Before S. S. Sandhawalia, C.J. and S. P. Goyal, J.

VED PARKASH,—*Petitioner.*

versus

OM PARKASH NIRWANIA,—*Respondent.*

Civil Revision No. 2147 *of* 1980.

May 1, 1981.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 13, 16 and 17—Proceedings before a Rent Controller—One of the issues ordered to be treated as preliminary—Provisions of the Act—Whether impliedly bar the adopting of such a procedure by the Rent Controller.

Held, that a bare look at the various sections of the East Punjab Urban Rent Restriction Act, 1949 in general and to the provisions of sections 16 and 17 in particular would make it manifest that it is only for the very limited purposes specified in these two sections that the relevant provisions of the Code of Civil Procedure are attracted to the proceedings before the Rent Controller and the subsequent execution of the orders made by the original and the appellate authorities thereunder. It is well settled that beyond the circumscribed limits of sections 16 and 17 of the Act in which the relevant sections of the Code of Civil Procedure may be attracted, the Rent Controller is not bound by any intricate shackles and is wholly free to devise his own procedure in the field or area not covered by section 16. Once it is so held, it appears to be plain that no bar express or implied, can possibly be raised with regard to his competence to try one of the issues framed by him as the preliminary one. There is no such implicit obstacle in his way in this context either in the Act itself or on, larger principle. Merely because the Act does not expressly provide at all for the framing of the issues or trying any one of them as a preliminary one cannot be a ground for assuming even remotely that it bars the latter procedure. Even a bird's eye view of the provisions of the Act makes it manifest that the present Act is not a procedural statute and does not provide in any great detail for the mode and manner of the trial of the proceedings before the Controller and later before the appellate authority. Therefore, absence of a specific provision cannot lead to any presumption of an implied bar against trying an issue which may conclude the matter as a preliminary one by the Rent Controller (Paras 4 and 5).

Petition under section 15 *of the Haryana Urban Control of Rent and Eviction Act, for revision of the order of the Court of Shri R. C. Bansal, Rent Controller, Kaithal, dated the* 8*th September,* 1980, *dismissing the application of the respondent with costs of Rs.* 25, *and adjourning the case to* 1*st October,* 1980 *for evidence of respondent.*

N. C. Jain, Advocate, *for the Petitioner.*

Nemo, *for the Respondent.*

JUDGMENT

S. S. Sandhawalia, C.J.

1. Whether the provisions of the East Punjab Urban Rent Restriction Act, 1949, impliedly bar the trying of an issue as a preliminary one by the Rent Controller is the significant question which had necessitated the admission of this revision petition for decision by a Division Bench.

2. The facts are not in dispute and lie within a narrow compass. Om Parkash Nirwania, respondent landlord had preferred an application under section 13 of the East Punjab Urban Rent Restriction Act (hereinafter called the Act) for the ejectment of Ved Parkash petitioner—tenant on the ground of non-payment of rent and further that the tenant had materially impaired the value and the utility of the premises leased out to him. The petitioner-tenant contested the application and also tendered the rent which was accepted by the respondent-landlord under protest on the ground that the same was not complete and legal. On the pleadings of the parties the Court struck the following issues:—

1. Whether the respondent is liable to ejectment on grounds mentioned in the application ?
2. Whether the tender is not valid ?
3. Whether the application is not verified in accordance with law ?
4. Whether the written reply is not correctly verified ?
5. Relief.

Whilst framing the same, issue No. 2 was treated as a preliminary issue. The matter was then adjourned for arguments thereon but

later the petitioner-tenant moved an application taking the firm stand that issue No. 2 could not be treated as a preliminary issue and that the earlier order be modified accordingly. This application was opposed by the respondent-landlord. On a full consideration of the objection raised on behalf of the petitioner-tenant that no issue could be tried as a preliminary one in the rent jurisdiction the Rent Controller took a contrary view. He further held that because the decision of issue No. 2 in favour of the landlord-respondent would finally dispose of the ejectment application the said issue could rightly be treated as a preliminary one. Consequently the application of the petitioner-tenant was rejected and aggrieved thereby the present civil revision has been preferred.

3. As is even manifest from the admitting order itself the core of the argument of the learned counsel for the petitioner is that under the Act the Rent Controller is debarred from trying any issue in the proceedings before him as a preliminary one. Counsel contended that there was no specific provision in the Act which vested the Controller with any such power and the absence thereof must be construed by implication as a total bar to do so. Reliance for this slippery submission was sought to be tenuously placed on *Dharam Paul* v. *Roshan Lal*, (1).

4. The aforesaid contention, despite some vehemence with which it was advanced, appears to us as patently not well-conceived. A bare look at the 21 sections of this short statute in general and to the provisions of sections 16 and 17 in particular would make it manifest that it is only for the very limited purposes specified in these two sections that the relevant provisions of the Code of Civil Procedure are attracted to the proceedings before the Rent Controller and the subsequent execution of the orders made by the original and the appellate authorities thereunder. At this stage it would perhaps be apt to read sections 16 and 17 of the Act:—

> S. 16. For the purpose of this Act, an appellate authority or a Controller appointed under the Act shall have 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.

(1) 1980 (1) R.C.R. 503.

