

site can only be restored on reimbursement of the forfeited sum as penalty. These two cannot be kept apart on the bare reading of section 8-A. In the second place, the misuser was attributed to the tenant and the proceedings of resumption had to be directed against him to deprive him of the user of the site without disturbing the obligations of the landlord and the tenant as to the payment of rent etc. *inter se*. The proceedings of resumption and forfeiture are required to be undertaken with regard to a tenanted premises by giving an opportunity of being heard to both the tenant and the landlord and it is to be determined as to whose possession is to be resumed, the actual from the tenant, or the actual and legal both from the tenant and landlord respectively, on fixation of fault, and on whom, and in what proportion is reimbursement to be made of the forfeited money.

(13) As a sequel to the aforesaid observations, this petition deserves acceptance and the same is hereby allowed by quashing the impugned order of the Chief Commissioner, Annexure P. 4, and the precedent orders of the Chief Administrator and the Estate Officer. Since legal questions involved were not free from difficulty there would be no order as to costs.

D. S. Tewatia, J.—I agree.

H.S.B.

Before R. N. Mittal, J.

OM PARKASH SAINI (MASTER WARRANT OFFICER No. 48460)—
Petitioner

versus

DALJIT SINGH,—*Respondent.*

Civil Revision No. 669 of 1980.

April 3, 1980.

Air Force Act (45 of 1950)—Section 32—East Punjab Urban Rent Restriction Act (III of 1949)—Sections 4, 13, 15 and 16—Benefit of section 32—Whether available to Air Force Personnel in matters pending before the Rent Controller—Rent Controller and the Appellate Authority under the Rent Act—Whether 'Courts' within the meaning of section 32.

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Held, that to constitute a Court in the strict sense of the term, an essential condition is that the Court should have apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement. The Rent Controller and the appellate authority under the Act have been empowered to decide the dispute between the landlord and the tenant after recording the evidence and hearing the parties or their counsel. Under section 4 of the Rent Act, the Rent Controller can determine the fair rent and under section 13 he can order the eviction of the tenant. Under section 16 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 1908. He also decides questions of fact as well as of law and has the jurisdiction to decide the matters mentioned in the Rent Act. Further more, an appeal has been provided for against the order of the Rent Controller to the appellate authority under section 15(1) of the Rent Act and a revision against the order of the appellate authority to the High Court under section 15(5) of the Act. The Rent Controller and the appellate authority are, therefore, 'Courts' within the meaning of section 32 of the Air Force Act, 1950 and in case a personnel of the Air Force files a certificate from a proper Air Force authority in terms of that section, the Rent Controller is bound to decide the case expeditiously as contemplated in that section. (Paras 4, 5 and 8).

Petition under section 15(v) of Act, III of 1949 of the East Punjab Urban Rent Restriction Act for revision of the order of the Court of Shri N. K. Bansal, Rent Controller, Chandigarh, dated the 6th March, 1980 dismissing the application.

H. L. Sarin, Senior Advocate with M. L. Sarin and R. L. Sarin, Advocates, for the Petitioner.

Ram Lal Luthra, Advocate, for the Respondent.

JUDGMENT

Rajendra Nath Mittal, J.

1. The only question that arises for determination in the present petition is whether the Rent Controller is a Court within the meaning of Section 32 of the Air Force Act, 1950 (hereinafter referred to as 'the Act').

2. Briefly the facts are that the petitioner, who is owner of House No. 3377, Sector 35-D, Chandigarh, filed an application for

ejection of the respondent from that house before Mr N. K. Bansal, Rent Controller, Chandigarh. He later obtained a certificate from the proper Air Force authority in terms of Section 32 of the Act and made an application before the Rent Controller for giving priority in the disposal of his case. He therein stated that he had been granted leave for the purpose of prosecuting the case with effect from February 25, 1980 to April 19, 1980 and consequently prayed that the hearing of the case be expedited and concluded within the period of his leave as contemplated by the aforesaid section. The application was contested by the respondent who *inter alia* pleaded that the Rent Controller under the East Punjab Urban Rent Restriction Act (hereinafter referred to as the 'Rent Act') was a *persona designata* and not a Court and, therefore, the provisions of Section 32 of the Act were not applicable to the proceedings before him. The learned Rent Controller came to the conclusion that the Rent Controller was not a Court for the purpose of Section 32 of the Act. He, consequently, dismissed the application. The petitioner has come up in revision against that order to this Court.

