Legislature was that accommodation which may fall vacant during the pendency of the eviction petition were to lead to the dismissal of the eviction petition, a provision to that effect would have been made. On the contrary the provision is that before the application is made, the landlord has to satisfy the Rent Controller that he did not vacate any premises in his occupation in order to secure eviction of the tenant. In these circumstances, it appears to me that the Rent Controller as well as the Appellate Authority had mis-directed themselves in taking into consideration the vacation of premises by Banke on the 22nd September, 1965, for the purpose of rejecting the landlord's application. There is no legal basis which would warrant such a result.

In this view of the matter I allow this petition, quash the orders of the Appellate Authority and the Rent Controller and direct that the tenant be evicted from the premises. I, however, allow three months' time to the tenant to vacate the premises. There will be no order as to costs.

K. S. K.

APPELLATE CIVIL

Before Mehar Singh, C.J. and R. S. Narula, J.

MUNI LAL,—*Appellant*

versus

CHANDU LAL,—*Respondent*

R.S.A. No. 1561 of 1963

January 3, 1968.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13—Application under—Existance of relationship of landlord and tenant between the parties denied—Rent Control Authorities—Whether can go into that question—S. 15(4)—Questions already decided by the Rent Control authorities—Whether can be re-adjudicated by Civil Courts—"Order" and "decision"—Whether synonyms.

Held, that the East Punjab Urban Rent Restriction Act, 1949, does not in terms authorise the authorities under the Act to determine finally the question of relationship of landlord and tenant and the Act proceeds on the assumption that there is such a relationship, but if the relationship is denied, the authorities under the Act have to determine the question also, because a simple denial of the relationship cannot oust the jurisdiction of the Tribunal under the Act. Though the Rent Control Tribunals are of limited jurisdiction, the scope of their power and authority being limited by the provisions of the statute, a simple denial of the relationship either by the alleged landlord or by the alleged tenant would not have the effect of ousting the jurisdiction of the authorities under the Act because the simplest thing in the world would be for the party interested to block the proceedings under the Act to deny the relationship of landlord and tenant.

Held, that section 15(4) of the Act creates a statutory bar to the jurisdiction of an ordinary Civil Court to readjudicate upon any question that has already been decided by the Rent Control Authorities under the Rent Act which question the Rent Control Authorities have the jurisdiction to decide. The question already decided cannot be re-opened in fresh proceedings in a Civil Court merely because the word "conclusive" has not been used in the sub-section.

Held, that in the particular context of sub-section (4) of section 15 of the Act, the words "decision" and "order" appear to have used more or less as synonyms. The content and scope of the two words in the context in which they are used in the sub-section are not materially different.

Second Appeal from the decree of the Court of the Additional District Judge, Ambala at Hissar, dated the 31st August, 1963, affirming with costs that of the Senior Sub-Judge, Hissar, dated the 25th October, 1962, granting the plaintiff a declaratory decree with costs that he was the owner of the property (Hathri) in dispute and the defendant was holding under him as a tenant.

B. S Gupta and Jaswant Jain, Advocates, for the Appellant

R. C. Chodhry, Advocate, for the Respondent.

Judgment

Narula, J.—A brief survey of the relevant facts leading to the filing of this appeal may first be made. Muni Lal appellant is the alleged tenant of the disputed premises. Chandu Lal, respondent is the alleged landlord and owner of the property in question. In February 1959, Chandu Lal filed an application before the Controller, Hissar (Senior Subordinate Judge, Hissar, for ejectment of Muni

Lal, appellant from the premises indispute, which comprise of Kothri No. 104 situate in Kucha Lala Chhabil Dass, Delhi Gate, Hissar. The ground of ejectment was the non-payment of rent and the personal need of the landlord. Before the Rent Controller, the defence of Muni Lal was that the Kothri belonged to him, that he had never taken the same on rent from Chandu Lal and that there was no relationship of landlord and tenant between the parties. In his order, dated February 24, 1960, Shri G. D. Jain, the Rent Controller held that though Chandu Lal, might be the owner of the shop in dispute; but the evidence produced on the record of the case by the parties could not sustain a finding in favour of Chandu Lal to the effect that Muni Lal, held the premises as a tenant under him. Chandu Lal's appeal under the East Punjab Urban Rent Restriction Act (3 of 1949), Civil Appeal No. 40 of 1960) was dismissed by the Order of Shri Murari Lal Puri, Appellate Authority (District Judge, Hissar), dated May 31, 1961. The order and decision of the Rent Controller to the effect that the relationship of landlord and tenant between the parties had not been proved was upheld.

