CIVIL MISCELLANEOUS

Before A. N. Grover, J.

MEHAR SINGH,—*Petitioner*

versus

THE ADMINISTRATOR, UNION TERRITORY OF DELHI AND ANOTHER,—*Respondents*

Civil Writ No. 94-D of 1966

September 5, 1966

Slum Areas (Improvement and Clearance) Act (LXXXXVI of 1956)—S. 20—Administrator hearing appeal from order of Competent Authority—Whether can hold further inquiry or take additional evidence.

Held, that the Administrator, while hearing and disposing of an appeal under section 20 of the Slum Areas (Improvement and Clearance) Act, 1956, cannot and does not enjoy all the powers which inhere in a Court, although his order partakes of judicial or quasi-judicial character. It is difficult to hold that he can exercise the same powers, as the Competent Authority can, of making an inquiry. No such power in terms has been conferred by section 20 and it cannot be read into it by necessary intendment. If the intention had been to give any such power, then section 20 would have contained a provision like the one to be found in section 15(3) of the East Punjab Urban Rent Restriction Act, 1949, empowering the appellate Tribunal to make a further inquiry either personally or through the Competent Authority. The other provisions relating to "appeals", which are to be found in the Act now, do not afford any assistance in determining the scope of the powers of the Administrator in the matter of holding further inquiry while entertaining an appeal under the aforesaid section. It is true that even though an appeal is in the nature of a re-hearing and the Courts in this country can take into account the facts and events which have come into existence after the decree appealed against, it could be only for moulding the relief to be granted in the appeal. Similarly it can well be said that it was the position as it emerged from the material placed before the Competent Authority which had to be considered and not any material or evidence which was sought to be put in at a later stage before the Administrator. The Administrator, therefore, has no power or jurisdiction, under section 20 of the Act, to hold any further inquiry and take into consideration any such evidence or material which had not been placed before the Competent Authority.

Petition under Articles 226 and 227 of the Constitution of India, praying for a writ of certiorari *or* mandamus *or other appropriate writ for quashing the order*

of the Administrator, Delhi, dated 7th of December, 1965, passed in Appeal No. 177 of 1964, under Slum Areas (Improvement and Clearance) Act of 1956.

B. C. MISRA, SENIOR ADVOCATE WITH GOPAL NARAIN AGGARWAL, ADVOCATE for the Petitioner.

H. HARDY, SENIOR ADVOCATE WITH YOGESHWAR DAYAL, ADVOCATE for the Respondents.

JUDGMENT

GROVER, J.—This is a petition under Articles 226 and 227 of the Constitution in which the facts stated briefly are as follows. The petitioner took the premises comprising the ground floor of house No. 8768 (new) in Mohalla Rahatganj, Roshanara Road, Delhi, at a rent of Rs. 12.50 Paise per mensem. This property was acquired by purchase by respondent No. 2, Bahali Ram, in March, 1959, with effect from the 1st of October, 1955. In March, 1962 respondent No. 2 filed an application against the petitioner for his ejectment under section 14 of the Delhi Rent Control Act on the grounds *inter alia* of non-payment of rent and *bona fide* personal necessity. This application was resisted, but the Rent Controller made an order on the 4th of March, 1963 holding that the landlord needed the premises for his personal occupation and he granted an order for ejectment. The petitioner filed an appeal before the Rent Control Tribunal, but the same was dismissed on the 3rd of May, 1963. On the 21st of May, 1963 the aforesaid respondent moved an application before the Competent Authority under section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 (hereinafter called the Act), for permission to execute the decree. Before the Competent Authority the petitioner took up the position that his income was very meagre and that he was employed with Mehta Transport Company at a monthly remuneration of Rs. 70 and that his son Kashmir Singh was sharing accommodation with him with his family. The Competent Authority got the premises inspected and according to the material collected by the Inspector it was found that the petitioner had been residing in the disputed premises with his minor son, Baldev Raj, whereas the other members of the family were not living with him. Kashmir Singh was reported to be residing somewhere in the Punjab and so was his wife who was also in service. On behalf of the respondent it was alleged before the Competent Authority that the petitioner owned landed property in District Ferozepore and that Kashmir Singh was employed as a