3. Section 32 of the Act relates to priority in respect of Air Force personnel's litigation. It reads as follows:—

“32. *Priority in respect of Air Force personnel's litigation.*—

- (1) On the presentation to any Court by or on behalf of any person subject to this Act of a certificate, from the proper air force authority, of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such Court, the Court, shall, on the application of such person, arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for.
- (2) The certificate from the proper air force authority shall state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for.

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| (3) | * | * | * | * | * |
| (4) | * | * | * | * | * |
| (5) | * | * | * | * | *.” |

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It is common knowledge that in most of the cases, proceedings in the courts are protracted and it takes much of the time of the litigants before their disputes are settled. It has also been seen that in view of large number of cases pending in Courts, long adjournments have to be given by them. In almost all the cases the defendants want to further prolong the proceedings by legitimate or illegitimate means. The persons serving in the defence services are greatly handicapped in case their cases are decided in routine as they are unable to attend to them in view of the exigencies of the service. In order to reduce the hardship of the Air Force personnel, Section 32 has been incorporated in the Act so that their cases may be decided expeditiously.

4. The word 'Court' has not been defined in the Act. It has, however, been interpreted by the courts from time to time. In *Cooper v. Wilson and others* (1), the words 'judicial' and 'quasi-judicial' were defined as follows:—

“A true judicial decision pre-supposes 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 them 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 an application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law. A quasi-judicial decision equally presupposes an existing dispute between two or more parties and involves (1) and (2), but does not necessarily involve (3) and never involves (4). The place of (4) is in fact taken by administrative action, the character of which is determined by the Minister's free choice.”

There are several judicial pronouncements of the Supreme Court on this point. In *Brajnandan Sinha v. Jyoti Narain* (2), the question

(1) 2 K.B. 309.

(2) A.I.R. 1956 S.C. 66.

arose as to whether a Commissioner appointed under the Public Servants (Inquiries) Act (37 of 1850) was a Court within the meaning of the term as used in the Contempt of Courts Act, 1952. Bhagwati, J., speaking for the Court, observed that in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement. Reference in this regard may also be made to *Virinder Kumar Satyawadi v. The State of Punjab* (3). The following observations of their Lordships of the Supreme Court may be read with advantage:—

“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.”

5. The Rent Controller under the Rent Act has been empowered to decide the disputes between the landowners and the tenants after recording evidence and hearing the parties or their counsel. Section 4 authorises him to determine the fair rent and Section 13 to order eviction of the tenants. Under Section 16 he has got 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, 1908. He decides questions of fact as well as questions of law between the parties to the litigation. He has also exclusive jurisdiction to decide the matters mentioned in the Rent

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Act. Thus he has all the trappings of a Court. It will not be out of place to mention that an appeal has been provided against the order of the Rent Controller to the appellate authority under section 15(1) and a revision against the order of the appellate authority to the High Court under section 15(5) of the Rent Act. It is thus clear that a hierarchy has been provided to hear appeals and revisions. It may be highlighted that the revisions lie to the High Court. Therefore, the Rent Controller fulfils all the tests of a Court, as laid down in various cases mentioned above.

6. In the aforesaid view I find support from a Full Bench decision of this Court in *Smt. Vidya Devi, widow of Ramji Dass v. Firm Madan Lal Prem Kumar* (4). The question in that case was as to whether the appellate authority under the Rent Act had the right to issue notice under section 479-A, Criminal Procedure Code, to show cause why complaint under section 193, Indian Penal Code, be not filed against the petitioner who had committed perjury before the Rent Controller. Bal Raj Tuli, J., speaking for the Bench, observed that the Rent Controller and the appellate authority decide in a judicial manner the proceedings that are taken before them. From that attribute of the Rent Controller and the appellate authority, it followed that they were not only Courts but Courts of justice as defined in section 20 of the Indian Penal Code. He further held that the appellate authority had the right to issue the notices to the petitioner under section 479-A of the Code of Criminal Procedure to show cause why a complaint under section 193, Indian Penal Code, should not be filed against her. Similar view was taken by a Division Bench of the Andhra Pradesh High Court in *K. Chalapathi Rao v. B. N. Reddy and others* (5). The relevant observations of the learned Bench are as follows:—

“That the Rent Controller has got exclusive jurisdiction to decide cases of eviction and restoration of amenities to the tenants. He is also empowered to decide questions of law if they arise during the course of proceedings before him. He has power to summon any person, examine witness on oath and come to a conclusion on the evidence adduced and the arguments submitted. The parties are entitled to be represented by legal practitioners. He has got power

(4) A.I.R. 1971 Pb. & Haryana 150.