On August 31, 1961, the suit from which the present appeal has arisen, was filed by Chandu Lal against Muni Lal; for a declaration to the effect that the plaintiff was the absolute owner of the shop in question and that the defendant was in possession thereof as a tenant under the plaintiff. The suit was contested by Muni Lal, who denied the relationship of landlord and tenant between the parties and further averred that this plea of the plaintiff had already been negatived by the Rent Controller and by the Appellate Rent Control Authority and that adjudication of this question was now barred on principles of *res judicata*. Ffom the pleadings of the parties the trial Court framed the following issues :—

"(1) Whether the suit is maintainable in the present form?

(2) Whether there subsists a relationship of landlord and tenant between the parties ?

(3) Whether the suit is within time ?

(4) Whether the defendant has acquired ownership rights by adverse possession in the suit property ?

(5) Relief."

By judgment, dated October 25, 1962, the trial Court held that the suit as framed was maintainable that there subsisted a relationship of landlord and tenant between the parties, that the suit was within time, and that the defendant had not proved that he had acquired ownership rights by adverse possession in the property in dispute. In view of the above findings, the learned Senior Subordinate Judge, Hissar, granted a declaration in favour of Chandu Lal to the effect that he was the owner of the property in dispute, and that Muni Lal was holding under him as a tenant.

The defendant's appeal against the trial Court decree was dismissed by the Court of the Additional District Judge, Ambala at Hissar, on August 31, 1963. Only two points were urged before the first appellate Court, namely, (i) whether the question of relationship of landlord and tenant between the parties could be re-opened in a civil Court after a decision on that point had already been given by the Rent Controller; and (ii) whether the relationship between the parties regarding the suit property was that of a landlord and a tenant. Following certain observations in an unreported judgment of a learned Single Judge of this Court (Dulat, J.), *Budh Ram and another* v. *Raghbar Dayal and others* (1), it was held by the learned Additional District Judge that as soon as the question of title had arisen before the Rent Controller, he should have held his hands and should have refused to proceed in the rent control case until the interested party had gone to the civil Court and obtained a decision in that respect. On that basis it was held that the decision of the Rent Controller on the point that there existed no relationship of landlord and tenant between the parties when the final decision between them centred round the question of title, could not operate as a bar against a civil Court deciding the question of relationship between the parties which was incidental to the question of title. On facts, the finding of the trial Court that the relationship of landlord and tenant existed between the parties was affirmed.

When this regular second appeal against the abovesaid judgment of affirmance of the first appellate Court came up for admission before a learned Single Judge of this Court (Mahajan, J.) on March 11, 1964, it was ordered as below :—

> "Mr. B. S. Gupta cites C.M. 987 of 1956 decided on 6th August, 1957 by Chopra, J. which decision is contrary to the decision of Dulat J, in C.R. 514 of 1961, decided on 4th October,

(1) Civil Revision 514 of 1961 decided on 4th Oct., 1962.

1952. It is therefore, desirable that this appeal be heard and decided by a Division Bench. Necessary orders be secured from Hon'ble the Chief Justice. Admitted. Very early date."

This is how the Appeal has come up before us for hearing.