checker in the Karnal—Kaithal Transport Company and that he was residing in Model Town, Karnal, where he had purchased a plot for Rs. 2,965. It was further argued that the petitioner was residing with his one son, namely Baldev Raj, who was a student. What affected the Competent Authority was the fact that the tenant was agreeable to exchange accommodation with the landlord as he was prepared to surrender the entire disputed premises on the ground floor and shift into the portion in occupation of the landlord, and as the landlord was not agreeable to this exchange, the Competent Authority felt that eviction should not be ordered, particularly when the petitioner could not be thrown on the road. An appeal was taken to the Administrator, which was disposed of by Shri Vishwanathan on the 7th of December, 1965. The Administrator noticed the rival contentions of the parties and observed that when the Inspector was sent by the Competent Authority, he found the house locked up. He referred to a document which had been filed with the appeal showing that the petitioner had sold land worth Rs. 5,000 in Ferozepore and he also referred to a copy of the documents from the Punjab High Court which showed that the petitioner was the owner of 2,680 fully paid-up shares of Rs. 10 each in the Modern Transport (P) Ltd. Shri Vishwanathan considered the statement of the petitioner as definitely untrue. This he did by taking into consideration the evidence relating to the shares as also the land. He further did not believe that Kashmir Singh's wife was living with the petitioner. He, therefore, allowed the appeal and granted permission to respondent No. 2 to execute the decree. It is this order which has been challenged by the present petition.

Mr. B. C. Misra has sought to raise two main contentions. The first is that Shri Vishwanathan, who as the Administrator was the appellate authority under section 20 of the Act, had no jurisdiction or power to admit additional evidence at the stage of appeal, and secondly that even if he had admitted additional evidence, he failed to give any opportunity to the petitioner to lead evidence in rebuttal. It is pointed out that section 19 of the Act confers express powers on the Competent Authority to make such summary inquiry as it may deem fit, but no such power of inquiry, which would include the power to take additional evidence, is conferred on the Administrator to whom an appeal lies under section 20 of the Act. A good deal of emphasis has been laid on the well-known rule that statutory authorities or tribunals exercising quasi-judicial functions do not possess such powers as inhere in a Court of law and that such powers have to be found in the

provisions constituting those authorities and conferring powers on them to dispose of original causes or appeals. Reliance has been placed on *Shri Krishan Lal Seth* v. *Shrimati Pritam Kumari* (1) a Bench decision of this Court, in which it has been held that where an appellate authority under the East Punjab Urban Rent Restriction Act, 1949, is dissatisfied with the trial of an application for eviction of a tenant, it can make a further inquiry itself or through the Rent Controller, but it has no power to set aside an order of the Rent Controller, and remand such an application to him for retrial and redecision. The Bench referred to a similar view taken by me in Civil Revision No. 641 of 1957 decided on the 29th of April, 1958. Another rule which has been sought to be pressed into service is that an appeal in India cannot be regarded to be a rehearing of the suit itself as observed in *Mst. Rewati* v. *Chiranji Lal* (2) Mr. Misra in amplification of his submission has invited my attention to the law laid down in *Laxman Purshottam Pimputkar* v. *The State of Bombay and others* (3) that an authority acting in a judicial or quasi-judicial capacity cannot, in the absence of any express provision empowering it, review its own order. Similarly in a Full Bench decision of this Court, of which I was a member, in *Deep Chand and another* v. *Additional Director, Consolidation of Holdings, Punjab, and another* (4) it was held that an Additional Director of Consolidation was not empowered to recall or review his earlier order, though erroneous and unjust, whenever he discovered that the error was due to his own mistaken view of the merits of the controversy. Reference was made in that case to several decision, according to which no Court has an inherent power of review and it must be conferred by statute like a power of appeal. According to *Rameshwar Dayal* v. *Sub-divisional Officer, Ghatampur, and others* (5) an election tribunal cannot claim inherent powers which are of a Court. Such tribunals are created by the statute to decide certain disputes and are bound to decide them strictly according to law after following the prescribed procedure and have jurisdiction to do only that which they are expressly empowered to do. Only those Courts which have the general jurisdiction to do justice are competent to pass any orders that they consider necessary in the interest of justice, even though they are not covered by express provisions of the laws of procedure.

(1) I.L.R. (1962) 1 Punj. 310=1961 P.L.R. 865.
(2) A.I.R. 1944 Lahore 29.
(3) A.I.R. 1964 S.C. 436.
(4) I.L.R. (1964) 1 Punj. 665=1964 P.L.R. 318.
(5) A.I.R. 1963 All. 518.

Broadly, therefore, the submission of Mr. Misra is that since the Administrator, to whom an appeal lies under section 20 of the Act, is not a Court and is merely an appellate tribunal exercising judicial or quasi-judicial powers, he does not possess the inherent powers of the Court, nor is there any indication in the Act by which the provisions of Order 41 rule 27 of the Code of Civil Procedure would *mutatis mutandis* become applicable to the proceedings before the Administrator. Furthermore an appeal cannot be regarded as continuation of the original cause and, therefore, also the Administrator could not, in the absence of an express provision, exercise the same powers as the Competent Authority.

