

Ram Nath Monga Vs. Hem Chand

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Court : Delhi

Decided On : Mar-20-1972

Reported in : 1973CriLJ512; ILR1972Delhi189

Judge : P.S. Safer and; B.C. Misra, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 195(1)

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 45 of 1971

Appellant : Ram Nath Monga

Respondent : Hem Chand

Advocate for Pet/Ap. : Mehtab Singh,; S.C. Singh and; K.K. Sud, Advs

Judgement :

P.S. Safer, J.

(1) The short question for determination as contained in the referring order is as to whether the Controller functioning under the provisions of Act 59 of 1958 is a Court within the meaning of section 195(1)(b) of the Code of Criminal Procedure. This judgment will, along with the reference dispose of Criminal Miscellaneous (Main) No. 45 of 1971.

(2) The petitioner has moved this court under section 561(A) of the Criminal Procedure Code (hereinafter called 'the Code') for quashing the proceedings pending against him before respondent No. 2. The allegations in the petition are that having obtained the permission of the competent authority the petitioner-landlord applied for the eviction of his tenant Hari Chand and obtained the eviction order dated the 4th of December, 1968, against which the appeal taken to the Rent Control Tribunal was dismissed on the 9th of February, 1970. He then took out execution proceedings. Hem Chand, respondent No. 1 to this petition along with his brother Ram Chand filed an application under section 25 of the Delhi Rent Control Act, 1958 (59 of 1958) (hereinafter called 'the Act') before the Controller urging that they were joint tenants with Hem Chand because their father Ishwari Parshad had been the original tenant for about thirty years. They prayed that the execution proceedings be stayed. The Controller refused the prayer and against his order dated the 21st of February, 1970 an appeal was preferred before the Rent Control Tribunal on the dismissal whereof this court was moved by filing S.A.O. No. 63 of 1970. Civil Miscellaneous Applications 573-J and 574-J of 1970 were moved therein praying that the execution proceedings pending before the Controller be stayed. Deshpande, J. made an order on the 29th of April, 1970, staying appellant's dispossession from the property till the 7th of May, 1970. When the matter again came up on 7th of May, 1970, he passed the following order:-

'ADMITTED in view of : AIR1925 Cal752 . 12 of the Administration Evacuee Property Act and 1968 P.L.R. (Delhi) 108 Shri Bk. Mehtab Singh accepts notice for respondent. Argument on 15-5-1970 on stay. Stay extended.'

(3) The petitioner before us has admitted his presence in court on 7th of May, 1970, but has averred that he did not hear the order extending the stay. The execution proceedings were taken up by the Additional Controller on the 8th of May, 1970, when respondent No. 1 contended that the High Court had passed the order staying them. The petitioner thereupon filed an affidavit wherein while referring to the proceedings before the High Court on 7th of May, 1970, he asserted:-

'That the said appeal came up for admission on 7th May, 1970, when the appeal was admitted but the application for interim stay for delivery of possession is to be argued on 15th May, 1970. No stay has been granted in the meanwhile.'

(4) Respondent No. 1 then filed a complaint under section 193 of the Indian Penal Code alleging that the petitioner's aforesaid affidavit filed on the 8th of May, 1970, was false in deposing that no interlocutory stay order had been granted by the High Court on the 7th of May, 1970.

(5) On appearing before respondent No. 2 who was dealing with it, the petitioner urged that the Controller under the Act being a 'Court' within the meaning of section 195 of the Code, the complaint under section 193 of the Indian Penal Code filed by a private person could not be entertained. In his order dated the 17th of February, 1971, respondent No. 2 held that the complaint had been competently filed and he could proceed with the trial. The petition is directed against that order and it is prayed that the proceedings pending before respondent No. 2. be quashed. The contention originally raised before him is pressed before us.

