

in the commitment of the heinous crime against man and his kind. Danger of losing ill-gotten property can also be a definite deterrent.

(94) In view of the above conclusions, we find that there is no constitutional or legal infirmity in the impugned provisions. Thus, these cannot be invalidated by the issue of a writ, order or direction. There is no merit in this petition. It is, consequently, dismissed in *limine*.

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**J.ST.**

*Before S.S. Nijjar, J*

VIJAY KUMAR & ANOTHER—*Petitioners*

*versus*

DURGA ASHRAM CHARITABLE TRUST (REGD.)

& OTHERS—*Respondents*

C.R. No. 2637 of 2002

22nd May, 2002

*Code of Civil Procedure, 1908—0.41 Rls 23, 25 and 33—East Punjab Urban Rent Restriction Act, 1949—S. 13—Public premises—Non-payment of rent—Trust filing eviction petition—Rent controller finding the existence of relationship of landlord & tenant between the parties—Petitioners claiming to be owner of the property on the basis of two sale deeds—Dispute regarding title of the property pending between the parties—Rent Controller holding the eviction application of the Trust not maintainable and the sale deeds binding on the Court—Whether the question of the title of the property can be seen while deciding such an eviction application—Held, yes—Petition dismissed while upholding the order of the appellate Court.*

*Held*, that the Rent Controller had failed to exercise its jurisdiction and wrongly held that sale deeds are binding on the Rent Controller. The Appellate Authority has rightly held that the question whether the Trust was the landlord of Karori Mal. It is always open to the Rent Controller or the Appellate Authority under the Rent Act to adopt any of the provisions contained in any procedural laws,

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including the Code of Civil Procedure to efficaciously determine the question that may arise in a particular case. No hard and fast rule can be laid down. The Authorities under the Act would have to make a decision in each case depending on the facts and circumstances of the case and the need to do complete justice between the parties. The judgment of the Appellate Authority does not suffer from any material irregularity. Furthermore, no injustice has been done to the petitioners.

(Para 13)

Ravinder Chopra, Sr. Advocate with Shiv Kumar, Advocate  
*for the petitioner.*

### JUDGMENT

*S.S. Nijjar, J*

(1) I have heard Mr. Chopra, at length. I have also perused the judgments of the courts below.

(2) The demised premises belong to a Public Charitable Trust known as "Durga Ashram Charitable Trust". It was created by Nanak Chand son of Durga Parshad, caste Aggarwal, Ferozepur city for the general benefits of public of Ferozepur City vide registered deed executed by Sh. Nanak Chand on 7th May, 1934. The Trust was duly registered in the office of sub Registrar, Ferozepur on 23rd May, 1934. Among other properties, the Trust owns eight shops. Shop No. 6 had been rented to Karori Mal at a monthly rent of Rs. 20. The Trust filed the Eviction petition against Karori Mal on the ground of non-payment of rent under section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "the Rent Act"). During the pendency of the proceedings, Karori Mal passed away and he has been duly represented by his legal heir, Krishna Devi, Vijay Kumar and Asha Rani (hereinafter referred to as "the petitioners") were impleaded as respondents on their application under Order 1 Rule 10 CPC. In this application, it was stated that Nanak Chand was the owner of the property. After his death, one Bailash Chand Jain become the owner. Parkash Wati and Naveen Kumar Jain were the widow and the son of Bailash Chand Jain, respectively. Petitioners claim to have purchased the demised shop from Parkash Wati and Naveen Kumar Jain by two registered sale-deeds dated 24th March, 1994 and 29th

March, 1994 for a consideration of Rs. 2,10,000. It was, therefore, pleaded that Karori Mal was tenant under the petitioners. The petitioners filed application under Section 13 of the Rent Act for his ejection from the shop in dispute. It is alleged that Karori Mal paid the arrears of rent to these respondents on 24th March, 1995 and handed over the possession of Shop No. 6 in dispute to them. The relationship of landlord and tenant between the Trust and Karori Mal was denied. The Rent Controller framed the following issues :—

- “1. Whether the relationship of landlord and tenant existed between the applicant trust and the said Karori (deceased) now represented through Smt. Krishna Devi ? OPA
2. If issue No. 1 is proved, then whether the said Karori, tenant is in arrears of rent since 1st September, 85. If so, its effect ? OPA
3. Whether the present eviction application of the applicant trust is maintainable in the present form ? OPA
4. Relief.”