(5) 1971 All India Rent Control Journal 164.

to execute orders passed by him. The decision of the Rent Controller is not based upon a private reference nor his decision is arrived at in a summary manner. In view of the provisions of section 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 there cannot be any doubt that the Rent Controller is subordinate to the High Court. Therefore, the Rent Controller is a Court subordinate to the High Court within the terms of section 3 of the Contempt of Courts Act.”

A learned Single Judge of this Court following the Full Bench decision in *Daulat Ram v. Girdhari Lal* (6) observed that the appellate authority under the Rent Act was a civil Court in view of the definition provided by section 195(1)(b) of the Criminal Procedure Code. The ratio in the aforesaid cases will apply to the present case.

7. The learned counsel for the respondent made a reference to *Ram Dutt Gupta v. The Financial Commissioner and another* (7) and *Sawan Ram v. Gobinda Ram and another* (8). In *Ram Dutt Gupta's case* (supra), the question for decision was as to whether the proceedings before a Rent Controller stood vitiated because he failed to frame issues. In that context, observations were made by a Division Bench to which I was a party, that the Controller was not a civil Court and the provisions of the Code of Civil Procedure did not apply. In my view, the learned counsel for the respondent cannot derive any benefit from the abovesaid observations. I am unable to understand how *Sawan Ram's case* (supra) helps the respondent. In that case, it was held that the civil Court had no jurisdiction to try a suit for eviction where the Rent Act was applicable. It is evident from the above observations that the matters which are covered by the Rent Act are to be decided by the Tribunals under that Act and not by the civil Courts. In my view, the aforesaid observations help the petitioner rather than the respondent.

8. From the aforesaid discussion, it follows that the Rent Controller and the appellate authority under the Rent Act are Courts within the meaning of section 32 of the Act and in case a personnel of the Air Force files a certificate from a proper Air Force authority

(6) 1979 P.L.R. 647.

(7) 1976 R.C.R. 806.

(8) 1980 (1) R.C.R. 21.

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in terms of that section, the Rent Controller is bound to decide the case expeditiously as contemplated in that section.

9. For the aforesaid reasons I accept the revision petition, set aside the order of the Rent Controller and direct him to decide the matter in accordance with section 32 of the Act. The parties are directed to appear before the Rent Controller on April 10, 1980. The costs in the revision petition shall be the costs in the cause.

H.S.B.

Before J. V. Gupta, J.

TARA CHAND CHANDANI,—Petitioner.

versus

SHASHI BHUSHAN GUPTA,—Respondent.

Civil Revision No. 946 of 1978.

April 9, 1980.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 2(d) (g) & (h)—Chartered Accountants Act (XXXVIII of 1949)—Sections 2(e) and 2(2)—Chartered Accountant Regulations, 1964—Regulations 166 to 168—Residential building rented out to a Chartered Accountant for use as an office—Such building—Whether ceases to be residential in terms of section 2(d) of the Rent Act—Chartered Accountancy—Whether a ‘profession’—The term ‘profession’—Whether included in the term ‘business’ or ‘trade’.

Held, that from a perusal of the Scheme of the East Punjab Urban Rent Restriction Act, 1949 and from the terms used therein, it is quite apparent that the words ‘business’ or ‘trade’ and the word ‘profession’ have been used purposely having different connotation. It may be that sometimes the word ‘business’ may include ‘the profession’ because ‘business’ is a wider term but whether the word ‘business’ as used in section 2(d) of the Act will include ‘profession’ thereir or not would depend on the scheme of the Act. A reading of sections 2(e) and 2(2) of the Chartered Accountants Act, 1949, as also Regulations 166 to 168 of the Chartered Accountant Regulations, 1964, would go to show that the Chartered Accountant is a profession as distinguished from ‘business’ and ‘trade’. Section 2(d) of the Act defines a non-residential building, section 2(g) defines