
(1976) 07 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 360 of 1976

Shri Ram Dutta Gupta

APPELLANT

Vs

The Financial Commissioner, Haryana, Chandigarh

RESPONDENT

Date of Decision : 28-07-1976

Acts Referred:

Haryana Urban (Control of Rent and Eviction) Act, 1973 — Section 13

Citation : (1976) RCR(Rent) 806

Hon'ble Judges : Rajendra Nath Mittal, J;K.S. Tiwana, J

Bench : Division Bench

Advocate : N.C. Jain, for the Appellant; H.L. Sarin for Mr. M.L. Sarin and Mr. H.N. Mehtani, D.A.G., Haryana, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Tiwana, J.—The facts leading to the filing of this petition are that Ram Datta, Gupta Petitioner, is a tenant under Respondent No. 2 in a building, Respondent No. 2 filed an application u/s 13 of the Haryana Urban (Control of Rent and Eviction) Act (Haryana Act No. 11 of 1973), hereinafter referred to as the Act, Before the Rent Controller, Gudgeon, to evict the Petitioner from the building The Petitioner raised preliminary objections in his reply to the application filed before the Rent Controller. One of the objections was that a similar application had been earlier dismissed by the Rent Controller on the same grounds and for that reason the present application required a summary dismissal. After considering the arguments, the learned Rent Controller, vide his order dated April 29, 1974, rejected, the preliminary objections. The matter was taken in revision before the Financial Commissioner Haryana (Respondent No. 1). The only controversy raised by the Petitioner before the Financial Commissioner has been summarized by the latter in paragraph 2 of his order (copy Annexure P/1) as "the only point urged before roe in the this case by the counsel for the present Petitioner-tenant is that the Rent Controller has committed an impropriety and illegality by disposing of his "Petitioner tenant"s preliminary

objections in a summary manner, without framing necessary issues regarding these preliminary objections". Respondent No. 1 after hearing the parties and discussing the relevant case law cited before him came to the conclusion that a Rent Controller functioning under the Act is to devise his own procedure and is not bound to frame issues to cover the points of controversy between the parties in the matter before him. The Financial Commissioner refused to quash the order dated April 29, 1974, of the Rent Controller, Gurgaon. The Petitioner has now approached this Court under Articles 226/227 of the Constitution of India for issuing a writ of certiorari and quashing the order of Respondent No 1, dated November 10, 197(sic), dismissing his revision, and issuing a direction to the Rent Controller, Gurgaon, for framing the issues in the case.

2. Before the Motion Bench, Shri N. C. Jain, Learned Counsel for the Petitioner, stated that no application was filed before the Rent Controller Gurgaon, asking him to frame the issues in the case but since this matter was agitated before Respondent No. 1 and his order on the point of non-framing of issues has been challenged in this petition, we propose to decide it.

3. The only point involved in this petition and requiring decision by this Court is whether a Rent Controller acting under the Act is bound to frame issues on the points on which the parties are at dispute in the proceedings pending before him. The ancillary questions also arise whether the Rent Controller appointed under the Act is a civil Court and the provisions of the CPC (hereinafter referred to as the Code) apply to the proceedings in cases instituted before the Rent Controller and whether these proceedings are covered by Section 141 of the Code.

4. The provisions of the Act are in pari materia with the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act. No. III of 1949), which prior to the coming into force of the Act was applicable in Haryana. Shri N. C. Jain, on behalf of the Petitioner, has argued that the proceedings before the Rent Controller functioning under the Act are proceedings of civil nature and in the cases decided under the East Punjab Act III, the provisions of the Code have been held to be applicable to the proceedings before these authorities.

5. Section 2(b) of the East Punjab Act III, defines the "Controller" as under:-

2. In this Act, unless there is anything repugnant in the subject of context-

(a) xx xx xx

(b) "Controller" means any person who is appointed by the State Government to perform the functions of a Collector under this Act.

Section 15 (1) of the East Punjab Act III of 1949 makes a provision for appointing the Appellate Authority for hearing appeals against the decisions and order passed by the Rent controllers under the Act. Section 15(1) of the Act for the purpose of reference is quoted as under:-

15(1). The State Government, may, by a general or special order, by notification,

confer on such officers and authorities as it may think fit, the powers of appellate authorities for the purposes of this Act, in such area or in such classes of cases as may be specified in the order.

