impelled to file the present application for ejectment. In this situation, the notice, dated August, 22, 1974 cannot necessarily be termed as one which was self-invited. The other ground urged by Mr. Kapoor is that the landlord of the respondent, after serving the notice on him, did not take any proceedings for getting him ejected. From this circumstance, the learned counsel wants me to infer that the notice, dated August 22, 1974 was, in substance, a sham notice. I cannot accept this argument either. Once the landlord of the respondent came to know that the latter had filed ejectment application for getting his own house vacated, he could have formed an opinion that as soon as the respondent succeeded in his case, he would vacate the house taken on rent by him. Consequently, the mere inaction on the part of the landlord of the respondent does not necessarily prove that he entered into a conspiracy with the respondent with the sole object of seeing that the petitioner should be evicted from the house of the respondent.

(6) It was then argued by the learned counsel for the petitioner that for bolstering up his claim the respondent-landlord stated before the learned Appellate Authority that he had in all six relations, even though two of such relations mentioned by him were the son and daughter respectively of his sister. There is no bar against a person to allow a part of his house to his nephew and niece. In any event, if the premises vacated by the petitioner are not occupied by the landlord himself the law makes a provision for the tenant to apply for re-entry into the premises.

(7) No other point was raised before me. This petition is, therefore, dismissed *in limini.*

N.K.S.

Before M. R. Sharma, J.

BRIJ LAL PURI and another,—*Petitioners*

versus

MUNI TANDON,—*Respondent.*

Civil Revision No. 1720 *of* 1978.

November 10, 1978.

East Punjab Urban Rent Restriction Act (III of 1949)*—Sections* 13(3) (*a*) (*i*) *and* (*iv*) *Second proviso and* 15(3)*—Ejectment application by a landlord—Preliminary objections of the tenant allowed and*

application dismissed—No enquiry on merits—Appeal by the landlord—Preliminary objections disallowed and case remanded for trial on merits—Such remand—Whether within the competence of the appellate authority—Tenant after remand producing evidence to disprove the claim of the landlord on merits—Ejectment application allowed—Tenant in appeal—Whether estopped from challenging the order of remand—Landlord ejecting a tenant from a portion of the building—Application for ejectment of another tenant on the ground of personal necessity—Whether maintainable.

Held, that the procedural provisions of a statute under which a court or a quasi-judicial authority is invested with the jurisdiction to decide a lis between two parties are exhaustive to the extent to which the subject matter has been specifically dealt with by the Legislature and in respect of the matters which have not been so specifically dealt with, such an authority can pass an appropriate order to achieve the ends of justice in exercise of its inherent powers. As far as the Code of Civil Procedure is concerned the orders of remand were usually passed by the appellate authority under Order 41, Rule 23 of the Code and if a matter did not fall squarely within the provisions of that Order the cases were remanded in exercise of inherent powers. At the same time unnecessary and avoidable orders of remand passed by the appellate courts were invariably frowned upon by the superior courts because such orders tended to give further spurt to litigation but where entirely new and relevant matters crop up before the appellate courts the decision on which becomes essential in the just disposal of the case it does look proper that such a matter should be decided at the lowest level so that the hands of the appellate courts do not remain tied up with original matters. Thus, where a Rent Controller has not dealt with the merits at all and dismissed the ejectment application after accepting certain preliminary objections, there is nothing in the words of section 15 of the East Punjab Urban Rent Restriction Act 1949 which prohibits a remand and the order of remand passed by the appellate authority under these circumstances could not at all be regarded as being one without jurisdiction. (Paras 15 and 16).

Held, that when after the order of remand, the tenant took the chance of disproving the claim of the landlord by leading evidence but failed to do so, it would be improper on the part of an appellate authority or the revisional court to allow the tenant to turn round and assert that the order of remand was without jurisdiction and the rule of estoppel would adequately confront him in such a situation. (Para 17).

Held, that a plain reading of the second proviso to section 13(3) (a) (iv) of the Act shows that a landlord after getting one building vacated, which can reasonably meet his needs, cannot get another

building vacated. The proviso does not lay down that if the entire building which is needed by a landlord for his personal use, is occupied by more than one tenants, he cannot take out eviction proceedings against the other tenants after having evicted one. The object of this proviso is that a landlord should not be allowed to seek unreasonable ejectments of tenants from independent buildings if he has already succeeded in evicting a tenant from a building which is sufficient for his personal occupation. (Para 19).