(3) After considering the entire evidence led by the parties, the Rent Controller decided issues No. 1 and 2 in favour of the Trust. Surprisingly, after holding that there was relationship of landlord and tenant between the Trust and Karori Mal and that Karori Mal was in arrears of rents, the application for eviction filed by the Trust was dismissed by the Rent Controller. The relief was denied on the basis that the Rent Controller cannot decide the legality of the sale-deeds Exs. R2 and R3. It was further held that since the sale-deeds have not been declared wrong or illegal by Civil Court, the same were binding on the Rent Controller. Therefore, it was held that the petitioners are not tenants of the applicant-Trust. The Rent Controller further held that if the petitioners are in unauthorised or illegal possession of the shop, the remedy for the trust was to file a suit for possession. The Rent Controller, therefore, held that the application of the Trust for eviction was not maintainable. The Rent Controller also held the application to be not maintainable on the ground that the Trust had put a suggestion to Vijay Kumar, petitioner No. 1 in his cross-examination that the shop is under the Trust, on the door

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of which they have put a lock. Therefore, the Rent Controller held that the eviction petition was infructuous as the possession was already with the Trust. Thus, issue No. 3 has been decided in favour of the petitioners and against the Trust.

(4) The findings on Issues No. 1 and 2 were challenged by the petitioners by way of appeal before the Appellate Authority. Again after meticulous examination of the evidence, the Appellate Authority has held that there was relationship of landlord and tenant between the Trust and Karori Mal. The star witness of the petitioner, Parkash Wati Jain has been disbelieved by the Rent Controller and the Appellate Authority. It has been held that she has not produced any rent note to prove the relationship of landlord and tenant between Parkash Wati Jain and her son as landlords and Karori Mal as tenant. The rent receipt produced by Parkash Wati Jain has also been disbelieved on a number of grounds. The Appellate Authority finds that the statement of Parkash Wati Jain is self contradictory. Ultimately, the Appellate Authority concludes that Parkash Wati Jain has failed to prove any document creating the relationship of landlord and tenant between Nanak Chand and Karori Mal, Bailash Chand Jain and Karori Mal, Naveen Kumar and Karori Mal. She has also not proved any document creating such a relationship between herself and Karori Mal. The Appellate Authority also observes as under :—

“19. It is alleged by the appellant as well as by Parkash Wati Rani that Parkash Wati and Naveen Kumar have sold the property in question to Vijay Kumar appellant. No doubt, the question of title is not to be decided by this court but the title of the property can be seen for collateral purposes for deciding the present case. On the one hand by filing the suit under section 92 CPC, Parkash Wati Jain has admitted the creation of the trust by Nanak Chand Jain. On the other hand, it is alleged by her that she had sold the property to Vijay Kumar and Asha Rani appellants. She has also stated in her cross-examination that she did not take any permission from the trust to alienate the said property. Though the correctness of the sale deeds is not to be decided by this court while deciding the present appeal but this fact falsifies the statement of Parkash Wati

RW1 that previously Bailash Chand Jain and after his death, she alongwith her son Naveen Kumar are the owners of the property in question. In view of these circumstances, I do not believe the statement of RWI Parkash Wati Jain.”

(5) The Appellate Authority holds that the findings of Rent Controller on Issue No. 1 are correct. Thereafter, the Appellate Authority observes as under :—

“22. ....Before parting with the discussion on this issue, I would like to point out that while discussing issue No. 1 the Learned Rent Controller had also touched some aspects of the title of the property. The said discussion was not required to be made for disposal of the Rent Petition. Hence the observation of the Rent Controller regarding the sale-deeds Exh. R2 and Exh. R3 would not be binding on the civil rights of the parties.”