The above quoted provisions show that the State Government has reserved the right to appoint Rent Controllers and Appellate Authorities. Officers who are not working as judicial officers can be appointed as Rent Controllers and Appellate Authorities. Under the East Punjab Act III, the Subordinate Judges having jurisdiction of the area in which the premises to which that Act applies have been appointed as the Rent Controllers and the District Judges have been designated as Appellate Authorities. This was also the position in Haryana prior to the repeal of the East Punjab Act, No. III and coming into-force of the Haryana Act. In Haryana, the Sub Divisional Officers (Civil) have been appointed as the Rent Controllers and the Deputy Commissioners have been appointed as the Appellate Authorities under the Act. The Rent Controllers and the Appellate Authorities are the creation of the Act and have a separate entity than the civil courts as envisaged by the Code. Similar matter came up for consideration in *Messrs. Pitman's Shorthand Academy v. Messrs. B. Lila Ram and sons* 1950 P.L.R. 1, wherein it was held by a Full bench of this Court:

It is by itself sufficient to indicate that it was not the intention of the Legislature to create a Court of law but to appoint a *persona designata* who would be entrusted with certain specific functions. We thus find that many of the attributes of Court of law are not to be found in the Controller or the "Appellate Authority.

6. In *Manohar Lal L. Nadarchand Vs. Mohan Lal Gian Chand*, . it was held as follows:-

But a Rent Controller cannot, in my opinion, be regarded as a Civil Court although he has been entrusted with a number of functions which are analogous to those performed by judicial officer. He is only a *persona designata* who has been brought into existence for the specific purpose of performing certain functions savouring of a judicial character but which are in reality only quasi-judicial. The fact "that he exercises a discretion or judgment quasi-judicial in its nature in the performance of his duties cannot bring him into the category of judicial officers.

He can at best be regarded as a quasi-judicial officer and the proceedings taken by him partake of the nature of a judicial proceeding. He has the same powers of summoning and enforcing the attendance of witnesses and compelling the production of evidence as are vested in a Court under the Code of Civil Procedure, and every order made by him under certain sections of the statute is required to be executed by a civil court as if it were a decree of that Court. He is under a statutory obligation to follow the procedure prescribed by law, but he is not bound to follow the technical rules of procedure which apply to trials in a Court of law .

7. The Rent Controller thus is not a civil court. It does have certain trappings of a

Court of law ; like the powers to summon and enforce the attendance of the witnesses ; to apply certain principles of *res judicata*, and its order is to be executed like a decree. The Rent Controller is a *persona designata* under the Act and acts as a quasi-judicial tribunal to decide matters covered by the Act alone.

8. It is not disputed that the decision of the Rent Controller on dispute between the landlord and the tenant and other matters covered by the Act is final and cannot be questioned in any other Court, including a civil Court. This is a restraining effect of the Act on the Courts of Civil jurisdiction to examine a matter decided by a Rent Controller. The legislature at the time of enacting the Act exercised the choice to apply only certain provisions of the Code and not its whole procedure to the proceedings under the Act. By enacting Section 16 it invested the Rent Controller exercising powers under the Act with the same powers for summoning and enforcing the attendance of witnesses and compelling their production as are vested in a civil Court under the Code. In Section 14 of the Act certain principles of *res-judicata* were given recognition for application to the rent cases. It was further provided in Section 18 of the Act that the order made under the Act shall be executed like a decree by a civil Court. Rule 7(1) of the Haryana Urban Rent Restriction Rules, 1972, prescribes the procedure for a Rent Controller to summon parties. Rule 7(2) provides that he shall record evidence of the parties and witnesses examined on either side in the manner laid down in the Code for recording evidence. This rule touches a part of Order XVII of the Code which relates to the recording of the evidence of the parties and their witnesses. The Act which is a Code in itself on the matters covered by it and the rules framed thereunder has limited the application of the provisions of the Code to the cases under it. Only the above referred provisions are specially adopted for application and the rest of the provisions of the Code have been excluded by implication. The Act and the rules framed under it thus answer the question of the application of the Code to cases tried under the Act.