(6) 3. In the course of the hearing before me on the 11th of May, 1971, the Single Bench judgment *Sumer Chand v. Shri Daya Sarup Saxena*, 1970 D.L.T. 145, was cited and I felt that a larger Bench should settle the question:-

'Is the Controller functioning under the provisions of Act 59 of 1958 a court within the meaning of section 195(l)(b) of the Code of Criminal Procedure ?'

(7) 4. The Act, which came into force on 9th February, 1959, was preceded by Act 38 of 1952 (Delhi and Ajmer Rent Control Act). The ordinary civil courts functioning in Delhi were authorised by that Act to deal with the suits filed for seeking the eviction of the tenants. The standard rent under that Act was also to be determined by the civil courts. The present Act provided that the proceedings there under were to be initiated before the controller which could also be dealt with by the Additional Controllers and against their orders the appeals were to lie to the Rent Control Tribunal under section 38 subsection (3) whereof said:-

'(3)The Tribunal shall have all the powers vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when hearing an appeal.'

Against the Tribunal's order an appeal could be filed in the High Court under section 39 of the Act if it involved some substantial question of law.

(8) It has not been denied that the Tribunal or the High Court under the Act would be a 'court' within the meaning of section 195 of the Code. Arguments for and against have to be examined in order to determine whether the Controller against whose order the first appeal was to lie to the Tribunal and the second, if involving some substantial question of law, to the High Court, was or was not a court within the meaning of section 195 of the Code while holding the same proceedings which were to be the subject-matter of the appellate jurisdictions.

(9) 6. The counsel appearing for the parties have relied on several decisions. In *Tara Cliand v. The State* and another, *D. Falshaw, J.*, as he then was, examined sections 13 and 15 of the East Punjab Urban Rent Restriction Act of 1949 and held that neither the Controller nor the appellate authority under that Act was a civil court within the meaning of section 476 of the Code, but he did not deal with section 195 thereof.

(10) The Act was examined in *Rain Parshad Rastogi v. Jagdish Narain*, 1966 P.L.R. 287. In that case while eviction proceedings were pending before the Controller an application was filed by one Jagdish Narain under section 476 of the Code alleging that one of the parties, having summoned him as a witness, had committed the offence under section 193 of the Indian Penal Code by securing a false report on the summons that he had refused to accept service. He further alleged that the same party had got subsequent summons issued for his attendance whereon his signatures were forged showing that he had received Rs. 3.00 as diet money for appearing as witness. The applicant urged that he had never been served with any summons, had never received the diet money and the reports having been falsely secured, the offending party be proceeded against under section 193 of the Indian Penal Code. Opposing the application it was pleaded that the Controller under the Act not being a Court could not lodge a complaint under section 476 of the Code. The Additional Controller rejecting the

contention held that the Controller had the power of a Court to file a complaint for an offence under section 3 of the Indian Penal Code and was competent to hold an inquiry under section 476 of the Code. Against his order a petition was filed under section 115 of the Civil Procedure Code and Article 227 of the Constitution of India. The High Court considered the provisions contained in section 476 of the Code and after noticing the law laid down in *Laiji Haridas v. The State of Maharashtra and another* : 1964 CriLJ249 relying on the omission in section 36(2) of the Act wherein the Legislature having mentioned sections 480 and 482 out of Chapter xxxv of the Code did not include section 476 although the Chapter began with it, observed at pp. 290-291 :-