(6) After discussing the entire evidence, the Appellate Authority has affirmed the findings of the Rent Controller on Issue No. 2 also.

(7) Without any appeal having been filed by the Trust, the Appellate Authority has reversed the findings on Issue No. 3 and held that the eviction application was maintainable.

(8) Mr. Chopra has vehemently argued that the Appellate Authority exceeded its jurisdiction by reversing the findings of the Rent Controller on Issue No. 3. It is submitted that since the findings have not been challenged by the Trust, therefore, it would not be open to the Appellate Authority to reverse the findings recorded by the Rent Controller. Further more, it is vehemently argued that the Appellate Authority wrongly exercised the power of the Appellate Court under Order 41 Rule 33 CPC. No such powers are vested in the Appellate Authority under Section 15 of the Rent Act. In support of the submission, Mr. Chopra has relied on a Division Bench judgment of this Court in the case of *Raghu Nath Jalota versus Romesh Duggar and another (1)*. Mr. Chopra has relied particularly on the observations

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contained in paragraph 12 of the aforesaid judgment which are as follows :—

“12..... It is then to be recalled that the Controller or the Appellate Authority are not Civil Courts as such. They have only the trappings of a court of law. They are only *persona designata* under the Act. Therefore, any theory of these quasi-judicial tribunals exercising any inherent powers is of little validity. Equally it deserves highlighting that there is no provision even remotely analogous to Section 151 of the Civil P.C. in the Act from which any such power could possibly be derived. Therefore, in the context of a special tribunal, the concept of inherent appellate power does not at all appear tenable. It has been held not once, but repeatedly that even the very right of appeal is a mere creature of the statute and there is no fundamental right of appeal from an original forum. Once it is so, then obviously where a special statute provides an appellate forum its powers must be limited within the narrow confines of what has been conferred on it by the statute. As noticed already there is no inherent power of appeal nor can it be said that a special Appellate Tribunal has inherent powers other than what are expressly laid upon it by the provision creating it. Reference in this connection may be made to the elaborate Division Bench judgment in **Sri Chand v. State of Haryana, (1978) 80 Pun LR 660.**”

(9) I am of the considered opinion that these observations are of no assistance to the petitioners. Merely because the Appellate Authority has mentioned that Order 41 Rule 33 C.P.C. authorises the Appellate Court to pass any decree and make any order which ought to have been passed, would not render the finding of the Appellate Authority either perverse or arbitrary. The Division Bench in **Raghu Nath Jalota's** case (*supra*) was considering the powers under Section 15 of the Rent Act and the powers of the Appellate Court for remanding the case as contemplated under order 41 Rules 23 and 28 of the CPC.

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After examining the entire history of the Rent Legislation, the Division Bench observed as follows :—

“7. From the aforementioned history and the provisions of the present and the proceeding 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 P.C., which governed the Civil Courts (emphasis supplied). Sections 16 and 17 of the Act brought in the Civil P.C. only for the limited purpose of the summoning and enforcing the attendance of witnesses and 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 one 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 (emphasis supplied).

(10) From the aforesaid observations, it becomes crystal clear that provisions of Order 41 Rule 23 and Rule 25 had been held to be inapplicable as it would amount to unnecessary delay in the finalisation of the proceedings before the Rent Controller and the Appellate Authority. A perusal of the underlined portions of the observations quoted above makes it abundantly clear that the specific

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intent of the Legislature was to provide a special and expeditious procedure for the disposal of the matters under the Act. The procedure applicable to Civil Courts was to be avoided. The Rent Controller and the Appellate Authority were left to devise their own procedure free from technicalities and formalities of the C.P.C. which govern the Civil Courts. The Division Bench has again stressed that the underlying principle was to rid the authorities under the Act from the shackles of technicality and procedure and to provide a summary and expeditious mode of disposal. If that be the avowed purpose for enacting the Rent Act, the Rent Controller and the Appellate Authority would be free to adopt any procedure which will lead to an expeditious decision provided the procedure adopted is neither arbitrary nor unreasonable. This view of mine also finds support from the observations of the Division Bench in paragraphs 9 and 10 of the aforesaid judgment. The Division Bench observed as follows :—