At the hearing of this appeal Mr. B. S. Gupta, the learned counsel for the defendant-appellant, has submitted :—

(i) that in an action for ejectment under the Rent Control Act if the respondent denies the relationship of landlord and tenant between the parties, the Rent Controller has the jurisdiction to decide that particular question and it is indeed his duty to do so;

(ii) that if in an appropriate proceeding the Rent Controller has decided the question of existence or non-existence of the relationship of landlord and tenant between the two parties one way or the other, the re-opening of the very same question by an ordinary civil Court in a subsequent proceedings is barred by sub-section (4) of section 15 of the East Punjab Urban Rent Restriction Act (3 of 1949) (as subsequently amended) (hereinafter referred to as the Rent Act); and

(iii) that even if section 15(4) of the Rent Act does not bar the re-opening of the decision of the Rent Controller on the existence of such relationship, the re-opening of the matter by civil Court is barred on the principles of *res-judicata,* and on the wider principle of avoiding double vexation to a litigant.

In the case of *Budh Ram and another* v. *Raghbar Dayal and others* (1), decided by Dulat, J., the only dispute was whether the shops in question belonged to Raghbar Dayal and others who filed the actions for ejectment. The Rent Controller went into the evidence on that point and found that Raghbar Dayal and others were not proved to be the owners of the three shops. He concluded that Budh Ram and Prabhu Dayal were, therefore, not the tenants of Raghbar Dayal and others. The appellate Rent Control Authority reversed the findings of the Rent Controller and held that the shops were the property of

Raghbar Dayal and others, and that Budh Ram and Prabhu Dayal were the tenants, and since the rent had not been paid, he ordered their ejectment. Against that decision Budh Ram and Prabhu Dayal came to this Court. The learned Judge observed in his order that it was clear from the frame of the Rent Act that the Tribunals set up under that Act were Tribunals of summary jurisdiction and the only matters they are empowered to deal with are "relations between landlords and tenants" and that no question of title is contemplated by the Act to be finally decided by such Tribunals. It was held that such a complicated question of title as had arisen in that case could not be satisfactorily decided by the Rent Controller or the Appellate Authority under the Rent Act, and that the proper course for the Rent Controller was to hold his hands and to refuse to proceed until the interested party had gone to a civil Court and obtained a decision establishing his title. Dulat, J., held in that situation as below:—

> "It is inherent in the very constitution of the tribunals under the East Punjab Urban Rent Restriction Act that they are not competent to deal with any question of title in a satisfactory way. The petitioners before the Rent Controller, being the respondents in this Court, that is, Raghbar Dayal and others, claimed to be the owners of the disputed shops. So do the present petitioners Budh Ram and Prabhu Dayal. I have no doubt that this is not a matter which can be finally settled by the Rent Controller or the Appellate Authority, and I, therefore, think it useless to go into that question. The proper order in this case, and Mr. Gupta agrees to this and so does Mr. Sarin would be that the order of eviction against the present petitioners be set aside and the petition of Raghbar Dayal and others be ordered to remain pending before the Rent Controller till they, that is, Raghbar Dayal and others, agitate the question of title in a competent Court and obtain a decision. I would order accordingly."

In the judgment of Chopra, J., dated August 6, 1957, in Civil Miscellaneous 987 of 1956, the precise question whether the rent control authorities had or had not the jurisdiction to decide the question of relationship of landlord and tenant (under the Rent Control Ordinance in which the relevant provisions were the same as the present Rent Act) between the parties had arisen. It was held by the learned Judge as below :—

> "The contention is no doubt ingenious, but to me it seems the entire argument is based on an incorrect hypothesis. It is

correct that the Ordinance does not in so many words say that the Controller shall be competent to adjudicate upon the existence or otherwise of the relationship of landlord and tenant between the parties. But the provisions made in and the whole scheme of the Ordinance leave no doubt that the matter is to be gone into and decided by the Tribunal even where the relationship is denied by any of the parties before it. The jurisdiction is not conferred only in cases where the relationship is admitted, the Tribunal is not required to stay its hands if the same is denied.

