Raghu Nath Jalota Vs. Romesh Duggal and anr.

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Court : Punjab and Haryana

Decided On : Aug-01-1979

Reported in : AIR1980P& H188

Judge : S.S. Sandhawalia, C.J. and; I.S. Tiwana, J.

Acts : East Punjab Urban Rent Restriction Act, 1949 - Sections 15, 15(3), 15(4), 16 and 19; Code of Civil Procedure (CPC), 1908 - Sections 16, 17 and 151 - Order 41, Rules 23, 25 and 27; Punjab Rent Restriction Act, 1941 - Sections 1 and 5; Punjab Rent Restriction Act, 1947 - Sections 2 and 4; Haryana Urban (Control of Rent and Eviction) Act, 1973; Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Sections 20(3)

Appeal No. : Civil Revn. No. 965 of 1976

Appellant : Raghu Nath Jalota

Respondent : Romesh Duggal and anr.

Judgement :

S.S. Sandhawalia, C.J.

1. Whether the appellate authority under S. 15(3) of the East Punjab Urban Rent Restriction Act, 1949, has the jurisdiction to remand the whole case to the Rent Controller for decision afresh is the sole, though meaningful, question which falls for determination in these two civil revision petitions before us on a reference. Directly linked therewith is also the issue of the correctness of the view expressed first by Grover, J., in Civil Revn. No. 641 of l957--Moti Ram v. Ram Sahai, decided on Apri1 29, 1958 (Punj) and its categoric af9rmance by the Division Bench in Krishan Lal Seth v. Shrimati Pritam Kumari, (1961) 63 Pun LR 865.

2. It is manifest that the aforesaid question is pristinely legal. Nevertheless the matrix of facts giving rise to the issue does cell for notice. Raghunath Jalota petitioner instituted two separate applications for ejectment under the East Punjab Rent Restriction Act (hereinafter called the Act)--one against Labhu Ram and Ramesh Duggal respondents jointly and the other against Ramesh Duggal respondent alone with respect to the portions of a godown leased to them. Both these applications first came un before Mr. K. S. Kauldhar, the Rent Controller and he framed issues in each application and evidence was also recorded separately therein. It would appear that later the matter came up before his successor Shri S. S. Tiwana and apparently taking the view that the grounds of ejectment in the two applications were virtually the same except the ground of subletting which was en additional around in the main application he took up both the applications together and discussing the issues

therein jointly disposed them of by an exhaustive judgment running into 22 typed pages on the 10th of March, 1975. Thereby he allowed both the ejectment applications and directed the ejectment of the respondents.

3. Aggrieved the respondents appealed to the appellate authority under the Rent Restriction Act being the District Judge, Kapurthala, who took the view that the disposal of the two cases, by a single judgment was against the provisions of the Civil P. C. and, therefore, set it aside: He remanded both the cases to the Rent Controller purporting to act under Section 151, Civil P. C., for disposing them through separate judgments by confining himself to the material on the record of each case with the further direction that since evidence in both cases had already been separately led neither party would be allowed to produce any additional evidence.

4. The petitioner has come up by way, of this revision petition primarily on the ground that the appellate authority had no jurisdiction to remand the whole case for re-decision and could only act with-. in the confines of Section 15(3) and if necessary could have made further enquiry himself or direct such a farther enquiry through the Controller. The matter first came up. before S. P. Goyal J., who. has expressed a veiled doubt about the correctness of Krishan Lal Seth's case (supra) in making the references.

5. Ere I inevitably come to the authorities relevant to the point it is refreshing to consider the matter on principle. The controversy must obviously revolve around the statutory provisions and these may be read at the very outset-

'15 Vesting of appellate authority on officers by State Government--(1)(a) The State Government may, by a general or special order, by notification confer on such officers and authorities as they think fit, the powers of appellate authorities for the purposes of this Act, in such area or in such classes of cases as may be specified in the order.

(b) Any person aggrieved by an order passed by the Controller may within fifteen days from the date of such order or such longer period as the appellate authority may allow for reasons to be recorded in writing, prefer an appeal so writing to the appellate authority having jurisdiction (in computing the period of fifteen days the time taken to obtain e certified copy of the order appealed against shall be excluded). (2) On such appeal being preferred, the appellate. authority may order stay of further proceedings in the matter pending decision on the appeal.