Petition under section 15 *Act III of* 1949 *for the revision of the order of the court of Shri Prithipal Singh Grewal, Additional District Judge, exercising the powers of Appellate Authority, Amritsar dated* 15*th September*, 1978 *reversing that of Shri R. L. Anand, Rent Controller, Amritsar setting aside the order of the trial court and remanding the case for a fresh trial.*

R. L. Aggarwal, Advocate with Amar Dutt, Advocate, *for the petitioners.*

R. S. Bindra Sr. Advocate with S. S. Dhaliwal, Advocate and K. Kochhar, Advocate, *for the respondent.*

JUDGMENT

M. R. Sharma, J. (Oral) :

(1) Shrimati Muni Tandon alias Urmila Tandon, the respondent herein, had filed an ejectment application against the petitioners on the ground of personal necessity. According to her, she had five unmarried school-going daughters and the accommodation already available with her was not satisfactory. The petitioners controverted these allegations. This application was allowed by the then learned Rent Controller on March 30, 1974. The petitioners went in appeal and urged that the application was not in proper form inasmuch as the respondent had not specifically pleaded in the application for ejectment that she was not in possession of sufficient accommodation. Faced with this situation, the respondent filed an application for amendment of the application for ejectment which was granted and she was allowed to bring her application in conformity with the requirements of section 13(3) (a) (i) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter called the Act). The learned Appellate Authority set aside the order of ejectment and remanded the case for a fresh trial.

(2) The petitioners filed a fresh written statement to the amended application for ejectment. The learned Rent Controller then framed the following issues :—

(1) Whether the applicant has *locus standi* to file the application ?

(2) Whether respondents are liable to ejectment on the grounds mentioned in paras 3 to 7, 9 and 10 of the application ?

(3) Whether any valid notice of termination of the tenancy was necessary ? If so, whether any such notice was served ?

(3) The parties led fresh evidence before the learned Rent Controller who decided all the issues against the petitioners and ordered their ejectment on March 10, 1977.

(4) The petitioners filed an appeal and at that stage raised an objection that the trial held by the learned Rent Controller was not in conformity with law because Shri Des Raj Mahajan, the learned Additional District Judge who exercised the powers of the Appellate Authority under the Act, had no jurisdiction to remand the case. They also contended that the order under appeal was wrong on merits inasmuch as there was no real necessity for the land-lady to get the premises in dispute vacated.

(5) The learned Appellate Authority held that the order of remand passed by the earlier Appellate Authority not having been challenged had become final and since the respondent land-lady had genuine need of the premises in dispute for her personal residence, there was no merit in the appeal. The petitioners have challenged this order in revision.

(6) In response to the notice of Motion issued by my learned brother R. N. Mittal, J., Shri R. S. Bindra, the learned counsel for the respondent, has appeared to oppose the admission of the petition.

(7) On behalf of the petitioners, it has been argued that the learned Appellate Authority had no jurisdiction to remand the case and as such the subsequent trial held by the learned Rent Controller was without jurisdiction. It was also submitted that the respondent land-lady had during the pendency of these proceedings got some premises vacated and under second proviso to section 13(3) (a)(iv) of the Act she was not competent to file the instant petition. The third point raised was that the son of the respondent land-lady was admittedly running handlooms in a portion of the

building and since that portion could be utilised for residential purposes the respondent land-lady had failed to prove that her requirement for personal residence was a *bona fide* one.