9. Shri N. C. Jain argued that in a number of cases decided by this Court under the East Punjab Act, No. III, the provisions of the Code have been extended to the authorities acting under the East Punjab Act III of 1949. The earliest case on the point is *Manohar Lal's ease* (*supra*). In that case, the Rent Controller refused to set aside the *ex-parte* proceedings taken against a party. The question of application of the provisions of the Code was directly involved in this case. Bhandari, C. J., in that case observed as under:-

He can at best be regarded as a quasi judicial officer and the proceedings taken by him partake of the nature of a judicial proceedings. He has the same powers of summoning and enforcing the attendance of witnesses and compelling the production of evidence as are vested in a Court under the Code of Civil Procedure, and every order made by him under certain sections of the statute is required to be executed by a civil Court as if it were a decree of that Court. He is under a statutory obligation to follow the procedure prescribed by law, but he is not bound to follow the technical rules of procedure which apply to trials in a

Court of law.

He is expected to observe the elementary and fundamental principles of a Judicial enquiry to comply with the rudimentary requirements of fair play, and to safeguard the fundamental constitutional-rights of the citizen. In the absence of an express provision in the statute or in a statutory rule, he is at liberty to devise his own procedure in ascertaining the facts on which he is to act or decide.

The next case cited on behalf of the Petitioner in *Mathra Das v. Om Parkash*, (1957)59 PLR 45. in which it was held by Bhandari, C.J, as under:-

I entertain no doubt in my mind that in the absence of a restraining provision a Rent Controller or a District Judge acting under the provisions of the Rent Restriction Act is at liberty to follow any procedure that he may choose to evolve for himself so long as the said procedure is orderly and consistent with the rules of natural justice and so long as it does not contravene the positive provisions of the law. The elementary and fundamental principles of a judicially enquiry should be observed but the more technical forms discarded.

In this case a direction, after the above observations, was given to the District Judge to implead the sons of the deceased landlord, who had died after the passing of an order of eviction in his favour, and to hear the case in accordance with law. With similar observations in *Civil Revision No. 787 of 1969, Gurbux Rai v. Rukmani Devi C. R. 787 of 1969. Civil Revision No. 936 of 1967, Shanti Parshad v. Bawa Niranjana Singh C. R. 936 of 1967., Civil Revision No. 310 of 1971 Bishan Dan etc. v. Kehar Singh C. R. 310 of 1971., and Goverdhan Dass v. Sodhi Dial Singh 1969 RCR 938.,* it was held that the provisions of the Code do not strictly apply to the proceedings of cases under East Punjab Act III. The tenor of all these judgments referred to above is that a Rent Controller is a *persona designata* who has to devise his own procedure and follow it, so long as it remains orderly and does not contravene the positive provisions of law, rules of natural justice and fundamental principles of judicial enquiry.

10. When the parties contest their case before a Rent Controller asserting claims and counter-claims which are recorded in the form of pleadings, if any of the parties want to delete any ground taken up or to add a new ground left out of the proceedings due to inadvertence or any other cause which does not alter or completely change the nature of the case, there should be no hinderance in the way of the Rent Controller to allow it irrespective of the fact whether Order VI, Rule 17 of the Code is applicable or not. Similarly, a Court or Tribunal, which has passed an order trying the case expert, whether permitted by any statute, rule, etc. or not, in the absence of any restraining power, is presumed to have inherent power to set aside those expert proceedings as the principles of natural justice and fair play will require the undoing of a thing done to the detriment of any party. The impleading of any necessary party or any legal representatives, in whose absence just and effective adjudication of the matter in dispute is not possible, can always be permitted in the interest of justice and fair-play. Rlying

on Guranditta Ram v. Murari Lal (1974) 76 PLR 519 (sic)., Shri N C. Jain argued that the implication of the judgment are that issues in rent cases have to be framed by the Rent Controllers. The facts of this case as given in para 1 are as follows:-

This is an alleged sub-tenant's petition under Sub-section (5) of Section 15 of the East Punjab Urban Rent Restriction Act (3 of 1949) (hereinafter called the Act) for revision of the order of Shri M. L. Singla, Rent, Controller, Fazilka. dated March 24, 1973, permitting the landlord-Respondent to produce evidence in rebuttal after the conclusion of the evidence of the tenant and the subtenant inspite of the fact that the burden of proof of all the issues framed in the application for ejectment is on the landlord-Respondent and the onus probandi(sic) of no issue is on either the tenant or the sub-tenant.