'On a parity of reasoning the learned Additional Rent Controller has held that because the proceedings before a Rent Controller are to be treated as judicial proceedings within the meaning of section 193 of the Indian Penal Code, the Controller would be Civil Court for the purpose of holding an inquiry etc. and filing a complaint for an offence under section 193 under the provisions of section 476 of the Criminal Procedure Code. It would have been difficult to have made any distinction between the majority judgment in the aforesaid decision of the Supreme Court and the present case but there are certain matters which require serious consideration. Nothing was stated in section 37(4) of the Income-tax Act about the Income-tax authorities being treated as Courts for the purposes of any section of the Indian Penal Code. In section 36(2) of the Delhi Rent Control Act the language employed is similar to section 37(4) of the Income-tax Act only up to the words 'Judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code.' But in the Delhi Rent Control Act there is a further provision which is not to be found in section 37(4) of the Income-tax Act that the Controller shall be deemed to be a civil court within the meaning of sections 480 and 482 of the Criminal Procedure Code. The Legislature has, therefore, specified When the Rent Controller is to be deemed a civil court and since section 476 is not mentioned along with sections 480 and 482 it would be legitimate to conclude that the omission of section 476 was intentional and deliberate. Section 476 is the first section appearing in Chapter xxxv of the Criminal Procedure Code. Sections 480 and 482 also appear in the same Chapter. Section 480 relates to procedure and certain cases of contempt and section 482 deals with procedure where the Court

considers that the case should not be dealt with under section 480. It has been expressly provided that the Controller shall be deemed to be Civil Court within the meaning of these two sections. It will be neither proper nor permissible according to the well-settled rules of interpretation to read, insert or add sections 476 into the aforesaid provision. I, therefore, venture to think that the Controller cannot be deemed to be a Civil Court within the meaning of section 476 of the Criminal Procedure Code.'

Because of the omission of section 476 of the Code from the terms employed in section 36(2) of the Act, it was concluded that the Controller could not be deemed a civil court within the meaning of section 476 of the Code.

(11) 7. The judgment shows that sub-section (2) of section 195 of the Code was never urged before the Court. That sub-section, which had undergone a purposeful amendment, prescribed the scope of term 'Court' as used in clauses (b) and (c) of sub-section (1) of section 195. The power in section 476 could be exercised by the three kinds of courts mentioned therein but the 'Court' within section 195(2) could still be a 'Court' even where it was not 'a civil, revenue or criminal court.'

(12) 8. The facts in *Sumer Chand v. Shri Daya Sarup Saxena*, 1970 D.L.T. 145, on which respondent No. 1 relies, were that an affidavit supporting the replies to interrogatories was filed before an Additional Controller. The opposite party, alleging that the replies and the affidavit constituted false evidence filed a complaint under section 193 of the Indian Penal Code in the Court of the Additional District Magistrate, Delhi, who held that its cognizance could not be taken because of the bar contained in section 195 of the Code. According to him, the Additional Controller being a 'Court' could alone have preferred the complaint. A revision petition against his order having been dismissed by the Additional Sessions Judge, the aggrieved party moved the High Court under section 439 of the Code.

(13) The learned Judge dealing with that petition noticed *Thakur Jugal Kishore Sinha v. The Sitamarhi Central Cooperative Bank, Ltd., and another*, : 1967 CriLJ1380a ,(s) and turning to the Act, observed:-

'THE language of section 14 indicates that the legislature intended to maintain distinction between a Controller and a Court and that the intention was that the Controller should not be regarded as a Court. Section 36(2) of the Act confers only certain powers of a civil court under the Code of Civil Procedure for summoning of witnesses etc. on a Controller but not all the powers under that Code. This section also lays down that a Controller shall be deemed to be a court for purposes of section 480 and section 482, Code of Criminal Procedure. There is no provision in the Act that the Controller shall be deemed to be a Court within the meaning of section 195, Code of Criminal Procedure. Section 37(2) provides that the Controller shall follow the practice and procedure of a court of small causes. Under Rule 23 of the Delhi Rent Control Rules, 1959, the Controller is to be guided by the provisions contained in the Code of Civil Procedure while deciding any question relating to procedure. It is clear that the Controller has been invested with the powers of a civil court relating to practice and procedure only and not with all the powers of a civil court. Section 42 of the Act provides that an order made by the Controller shall be executable by the Controller as a decree of the civil court and for this purpose the Controller shall have all the powers of a civil court. This section also indicates that the Controller can exercise the powers of a civil court for certain purposes only.