(8) In support of the first contention, Shri R. L. Aggarwal, the learned counsel for the petitoiners has placed reliance on a Division Bench Judgment of this Court in *Shri Krishan Lal Seth* v. *Shrimati Pritam Kumari* (1). In that case the land-lady had sought ejectment of the tenant on the ground of non-payment of rent as also on the ground of personal necessity. Since the rent, interest, etc., was paid on the first date of hearing, that ground was no longer available to her. The learned Rent Controller dismissed her application on the ground that the land-lady had not averred in the application for ejectment that she had not vacated any building without any sufficient cause after the commencement of the Act in the urban area in which the premises in dispute were situate. The land-lady went in appeal. The learned Appellate Authority characterised the order of the learned Rent Controller as perverse and illogical by saying that her application could not be thrown out on the technical ground on which it had been dismissed. It set aside the order of the learned Rent Controller and remanded the case for re-trial on the question whether the land-lady needed the premises for her own use and occupation or not. That order was challenged by the tenant in a revision petition. It was argued before the Division Bench that if the learned Appellate Authority was somehow or other dissatisfied with the trial of the application for ejectment, it could either make a further enquiry as it thought fit or had it conducted through the learned Rent Controller, but it had no power to remand the case. The Bench observed that it was not necessary for the land-lady to re-state in the application the statutory conditions under which she sought ejectment of the tenant and for her omission to refer to those conditions in the application, her application could not possibly be dismissed. On this basis, the Division Bench set aside the order of remand and directed the learned Appellate Authority to decide the case in accordance with law. I might add at this place that the view held by the Division Bench that a landlord or a land-lady is not under an obligation to refer to these statutory conditions in his/her application for ejectment has been modified and no longer holds the field now. While holding that the learned Appellate Authority under the Act had no power to remand a case,

(1) 1961 P.L.R. 865.

the Division Bench also referred to *Moti Ram* v. *Ram Sahai* (2), decided by Grover, J. (as the learned Judge then was), in that case, the learned Judge observed—

> "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."

(9) It was contended before the learned Judge that there was an inherent power in any appellate authority to remand a case for re-trial and fresh decision. The contention was based on the analogy of order 41, rule 23, Code of Civil Procedure. This contention was negatived on the ground that there was no corresponding provision in the Act. At the same time, the learned Judge observed as under :—

> "Assuming that the Appellate Authority had a general power of remand similar to that power of remand which the appellate Courts under the Code exercise under the provisions of section 151, even there seems to be no reason or justification in the present case for remanding the matter for fresh decision by the Rent Controller."

(10) It is, thus, clear that in that case, on merits, it was found that the case was not one which should have been properly remanded by the Appellate Authority, and the learned Judge did not expressly lay down that the Appellate Authority did not exercise inherent powers.

(11) Moti Ram's case (*supra*) came up for consideration before Dua, J. (as the learned Judge then was) in *Din Dayal* v. *Ram Chander* (3). It was argued before the learned Judge that the power of remand was inherent in every court of appeal and in every appellate tribunal when it had to perform judicial or quasi-judicial functions. In support of this submission, reliance was

(2) C.R. 641-57 decided on 29th April, 1958.

(3) CR 169/58 decided on 29th September, 1958.

placed on I.L.R. 1955 Patiala 481 in which a learned Judge of the Patiala High Court had taken that view. The learned Judge observed that there was some force in the submission made before him and observed—

> "There may be cases where the Controller has disposed of a matter on a preliminary point without adjudicating upon the merits of the dispute and if the appellate authority disagrees with that decision it would undoubtedly be desirable to hold in favour of three being inherent power vesting in the appellate authority to remand the case to the Rent Controller to try the petition on merits."

(12) He was inclined to refer the case to a larger Bench but the parties before him agreed that the learned District Judge, should either himself visit the spot or appoint some other expert to enable the Appellate Authority to finally decide the appeal.

(13) A similar question cropped up before Falshaw, C.J. in *Lajpat Rai* v. *Harkishan Dass* (4). In that case an allottee of the evacuee property filed an application for ejectment against the tenant who had been inducted into that property prior to its allotment. The tenant contested the application for ejectment on every conceivable ground including the denial of any relationship of landlord and tenant between the parties. He also pleaded that the application for ejectment was premature in view of the provision of section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, which prohibits the ejectment of persons in lawful possession of the former evacuee properties transferred to other persons for a period of two years except on certain grounds. The learned Rent Controller framed issues on all the points and allowed the parties to lead the evidence on all the issues, but he dismissed the landlord's petition on the finding that there was no relationship of landlord and tenant and that the ejectment petition was premature. No decision was given by him on the remaining issues. The landlord went up in appeal. The Appellate Authority reversed the decision of the learned Rent Controller on the first point. On the second point he held that the landlord's application was not premature and remanded the case to the learned

(4) C.R. 676-62 decided on 5th April, 1963.