R.S. Narula, J. (as His Lordship then was) held as under:-

Howsoever wide may appear to be the power vested in a Rent Controller to coin out his own procedure which is not inconsistent with any provision of the Act, such power has to be carefully hedged (as was done by Bhandari C. J.) within certain limits. The limitations placed on that power are:-

- (i) the procedure adopted by him must be orderly and consistent with the rules of natural justice.
- (ii) the procedure followed by the Rent Controller should not contravene the positive provisions of the law, and
- (iii) the procedure adopted by the Rent Controller must be consistent with elementary and fundan ental principles of a judicial inquiry.

The basic principles underlying provisions of the CPC like Order 18, Rule 3 are in my opinion, bedrock of a proper judicial inquiry and the Rent Controller is bound to observe the same in order to have an orderly and fair trial of the causes before him. The departure from that well established procedure by the Rent Controller was, in my opinion, neither legal nor proper.

11. shri N. C. Jain, Learned Counsel for the Petitioner stated that in Guranditta Ram's case (supra) a case under the Rent Act, Order XVIII, Rule 3 of the Code was described as bedrock of a proper judicial inquiry. According to him it could not be so unless issues were framed by the Rent Controller 1 cannot persuade myself to agree with Shri N. C. Jain, Learned Counsel for the Petitioner, to draw such an inference from the observations of R. S. Narula, J. (as His Lordships then was). The East Punjab Act III of 1949 does not envisage the application of the Code to the cases under it. If for the sake of just and orderly decision the Rent Controller chooses to apply the provision of the Code like the framing of issues then he cannot do any act inconsistent with the provisions applied. In Guranditta Ram's case the Rent Controller had framed the issues and in those circumstances those observations were made by R. S. Narula, J. Moreovre no rules have been framed in the Punjab under the East Punjab Act III of 1949 as

has been done in Haryana. In Haryana, the rules under the East Punjab Act III of 1949 were framed in 1972 which by virtue of Section 22 of the General Clauses Act continue to be in force and are deemed to have been made under the Act. Rules 7 and 8 are relevant to appreciate this argument and are reproduced as under:-

7(1). When an application under the Act is presented to the Controller he shall fix the date, time and place at which the enquiry in respect of the application will be held and send a notice along with a copy of the application to each Respondent in the Form "A" appended to these rules.

(2) The Controller shall give to the parties a reasonable opportunity to state their case. He shall also record the evidence of the parties and witnesses, examined on either side in the manner laid down in the CPC for recording evidence.

(3) After consideration of the oral and documentary evidence which may be produced by the parties, pass orders on the application.

In any application or proceeding pending before the Controller or the appellate authority, as the case may be, if he thinks fit to do so for the purpose of elucidating any matter in dispute or of determining the fair rent of any building or rented land either personally or through a Commissioner, inspect any building or rented land.

The heading of Rule 7 is "procedure to be adopted by the Rent Controller." Rules 7 (1) concerns the giving of the notice to the parties and fixing the dates, etc. Rule 7 (2) has two parts. The first part more or less is on the lines of Order XVIII Rule 2 of the Code. The second part of this sub-rule embraces the provisions of Order XVIII, Rule 4 onwards till Rule 17. Order XVIII, Rule 3 of the Code can be utilised only if the Rent Controller had framed issues. If he has not done so, then Rule 3 of Order XVIII of the Code will not be attracted. A study of Rule 7 (2) of the Haryana Urban Rent Restriction Rules, 1972 shows that the whole of Order XVIII of the Code has not been adopted by it. From a study of the Haryana Act, the rules framed thereunder, and from Guranditta Ram's case (supra) even a far fetched inference cannot be derived to support the argument of Mr. N. C. Jain, counsel for the Petitioner, that the provisions of Order XVIII Rule 3 of the Code have to be applied in a rent case and the issues are necessary to be framed.

12. Rights of a landlord and tenant are civil rights, according to Shri N. C. Jain, counsel for the Petitioner. He further argued that by analogy the proceedings in which these rights are asserted or denied can be said to be civil proceedings. He has cited a decision of this Court in *Kishan Kumar v. Baldev Singh*, (76 P. L. R. 468) wherein B R. Tuli, J. held as under ; -

Even if the proceeding under the East Punjab Urban Rent Restriction Act are not strictly governed by the provisions of the Code of Civil Procedure, u/s 141 of the Code the said provisions can be made applicable to the proceeding before the Rent Controller and the Appellate Authority under the Rent Restriction Act, as

they are civil proceedings. It cannot, therefore, be said that the provisions of Order 22 are not applicable to the petition before the Rent Controller or the appeal before the Appellate Authority under that Act.