S. 17. Every order made under section 10, or section 13 and every order passed on appeal under section 15 shall be executed by a Civil Court having jurisdiction in the area as if it were a decree of that Court."

Now it is well-settled that beyond the circumscribed limits of the aforesaid two provisions in which the relevant sections of the Code of Civil Procedure may be attracted, the Rent Controller is not bound by any intricate shackles and is wholly free to devise his own procedure. This legal position in law is now so well-accepted within this jurisdiction that it would be rather wasteful to examine the point on first principles. In *Shri Ram Dutta Gupta* v. *The Financial Commissioner, Haryana,* (2) it was concluded as follows :—

" * * * 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 enquiry or the principles of natural justice."

And again in the recent Division Bench judgment reported as *Raghunath* v. *Romesh Duggal,* (3), after an examination of the issue in some depth it has been observed as follows:—

From the aforementioned history and the provisions of the present and the preceding rent legislation it appears to be self-evident that apart from the larger purpose of restricting rents and giving special protection to the tenants, the specific intent of the legislature was to provide a special and expeditious procedure for the disposal of the matters under the Act. The jurisdiction for the determination of these matters was designedly and meaningfully taken away from the ordinary run of Civil Courts and vested in the Controllers. They were left to devise their own procedure free from technicalities and formalities of the Civil Procedure Code which governed the Civil Courts. Sections 16 and 17 of the Act brought in the Civil Procedure Code only for the limited purpose of the summoning and enforcing the attendance of witnesses and

(2) 1976 P.L.R. 791.

(3) A.I.R. 1980 Punjab and Haryana 188.

the execution of the orders passed by the Controller or the Appellate Authority and by necessary implication exclude the strict application of its provisions to the authorities under the Act. The underlying purpose was to rid the authorities under the Act from the shackles of technical procedure and to provide a summary and expeditious mode of disposal, is further evident from the fact that originally only the appeal was provided by the statute to the Appellate Authority and all further appeals or revisions were barred by section 15(4) of the Act. It was not till 1956 that by the Punjab Act No. XXIX, sub-section (5) was added to section 15 of the Act vesting the High Court with Special revisional jurisdiction thereunder."

5. Once it is held, as it must inevitably be, that the Rent Controller is free to devise his own procedure in the field or area not covered by section 16, it appears to us plain that no bar, express or implied, can possibly be raised with regard to his competence to try one of the issues framed by him as the preliminary one. We are unable to see any such implicit obstacle in his way in this context either in the Act itself or on larger principle. Merely because the Act does not expressly provide at all for the framing of issues or trying any one of them as a preliminary one cannot be a ground for assuming even remotely that it bars the latter procedure. In this context, it is again apt to recall the view in *Ram Dutta Gupta's case* (supra) that even the very framing of issues is not compulsory for the Rent Controller when exercising jurisdiction under the closely analogous provision of the Haryana Urban Rent Restriction Act, 1973. Even a bird's eye view of the provisions of the Act makes it manifest that the present Act is not a procedural statute and does not provide in any great detail for the mode and manner of the trial of proceedings before the Controller and later before the appellate authority. It is because of this very fact that it has been repeatedly held judicially that the Controllers have been left free to devise their own procedure. Therefore, the absence of a specific provision cannot lead to any presumption of an implied bar against trying an issue which may conclude the matter as a preliminary one by the Rent Controller.

6. Coming now to the precedent on the point, the only judgment that was cited by Mr. N. C. Jain is *Dharam Paul's case* (supra). It would appear that the reliance of the learned counsel thereon stems

from a superficial reading of the head note thereof which, it must be observed, appears to be slightly misleading. A closer analysis of the judgment would show that it is not warrant even remotely for the proposition that there is a legal bar to the trial of an issue as a preliminary one by the Rent Controller. Indeed in the said case the position was the converse one, whether the Rent Controller on the application of one of the parties had rightly declined to try issue No. 3 as a preliminary one. The landlord then preferred the revision petition and the learned Judge in a brief judgment after noticing the contentions of the counsel declined to interfere with the order of the trial Court. Far from supporting the stand of the learned counsel for the petitioner the following observations in the said judgment would be a clear pointer to the contrary:—

> "* * * Further more, no request was made to treat issue No. 3 as a preliminary issue at the time of framing of the issues. Only when the witnesses of the tenant had come to Court to make their statements, the application was filed, obviously, with a view to delay the proceedings. *It was within the discretion of the Rent Controller to treat issue No. 3 as a preliminary issue or not. He has exercised his jurisdiction and given cogent reasons for reaching the conclusion.. These reasons cannot, by any stretch of imagination, be termed as perverse. This order has not occasioned a failure of justice or caused any irreparable injury to the petitioner."*

7. Both on principle and precedent we conclude that the answer to the question formulated at the outset must be rendered in the negative and hold that there is no bar against the Rent Controller trying an issue as a preliminary one.

8. In the light of the aforesaid legal position we are unable to find the least infirmity in the order of the Rent Controller. He held, and in our view rightly, that if issue No. 2 were to be decided in favour of the landlord the application for ejectment would stand completely disposed of thereby. In this context the order directing the trying of issue No. 2 as a preliminary one appears to us as wholly unassailable. The revision petition is without merit and is hereby dismissed. There will, however, be no order as to costs.

N. K. S.