IT is clear from the provisions set forth above that the intention of the legislature was that the Controller should be regarded as a court for certain specified purposes only and not for all purposes and that the Controller does not possess all the attributes of a Court. The Controller, therefore, cannot be held to be a Court for purposes of section 195(l)(b), Code of Criminal Procedure.'

For coming to the aforequoted conclusion 1966 P.L.R. 287, already discussed, was also relied upon.

(14) Referring to : 1967 CriLJ1380a , having noticed that the Supreme Court had held that the Assistant Registrar discharging the functions of a Registrar was a Court within the meaning of section 3 of the Contempt of Courts Act, the learned Judge observed that the Controller was not vested with power of review or with inherent jurisdiction under the Code of Civil Procedure, and concluded that the

Controller under the Act was not a Court within the meaning of section 195(l)(b) of the Criminal Procedure Code. Several decisions of the Supreme Court, which were available, were not cited before the learned Judge.

(15) 9. It may be noticed that a similar view had earlier been taken by the Punjab and Haryana High Court. In *Smt. Vidya Devi v. Firm Madan Lal Prem Kumar*, 1971 P.L.R. 61, a Division Bench consisting of the then Chief Justice and B.R. Tuli, J. found that a Full Bench of that Court had held that a Controller under the Provisions of the Rent Control Act was a *persona designata* entrusted with specific duties of judicial or quasi-judicial nature and was not a court. Considering the observations made by the Supreme Court in *Virinder Kumar Satyawadi v. The State of Punjab*, : 1956 CriLJ326 and *Jagan Nait Prasad v. State of Uttar Pradesh*, : [1963]2SCR850 the Division Bench expressed that the word 'Court' had been used in a wide sense in section 195(l)(b) of the Criminal Procedure Code, and that it was appropriate that a Full Bench consisting of five judges should settle the law. Thereafter, the Full Bench consisting of five Judges reached the conclusion recorded in 1971 P.L.R. 61. Dealing with the provisions contained in the East Punjab Urban Rent Restriction Act, 1949. as also with sections 195 and 476 of the Criminal Procedure Code, it was found that the term 'Court' had not been defined except in the Indian Evidence Act and that the Criminal Procedure Code defined 'Judicial proceedings' in section 4(l)(m) thereof. The definition of 'Court of justice' in the Indian Penal Code was noticed. The High Court proceeded to find whether the Controller and the appellate authority were 'Court' or not and observed :-

'ALL proceedings before the Rent Controller are of a civil nature and the power to adjudicate upon those matters would have been of the civil Courts but for the Rent Acts which have conferred that jurisdiction on special tribunals like the Rent Controller and Appellate Authority under the Act.

(16) Finding that the Controller and the Appellate authority were called upon to decide in a judicial manner, it was held:-

'FROM this attribute of the Rent Controller and the Appellate Authority it follows that they are not only Courts but 'Courts of Justice' as defined in section 20 of the

Indian Penal Code. Since the proceedings before them are of a civil nature. they are necessarily to be termed as civil courts of justice or simply civil courts for the purposes of sections 195(l)(b), 476, and 479-A of the Code of Criminal Procedure' and

INTERPRETING sub-section (2) of section 195 of the Code of Criminal Procedure, the High Court concluded that but for their exclusion the Registrar or Sub-Registrar would also have been included in the term 'Court.'

(17) 10. The position in Delhi has been approximate to that in Punjab and Haryana. In terms of section 33 of Act 38 of 1952 the civil courts had the jurisdiction to hear and decide suits for recovery of possession and to deal with 'any case' under that Act.

(18) Section 57 of Act 59 of 1958 by which Act 38 of 1952 was repealed provided that all suits and other proceedings pending at the commencement of the Act were to be continued and disposed of in accordance with the preceding Act. Both enactments provided for achieving same objects. The rights of landlords or tenants to plead their cases in the same way as before were hardly curtailed. The parties to the proceedings under the Act could plead their rights in detail. Under section 37(2) of the Act the Controller was vested with authority to follow the practice and procedure of a Court of Small Causes. That court is a civil court following, subject to section 17 of the Provincial Small Cause Courts Act, the procedure contained in the Civil Procedure Code. Section 37(2) of the Act indicates that the Controller was to function almost in the same way as a Court of Small Causes would.