(3) The appellate authority shall decide the appeal after sending for the records of the case from the Controller and after giving the parties an opportunity of being heard and, if necessary, after making such further enquiry as it thinks fit either personally or through the Controller.

(4) The decision of the appellate authority and subject only to such decision, an order of the Controller shall be final and shall not be liable to be called in question in any court of law, except as provided in sub-section (5) of this section.

(5) The High Court may, at any time, en the application of any aggrieved party or on its own motion, call and examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality and propriety of such order or proceedings and may pass such order in relation thereto as it may deem fit.'

6. In construing the aforesaid provisions, what perhaps deserves to be kept in the forefront is the fact that the East Punjab Urban Rent Restriction Act, 1949 (hereinafter called the Act) is a special piece of legislation comprising the rights and liabilities of the tenant and the landlord and thereby the jurisdiction for determination of disputes thereunder has been designedly included from the ken of the ordinary run of civil courts. Indeed a reference to the legislative history and the background thereof is not only relevant, but would adequately highlight the objects and the purposes of the statute. In the wake of the Second World War and the imposition of taxes on buildings and lands within the limits of the Lahore Municipality and the other urban areas of the State, it became necessary to enact the Punjab Rent Restriction Act, 1941 (Act X of 1941) even prior to the partition of the country. A reference to Sections,1 and 5 thereof would indicate that the primary object was to restrict the increase o! rents of certain premises but the decision of all questions arising thereunder was left to the ordinary Civil Courts and no special provisions were made with regard to appeals or revisions therefrom.. However, when six years later the Punjab Rent Restriction Act 1947 (Punjab Act No. VI of 1947) was promulgated on the l4th of April, 1947, more meaningful changes were introduced in the law and the earlier statute was substantially recast. Section 2(b) of this Act introduced the concept of a Controller W be appointed by the provincial Government to perform the functions under the Act and the substantial issues for determination of fair rent under S. 4 and the eviction of tenants as also other matters arising under the Act were designedly excluded from the ordinary Civil Courts and vested in the Controller so appointed. This Act applied to ail urban areas in the undivided Punjab and therefore set up an altogether new machinery for determining fair rent and performing other functions under the Act. It elaborately dealt with the conditions upon which a tenant might be evicted or a landlord might be put into possession and the significant thing to notice is that the appeals from the order of the Controller were to lie before an Appellate Authority. This procedure was given finality and sub-sea 15(4) of the 1947 Act provided that these decisions would not be liable to be called in question in any Court of law whether in a suit or other proceedings by way of appeal or revision The Punjab Rent Restriction Act, 1947 apparently continued to hold the field in the wake of the partition and minor changes therein were introduced by the East Punjab Act XXI of 1948. which was promulgated on the 10th of April, 1948. To complete the history, it may be mentioned that the Punjab Rent Restriction Act, 1947 which was a Governor's Act was to lapse after a period of two years on the l4th of August, 1949. As a permanent measure, the East Punjab Urban Rent Restriction Act, 1949 was therefore enacted with necessary modifications.

7. 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 it1 the Controllers. They were left to devise their own procedure free rom technicalities and formalities of the Civil P. C. which governed the Civil Court Sections 16 and 19 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 try 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 shakles of technical procedure and to provide a summary and expeditious made 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.

8. Now it may be recalled that under the Punjab Rent Restriction Act, 1941, the rent jurisdiction had continued to vest in the ordinary Civil Courts and therefore, was squarely covered by the Civil P. C., 1908, including its appellate provisions laid out in Order 41 thereof. However, when the Punjab Urban Rent Restriction Act, 1947 was enacted, the Civil P. C. generally was excluded from the rent jurisdiction apart from the specific provisions thereof mentioned in the said statute itself. The framers of the Act of 1947 and the successor statute therefore, must be deemed to be more than well aware of the general law of procedure contained in the Civi1 P. C. and in particular the appellate powers thereunder whit had earlier governed the rent jurisdiction as well. In particular reference in this connection is called to the provisions of Rule 23 and Rule 25 of Order 41 of the Code, which may be first read for facilit9 of reference:--

'23. Remand of case by Appellate Court:--Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree in reversed in appeal, the Appellate Court may; if it thinks fit, by order remand the case, and my further direct what issue or issues shall be tried in the case so remanded, and shal1 send a copy of its judgment and order to the Court from whose decree the appeal is preferred with direction to readmit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (it any) recorded during the original trial shall, subject to al1 just exceptions, be evidence during the trial after remand'.