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Now, the Controller before he proceeds into the matter has to satisfy himself that the applicant before him is a landlord and the person proceeded against a tenant, as defined by section 2(c) and (i) of the Ordinance. If the parties are agreed on the point, there is no difficulty in the matter. But if they are not, it will be for the applicant to show and for the controller to decide whether the applicant occupies the status of a 'landlord' and the non-applicant that of his 'tenant', as defined by the Ordinance. The jurisdiction of the Controller does not rest merely upon an agreement between the parties. It is a statutory jurisdiction which is vested in the Controller by the terms of the Ordinance itself. It is for the Controller to determine whether the case is one which falls within his jurisdiction and in determining it he shall have to decide whether the parties stand in the relationship of landlord and tenant. Where a Court or a Tribunal with limited jurisdiction is given authority under law to decide a particular matter, but the decision of that particular matter depends upon certain preliminary findings of fact, that Tribunal must have jurisdiction to decide those preliminary points of fact (*Baijnath* v. *Ram Prasad* (2)."

(2) A.I.R. 1951 Patna 529.

Mehar Singh, J. (as my Lord, the Chief Justice then was) held in *Badri Parshad* v. *Bhuru Mal and another* (3), as follows :—

> "The learned counsel for the petitioner has first contended that the petitioner having taken the position in his written statement that he is not the tenant of the respondents and that he is not in possession of the shop, there was nothing before the Rent Controller in the application of the respondents for trial, in other words, the argument comes to this, that on that plea of the petitioner, the application of the respondents became for all practical purposes infructuous. The learned counsel presses that leaving aside the plea of the petitioner denying the tenancy, his mere denial that he was in possession of the shop was enough to render the application of the respondents as something not triable by the Rent Controller. The reason advanced for this approach to the case is that the petitioner not being in possession of the shop, there can possibly be no order of his eviction from that shop. The position is not rendered so simple and easy by the pleas of the petitioner in his written-statement. In the case of such pleas the only course open, and the course adopted in the present case, to the Rent Controller is to settle issues (a) on the question of the existence of relationship of landlord and tenant between the parties, and (b) on the question of possession of the premises. In fact the second question really does not arise in these porceedings for once the relationship of landlord and tenant is established and any one of the grounds for eviction is made out by the landlord, he is entitled to an order of eviction against his tenant under section 13 of the said Act. The petitioner denied the title of the respondents in the premises and there is some considerable discussion by the Appellate Authority on this question. The question is irrelevant in proceedings in a case like this for once the relationship of landlord and tenant is established between the parties, it is not open to the tenant to deny the title of the landlord, and if such relationship is not established, that ground alone is sufficient for dismissal of the application of the landlord. The Rent Controller was thus right in settling the type of issues that he settled and those were the issues that arose

(3) Civil Revision No. 607 of 1958 decided on 11th Sept., 1959.

out of the pleadings of the parties. He could not possibly have thrown out the application of the respondents merely believing what is stated by the petitioner in his written statement for what is stated therein was not accepted as true by the respondents. In spite of the denial of the petitioner of the tenancy and of his possession of the shop, it was still open to the respondents to prove that they are the landlords and the petitioner is the tenant under them in relation to the shop in question and that is what has actually been done in the present case. There was, therefore, a matter of issue for trial before the Rent Controller in the application of the respondents and that matter for trial was the relationship between the parties whether the respondents are the landlords of the petitioner. So that there is no substance in this first argument urged on behalf of the petitioner."

The question could have two facts, i.e., (i) relating to the question of ownership; and (ii) relating to the question of existence or non-existence of a tenancy within the meaning of the Rent Act. The question of ownership with which Dulat, J., was concerned in the case of *Budh Ram and another* v. *Raghbar Dayal and others* (1), does not concern us in the present case, as the rent control authorities left that question open. The decision as to the non-existence of the relationship of landlord and tenant between the parties in the case decided by Dulat, J., was a separate question and the learned Judge does not appear to have observed that the Rent Controller should have stayed his hands for a decision on that question if the question of ownership had not arisen before him. In the instant case, the question of title or ownership was not decided by the Rent Controller. Though he was inclined to hold that Chandu Lal was the owner of the premises in dispute, he in fact left the question open as it was not necessary for him to adjudicate upon it. The appellate Rent Control Authority did not adopt a different course.