(19) 11. We may now turn to the Supreme Court decisions cited before us. In *Virindar Kumar Satyawadi v. The State of Punjab*, : 1956 CriLJ326 , while discussing the distinction between a 'Court' and a 'Quasi-judicial Tribunal' it was observed that a 'Court was charged with a duty to decide disputes in a judicial manner and declare the rights of the parties in a definitive judgment. It was held:-

'TO decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it.

ANDit also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law.'

(20) The Supreme Court was deciding as to whether the Returning Officer functioning under the Representation of the Peoples Act was a Court or not. It was noticed that while proceedings before Election Tribunal were in all essential matters approximately the same as before a civil court the proceedings under section 36 of the Representation of Peoples Act were different in nature. Under that section there was to be no 'lis' in which persons with opposing claims were to be entitled to have their rights adjudicated upon in a judicial manner. The Supreme Court found that the Returning Officer deciding on the validity of a nomination paper was therefore not a Court for purposes of section 195(l)(b) of the Code of Criminal Procedure. The measure indicated by the foregoing decision for determining whether an authority functioning under special statute and not described as a Court, would be a Court or not for purposes of section 195(l)(b) was to find out as to whether the said authority was or not charged with a duty to decide the dispute in a judicial manner by a definitive judgment after recording the evidence of the parties and hearing them as is ordinarily done by the civil courts.

(21) In *Jagannath Prasad and another v. State of Uttar Pradesh*, : [1963]2SCR850, the Court was deciding whether a Sales Tax Officer functioning under the U.P. Sales Tax Act (15 of 1948) was a Court or not within the meaning of section 195(2) of the Code. Having noticed *Smt. Ujjam Bai v. State of Uttar Pradesh and another*, A.I.R. 1962 S.C. (1621), and the observation of Lord Sankey, L.C., in *Shell Co. of Australia Ltd., v. Federal Commissioner of Taxation*, 1931 A.C. 275, to the effect that there may be Tribunal with many trappings of a court which nevertheless are not courts in the strict sense of exercising judicial power, the Supreme Court found that the Sales Tax Officer was an assessing authority, and the assessment was to depend upon the inquiries which he may consider it necessary to make. The Sales Tax Officer had the power to enter any shop, go-down, vehicle or other place in which business was being done but those powers were destructive of his being a court which ordinarily would be a place where justice is administered as between the parties to a litigation. For coming to that conclusion the Supreme Court placed reliance on : 1956 CriLJ326 *Virinder Kamar*

Satyawadi v. The State of Punjab.

(22) These decisions affirmed that an authority created by a special statute although not described as such could still be a 'Court' within section 195(2) of the Code. 12. The facts which led to the determination by the Supreme Court in : 1964 CriLJ249 that an Income-Tax Officer functioning under section 37 of the Indian income-tax Act, 1922, was a court for purposes of section 195(l)(b) of the Code were that during the proceedings in which the appellant Laiji Haridas was to be assessed to income-tax, respondent No. 2 had given evidence on oath before the Income-tax Officer, Jamnagar, denying that he had a son named Nihal Chand and that he had done any business in the name of Messrs Nihal Chand and Company at Jamnagar. That statement made by respondent No. 2 Mulji Manilal Kamdar, according to the appellant, was false to his knowledge and was made to mislead the Income-tax Officer so as to avoid the incidence of income-tax which may have fallen on the deponent. As a result of the alleged false statement the appellant felt aggrieved as he was heavily taxed. Laiji Hari Das filed a complaint against Mulji Manilal Kamdar under section 193 of the Indian Penal Code in the court of the Presidency Magistrate, 19th Court, Esplanade, Bombay. A preliminary objection was raised that the proceedings before the Income-tax Officer were proceedings before a 'Court' within the meaning of section 195(l)(b) of the Code and no complaint having been filed by the Income-tax Officer, the accused could not be proceeded against. The learned Presidency Magistrate held that the Income-tax Officer was not a court but the Bombay High Court, on appeal, reversed the decision and held that he was a court within section 195(l)(b) of the Code. While hearing the appeal against the High Court judgment the Supreme Court dealt with section 37 of the Indian Income-tax Act, 1922. That provision is so approximate to section 36 of the Act that both of them may be usefully noticed together:-