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25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from--Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, name issues and refer the same for trial to the Court from whose decree the appeal is referred, and in such case shall direct such Court to take the additional evidence required;

and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor.'

The aforesaid provisions are plain and it is evident that whilst Rule 23 in terms confers on the Appellate Court a power of remand, directing a decision afresh, Rule 25 confers a limited power on the Appellate Court, to specifically refer an issue or other questions of tact etc. for additional evidence and findings thereon to the trial court, which for ease of reference is sometime called a report from the trial court for the final decision of the appeal. Again Rule 27 provides the limitations within which the production of additional evidence in the appellate court is to be allowed. It must inevitably be assumed that the legislature was amply and fully conversant with the powers al the appellate court specifically conferred by the Civil P. C. However, when it came to conferring the said powers on the appellate authority constituted under the

Act, Section 15(3) seems to have designedly chosen to refer only to the power of making further enquiry either by the appellate authority itself or through the Controller. In effect, therefore, the framers chose in concise language the appellate power spelt out in Rr. 25 and 27 Civil P. C. to the deliberate exclusion of the power of remand and decision afresh as stood specifically laid out in Rule 23. To give an example, if Rule 23 of the Code were to be designedly repealed by the Parliament, could it possibly be said that nevertheless a power to remand for decision afresh would continue to vest in the appellate authorities to which the Code applies? It appears to me that the answer to such a question must inevitably be in the negative. It is significant that in Section 15(3) the very word 'remand' s conspicuous by its absence and there is not the least reference of sending the ease back to the trial court for a fresh determination thereof. Indeed it appears to roe that once it is held that the farmers of the statute were well aware of the appellate powers, so well-known and fully spelt out in the Civil P. C. the couching of sub-section (3) in the terms in which it has now been laid, cannot have any other meaning except that either expressing or in any case impliedly the intent of the legislature was to exclude the power of remand and decision afresh as laid down in Rule 23.

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 prom the ordinary gamut of civil litigation and to put it in a more expeditious and a quicker procedural.remed9 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 and 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 berated 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 case are under special Acts.....

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 cell for an early disposal.'

11. The case in hand is itself an example (though much more glaring ones are also

available) of the delay in the courts below which may nevertheless occur despite the legislature's intent to provide an expeditious procedure for the rent jurisdiction which prima fade cries out for urgent disposal. The application for ejectment was preferred way back on the 20th of January, 1971, but it was not till more than four years later that on the 10th of March 1975 the case came to be decided by the Controller. The Appellate Authority proceeded with relative quickness, but. nevertheless, it was not till a year end three months thereafter that the judgment under revision was render. ed. If the matter were to be remanded for a fresh decision, the parties would be thrown back into the mill of a fresh trial which conceivably may take as long as the earlier one. Therefrom, inevitably would arise fresh rights of a regular appeal under Section 15(3) and the possibility of a revision thereafter have equally to be conceived of. It were perhaps such like eventualities which had motivated the legislature that at least within the rent jurisdiction, the appeal would remain before the appellate authority even though fresh enquiry may be necessary in order to prevent the start of the cycle a11 over again.

12. It was then faintly sought to be argued before us on behalf of the respondent that despite the fact that Section 15(3) does not spell out any such power; there as nevertheless an inherent power to remand the matter for a decision afresh by the Appellate Authority. In view of what has been said above. this argument cannot hold water even for a moment. Once it is held that the legislature on the framers of the Act. by express or implied implication excluded the power of remand from the ambit of the appellate power under Section 15(3), then no question of any such inherent power vested in the Appellate Authority can arise. Holding otherwise would be introducing by the back-door what the legislature had expressly excluded by barring the front one. 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.

