

(1968) 08 P&H CK 0031
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 877 of 1966

Messrs. Kharati Ram Bansi Lal and others	APPELLANT
Vs	
Shmt. Radha Rani and another	RESPONDENT

Date of Decision : 01-08-1968

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13

Citation : (1969) 2 ILR (P&H) 374

Hon'ble Judges : P.C. Jain, J; D.K. Mahajan, J

Bench : Division Bench

Advocate : H.L. Sarin, A.L. Bahri and A.L. Bahl, for the Appellant; Bahadur Singh, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Mahajan and P.C. Jain, JJ.—This is a petition for revision against the order of the Rent Controller declining to stay the proceedings in eviction application u/s 13 of the East Punjab Urban Rent Restriction Act, 1949.

2. The petitioner Shrimati Racha Rani widow of Saib Dayal brought a petition under the East Punjab Urban Rent Restriction Act for ejectment against Rajesh Kumar and others, the sons of Bansi Lal son of Sarb Dayal. The stand taken up by Rajesh Kumar and others was that they were the owners of the premises and that Shrimati Radha Rani had no right, title or interest in the same.

3. On the 29th of June, 1966, an application was filed before the Rent Controller that as there was a dispute on the question of title to the property between the parties, and complicated questions of law and fact were involved, the proceedings in the eviction application be stayed, and the petitioner Shrimati Radha Rani be ordered to get her title established in the Civil Court.

4. The Rent Controller declined this request and decided to proceed with the petition on the ground that the question as to whether there was a relationship of landlord and tenant between the parties could be determined by him.

5. Against this decision the present petition for revision was preferred in this Court. This petition came up for hearing before Grover, J. (as he then was) and the learned Judge by his order, dated January 23, 1967, directed that this petition be heard by a larger Bench, in as much as certain observations made in a number of Single Bench decisions to which a reference will be made later may lend support to the view that whenever a question of title is raised in eviction proceedings, the Rent Controller is bound to stay his hands and ask the parties to resort to a decision thereon in the Civil Court. This observation was made by the learned Judge in view of certain observations made by the Supreme Court in *Om Parkash Gupta v. Dr. Rattan Singh* (1963) 65P.L.R. 643. It is thus that the matter has been placed before us.

6. The real question that requires determination is, is the Rent Controller debarred from determining the question whether there is a relationship of landlord and tenant between the petitioner and the respondent when the petitioner seeks the eviction of the respondent u/s 13 of the East Punjab Urban Rent Restriction Act, when the respondent specifically denies that relationship, and either sets up his own title to the premises or denies the title of the landlord to the premises? It may be mentioned that so far as this Court is concerned it has consistently taken the view that under the Rent Act the Rent Controller has no jurisdiction to decide questions of title. His jurisdiction is a very limited jurisdiction and is confined to those matters which he is called upon to determine under the Act. In *Budh Ram and another v. Raghbar Dayal* C.R.514 of 1001 Civil Revision No. 514 of 1961, decided by Dulat J. on October 4, 1962, the learned Judge observed as follows :

It is clear from the frame of the East Punjab Urban Rent Restriction Act that the tribunals set up under the Act are tribunals of summary jurisdiction and the only matters they are empowered to deal with are relations between landlords and tenants. No question of title is contemplated by the Act to be finally decided by such tribunals, and the Appellate Authority in the present case was in error in thinking that because it was a tribunal of special jurisdiction, its findings were final. As it happens, however, the particular view expressed by the Appellate Authority is of no great consequence. What is important is that the real dispute between the parties has been and still is whether the disputed shops are the property of one party or the other. The two tribunals below came to different conclusions because they took different views of the evidence which does not consist of any title deed as such or of any rent-notes, but of a number of entries in various documents. The inferences of the Tribunals below are inferences from other facts, all of them touching the question of title. I am clear in my mind that such a complicated question of title, as has arisen in the present case, cannot be satisfactorily decided by the Rent Controller or the Appellate Authority under the East Punjab Urban Rent Restriction Act, and, as it is clear that, that is the only question, the proper course for the Rent Controller might have been to hold his hand and refuse to proceed until the interested party had gone to a civil court and obtained a decision establishing his title. It is inherent in the very

constitution of the Tribunals under the East Punjab Urban Restriction Act that they are not competent to deal with any question of title in a satisfactory way. The petitioners before the Rent Controller, being the respondents in this Court, that is, Raghbar Dayal and others, claimed to be the owners of the disputed shops. So do the present petitioners Budh Ram and Prabhu Dayal. I have no doubt that this is not a matter which can be finally settled by the Rent Controller or the Appellate Authority and I, therefore, think it useless to go into that question. The "proper order in this case, and Mr. Gupta agrees to this and so does Mr. Sarin, would be that the order of eviction against the present petitioners be set aside and the petition of Raghbar Dayal and others be ordered to remain pending before the Rent Controller till they, that is. Raghbar Dayal and others, agitate the question of title in a competent Court and obtain a decision.