'37.Powers of Income-tax authorities.-(1) The Income- tax Officer, Appellate Assistant Commissioner, Commissioner and Appellate Tribunal shall, for the purposes of this Act. have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (V of 1908). when trying a suit in respect of the following matters, namely:-

(A)discovery and inspection: (b) enforcing the attendance of any person, including any officer of a banking company, and examining him on oath: (c) compelling the production of books of account and other documents: and (d) issuing commissions.

(2) Subject to any rules made in this behalf, any Income-tax Officer specially authorised by the commissioner in this behalf may,-

(I)enter and search any building or place where he has reason to believe that any books of account or other documents which in his opinion will be useful for, or relevant to. any proceeding under this Act may be found and examine them, if found;

(II)seize any such books of account or other documents or place marks of identification thereof or make extracts or copies there from;

(III)make a note or an inventory of any other article or thing found in the course of any search under this section which in his opinion will be useful for. or relevant to, any proceeding under this Act :

and the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to searches shall apply so far as may be to searches under this section. (3) Subject to any rules made in this behalf, any authority referred to in sub-section (1) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this act; Provided that an Income-tax Officer shall not:-

(A)Impound any books of account or other documents without recording his reasons for so doing: or (b) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Commissioner therefor.

(4) Any proceeding before any authority referred to in this section shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860).

'36.Powers of Controller.- -(1) The Controller may:- (a) transfer any proceeding pending before him for disposal to any additional Controller, or (b) withdraw any proceeding pending before any additional Controller and dispose it of himself or transfer the proceeding for disposal to any other additional Controller.

(2) The Controller shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:-

(A) summoning and enforcing the attendance of any person and examining him on oath: (b) requiring the discovery and production of documents: (c) issuing commissions for the examination of witnesses: (d) any other matter which may be prescribed;

and any proceeding before the Controller shall be deemed to be a judicial proceeding within the meaning of section 193 and section 225 of the Indian Penal Code (45 of 1860), and the Controller shall be deemed to be a civil court within the meaning of section 480 and section 482 of the Code of Criminal Procedure, 1898 (5 of 1893). (3) For the purposes of holding any inquiry or discharging any duty under this Act. the Controller may,-

(A) after giving not less than twenty-four hours notice in writing. enter and inspect or authorise any officer subordinate to him to enter and inspect any premises at any time between sunrise and sunset: or

(B) by written order, require any person to produce for his inspection all such accounts, books or other documents relevant to the inquiry at such time and at such place as may be specified in the order.

(4) The Controller may, if he thinks fit, appoint one or more persons having special knowledge of the matter under consideration as an assessor or assessors to advise him in the proceeding before him.'

(23) 13. The Supreme Court found that all proceedings before the authorities mentioned in section 37, in terms of sub-section (4) thereof, were to be deemed to be judicial proceedings within the meaning of section 193 of the Indian Penal

Code. Dealing with the contention that whereas several statutes made section 195 of the Code expressly applicable, while the Income-tax Act did not, the Supreme Court observed;-