Mr. Hardy for respondent No. 2 contends that the real question which requires determination is not whether the Administrator, to whom an appeal lies under section 20 of the Act, can exercise the inherent powers of a Court, but what has to be seen is whether the Administrator can exercise the same powers which have been conferred on the Competent Authority by section 19. According to him the Civil Procedure Code has only accepted and carried out the well-established principle that an appeal is the continuation of the proceedings in the original Court, that those proceedings are removed to the Court of appeal and that the proceedings in the appellate Court are in the nature of a re-hearing *Vuppuluri Atchayya* v. *Sri Kanchumarti Venkata Seetharama Chandra* (6). In Words and Phrases, Volume 3A, it is stated at page 288 that an "appeal", strictly speaking, is a proceeding by which a case is removed from a lower Court to a higher Court for trial there *de novo*, either upon the record made in the lower Court or upon evidence newly introduced. Mr. Hardy has stressed the principle that the Courts can take into account at the stage of appeal the facts and events which have come into existence after the decision of the original Court or tribunal. The observations of Lord Loreburn L. C. from *Board of Education* v. *Rice* (7) have been relied upon for showing that departmental authorities can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view.

It is necessary at this stage to notice briefly the scheme and the material provisions of the Act. It is stated in the preamble that it

(6) I.L.R. 39 Had. 195 at p. 208.
(7) (1911) A.C. 179.

was meant to provide for improvement and clearance of slum areas in certain Union territories and for the protection of the tenants in such areas from eviction. It is un-necessary to refer to all the sections dealing with slum improvement, slum clearance and redevelopment, and acquisition of land. Chapter VI deals with protection of tenants and section 19 provides for permission to be obtained of the Competent Authority for eviction of tenants. As stated before, section 19 expressly confers power on the Competent Authority to make a summary inquiry into the circumstances of a case. Then comes section 20, which gives a right of appeal against the orders of the Competent Authority passed under sections 6A and 19 of the Act. There is another provision, namely, section 30, in the Act, which relates to appeals, but that is in the following terms:—

"(1) Except as otherwise expressly provided in this Act, any person aggrieved by any notice, order or direction issued or given by the competent authority may appeal to the Administrator * * * * * *

(2) * * * * * * * *

(3) * * * * * * * *

(4) No appeal shall be decided under this section unless the appellant has been heard or has had a reasonable opportunity of being heard in person or through a legal practitioner.

(5) * * * * * * * *."

The other provisions which confer right of appeal under the Act are sections 10(7) and 15(4). It is apparent from the proviso to section 10(7) that the Administrator is empowered to "make such order in the matter as he thinks proper and his decision shall be final." Similarly under section 15(4) an appeal can be preferred to the Administrator and under section 15(5) he shall, after hearing the appellant, "determine the net average monthly income and his determination shall be final and shall not be questioned in any Court of law." The language of section 20, which is the material section for the purposes of the present case, also indicates that the Administrator must hear the appellant and his decision shall be final. It may be mentioned that section 20 of the Act as it stood before its amendment by the Slum Areas (Improvement and Clearance) Amendment Act, 1964, which was first published in the Gazette of India, dated the 21st of December, 1964, was as follows:—

"20. Any person aggrieved by an order of the competent authority refusing to grant the permission referred to in

sub-section (1) of section 19 may, within such time as may be prescribed, prefer an appeal to the Administrator and the decision of the Administrator on such appeal shall be final."

Now, in the present case we are concerned with the un-amended section 20, because the appeal was filed before the amending Act came into force.

It seems to me that the Administrator while hearing and disposing of an appeal under section 20 of the Act cannot and does not enjoy all the powers which inhere in a Court, although his order partakes of judicial or quasi-judicial character. It is difficult to hold that he can exercise the same powers, as the Competent Authority can, of making an inquiry. No such power in terms has been conferred by section 20 and it cannot be read into it by necessary intendment. If the intention had been to give any such power, then section 20 would have contained a provision like the one to be found in section 15(3) of the East Punjab Urban Rent Restriction Act, 1949, empowering the appellate Tribunal to make a further inquiry either personally or through the Competent Authority. The other provisions relating to "appeals", which are to be found in the Act now, do not afford any assistance in determining the scope of the powers of the Administrator in the matter of holding further inquiry while entertaining an appeal under the aforesaid section. It is true that even though an appeal is in the nature of a re-hearing and the Courts in this country can take into account the facts and events which have come into existence after the decree appealed against, it could be only for moulding the relief to be granted in the appeal,—*vide* observations of Varadachariar, J., in *Lachmeshwar Prasad Shukul* v. *Keshwar Lal Chaudhuri* (8) at p. 13, which were followed in *Chunilal Khushaldas Patel* v. *H. K. Adhvaru* (9) at p. 674. The following observations in *Chunilal Khushaldas Patel's case* at page 674 are pertinent:—

