application can only be filed against a final order. Previously the matter was dropped and not pursued further. There is, thus, no merit in this contention as well.

In view of what I have said above, this petition fails and is dismissed but with no order as to costs.

K.S.K.

REVISIONAL CIVIL

Before D. Falshaw, C. J. and H. R. Khanna, J.

BAIJ NATH,—*Petitioner*

versus

FIRM MONGA LAL MURARI LAL,—*Respondent.*

Civil Revision No. 674 of 1963.

April 26, 1966

East Punjab Urban Rent Restriction Act (III of 1949)—Object and purpose of—S. 4—Fair rent—Tenant in earlier proceedings for fixation of fair rent accepting an amount as fair rent which is in excess of fair rent as determined under S. 4—Whether barred from making second application for fixation of fair rent.

Held, that the East Punjab Urban Rent Restriction Act, like other Acts on the same lines, is intended mainly for the protection of tenants and for the purpose of preventing the exploitation of tenants by landlords who want to take advantage of the apparently universal shortage of accommodation. The Act protects tenants both from ejectment and from the liability to pay excessive rents.

Held, that a tenant, cannot be allowed to accept an amount as the fair rent which is in excess of the fair rent as it would be determined under the provisions of section 4 of the Act. It is to be borne in mind that the rent is not for the tenant, but for the premises and once the fair rent is determined, it will remain the fair rent for any tenants who succeed the present incumbent. For this reason a compromise arrived at in the previous proceedings for fixation of fair rent would not bar a second application by the tenant for fixation of the fair rent, if in the earlier proceedings the fair rent was not judicially determined in accordance with the provisions of the Act.

Baij Nath *v.* Firm Monga Lal Murari Lal (Falshaw, C.J.)

Petition under section 15(4) *of East Punjab Urban Rent Restriction Act III of* 1949, *and section* 115, *Civil Procedure Code, for revision of the order of Shri Kul Bhushan (Appellate Authority), District Judge, Rohtak, dated the* 10*th June,* 1963, *affirming that of Shri M. L. Jain, Rent Controller, Rohtak, dated the* 29*th May,* 1962, *allowing an increase of* 37½ *per cent on the basic rent, and fixing the fair rent of the shop in dispute at Rs* 660 *P.A. from the date of order, i.e.,* 29*th May,* 1962, *and leaving the parties to bear their own costs.*

P. C. JAIN, ADVOCATE, for the Petitioner.

D. N. AWASTHY AND RAJ KUMAR AGGARWAL, ADVOCATES, for the Respondent.

JUDGMENT

FALSHAW, C.J.—This is a landlord's revision petition on a matter of fixation of the fair rent of the premises in dispute under the provisions of section 4 of the East Punjab Urban Rent Restriction Act.

It so happens that the premises in suit, a godown in the town of Rohtak, were not only in existence in 1938, but were then occupied by the same firm which is the present tenant. The contractual rent was Rs. 2,000.00 per annum and the tenant applied to the Rent Controller under section 4 of the Act for fixation of the fair rent in 1961, alleging that the rent for this godown and other similar godowns in the neighbourhood in 1938-39 was only Rs. 40.00 per mensem. The learned Rent Controller found that this was established, and in accordance with the provisions of section 4 he held that the basic rent was Rs. 480.00 per annum and, therefore, the fair rent, with the permissible addition of 37½ per cent was Rs. 660.00. This was upheld by the learned Appellate Authority.

The only complication which has led to the reference of the case to a Division Bench was that previously the tenant had filed a similar application which had been dismissed on the basis of an agreement between the parties that the tenant would pay an annual rent of Rs. 2,000.00 subject to the rebuilding of the godown by the landlord. The question which arose was whether the decision in the previous petition operated as a bar to a fresh petition either by way of *res judicata* or estoppel. There were a number of decisions of this Court to the effect that the decision of a previous petition by way of compromise was not a bar to the filing of a fresh petition by

the tenant, but there were also decisions to the opposite effect, notably in *Sat Parkash* v. *Parkash Chand*, Civil Revision No. 648 of 1960, decided on the 6th of April, 1961, by G. D. Khosla, C.J., which decision was followed by Shamsher Bahadur, J., in *Hindu Rao* v. *Shori Lal* (1). In deciding that the same tenant cannot bring a fresh petition after reaching an agreement with the landlord in the previous petition, though it might be open to a subsequent tenant to do so, the learned Chief Justice chiefly relied on the decision of Dixit and Vyas, JJ., in *Popatlal Ratansey* v. *Kalidas Bhavan* (2). In that case the learned Judges held that in proceedings under the Bombay Rent Control Legislation, 1947, arising out of a dispute as to standard rent, a consent decree by which the standard rent of certain premises is fixed would operate as *res judicata* in a subsequent application by the same tenant for fixing the standard rent for the same premises. The basis of the decision was the proposition that there is a fundamental distinction which cannot be overlooked between an agreement which is embodied in a lease and the decision which is embodied in a consent decree since the agreement which is embodied in a lease is purely and simply an agreement as to rent while on the other hand what is embodied in a consent decree is the decision of the Court as to standard rent and such a decision or judgment of the Court would estop the tenant from contending in a subsequent application under the Act that the standard rent to which he had previously agreed was not the fair rent.