'.....BUT we hesitate to hold that the omission to refer to S. 195(1)(b), Criminal Procedure Code . in S. 37(4) of the Act necessarily means that the intention of the legislature in enacting S. 37(4) was merely and solely to provide for a higher sentence in regard to the offence under S. 193, I. P. C. if it was committed in proceedings before the Income-tax Officer, It is plain that if the argument of the Additional Solicitor General is accepted, the result would be that a complaint like the present can be made by any person and if the offence alleged is proved, the accused would be liable to receive higher penalty awardable under the first paragraph of S. 193, I. P. C. without the safeguard correspondingly provided by S. 195(1)(b), Criminal Procedure Code . Could it have been the intention of the legislature in making the offence committed during the course of a proceeding before an Income-tax Officer more serious without affording a corresponding safeguard in respect of the complaints which can be made in that behalf We are inclined to hold that the answer to this question must be in the negative. That is why after careful consideration, we have come to the conclusion that the view taken by the Bombay High Court should be upheld though for different reasons. Section 37(4) of the Act makes the proceedings before the Income-tax Officer judicial proceeding under S. 193 I. P. C. and these judicial proceedings must be treated as proceedings in any Court for the purpose of S. 195(1)(b), Criminal Procedure Code . That, we think, would really carry out the intention of the legislature in enacting S. 37(4) of the Act.

(24) 14. Both section 37 of the Indian Income-tax Act and section 36 of Act 59 of 1958 expressly give specified powers of the Civil Procedure Code to the authorities mentioned therein but the conspicuous proximity is where section 36(2) of the Act like section 37(4) of the Income-tax Act provides that:-

'ANY proceeding before the Controller shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860), and the Controller shall be deemed to be a civil court within the meaning of

section 480 and section 482 of the Code of Criminal Procedure, 1898 (5 of 1898).

(25) The observations by the Supreme Court are attracted to the identity contained in the aforequoted provision. On parity of reasoning, there can be no hesitation in holding that the proceedings before him being judicial proceedings within the meaning of section 193 of the Indian Penal Code the Controller would be a Court within section 195(2) of the Code.

THAT provision after the amendment in 1923 is:- 'S. 195.....

'(2) In clauses (b) and (c) of sub-section (1), the term 'Court' includes, a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877.'

(26) By the amendment, the word 'includes' was inserted in substitution of the word 'means'. By doing that the Legislature extended the scope of the term 'Court'. Only the Registrar and the Sub-Registrar functioning under the Indian Registration Act were expressly excluded from its ambit.

(27) The term 'Court' so employed could be interpreted as including other authorities under different statutes which may not be functioning as Civil, Revenue or Criminal Courts. That being the position in law the omission to mention section 476 of the Code in the ultimate part of sub-section (2) of section 36 of the Act could not lead to the inapplicability of section 195 of the Code when the proceedings before the Controller were to be deemed to be judicial proceedings within the meaning of section 193 of the Indian Penal Code.

(28) 15. It has been contended that the word 'Court' used in the opening part of section 14 of the Act is so used as to indicate that Court is something other than the Controller and, therefore, the Controller is not a Court within section 195(l)(b) of the Code. The concerned part of that provision is:

'14. Protection of Tenant Against eviction.- (1) Notwithstanding anything to the contrary contained in any other law or contract no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favor of the landlord against a tenant.'

The contention raised on the basis of the aforequoted provision is unacceptable.

(29) Under section 39 of the Act an appeal was to lie to the High Court. The High Court could have made an order for the recovery of possession under section 14 of the Act. As against the decision by the High Court an appeal could have been taken to the Supreme Court by invoking Article 136 of the Constitution of India. The Supreme Court could have then in a case where no order of eviction had been made granted the decree in appeal for the recovery of the possession of the premises concerned in the litigation. The decrees so made by the High Court and the Supreme Court were also to be executable by the Controller. Section 42 of the Act providing for execution is:-

'42. Controller to exercise powers of civil court for execution of other orders.-Save as otherwise provided in section 41, an order made by the Controller or an order passed on appeal under this Act shall be executable by the Controller as a decree of a civil court and for this purpose the Controller shall have all the powers of a civil court.'