It will appear from the above observations that the learned Judge made these observations in a case where the Rent Controller proceeded to decide the question of title and did not confine himself to the only question he was called upon to decide, namely, whether there was a relationship of landlord and tenant between the parties. It is also significant that this decision was given after the parties had led evidence. It was not a case where at the very outset the Tribunal refused to determine the real question that it had jurisdiction to determine, namely, whether there was a relationship of landlord and tenant merely on the ground that the tenant had denied the existence of such a relationship. One can conceive of cases such as the one where there is a registered deed of lease and in the face of that registered deed of lease, the Tribunal would not be called upon to determine any other controversial question and on the basis of the same could come to the conclusion that a relationship of landlord and tenant existed between the parties.

7. In Hari Ram and another v. Dalip Singh and another C. R. 701 of 1961, Civil Revision 701 of 1961, decided by Chief Justice Falshaw on November 30, 1962, the learned Chief Justice refused to decide the question whether the relationship between the parties was that of landlord and tenant because the tenants had taken the plea that they were in occupation of the premises for more than forty years without paying any rent. It was observed by the learned Chief Justice:

It is certainly true that the execution of the rent deed in 1911 has not been satisfactorily established and the tenants have denied the landlord's title and claimed to have become owners by long adverse possession. The case certainly appears to be one in which the rights of the parties can better be determined by a suit for possession instituted in an ordinary Civil Court rather than by proceedings in the Court of the Rent Controller under the Act. I, therefore, decline to interfere.

It will also appear from this case that the; Rent Controller had recorded the evidence and then come to a finding that there was no relationship of landlord and tenant, and in revision the learned Chief Justice thought it proper that as disputed question of title had arisen, it was better that it be settled by a Civil

Court. It will appear that this decision is also in line with the decision of Dulat. J. in Budh Ram's case (supra).

8. In Mahi Dass v. Nagar Mal (1965) 67 P.L.R. 35, the learned Chief Justice (Falshaw) in reversing the decision of the Appellate Authority and restoring that of the Rent Controller observed as follows:

In deciding the matter in favour of the landlord, the learned Appellate Authority has expressed disbelief of the plea of the tenant that the mortgage was redeemed by the end of first year in the manner alleged on the ground that this plea was not specifically taken in the written statement and appeared to be an after-thought. In my opinion the learned Appellate Authority was quite wrong in embarking on a decision as to whether the mortgage had been redeemed or not, and the learned Rent Controller was quite right in holding that that could only be decided if Nagar Mal instituted a suit based on the mortgage. In more than one cases it has been held by this Court that Rent Controllers would do well to confine themselves to deciding matters under the Act and not deciding rival claims to title in property under the guise of ejectment application under the Act. This has been said by Dulat. J. in Budh Ram and another v. Raghbar Dayal and others (supra), decided on the 4th of October, 1962, and by me in Hari Ram v. Dalip Singh and another (supra), Civil Revision No. 701 of 1961 on the 30th of November, 1962. Again this decision is in line with the decision in Budh Ram's case (supra). In Ganesh Mal v. Motan Das S. C.R.772 of 1965, Civil Revision No. 772 of 1935, decided on January 10, 1937, the same view was taken as in the cases cited above.

9. Therefore, one thing is clear from the above cases that only after the examination of the evidence, the Rent Controller or the Appellate Authority or this Court came to the conclusion that the relationship of landlord and tenant could not be established without determining the question of title. In none of these cases, the Rent Controller proceeded to stay the proceedings merely because a question of title had been raised. It now seems to be firmly established that the Rent Controller has the undoubted jurisdiction to decide whether there is the relationship of landlord and tenant between the parties where an application for eviction is made in that Court. It is another matter that while dealing with that question the Rent Controller finds that the question that he has the Jurisdiction to settle can only be settled only after determining the complicated question of title. In any event even if he settles for his own purposes, the question of title, it will not be of any consequence, and in an appropriate case the Appellate Authority or this Court may quash that order leaving the parties to get that question of title settled in a Civil Court. What I have said above is fully in consonance with the consistent trend of decisions of this Court.