In *Sarat Chander Tripathi v. Hiran Bala Debi* 1971 R.C.J. 200. the judgment delivered by the Orissa High Court under the Orissa House Rent Control Act (31 of 1958) it was held that "there is no dispute that the proceedings under the above said Act is a civil proceedings." By virtue of Section 141 of the Code, these proceedings, according to Shri N C. Jain, counsel for the Petitioner, are governed by the Code. Section 141 of the CPC is as follows:-

The Procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

Section 16 of the Act and the rules framed thereunder (quoted-above) give sufficient indication that the procedure in the Code about suits is not extended to the proceedings under the Act. As held supra on the basis of *Messrs. Pitman's(sic) Shorthand Academy's* case and *Manohar Lal Nadarchand's* case a Rent Controller is not a civil Court but is only a parsona designata created under the Act to perform specific functions. in view of this it cannot be described as a Court of civil jurisdiction u/s 141 CPC to facilitate the application of the provisions of the Code. In *Nathulal Vs. Collector, Sawai, Jaipur* , which was a case under the Jaipur Rent Control Order 1947, having similar provisions as the Haryana Act, similar view has been taken. With due respect to the learned Judges deciding *Kishan Kumar's* and *Sarat Chander Tripathi's* cases, we are to say that these decisions are not in conformity with the language of Section 141, CPC Code, and the views expressed by them are not in accord with the Full Bench decision of this Court in *Messra Pitman's Shorthand Academy's* case. We are in respectful agreement with the decision in *Messrs Pitman's Shorthand Academy's* case and *Manohar Lal L. Nadarchand's* case and cannot accept the views expressed in *Kishan Kumar's* and *Sarat Chander Tripathi's* cases.

13. There is no scope for the argument that by an analogy the provisions of the Code automatically extend even to the proceedings conducted by the Rent Controllers when the Act by implication prohibits the application of those to the proceedings.

14. There is no prohibition in the Act forbidding the Rent Controller or the Appellate Authority to adopt any provision of the Code which is relevant or necessary for an orderly and just decision. If he elects to frame issues to narrow down the controversy between the parties, his decision cannot be called in question. In *Guranditta Ram's* case (supra) the Kent Controller had framed the issues and in those circumstances Order XVIII Rule 3 of the Code was held to be applicable because the Rent Controller cannot digress from the procedure of the Code after adopting it. Even under the Code if the parties knowing each other's case fully, lead evidence, then the absence of the framing of issues does not vitiate the proceedings. In view of the above discussion, I am of the view that

the Rent Controller is at liberty to formulate his own procedure so long as it does not violate the fundamental principles of judicial inquiry or the principles of natural justice

15. Framing of issues in matters where civil rights are involved, is always conducive for the proper administration of justice. Issues always narrow down the points of controversy between the parties. Irrelevant matter and inconsistent pleas are clipped off by the framing of issues and the parties know and understand each other's case in a better way. Even the Presiding Officers of the Court or Tribunals can control the recording of the evidence Which has to be led strictly in the light of the issues and they can better appreciate and understand the case before them. Only that evidence is allowed which is relevant to the issues framed. Cases do arise in civil Courts where the right to begin evidence is contested between the parties. Onus probandi is always germane in contested cases. The normal rule is that he who invokes the aid of law must first prove his case. Cases also arise in which this rule has to be relaxed. When, however, Defendant or either litigant party instead of denying what is alleged against him, relies on some new matter, which, if true, is an answer to it the burden of proof then changes sides, and he in turn is bound to show prima facie case. The Defendant or the Respondent may depose certain facts from his special knowledge which the opposite party in view of the principles of natural justice has a right to rebut. Such situations can and do arise in cases before the Rent Controllers also in which the points in controversy are complicated. Framing of issues on the points in controversy in such cases are helpful not only to the parties but to the Presiding Officers who can settle the dispute about the right of the party to begin evidence and avoid confusion. In short, the framing of issues is always a better method of arriving at a just and proper decision. The framing of issues, however, is not compulsory for the Rent. Controller exercising jurisdiction under the Act as the Code, except the parts adopted, does not apply to these proceedings.

16. For the foregoing reasons, we find no merit in this petition and dismiss the same, but leave the parties to bear their own costs.

R.N. Mittal, J.

17. I agree.