In the first place the relevant provisions in the Bombay Act for the fixation of standard rent are not by any means on all fours with those of the Punjab Act, which requires the basic rent to be determined first by determining what was the rent of the same or similar premises in the year 1938, and then the fair rent to be fixed by making the prescribed addition thereto.

It is perfectly clear in the present case that no attempt whatever was made to determine the fair rent in this manner in the previous proceedings and in fact there was no determination of the fair rent at all since the tenant agreed to pay Rs. 2,000.00 per annum on the condition of the godown being reconstructed, and with all due respect to the views of the learned Judges of the Bombay High Court I am of the opinion that no question of *res judicata* can arise where a matter has not been judicially determined.

(1) I.L.R. (1962) 2 Punj. 108.
(2) A.I.R. 1958 Bom. 1.

I am also of the opinion that there can be no question of estoppel in a case of this kind. The Punjab Act, like other Acts on the same lines, is intended mainly for the protection of tenants and for the purpose of preventing the exploitation of tenants by landlords who want to take advantage of the apparently universal shortage of accommodation. The act protects tenants both from ejectment and from the liability to pay excessive rents. In matters of ejectment this Court has held that a tenant cannot be ejected by consent except if he admits that one or more of the grounds on which ejectment can be ordered exists, and in my opinion equally a tenant cannot be allowed to accept as the fair rent a rent which is in excess of the fair rent as it would be determined under the provisions of section 4 of the Act. It is to be borne in mind that the rent is not for the tenant, but for the premises and once the fair rent is determined it will remain the fair rent for any tenants who succeed the present incumbent.

If any authority is needed for the proposition that there can be no estoppel against the provisions of a statute it is to be found in *L. Prem Parkash* v. *Pt. Mohan Lal and another* (3), a decision of a Full Bench consisting of Harries, C.J., and Din Mohammad and Abdul Rahman, JJ. In that case a defendant had consented to a decree against him which violated the provisions of section 60(1), Civil Procedure Code, the protection of which he sought when execution proceedings were taken against him. One of the learned Judges' observations is directly against part of the basis of the decision of the Bombay High Court referred to above, since they held that no doubt ordinarily a Court in execution cannot go behind a decree, but where a decree is passed in consequence of a compromise and gives effect to the will of the parties without any adjudication by the Court itself, the contract cannot be said to have any greater sanctity in spite of the fact that the command of a Judge has been added to it, and the contract in cases of this kind must be taken to have been adopted with all its incidents, and so as it is open to a party to plead that a contract was void or unenforceable, it would be equally open to him to urge that the contract, although embodied in a decree, still remains void and unenforceable. It was further held that if an agreement is found to be in contravention of a statute or against public policy, a party cannot be held estopped from pleading or proving facts which would render the agreement void *ab initio* and the fact that a party may thereby be enabled to take advantage of his

(3) A.I.R. 1963 Lah. 268.

own wrong cannot be allowed to militate against the mischief which would otherwise follow, and there can be no estoppel against pleading or relying upon a statute. In my opinion these principles would clearly apply to a case like the present one and I accordingly consider that a compromise arrived at in the previous proceedings for fixation of fair rent would not bar a second application by the tenant, and the decision on the question of basic and fair rent of the premises in suit is not now in question. The revision petition must, therefore, be dismissed, but the parties may be left to bear their own costs.

H. R. KHANNA, J.—I agree.

R.S.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

VISHRAM PARSHAD,—*Petitioner*

versus

THE COLLECTOR OF CUSTOMS, CENTRAL EXCISE COLLECTORATE AND ANOTHER,—*Respondents.*

Civil Writ No. 2289 of 1965

April 28, 1966

Customs Act (LII of 1962)—Ss. 110(2) and 124(a)—Show cause notice under section 124(a) not issued within six months of the seizure of the goods—Customs Authorities—Whether bound to return the goods—S. 110(2) proviso—Whether ultra vires *Article 14, Constitution of India.*

Held, that if show-cause notice under section 124(a) of the Customs Act, 1962, is not issued within six months of the seizure of the goods, the Customs Officers are not bound to return the goods to the person from whose possession they had been seized, because under the proviso to sub-clause (2) of section 110 the period of six months, within which the said notice has to be given, can be extended by the Collector of Customs on sufficient cause being shown and if the notice was given during the extended period the Customs authorities could retain the goods with them till the final decision of the matter by them after obtaining a reply to the show-cause notice from the person concerned.