“9. In the aforesaid background, Mr. J.L. Gupta, learned counsel for the petitioner, appears to be on firm ground in contending that the legislature had a clear-cut and purposeful rationale in excluding the power of remand and a decision afresh under Section 15 (3) of the Act. It was pointed out that one of the major premises of the statute was to take away the rent jurisdiction from the ordinary gamut of civil litigation and to put it in a more expeditious and a quicker procedural remedy laid out under the Act and emancipate it from the limitations and technicalities of Civil Procedure. It was in line with this intent that the legislature again expressly chose the relatively speedier mode of disposal of appeals by providing that there could only be either an enquiry through the Controller or itself by the Appellate Authority in order to prevent the whole matter from being put back into the boiling pot of litigation by a remand of the whole case and its trial decision afresh. It was highlighted that by its very nature the issues of eviction and others arising under the rent jurisdiction are urgent in nature calling for an expeditious final decision. The very purpose of the statute may indeed be frustrated if this jurisdiction is again bogged down into the quagmire of the ordinary civil process. It was,



therefore, submitted with considerable plausibility that a reading of the power of remand and decision afresh in Section 15(3) with the consequential result of a retrial and an appeal and revision therefrom would virtually reduce the expeditious procedure sought to be devised by the Act to the tardy process of the ordinary civil suit from which it was sought to be liberated by special legislation.

10. The above view is patently buttressed by the recent 77th Report of the Law Commission of India, where in Chap. 10, it has been stated as follows :—

“10.1. There are certain cases which, by their very nature, have an element of urgency about them and call for speedy disposal. Quite a number of these cases are under special Act... ..

10.2. A second category of cases which call for early disposal are eviction cases, especially those on the ground of *bona fide* personal necessity of the landlord. Such cases obviously call for an early disposal.”

(11) From the above it becomes evident that the approach adopted by the Appellate Authority cannot be said to be either perverse or inequitable. The Appellate Authority has merely adopted the principles enshrined in Order 41 Rule 33 while reversing the findings of the Rent Controller on Issue No. 3. I am unable to hold that this power to do complete justice was not available to the Appellate Authority under Section 15 (3) of the Rent Act. The Appellate Authority could have compelled the Trust to file a formal appeal against the findings of the Rent Controller on Issue No. 3. It was equally open to the Appellate Authority to take note of the oral objections raised before him to the Findings of the Rent Controller on Issue No. 3. In paragraph 24 of the judgment, the Appellate Authority has noted that the learned counsel for the Trust argued that the findings of the Rent Controller on Issue No. 3 are not correct. It was argued that the ejection application filed by the Trust is maintainable. On the other hand, learned counsel for the petitioners argued that no appeal or cross-objection was filed against the order of the Rent Controller. So, the Trust cannot assail the findings of the Rent Controller on Issue No. 3.

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In the case of **K. Muthuswami Gounder versus N. Palaniappa Gounder, (2)** it has been held as follows :—

“12. Order XLI, Rule 33 enables the appellate Court to pass any decree or order which ought to have been made and to make such further order or decree as the case may be in favour of all or any of the parties even though (i) the appeal is as to part only of the decree ; and (ii) such party or parties may not have filed an appeal. The necessary condition for exercising the power under the Rule is that the parties to the proceeding are before the Court and the question raised properly arises one (out) of the judgment of the lower court and in that event the appellate Court could consider any objection to any part of the order or decree of the Court and set it right. We are fortified in this view by the decision of this Court in AIR 1988 SC 54. No hard and fast rule can be laid down as to the circumstances under which the power can be exercised under Order LXI, Rule 33 CPC and each case must depend upon its own facts. The rule enables the appellate Court to pass any order/decreed which ought to have been passed. The general principle is that a decree is binding on the parties to it until it is set aside in appropriate proceedings, ordinarily the appellate Court must not vary or reverse a decree/order in favour of a party who has not preferred any appeal and this rule holds good notwithstanding Order XLI, Rule 33, C.P.C. However, in exceptional cases the rule enables the appellate Court to pass such decree or order as ought to have been passed even if such decree would be in favour of parties who have not filed any appeal. The power though discretionary should not be declined to be exercised merely on the ground that the party has not filed any appeals.....”