13. Some misapprehension and confusion on the point seems to arise from the fact that usually the powers of the Controller under the Act have been conferred on subordinate Judges and the powers of Appellate Authority were also specifically vested by the, notification in the District Judges. This, however, should not lead one to the misapprehension, that thereby the Controller or the Appellate Authority becomes Civil Courts as such They retain their essential nature as Tribunals or a persona designata. It is in this context that it deserves to be highlighted that under a sister statue namely; Haryana Urban (Control of Rent and Eviction) Act, 1973 the powers of the Controller were at one time vested in the Sub-Divisional Officers whilst the Deputy Commissioners were made the Appellate Authorities by notification. By

Section 15(6) of the Haryana Urban (Control of Rent and, Eviction) Act, 1973, the Financial Commissioner was designated by the statute itself as the revisional authority. Though there has recently been reversion to the old practice, the above rightly highlights the fact that it would be misleading to assume that the Controller or the Appellate Authority are necessarily civil courts to whom alone the theory of inherent powers can be possibly applied.

14. It was then sought to be argued that despite the provisions of Sections 16 and 17 of the Act, the Civil P. C. was nevertheless attracted and wholly applicable to all matters under the rent jurisdiction and therefore, Section 151 and even Order 41 of the Code would nevertheless be attracted. I am unable to accede to this line of reasoning and it appears to be plain that the only provisions of the Civil P. C. which are specifically applicable are those specified in Ss. 16 and 17 of the Act. The argument on behalf of the respondent was wholly and entirely rested on the observations of Tuli, J. sitting singly in Krishan Kumar v. Baldev Singh 1974 Cur LJ 233 (Punj). It, therefore, suffices to mention that the said judgment has been overruled by the Division Bench in Ram Dutta Gupta v: Financial Commr. Haryana Chandigarh, (1976) 78 Pun LR 791, and is, therefore no longer good law.

15. Having cleared the ground with regard to the language of the Act and on principle, one must now inevitably advert to precedent. There appears to be a long and unbroken line of authority for the view enunciated above. Indeed, learned counsel for the respondent was forced to concede that apart from veiled rumblings of doubt, there was no judgment holding directly and squarely in favour of the respondent that Section 15(3) conferred any express or implied power of remand on the Appellate Authority for altogether a fresh decision. More than two decades ago, the matter fell directly for decision by Grover, J. in Moti Ram v. Ram Sahai. Civil Revn. No. 641 of 1957. decided on April 29, 1958 (Punj),. under the provisions of Section 16(3) of the Patiala and East Punjab States Union Urban Rent Restriction Ordinance, 2006 Bk. which is in pari materia with the provisions under consideration, wherein it was observed as follows:--

'It would be useful to refer to the provisions of sub-section (4) of Section 16 as well. According to that provision the decision of the Appellate Authority and subject only to such decision, an order of the Controller shall be final and shall not be liable to be called in question in any Court of law. It is submitted that the Appellate Authority could make such enquiry as it thought fit itself or it could ask the Controller to make that enquiry hut the appeal had to be disposed of by the Appellate Authority itself and since the decision of the Appellate Authority is to be final, it can have reference only to such decision as the Appellate Authority makes on the merits and it can have no reference to such an order of remand as has been made in the present case. It is quite clear that the statute makes no provision for an order of remand for retrial or fresh decision and the obvious intention of the legislature seems to be that the Appellate Authority should itself decide the points, and if for the purpose of doing so, it becomes necessary to make some further enquiry that can be done by the Appellate Authority itself or through the Controller. It has been contended on behalf of the respondent that there is an inherent power in an Appellate Authority to remand a case for retrial and fresh decision. Such an inherent power exists in the Courts under the Civil Procedure Code as there can be a remand under inherent powers apart from the provisions of O. 41 R. 23 Civil P. C. In the first place there is no provision analogous to Section 151 of the Civil P. C. in the Rent Ordinance. Secondly, the language of subsection (3) read with sub-section (4) of Section 16 makes it fairly clear

that the Appellate Authority has to decide the dispute between the parties itself and these does not seem to be any warrant for reading into these provisions a general power of remand,'

The aforesaid line of reasoning was affirmed by the Division Bench in Krishan Lal Seth v. Shrimati Pritam Kumari, (1961) 63 Pun LR 865 and in view of the fact that they were reiterating the view of Grover, J. the learned Judges rightly did not traverse the same ground over again.

