned single Judge a preliminary objection was raised that the revision was not maintainable. Since there was conflict on this point between two Division Benches of this Court, namely. Civil Revn. No. 602 of 1956, D/-11-3-1958 (All), by a Bench consisting of Roy and B. Dayal, JJ. and Lal Chand Vs. Bharat Nidhi Ltd., decided by a Bench consisting of Desai, C. J. and Ramabhadran, J., the learned Single Judge referred the matter to a Division Bench and the Division Bench referred it to a Full Bench.

63. Before stating the points in controversy it is necessary to refer to certain provisions of the Act. Section 2(12) defines "Tribunal" to mean any Civil Court specified u/s 4 as having authority to exercise jurisdiction under this Act. Section 4 provides that the State Government may, by notification in the Official Gazette, specify any Civil Court or class of Civil Courts as the Tribunal or Tribunals having authority to exercise jurisdiction under this Act. On December 24, 1951. the State Government issued a notification No. 6454/VII-810-51 which is as follows:-

"In exercise of the powers conferred by Section 4 of the Displaced Persons (Debts Adjustment) Act, 1951, the Governor of Uttar Pradesh is pleased to direct that Civil Judges in their respective areas of jurisdiction and the District Judges in places where there are no Civil Judges, shall act as Tribunals having authority to exercise jurisdiction under this Act."

Chapter II of the Act provides for the procedure of making applications in connection with debt adjustment proceedings. Section 25 in Chapter II provides

that save as expressly provided in the Act or in any rules made thereunder, all proceedings under the Act shall be regulated by the provisions contained in the CPC 1908. Section 28, which is also in Chapter II, provides that it shall be competent for the Civil Court which has been specified as the Tribunal for the purposes of the Act to execute any decree or order passed by it as the Tribunal in the same manner as it could have done if it were a decree or order passed by it as a Civil Court.

Chapter III specifies the reliefs that can be granted under the Act. Some of the reliefs that can be granted are cessation of interest on and from August 15, 1947, exemption from arrest, relief in the matter of attachment of property, scaling down of debts and payment by instalments, Section 40 makes provision for appeals to the High Court from final decrees or orders of the Tribunal and from orders made in execution. Section 41 restricts the right of appeal to cases in which the subject-matter relates to an amount of Rs. 5,000/-and above. Section 53 provides that, subject to the other provisions contained in the Act, the Indian Limitation Act, 1908, shall apply to the institution of any proceeding under the Act, and, for the purpose of determining and computing the period of limitation prescribed by the Limitation Act in relation thereto, every application made under the Act shall be deemed to be a suit for the purpose of that Act. Section 54 provides that nothing contained in Order XXXVIII of the First Schedule to the Civil Procedure Code, 1908, relating to arrest and attachment before judgment, shall apply to any proceeding under the Act.

64. Since the decree passed by the Tribunal in the present case was for an amount less than Rs. 5,000/-, no appeal lay to the High Court and therefore the applicant filed an application to revision.

65. With regard to the preliminary objection as to the maintainability of the revision two points arise for consideration. The first is whether the Tribunal is a Court or a persona designata. If it is held that it is a persona designata, then the question referred must straightaway be answered in the negative; but if it is held that it is a Court, then a second question arises for consideration whether it is a Court subordinate to the High Court within the meaning of Section 115, Civil Procedure Code.

66. I shall first deal with the question whether the Tribunal is a Court or a persona designate. Two decisions have been brought to our notice in which it has been held that the Tribunal under the Act is not a Court but is a persona designata In *Lal Chand Vs. Bharat Nidhi Ltd.*, Desai C. J., has observed as follows:

"The provisions of the Act show that it was not the intention of the Legislature that the Civil Judge should exercise the jurisdiction conferred by the Act as a Civil Judge, but to create a new Court, though to be presided over by a Civil Judge. It contains provisions such as Sections 26, 28, 40 and 53 suggesting that he was meant to exercise the jurisdiction over the cases coming under the Act not as a Civil Judge but as a persona designata".