Mr. B. S. Gupta is not only supported by the judgment of Chopra, J., and of my Lord the Chief Justice on the first question raised by him, but the said moot point has in fact by now been authoritatively settled by the pronouncement of the Supreme Court in *Om Parkash Gupta* v. *Dr. Rattan Singh and another* (4). Their Lordships held

(4) 1963 P.L.R. 543.

that it is true that the Rent Act does not in terms authorise the authorities under the Act to determine finally the question of relationship of landlord and tenant and the Act proceeds on the assumption that there is such a relationship, but if the relationship is denied, the authorities under the Act have to determine that question also, because a simple denial of the relationship cannot oust the jurisdiction of the Tribunals under the Act. Though the Rent Control Tribunals are of limited jurisdiction, the scope of their power and authority being limited by the provisions of the statute, their Lordships held that, a simple denial of the relationship either by the alleged landlord or by the alleged tenant would not have the effect of ousting the jurisdiction of the authorities under the Act, because the simplest thing in the world would be for the party interested to block the proceedings under the Act to deny the relationship of landlord and tenant. It was observed that Tribunals under the Act being creatures of the statute have limited jurisdiction and have to function within the four corners of the statute creating them. At the same time, held the Supreme Court, they are Tribunals of exclusive jurisdiction within the provisions of the Act and their orders are final and not liable to be questioned in collateral proceedings like a separate suit or application in execution proceedings.

The Andhra Pradesh High Court held in *Kunta Hari Rao and another* v. *Yelukur Subha Lakshmamma* (5), that the question of existence of jural relationship of landlord and tenant between the parties arises out of proceedings under the relevant Rent Control Act. Moreover, the authoritative pronouncement of the Supreme Court has finally settled the controversy about the decision of the Rent Controller on the disputed question being within his jurisdiction.

In this state of law, we cannot but hold that the Rent Controller as well as the appellate Rent Control Authority did have the jurisdiction to decide whether the relationship of landlord and tenant existed between the parties or not. As already observed, the said authorities finally decided that such relationship did not exist between the parties to this litigation. The said decision was given by competent Tribunals within their jurisdiction.

This takes to the second question raised by Mr. Gupta. Sub-section (4) of section 15 of the Rent Act is in the following terms :—

"The decision of the appellate authority and subject only to such decision, an order of the Controller shall be final and shall

(5) (1966) I Andhra Weekly Reporter 122.

not be liable to be called in question in any Court of Law except as provided in sub-section (5) of this section."

Sub-section (5) of Section 15 provides that the High Court, on an application of an aggrieved party or on its own motion, may call for and examine the records relating to any order passed or proceedings taken under the Rent Act for the purpose of satisfying itself as to the legality or propriety of such order or proceedings and may pass such order in relation thereto as it may deem fit.

A Division Bench of the Patna High Court (B. P. Sinha and C. P. Sinha, JJ.) held in *Baijnath Sao* v. *Ram Prasad* (2), that where the House Controller and the Commissioner (under the Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947), had the jurisdiction to decide the question of eviction under the Act, their decision, either on law or on fact, right or wrong, is final under that Act and even if the decision was opposed to law, the civil Court can have no jurisdiction to go into that decision in a collateral proceeding. We are in respectful agreement with the observations of the learned Judges of the Patna High Court to the above effect.

All that Chaudhry Roop Chand, the learned counsel for the plaintiff-respondent, could urge in this connexion was that it is only the "order" of the Rent Controller, by which counsel implies the final direction for ejectment or the final order refusing to give such a direction, which is made unassailable by sub-section (4) of section 15 and that the decision of the Rent Controller on a preliminary matter such as the existence of the jural relationship of landlord and tenant between the parties is not made final by the said provision. Counsel tried to draw distincton between "an order" on the one hand and "a decision" on the other. It is significant to note that in the particular context of sub-section (4) of section 15 of the Rent Act, the words "decision" and "order" appear to have been used more or less as synonyms. Whereas the final declaration of the Appellate Authority is referred to as a decision, the award of the Rent Controller is referred to as an order. It appears to be impossible to hold that the content and scope of the two words ("order" and "decision") in the context in which these are used in section 15(4) of the Rent Act are materially different. We are, therefore, unable to find any force in this contention of Chaudhry Roop Chand. It is also noteworthy that in the instant case the final order was contained in the decision of the Appellate Authority and if there was anything in what the learned counsel

for the respondent sought to urge in this respect, the relevant provision admittedly bars the re-opening of the "decision" of the Appellate Authority which, in the present case, was to the effect that there was no relationship of landlord and tenant between the parties.