10. What is the extent of the jurisdiction of the Rent Controller in the matter of eviction has been elaborately examined by the Supreme Court in Om Parkash Gupta v. Dr. Rattan Singh and another(supra), a case under the Delhi Rent

Control Act of 1958 So far as the eviction matters are concerned, the provisions of this Act, the Punjab Act and Bihar Act are in pari materia. I have, therefore, thought it fit to set out the relevant passages from this judgment for facility of reference -

The Act postulates the relationship of landlord and tenant, which must be a pre existing relationship. The Act is directed to control some of the terms and incidents of that relationship. Hence, there is no express provision in the Act empowering the Controller, or the Tribunal, to determine whether or not there is a relationship of landlord and tenant In most cases such a question would not arise for determination by the authorities under the Act. A landlord must be very ill advised to start proceedings under the Act, if there is no such relationship of landlord and tenant. If a person in possession of the premises is not a tenant, the owner of the premises would be entitled to institute a suit for ejectment in the Civil Courts, untrammelled by the provisions of the Act. It is only when he happens to be the tenant of premises in an urban area that the provisions of the Act are attracted If a person moves a Controller for eviction of a person on the ground that he is a tenant who had, by his acts or omissions, made himself liable to be evicted on any one of the grounds for eviction, and if the tenant denies that the plaintiff is the landlord, the Controller has to decide the question whether there was a relationship of landlord and tenant. If the Controller decides that there is no such relationship the proceeding has to be terminated without deciding the main question in controversy, namely, the question of eviction It on the other hand the Controller comes to the opposite conclusion and holds that the person seeking eviction was the landlord and the person in possession was the tenant, the proceedings have to go on.

It is true that the Act does not in terms authorise the authorities under the Act to determine finally the question of the relationship of landlord and tenant. The Act proceeds on the assumption that there is such a relationship. If the relationship is denied, the authorities under the Act have to determine that question also because a simple denial of the relationship cannot oust the jurisdiction of the tribunals under the Act. True, they are tribunals of limited jurisdiction the scope of their power and authority being limited by the provisions of the statute. But a simple denial of the relationship either by the alleged landlord or by the alleged tenant would not have the effect of ousting the jurisdiction of the authorities under the Act, because the simplest thing in the world would be for the party interested to block the proceedings under the Act to deny the relationship of landlord and tenant. The tribunals under the Act being creatures of the statute have limited jurisdiction and have to function within the four corners of the statute creating them. But within the provisions of the Act, they are tribunals of exclusive jurisdiction and their orders are final and not liable to be questioned in collateral proceedings like a separate suit or application in execution proceeding. In our opinion, therefore, there is no substance in the contention that as soon as the appellant denied the relationship of landlord and tenant, the jurisdiction of the authorities under the Act was completely ousted.

It will be clear from the above observations that there is no warrant for the proposition that the Rent Controller must stay his hands and refuse to determine; whether the relationship of landlord and tenant exists between the parties to an application u/s 13 of the East Punjab Urban Rent Restriction Act. The observations of the Division Bench in *Muni Lal v. Chandu Lal* (1068) 70 PLR 473, also support this conclusion.

11 Mr. H. L. Sarin, who appears for the petitioner, contends that this decision (*Muni Lals case*) is not correctly decided because it is based on an overruled decision of the Patna High Court and also runs counter to the following observations of the Supreme Court in *Om Parkash Gupta's case*:

Thus, any order passed by the Controller, either u/s 15 or other sections of the Act, assumes that the Controller has the jurisdiction to make the order, i.e., to determine the issue of relationship. In this case, when the Controller made the order for deposit of the arrears of rent due u/s 15(1), and on default of that made the order under subsection 7 of section 15, striking out the defense, the Controller must be deemed to have decided that the appellant was a tenant. Such a decision may not be *res judicata* in a regular suit in which a similar issue may directly arise for decision. Hence, any orders made by a Controller under the Act proceed on the assumption that he has the necessary power to do so under the provisions of the Act, which apply and which are meant to control rents and evictions of tenants.