With respect, I am unable to agree with this view. In the first instance, it is "Civil Courts" and not Civil Judges, which have been invested with the authority to function as Tribunals under the Act. In the second place, the Tribunals are required, by the provisions of the Act, to act as Courts and not in their personal capacities as Civil or District Judges

67. In *Parkash Textile Mills Ltd. Vs. Mani Lal and Others*, J., (as he then was) in his minority judgment observed as follows:

"The Tribunal under the Adjustment Act is not a Court but merely, a Tribunal with many trappings of a Court deciding cases, not according to application of legal principles to ascertain facts but by considerations of policy also, as will be seen from the scheme of the Act which I shall discuss at another place. It has been entrusted with the duty of adjudicating a dispute of a peculiar kind and has extraordinary powers.

And this Tribunal can do what (sic) do, namely, it can add to or alter the terms or conditions of a contract and vary the effect of decrees."

With respect, I am unable to agree with these observations. As I read the provisions of the Act, the Tribunal is required to act in accordance with the principles laid down in the Act itself and it is not to be influenced by any considerations of policy; nor do I find that it is entrusted with any peculiar kind of disputes or that it has extraordinary powers. There has been a good deal of debt legislation the provisions whereof empower Courts to go behind contracts between the parties and even to re-open decrees passed by competent Courts. The mere fact that powers of this nature have been conferred upon the Tribunal is no indication of the fact that it is not a Court but is a *persona designata*.

68. In *The Central Talkies Ltd., Kanpur Vs. Dwarka Prasad*, the Supreme Court cites with approval the following definition of *persona designata* as given in *Oaborn's Concise Law Dictionary*:

"A *persona designata* is a person who is 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".

The Supreme Court further cites with approval the following observation made by Schwabe, C. J. in *Parthasaradhi Naidu v. Koteswara Rao* AIR 1924 Mad 561 (FB):

"*Persona designata* are persons selected to act in their private capacity and not in their capacity as Judges".

Sections 2(12) and 4 of the Act, read with the notification issued by the State Government u/s 4, unmistakably show that no individual person has been appointed as a Tribunal but a class of Civil Courts have been appointed Tribunal under the Act. It further appears from the provisions of the Act that the Tribunals have not been selected to act in their private capacity but to act in their capacity as Civil Courts.

69 Learned Counsel for the opposite party has relied upon a decision of the Supreme Court in *Hanskumar Kishanchand Vs. The Union of India (UOI)*, in support of the proposition that even a Court may, in certain circumstances act as a *persona designata*. There is no real anti- thesis between the expressions "*persona designata* and "Court"; in other words, even a Court may be a *persona designata*. Whether he is a Court or not depends upon his powers and the functions which he has to discharge. In legal phraseology "*persona designata* means "a person indicated in a statute or legal instrument nor by name but either by official designation or as one of a class. In some statutes special powers Have been delegated to certain officers of the Court who are referred to therein by their official designation. The question which is to be asked in such cases is whether the person so designated has been invested with powers as a Court or otherwise. If he is invested with powers as a Court, the necessary implication is that die jurisdiction of the Court is enlarged and its jurisdiction is subject to all the incidents of such jurisdiction: see *National Telephone Co. Ltd v. Postmaster General* 1913 AC 546. If the powers are conferred on him not as a Court, he is a mere *persona designata* and his decision will not be subject to the incidents of such jurisdiction as the Court ordinarily exercises. One has to look to the entire provisions of the statute 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.

70. As already observed, it is cleat from the provisions of the Act that the Tribunals are required to hear the matters as a Court and not in any personal capacity. In fact, since under the Act it is the "Civil Courts" which have been constituted the Tribunals, it will hardly be apt to say that they could act in their own personal capacity. I am accordingly of the view that the Tribunals under the Act are Courts and not *persona designata*.

71. The Tribunal having been held to be a Court, the second question that arises for consideration is whether it is a Court subordinate to the High Court within the meaning of Section 115 Civil Procedure Code. This question resolves it-self into two parts namely (1) whether the Tribunal is a Court as contemplated, in the CPC i. e., whether it is a Civil Court and (2) whether it is subordinate to the High Court.

72. With respect to the first part of this question our attention has been drawn to only one decision which proceeds on the view that the Tribunal is not a Court within the meaning of the Civil Procedure Code. In *Sundar Das and Others Vs. Lachman Das, V. Bhargava, J.*, observed as Follows:-

"A Tribunal exercising powers under Act 70 of 1951 is neither a district Court nor a Civil Court nor a Court of Small Causes Consequently, such a tribunal is not a Court subordinate to the High Court for the purposes of the CPC The only Courts which are subordinate to the High Court for the purposes of the Civil Procedure Cod are those enumerated in Section 3 of the CPC and such other Courts as may have been made subordinate to the High Court for the purposes of the CPC by

any other enactment."