Rent Controller for decision on the remaining issues. The tenant filed a revision petition against the order of remand which came up for hearing before the learned Chief Justice. While negativing the argument, the learned Chief Justice observed as under :—

> "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 all 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."

(14) In other words the learned Chief Justice distinguished Krishan Lal Seth's case (supra) on the ground that that authority applied only to a case where the Rent Controller had not dealt separately with some point which arose in the case in contradistinction with his not having dealt with the merits of the case at all after accepting certain preliminary objections. The fact, however, remains that the learned Chief Justice did accept the proposition that under certain situations it is open to an Appellate Authority under the Act to remand the case.

(15) Speaking for myself, I am *prima facie* of the view that the procedural provisions of a statute under which a court or a quasi-judcial authority is invested with the jurisdiction to decide a *lis* between two parties are exhaustive to the extent to which the subject-matter has been specifically dealt with by the Legislature and in respect of the matter which have not been so specifically dealt with, such an authority can pass an appropriate order to achieve the ends of justice in exercise of its inherent powers. As far as the Code of Civil Procedure is concerned, the orders of remand were usually passed by the Appellate Authority under order 41, Rule 23, C.P.C. and if a matter did not fall squarely within the provisions of that Order the cases were remanded in exercise of inherent powers. At the same time unnecessary and avoidable orders of remand passed by the appellate courts were invariably frowned upon by the superior courts because such orders tended to give further spurt to litigation, but where entirely new and relevant matters crop up before the appellate courts the decision on which becomes essential in the just disposal of the case it does

look proper that such a matter should be decided at the lowest level so that the hands of the appellate courts do not remain tied up with original matters. In this connection the observations made by Dua, J., which have been extracted above, appear to be quite pertinent. Had the matter rested here, I would have felt inclined to refer the case to a larger Bench but since Chief Justice Falshaw has distinguished the earlier Division Bench judgment, I would like to examine whether the same or similar distinction is also available in the instant case or not.

(16) As stated above, in the instant case the learned Appellate Authority had earlier remanded the case because the application filed by the respondent land-lady was not in proper form in as much the same did not contain one of the two allegations required to be made under the statute, i.e., that the land-lady did not vacate some residential building in the same urban area without a sufficient cause. In other words, the plea of the respondent land-lady about her personal necessity had not at all been considered by the learned Rent Controller on merits. It would, thus, appear that the observations made by Falshaw C.J. in Lajpat Rai's case (supra) fully to the present case and as laid down by him the order of remand made by the learned Appellate Authority under these circumstances could not at all be regarded as being one without jurisdiction. The first contention raised by Mr. Aggarwal deserves to be repelled on this short ground.

(17) However, there is another way of looking at the problem. An order of ejectment had been passed earlier against the petitioners by the learned Rent Controller, which was set aside by the learned Appellate Authority who remanded the case after allowing the respondent land-lady to amend her application so that the issue regarding her personal necessity be again gone into. The petitioners obtained full advantage of this order of remand and took the chance of disproving this issue by leading evidence. After they had failed to do so, it would be improper on the part of the learned Appellate Authority or the revisional court to allow them to turn round and assert that the order of remand was without jurisdiction. The plea of estoppel would adequately confront them in such a situation. In *Ram Diways* v. *Kanhaya Lal* (5), under somewhat similar circumstances it was held by a learned Judge of

(5) 1972 R.C.R 530.

this Court that where a tenant enjoys full benefit of the trial after the case is remanded by the Appellate Authority, he would be estopped to challenge the legality of the order of remand in subsequent proceedings. Since the order of remand was made because a relevant issue had not been tried by the learned Rent Controller on merits and since the petitioners had themselves derived benefit under this order of remand, I hold that neither the order of remand was illegal nor was it open to the petitioners to challenge its legality at this stage.

(18) In order to understand the second contention raised by Mr. Aggarwal, it becomes necessary to notice the statutory provisions. The relevant portion of section 13 of the Act reads as under :—

> "Section 13(3)(a)(i)(a).
>
> A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession (i) in the case of a residential building if—
>
> (a) he requires it for his own occupation."
>
> "2nd proviso to section 13(3)(a)(iv):
>
> provided further that where the landlord has obtained possession of a residential building or rented land under the provisions of sub-paragraph (i) of sub-paragraph (ii) he shall not be entitled to apply again under the said sub-paragraph for the possession of any other building of the same class or rented land."