16. In Brijmohan La1 v. Rajalingam, 1959 Andh LT 206, the virtually identical provision of Section 25 of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 fell for construction (consideration ?) before M. A. Ansari, J. (as his Lordship then was). He concluded in categoric terms that there was no power to remand the case for decision afresh in the Appellate Authority.

17. The identical question came up before Munikannaiah, J. in Mahboob Bi v. Alvala Lachmiah AIR 1964 Andh Pra 314, in the context of Section 20(3) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act (15 of 1960), which is in pari materia with the provisions which fell for construction (consideration ?) here. Unhesitatingly. agreeing with Ansari J. and following that view, it was observed as follows:--

'.....The question whether by virtue of this provision the jurisdiction to remand a case for fresh decision by the Controller on merits was then considered and it was observed that inasmuch as the appellate Court is to order further inquiry which is either to be done personally or through the Controller, it is implicit that the appeal should be kept pending all the time before appellate authority. For this reason, it was held that an order of remand by the appellate authority was incorrectly made. As the language of subsection (3).of Section 20 of the Andhra Pradesh Act XV of 1960 is unambiguous, there can be no two interpretations regarding the meaning of that sub-section. I am in entire agreement with the view taken by Ansari, J. Therefore, the argument that an order of remand such as the one passed by the Appellate Authority is clearly unsustainable. From what I am thus prepared to hold in regard to the two points taken before me and dealt with above, it has to follow that the appeal before the lower appellate court was incompetent, and that the order o! remand is incorrect.....'

18. Lastly, the observations of the Full Bench in Pitman's Shorthand Academy v. B. Lila Ram & Sons (1950) 52 Pun LR 1, though not directly covering the point at issue yet provide substantial support by an analogous line of reasoning.

19. To conclude therefore the history of the legislation, its object and purpose, the specific language of Section 15(3) of the Act and both principle and precedent, attend to render an answer in the negation to the question formulated at the out-. set. It is, therefore, held that there is no jurisdiction in the Appellate Authority to remand the whole case to the Controller for entirely a fresh decision and the view in Moti Ram v. Ram Sahai, Civi1 Revn. No. 641 of 1957 decided on April 29, 1958 and Krishan Lal Seth v. Shrimati Pritam Kumari, (1961) 63 Pun LR 865, is reaffirmed.

20. Before parting with the judgment, it is however, necessary to advert to a few discordant notes and rumblings. of doubt raised in some of the judgments relied on by the respondent. The first on these in order of chronology is Din Dayal v. Ram

Chandar C. R. No. 169 of 1958, decided on September 29, 1958 (Punj). Therein, the specific point was raised and reliance was placed on the decision of Grover, J. in Moti Ram (supra). The learned single Judge expressed vacillating doubts with regard thereto but the matter was compromised before him and in fact the order of the District Judge remanding the case was set aside with the direction that he should decide the appeal himself either by inspecting the spot or by appointing some local Commissioner to do so and report to him It was expressly observed that the question of law raised was not being decided. It is, therefore, plain that this judgment is no warrant for taking a contrary view.

21. In Lajpat Rai v. Harkishan Das, C. R. No. 676 of 1962, decided on April 5, 1963 (Punj) a similar question again arose before Chief Justice Falshaw. Krishan Lal Seth v. Pritam Kumari. (1961) 63 Pun LR 865 was cited before him, but without expressing the least doubt or criticism of the said judgment (indeed sitting singly he was bound thereby), he distinguished the same on the short ground-

'I do not, however, consider that that decision applies to the present case in which it is not so much a matter of the learned Rent Controller's not having dealt satisfactorily with some point which arose in the case as of his not having dealt with the merits at a11 after accepting-certain' preliminary objections. In my opinion, there is nothing in the words of the section which prohibits a remand in such. a case.'