Taking this view V. Bhargava, J., came to the conclusion that no revision lay from a decree or order of the Tribunal under the Act. With respect, I am unable to subscribe to the view taken by V Bhargava, J., that the Tribunal is not a Civil Court. It may be mentioned here that this decision was overruled by a Division Bench of this Court in Civil Revn. No. 602 of 1956, D/- 11-3-1958 (All). The only argument in favour of holding that the Tribunal is not a Civil Court is that Sections 4 and 28 make a distinction between the Civil Court and the Tribunal.

Section 4 provides that the Civil Court specified shall act as the Tribunal and Section 28 pro-vides for the execution, by the Civil Court, of the decrees passed by it as the Tribunal. These sections do lend some support to the argument. But this is offset by Section 2(12) which defines a Tribunal as the Civil Court specified u/s 4. Again, it is said that if the Tribunal was a Civil Court it would not have been necessary to enact Section 25 which makes the CPC applicable. Against this it can be said that if the Tribunal was not a Civil Court it would not have been necessary to enact Section 54 which makes the provisions of Order XXXVIII CPC relating to arrest and attachment before judgment inapplicable to proceedings under the Act. These provisions of the Act do not provide any sure guide for deciding whether the Tribunal is a Civil Court or not.

73. In my opinion the Tribunal under the Act is a Civil Court within the meaning of Section 3, Civil Procedure Code. This section provides for the subordination of Courts and reads thus:

"For the purposed of this Code, the District Court is subordinate to the High Court) and every Civil Court of a grade inferior to that of a District Court arid every Court of Small Causes subordinate to the High Court arid District Court:"

The enumeration of Courts in this section is not exhaustive. The true teat for determining whether the Tribunal is a Civil Court within the meaning of Section 3 or not is whether the matters which come before it are of a purely Civil Nature relating to the civil rights of the parties. The view which I am taking is supported by a decision of their Lordships of the Privy Council in 9 Ind App 174 (PC). In that case their Lordships had to decide whether a Collector who had passed a decree for rent as a Rent Court under the Bengal Rent Act (X of 1859) could transfer the decree for execution to another district. The provisions of the Rent Act gave him no such powers: Under the CPC of 1859 (VIII of 1859) the "Civil Courts" had such power, and the question arose whether the Rent Court was a "Civil Court" within the meaning of the Code. Various provisions of the Rent Act were referred to in support of the contention that the Rent Courts were not Civil Courts within the meaning of the Code.

Rejecting this contention and holding that the Kent Courts were "Civil Courts" within the meaning of the CPC their Lordships observed:

""It must be allowed that in those sections there is a certain distinction between

the Civil Courts there spoken of and the Rent Courts established by the Act, and that the Civil Courts referred to in Section 77, and the kindred sections mean Civil Courts exercising all the powers of Civil Courts, as distinguished from the Rent Courts which only exercise powers over suits of a limited class. In that sense there is a distinction between the terms; but it is entirely, another question whether the Rent Court does not remain a Civil Court in the sense that it is deciding on purely civil questions between persons seeking their civil rights, and whether being a Civil Court in that sense, it does not, fall within the provisions of Act VIII of 1859. It is hardly necessary to refer to those provisions in detail, because there is no dispute but that, if the Rent Court is a Civil Court within Act VIII of 1859, the collector has u/s 284, the power of transferring his decrees for execution into mother district."

I am of the opinion that the expression "Civil Court" must receive the same meaning in Section 3 of the present Code. The provisions of the Act show that the Tribunal has to give its decision on purely civil question between persons seeking their civil rights and must be held to be a Civil Court Referring to this decision of the Privy Council, Meredith, I., has observed in *Arjun Rautara Vs. Maharaja Krishna Chandra Gajapati Narayan Deo*,

"There is no getting over the fact that, where in the corresponding Code of 1859 the same expression is used, in generally speaking, the same contexts, the Privy Council has said that the Rent Courts established by the Rent Act of 1859 must be held to fall within Section 284 of Act 8 of 1859, the expression used in Section 284 being "Civil Court", So far as I can see by comparing the two Codes the expression "Civil Court" is used in exactly the same sense in both the Code of 1859 and that of 1908, and it is to be noted that in both cases the Preamble describes the Act as relating to the Courts of civil judicature".