It was then urged by counsel that section 15(4) of the Act only attaches finality to the decision of the Rent Control Authorities, but does not make the same conclusive. This argument appears to be wholly misconceived. The sub-section specifically bars the jurisdiction of civil Courts (except the High Court under sub-section 5) to call in question any decision of the Appellate Rent Control Authority, or any order of the Rent Controller. There would be no meaning in calling the order or decision of the Rent Control Authorities as final and not liable to be called in question in a Court of law if it could still be argued that the question can be re-opened in fresh proceedings in a civil Court merely because the word "conclusive" has not been used in sub-section (4).

Chaudhry Roop Chand lastly relied on a Division Bench judgment of this Court in *Pateshwari Parshad Singh* v. *A. S. Gilani* (6), and argued that the Rent Control Tribunals not being Courts of exclusive jurisdiction to decide a disputed question of existence of relationship of landlord and tenant, a suit for such adjudication on such a disputed question lies in a civil Court in the same way in which the decision of a Small Cause Court relating to claim for pension amounting to Rs. 500 does not bar the re-opening of the question of liability to pay Rs. 18,000 as pension as held by the Division Bench. The argument is misconceived. All that the Division Bench held was that a Court of Small Causes is not a Court of exclusive jurisdiction, and that, therefore, the plea of *res judicata* on general principles cannot be successfully taken in respect of a judgment of such a Court. There is no provision in the Provincial Small Cause Courts Act which corresponds to sub-section (4) of section 15 of the Rent Act. The Court of Small Causes had no jurisdiction to try the claim in the subsequent suit for Rs. 18,000. That case was concerned with the interpretation and scope of section 11 of the Code of Civil Procedure and not with any statutory bar. If it could be held that the Rent Controller had no jurisdiction to decide the claim for declaration of relationship of landlord and

(6) A.I.R. 1959 Punj. 420.

tenant which was the subject-matter of the civil suit, the ratio of the judgment of the Division Bench in *Pateshwari Parshad Singh* v. *A. S. Gilani* (7) could possibly be of some avail to the respondent. Section 9 of the Code of Civil Procedure vests the civil Courts with jurisdiction (subject to the provisions contained in the Code itself) to try all suits of civil nature "excepting suits of which their cognizance is either expressly or impliedly barred".

After carefully considering the submissions made by the learned counsel for both sides, it is held that section 15(4) of the Rent Act creates a statutory bar to the jurisdiction of an ordinary civil Court to readjudicate upon any question that has already been decided by the Rent Control Authorities under the Rent Act which question the Rent Control Authorities have the jurisdiction to decide.

It has been fairly and frankly conceded by learned counsel for the appellant that he has no quarrel with the second declaration granted in favour of the respondent about his being the owner of the premises in dispute which is based on pure finding of fact into which this Court cannot possibly go in second appeal.

In the view we have taken of the first and the second submissions of learned counsel for the appellant, it appears to be wholly unnecessary to deal with the third question relating to the claim for declaration about the relationship of landlord and tenant between the parties being barred on general principles of *res judicata* or of double vexation. We need not, therefore, deal with the cases cited before us on that point by the counsel for the parties.

For the foregoing reasons this appeal is partially allowed. The finding of the lower appellate Court about the decision of the Rent Control Authorities regarding the relationship of landlord and tenant between the parties being not binding on them, is set aside and reversed. Consequently the suit of the plaintiff-respondent for a declaration to the effect that the defendant-appellant is in occupation of the premises as a tenant under him is dismissed. The declaratory decree of the lower appellate Court about the plaintiff-respondent being owner of the premises in dispute, is, however, upheld and maintained. In the circumstances of the case we make no order as to costs incurred by the parties in this Court.

MEHAR SINGH, C.J.—I agree.

K.S.K.