(12) The aforesaid enunciation of the law is fully applicable to the facts and circumstances of this case. The Rent Controller having come to the conclusion that the Trust was landlord of Karori Mal passed a wholly erroneous order with regard to Issue No. 3. Thus, it

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was absolutely necessary for the Appellate Authority to correct the error. The Appellate Authority has merely held that the Rent Controller need not have touched upon the question of title of the property. Therefore, the Appellate Authority has directed that the observation of the Rent Controller regarding sale-deeds Ex. R2 and Ex. R3 would not be binding on the civil rights of the parties. Thus it becomes patent that no prejudice has been caused to the petitioners, in the civil litigation, which is said to be pending between the parties, with regard to the validity of the sale deeds Ex. R2 and Ex. R3. The Appellate Authority has also made it clear that the observations with regard to sale-deeds have only been made for the collateral purpose for deciding the eviction application. Necessarily, a certain amount of discussion was required to decide as to whether the Trust was the landlord or Karori Mal. It is by now well settled that validity of the sale-deed could be gone into by the Rent Controller. I find support for this view of mine from the Single Bench judgment of this Court in the case of **Rekha Sharma versus Shankar Devi and others, (3)**. In paragraph 7 of this judgment, it has been observed as follows :—

“(7) The contention of Mr. Sibal that this Court cannot go into the validity of the Gift Deed in view of the observations in Sardarni Kirpal Kaur’s case (*supra*) has also no substance. It is true that in that case, it was observed by Grover, J. (as he then was) that the question of validity of the gift cannot be raised in proceedings under the East Punjab Urban Rent Restriction Act, as such question is outside the jurisdiction of the Rent Controller. However, the Supreme Court in **Devi Das versus Mohan Lal (2)** observed to the contrary. In that case, the validity of the sale in favour of the landlord who filed an application for ejection against his tenant was challenged, before the Rent Controller. The Appellate Authority rejected the tenants contention observing that he could not challenge the validity of the Sale Deed executed in favour of the landlord, as the tenant was not a party to that. The High Court did not advert to that point. The Supreme Court accepted the appeal and remanded the case to

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the trial Court to record a finding on the question whether the sale of the building was a *bona fide* transaction, or not. From the above case, it is obvious that Court was of the view that in the Rent Cases the question of validity of the sale of the property in favour of the landlord could be gone into by the Rent Controller. The above judgment is binding on this Court. Therefore, I am of the view that the Authorities under the Act can determine the question whether the Gift, dated 30th March, 1979 is a valid or a sham transaction.”

(13) A perusal of the aforesaid observations make it abundantly clear that the Rent Controller had failed to exercise its jurisdiction and wrongly held that sale-deeds Ex. R2 and Ex. R3 are binding on the Rent Controller. The Appellate Authority has rightly held that the sale-deeds could have been looked at for deciding the question whether the Trust was the landlord of Karori Mal. The argument of Mr. Chopra is even otherwise, against the conduct of the petitioners. It is a matter of record that initially when the eviction application was filed, petitioners were not impleaded as party-respondents. They, therefore, filed an application under Order 1 Rule 10 CPC for being impleaded as party. If the argument of Mr. Chopra is to be accepted, then the application for being impleaded as party under Order 1 Rule 10 was also not maintainable. As observed earlier, I am of the considered opinion that it is always open to the Rent Controller or the Appellate Authority under the Rent Act to adopt any of the provisions contained in any procedural laws, including, the Code of Civil Procedure to efficaciously determine the question that may arise in a particular case. No hard and fast rule can be laid down. The Authorities under the Act would have to make a decision in each case depending on the facts and circumstances of the case and the need to do complete justice between the parties. I am of the considered opinion that the judgment of the Appellate Authority does not suffer from any material irregularity. Furthermore. No injustice has been done to the petitioners.

(14) In view of the above, the revision petition is dismissed.