With great respect, I say it is not possible to subscribe to the aforesaid view in view of the exhaustive discussion in. the earlier part of the judgment. Once it is held that Section 15(3) precludes any remand for a fresh decision, then the said prescription cannot be whittled down by raising any finical distinctions. As has been noticed no reasons were given by the learned single Judge for deviating from the rule that Section 15(3) did not confer any power of total remand. That principle cannot be departed from merely on the ground of the nature or the quantum of the evidence produced in the trial court. Neither precedent nor any particular rationale appears in the cryptic observations whereby the case was sought to be distinguished. I am of the view that for the detailed reasons recorded earlier end the fact that the learned single Judge had chosen to go against binding precedent, the same is not good law and therefore, has to be overruled.

22. In Brij Lal Puri v. Smt. Muni Tandon, AIR 1979 Punj & Har 132, this question was raised again before a learned single Judge and after referring to some of the case law, already noticed above, including the Division Bench judgment in Krishan Lal Seth v. Pritam Kumari, (1961) 63 Pun LR 865 he observed that as the plea of the respondent landlady about her personal necessity had not been considered by the learned Rent Controller on merits and it would appear that the observations made by Chief Justice Falshaw in Lajpat Rai's case (supra) would apply to the case before him and therefore, the retrial was not wholly without jurisdiction. However, he further held that because the petitioners therein had themselves derived the benefit under the order of remand and had led evidence afresh before the trial court and invited the decision thereon, therefore, it was not open to them to challenge its `Legality at that stage. It is plain from the analysis of the judgment that the challenge to the order of remand was repelled on. the aforesaid intermingled twin grounds. However, it the judgment is to be read as a support for the proposition that there exists power of remand under Section 15(3) of the Act or is also an affirmance of the view of Chief Justice Falshaw in Lajpat Rai's case then with great respect, far the detailed reasons given above; on both these issues, the view of the learned single Judge cannot be

sustained, and is hereby overruled.

23. In Tulsi Ram v. Mohan Krishan, (1978).1 Rent LR 308 (Punj), the matter was. only incidentally raised before Goyal, J. and it is apparent that the issue was not canvassed at any length. The argument was brushed aside with the following observation:--

'.....I am afraid I am unable to agree with this contention. The provisions of Section 15(3) only envisage further enquiry when there has been a trial and the Appellate Authority for its satisfaction wants to make any further enquiry. Where there has been no trial, as in the present case arid where the ex parte proceedings are set aside, if the contention of the learned counsel is accepted the Appellate Authority has to hold the trial from its very inception. In my view this is not the intention of the provisions of Sec 15(3) of the Act which is meant to meet the contingencies noticed above. I have, therefore, no hesitation in overruling the objection of the learned counsel that the lower appellate Court had no jurisdiction to send back the case for the fresh trial.'

Even whilst making the present reference, the learned Judge has made similar observations that if the Appellate Authority is denuded of the power of remand end decision afresh, then it has to perform the function of the Rent Controller itself. With great respect, this view does not commend itself to us. The Plain language of Section 15(3) clearly provided both the alternatives in a vide ranqin4 discretion to the Appellate Authority. Re is entitled to make such further enquiry either himself or through, the Controller. It is thus plain that in appropriate cases, if the Appellate Authority so desires, the matter can be sent to the Controller for the recording of further evidence and even the findings to be arrived at thereon. This procedure can obviously be closely analogous to the calling of a report from the trial court under Order 41. Rule 25, Civil P. C. Therefore, the rear repeatedly expressed that the absence of the power of remand would inevitably and as a matter of law convert the Appellate Authority into a trial. court, in peculiar cases appears to be not well founded. If would be wasteful to reiterate a11 the reasons given above and on their basis, there is no option, but to overrule the judgment on this point.

24. Lastly, apparently owing to some misapprehension, reliance on behalf of the respondent was sought to be placed on the observations of Pandit, J. in Rajinder Kumar v. Basheshar Nath, (1965) 67 Pun LR 974. This reliance appear to me as based on a misreading of the judgment which in fact was merely a case of enquiry through the Controller by the Appellate Authority and was not a case of total remand and a decision afresh by him.

25. In accordance with !he answer to the main question of law rendered earlier, both the revision petitions are hereby allowed and the order of the Appellate Authority is hereby set aside with the direction that he shall proceed to decide the appeal himself in the light to the observation made above.

Petition allowed.