It is therefore clear that the test laid down by the Privy Council for determining what is a "Civil Court" in respect of the CPC of 1859 holds good even under the present Civil Procedure Code.

74. In AIR 1944 Mad 139 the question arose for consideration whether the orders passed by the Sub-Collector and the District Collector under the Madras Agriculturists' Relief Act 1938 were open to revision u/s 115, Civil Procedure Code. A Division Bench of the Madras High Court held that proceedings before the Sub-Collector and District Collector were civil proceedings, that their Courts were Civil Courts for purposes of Section 3, Civil Procedure Code, and that their orders were revisable u/s 115 Civil Procedure Code. In the course of his judgment, Patanjali Shastri, J. (as he then was), referring to Section 3 CPC observes:-

"To say that the Collector's Court is a "Civil Court" within the meaning of this section will be a simple and complete solution of the problem. In our judgment, it is also the correct solution."

The learned Judge then refers to the Preamble to the Civil Procedure Code, 1908,

which indicates that it is an Act to consolidate and amend the law relating to the procedure of "Courts of Civil Judicature", to Section 2(4) of the Code which defines a "District Court" as the principal Civil Court of original jurisdiction in a District and to Section 3(24) General Clauses Act which says that "High Court" used with reference to civil proceedings means the highest Civil Court of appeal and says:

"From these provisions it seems to us that Section 3 of the Code must be interpreted as a comprehensive declaration, as a matter of corollary, of the subordination of all "Court of Civil judicature" to the District Court in a district area and to the High Court in a provincial area. There can be little doubt that in the present case the Sub-Collector and the District Collector were hearing and determining disputes of a civil nature and we see no sufficient reason why the proceedings before them should not be regarded as "civil proceedings" and their Courts as "Civil Courts" for the purposes of Section 3."

The learned Judge observed that this conclusion was supported by the decision of the Privy Council in 9 Ind App 174 (PC). In view of the decision of the Privy Council above referred to, it is clear, that the Tribunal acting under the Act and deciding civil disputes with respect to civil rights in accordance with the procedure prescribed by the Act itself and by the CPC is a "Civil Court" within the meaning of Section 3 of the Civil Procedure Code.

75. The fact that the Tribunal under the Act is a "Civil Court" within the meaning of Section 3, Civil Procedure Code, is itself sufficient to hold that it is a Court subordinate to the High Court. Apart from this, the fact that an appeal, u/s 40, lies to the High Court from decrees and orders passed by the Tribunal also indicates that the Tribunal is a Court subordinate to the High Court. Desai, J., (as he then was) in Phul Kumari Vs. State and Another, held that "the subordination contemplated by Section 115 is the subordination not arising out of the subjection to appellate or supervisory jurisdiction but the subordination arising out of a statutory provision". In Lal Chand Vs. Bharat Nidhi Ltd., , Desai, C. J., has reaffirmed his view. In 1962 Ram Saran Tewari Vs. Raj Bahadur Varma and Others, a Full Bench of this Court has disapproved of the view taken by Desai, C. J., and it has reaffirmed the earlier view of this Court expressed in the case of Makhani Lal and Others Vs. Secy. of State that a Court from whose decision an appeal lies to the High Court is a Court subordinate to the High Court within the meaning of Section 115, Civil Procedure Code.

76. I have accordingly come to the conclusion that the Tribunal under the Act is a Court and not a persona designata, that it is a "Civil Court" within the meaning of Section 3, CPC and that it is a Court subordinate to the High Court within the meaning of Section 115 Civil Procedure Code. I would, therefore, answer the question referred as follows:-

"The Tribunal constituted under the Displaced Persons (Debts Adjustment), Act, 1951 (LXX of 1951) is a Court subordinate to the High Court within the meaning

of Section 115, CPC and a revision lies u/s 113 CPC against an order passed by such a Tribunal,"

77. BY THE COURT : In accordance with the view of the majority, the question referred to the Full Bench is answered as follows:-

"The Tribunal constituted under the Displaced Persons (Debts Adjustment) Act, 1951 (LXX of 1951) is a Court subordinate to the High Court within the meaning of Section 115, CPC and a revision lies u/s 115 CPC against an order passed by such a Tribunal."