In *Muni Lals case*, the question as to the scope of the jurisdiction of the Rent Controller was examined with respect to two matters - (1) regarding the question of ownership, that is title; and

(2) regarding the question of existence or non existence of a tenancy within the meaning of the Rent Act. It was with regard to the determination of the latter question that it is argued that the decision of the Rent Controller thereon would be *res judicator* in subsequent proceedings. This is a matter on which we are not called upon to pronounce. But it appears to me that the Bench decision would need reconsideration because the view, that has been taken on this matter, was based on a decision of the Patna High Court in *Baijnath Sao Vs. Ram Prasad*, which was reversed by a Full Bench of that Court in *Kishun Sah Vs. Harinandan Prasad Sah and Others*, Precisely the same question, that was determined by this Court in *Muni Lal's case* fell for determination before the Patna High Court. It may be mentioned that the provisions of the Patna Act, the Delhi Act and the Punjab Act regarding the finalities attaching to the orders of the Rent Controller under the Act are virtually the same. The following passage from the decision of the Full Bench clearly runs counter to the view taken by this Court :

A tribunal of limited jurisdiction has no power in the first type of cases but has power in the second type of cases to decide the jurisdictional facts. No power has been given to the Controller under the Act to decide finally and conclusively the question of existence of the relationship of landlord and tenant between the

parties or the question as to whether the premises occupied by the tenant is a building. These are jurisdictional facts, and, with regard to these facts, the Controller or his higher authorities cannot possibly be held to have exclusive jurisdiction. The provision relating to the finality of their decision in Sec. 18 of the Act can only apply to their decision relating to matter, which are within their exclusive jurisdiction. It follows, therefore, that a decision of the Collector as to existence of the relationship of landlord and tenant between the parties is not final, and its correctness is liable to be examined by the Civil Court. It clearly is a case of the first type described by Lord Esher.

In a Bench decision of this Court in *Baijnath Sao v. Ram Prasad*(supra), the question which arose for consideration was whether the order of eviction passed by the Commissioner on an application under Sec. 11 of the Act could be challenged in the Civil Court on the ground that he had no jurisdiction to pass the order because there was no relationship of landlord and tenant between the parties. C. P. Sinha J., who has delivered the Judgment of the Bench, has observed :

In my view, if a Court or a tribunal with limited jurisdiction is given authority under law to decide a particular matter but the decision of that particular matter depends upon certain preliminary findings of fact, that tribunal must have jurisdiction to decide those preliminary points of fact and the Civil Court will have no jurisdiction to go into the correctness or otherwise of the findings of the tribunal in regard to those preliminary questions of fact.

With great respect, I am unable to agree with the opinion expressed in this observation. As I have already stated a tribunal of limited jurisdiction has no power to decide the preliminary facts finally unless that power has been expressly conferred upon it by the legislature to this extent, therefore, that decision is overruled.

Moreover, the observations of the Supreme Court in *Om Parkash Gupta's* case also seem to be in line with the decision of the Patna High Court.

12. As already said, this is not a matter which we are called upon to decide; and if the question, that has been settled in *Muni Lal's* case, arises again, it will have to go to a Full Bench because, in our opinion, the decision of the Division Bench runs counter to the Supreme Court decision; and, in any event, the decision, on which it is based, was overruled by the Full Bench of that Court. It is a pity that the decision of the Full Bench was not brought to the notice of the learned Judges who decided *Muni Lal's* case.

13. SO far as the present case is concerned, the petitioner averred in the petition that he was the owner of the premises and the respondents were the tenants. The respondents in their reply set up title in themselves and denied that the plaintiff was the landlord. An application was made to the Rent Controller that he should not decide the" question of title and to refer the parties to a Civil Court and stay his hands in so far as the application under the Act was concerned. The

Rent Controller refused to stay his hands and has said that he will decide the question whether there is the relationship of landlord and tenant between the parties. In our view, this is a correct decision by the Rent Controller. He has not taken the stand that he will decide the question of title. That is a matter which will primarily fall for decision by the Civil Courts of the land. Therefore, Shri Sarin's contention, that the proceedings before the Rent Controller should not proceed, is untenable.

14. After giving the matter our careful consideration, we are of the view that the mere fact, that a tenant denies the relationship of landlord and tenant will not oust the jurisdiction of the Rent Controller to determine that question. If while determining that question, the Rent Controller comes to the conclusion that he cannot decide that question without determining the complicated question of title, he will, in that event stay his hands. But if he can, without deciding the complicated question of title, determine the sole question, which falls within his Jurisdiction, namely, whether there is the relationship of landlord and tenant between the parties, he will proceed to decide that question and would not be deterred by the fact that the tenants seek to raise the complicated question of title. This, in our view, is the correct approach to the problem; and the decided cases support this view.

15. For the reasons recorded above, we see no force in this petition; the same fails and is dismissed with no order as to costs.