"In the events that had happened as narrated above. there was no justification therefore, for the High Court taking into consideration the higher offers which were brought into existence by Madhubhai after 25th August, 1955, based on a bid for the managing agency of the Himabhai Company on the strength of the acquisition of the voting rights in respect of the whole block of 1936 shares.

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(8) A.I.R. 1941 F.C. 5.
(9) A.I.R. 1956 S.C. 655.

> The position as it stood on 4th August, 1955, was to be considered and it was on an appreciation of the position as it then stood that the District Judge had to and did consider whether the offer of Chunilal or that of Adhyaru should be sanctioned."

Similarly it can well be said that it was the position as it emerged from the material placed before the Competent Authority which had to be considered and not any material or evidence which was sought to be put in at a later stage before the Administrator. I would, therefore, hold that under section 20 of the Act the Administrator does not have the power or the jurisdiction to hold any further inquiry and take into consideration and such evidence or material which had not been placed before the Competent Authority.

Mr. Hardy has laid a great deal of emphasis on the manner in which the petitioner and members of his family have abused the process of the Court. It has been pointed out that the order of the Administrator was announced on the 7th of December, 1965 and an application for execution was filed on the 16th of December, 1965. On the 18th of December, 1965 Kashmir Singh filed objections and asked for stay but the stay was refused. On the 22nd of December, 1965 the other son of the petitioner, i.e., Gurcharan Singh, filed objections. The next date fixed was the 31st of January, 1966. Meanwhile the writ petition was filed on the 22nd of January, 1966. He has also pointed out that before the Competent Authority a copy of the *jamabandi* of the year 1956-57 concerning Dabwali land was produced, which showed that the petitioner owned land in Ferozepore District. A sale-deed had also been filed to show that Kashmir Singh had purchased a house. Further a certificate had been obtained from Dharam Pal, Proprietor, New Paul Golden Transport Company, that the petitioner was a well-known broker. Mr. Hardy has next pointed out that the order made by this Court with regard to the shares were passed subsequent to the orders of the Competent Authority and for that reason they could not be produced before it and could only be produced before the Administrator. Moreover, according to Mr. Hardy, no objection was taken on behalf of the petitioner to the admission of additional evidence or consideration of that evidence and facts by the Administrator at the time the appeal was heard. On the contrary, Mr. Misra has sought to rely on an affidavit filed by the counsel appearing before the Administrator that he did object to the additional material being relied upon at the stage of appeal. The circumstances in which this affidavit had been

filed have been assailed by Mr. Hardy, but I consider it altogether unnecessary to decide these matters. Nor does the second point urged by Mr. Misra require determination, because in my opinion there was lack of jurisdiction in the Administrator to admit additional material or evidence for the purpose of deciding the appeal. I am well aware and have little doubt that the petitioner has tried to prolong his occupation of the premises in dispute as much as he could and he may also have indulged in such tactics which litigants normally employ for prolonging or defeating proceedings for eviction, but I am constrained to strike down the order of the Administrator as it suffers from the infirmities already mentioned.

In the result the petition is allowed and the order of the Administrator is set aside. However, in the exercise of my powers under Article 227 of the Constitution, I direct that the appeal shall be reheard and redecided by the Administrator in accordance with law. Keeping in view the entire facts, I leave the parties to bear their own costs.

B.R.T.

REVISIONAL CIVIL

Before Inder Dev Dua and Prem Chand Pandit, JJ.

SHYAM SUNDER AND OTHERS,—*Petitioners*

versus

M/s BRIJ LAL-CHAMAN LAL AND OTHERS,—*Respondents.*

Civil Revision No. 805 of 1965

September 6, 1966

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13(2)(ii)(a)—Applicability of—Tenant being a firm, dissolved after death of a partner—Goodwill along with lease-hold rights falling to share of one of the partners—Relinquishment of rights in the leased property by the legal representatives of deceased partner—Whether amounts to transfer—Remaining partner forming another partnership and continuing business in the same shop—Whether amounts to sub-letting—Partnership Act (IX of 1932)—Ss. 4 and 14—Partnership—Nature of—Partnership property—Rights of partners therein.