(19) The precise argument raised is that if the landlord or the land-lady has succeeded in ejecting a tenant from any building situate in the same urban area, he or she shall not be entitled to make another application for ejectment of a tenant from another building on the ground of personal necessity. It has been argued by Mr. Aggarwal that in the same building there was another tenant also and since the respondent land-lady succeeded in ejecting him, the present application was barred under the aforementioned proviso. This argument is also devoid of any merit. A plain reading of the proviso mentioned above shows that a landlord after getting one building vacated, which can reasonably meet

his needs, cannot get another building vacated. The proviso does not lay down that if the entire building, which is needed by a landlord for his personal use, is occupied by more than one tenants, he or she cannot take out eviction proceedings against the other tenants after having evicted one. The object of this proviso is that a landlord should not be allowed to seek unreasonable ejectments of tenants from independent buildings if he has already succeeded in evicting a tenant from a building which is sufficient for his personal occupation. In any event, the aforementioned plea was not taken either before the learned Rent Controller or before the learned Appellate Authority. Had such a plea been taken, the respondent land-lady would have led evidence for proving the defences open to her. Where valid defences are open to a party the proof of which necessitates the taking of further evidence it would not be a proper exercise of discretion by the revisional court for allowing such pleas to be raised at that late stage. In *Baldevdas Shivlal and another* v. *Filmistan Distributors (India) Pvt. Ltd. and others* (6), it was held that a High Court could not give a finding on the question of res judicata where the trial Court had not decided this issue. In the circumstances, I have no hesitation in repelling the second contention raised by Mr Aggarwal.

(20) Last of all, it was argued that since the son of the respondent land-lady was running handlooms in a part of the building in dispute and that part was capable of being used for residential purposes, the claim made by the respondent that she requires the premises in dispute for her own use should be held mala fide. It is difficult for me to accept this contention either. It is open to a landlord to put his property to any reasonable use including its use by his sons or daughters for running a cottage industry and yet seek the eviction of tenants from a part of the same building on the ground of personal necessity. The learned Rent Controller while deciding an application under section 13(3) of the Act made by a landlord has to take into consideration all the relevant circumstances for determining whether the need of the landlord is bona fide or not, but the law does not require that a landlord should render his son or daughter jobless first and then seek eviction of a tenant from his building.

(21) No other point was raised before me.

(6) A.I.R. 1970 S.C. 406.

(22) For the reasons mentioned above, there is no merit in this petition which is dismissed in limine with no order as to costs. The petitioner is allowed two months time to vacate the premises provided they pay or deposit in court arrears of rent, if any, and the rent for this period within fifteen days from today.

N.K.S.

Before M. R. Sharma, J.

RAJ WIDOW OF SAWAN MALL and another,—*Petitioners.*

versus

DEVI DITTA MALL and another,—*Respondents.*

Civil Revision No. 1724 *of* 1976

November 10, 1978.

Life Insurance Act (IV of 1938)—*Section* 39(5) *and* (6)—*Nominee of a deceased policy holder claiming insurance money—Suit for declaration and mandatory injunction filed by legal heirs against the nominee—Temporary injunction—Whether can be granted restraining the nominee from receiving insurance money.*

Held, that a combined reading of sub-sections (5) and (6) of section 39 of the Life Insurance Act, 1938 shows that a nominee is in the nature of a trustee who receives the money due under a policy and keeps it for the benefit of the legal heirs of the deceased. The circumstance that he happens to be mentioned as a nominee by the person insured does not of itself clothe him with a title to the insurance money. Cases may arise in which the real beneficiaries under the insurance policy might apprehend that if the money falls into the hands of the nominee, they might not be able to realise it from him. In such circumstances a court of law which is primarily concerned with administering justice in accordance with the circumstances of a particular case shall be under an obligation to protect the rights of the real heirs of the deceased who alone are entitled to receive the insurance money. Section 39 of the Act merely provides for a procedure for the discharge of the insurance policy under certain contingencies so that if that procedure is strictly followed, the insurance company might not be burdened with additional liability. The existence of this provision does not debar a civil court, which is seized of a dispute between the real heirs of