(30) The Controller was empowered to execute all final orders or decrees. The word 'Court' used in the opening part of section 14 was with reference to the decrees or orders to be made under section 39 of the Act or in exercise of the jurisdiction contained in Article 136 of the Constitution of India. The words employed in section 14 did not enact that the Controller was not to be a 'Court' for any purpose whatsoever. The opening part of section 14 of the Act does not prescribe the functions of the Controller and does not interfere with the interpretation of section 195(2) of the Code.

(31) 16. In this case the alleged false affidavit was filed actually in the course of the execution proceedings pending before a Controller. He was certainly a Court within section 195(2) of the Code. Although section 42 provides that the Controller shall have all the powers of a civil court when carrying out execution proceedings it does not conclude that the Controller will not be a court within section 195(2) of the Code when otherwise holding an inquiry under the Act.

(32) 17. The counsel for the respondents has urged that while recording the decision in 1971 P. L.R. 61 the Punjab and Haryana High Court did not deal with the observations made by the Supreme Court in : 1969 CriLJ1064. The observations contained in paragraphs 20 and 21 of the Supreme Court judgment lend support to the contention that a mere duty to act judicially either expressly imposed or arising by necessary implication would not of itself make a Tribunal. judicial or quasi-judicial a court within the meaning of section 195 of the Code. In paragraph 10 of that judgment, the Supreme Court discussed section 195(2) of the Code of Criminal Procedure and finding that the expression 'Court' employed therein was not restricted to mean Courts civil, revenue or criminal, and it did include other Tribunals, it proceeded to observe that the definitions of term 'Court' and 'Court of Justice' contained in the Indian Penal Code and the Indian Evidence Act were not necessarily to apply to the Code of Criminal Procedure. The Supreme Court observed:-

'THE expression 'Court' in ordinary parlance is a generic expression and in the context in which it occurs may mean a 'body or organisation' invested with power, authority or dignity. In Halsbury's Laws of England, 3rd Edn. Vol. 9. Article 809 at p. 342 it is stated:

'ORIGINALLY the term 'Court' meant, among other meanings, the Sovereign's place; it has acquired the meaning of the place where justice is administered and, further, has come to mean the persons who exercise judicial functions under authority derived either immediately or mediately from the Sovereign. All tribunals, however, are not courts, in the sense in which the term is here employed, namely, to denote such tribunals as exercise jurisdiction over persons by reason of the sanction of the law, and not merely by reason of voluntary submission to their jurisdiction. Thus arbitrators, committees of clubs, and the like although they may be tribunals exercising judicial functions, are not 'Courts' in this sense of that term. On the other hand, a tribunal may be a court in the strict sense of the term although the chief part of its duties is not judicial. Parliament is a Court. Its duties are mainly (deliberative and legislative: the judicial duties are only part of its functions.'

After noticing article 810. in the same Volume of Halsbury's Laws of England, the Supreme Court observed:- A body required to act judicially in the sense that its proceedings must be conducted with fairness and impartiality may not therefore necessarily be regarded as a court.' Having considered the various provisions and the decisions made by the High Courts and itself the Supreme Court in paragraphs 20 and 21 observed:--

20. Attention of course must be directed to *Laiji Haridas v. State of Maharashtra*. : 1964 CriLJ249 where this Court took the view that an Income-tax Officer exercising powers under section 37(1), (2) and (3) was exercising powers in a judicial proceeding for the purpose of section 193, 196 and 228 Indian Penal Code. The Court however, expressly observed that it was not necessary to decide the general question whether the income-tax Officer was a 'Court', for section 37(4) of the Income-tax Act makes the proceedings before the Income-tax Officer judicial proceedings for the purpose of section 193 Indian Penal Code and accordingly the proceeding before him must be treated as a proceeding in a Court for the purpose of section 195(1) of the Code of Criminal Procedure.

21. Two other decisions may be referred to. In *v. Rindar Klimai- Satyawadi v. State of Punjab*, : 1956 CriLJ326 this Court held that a Returning Officer acting under sections 33 and 36 of the Representation of the People Act, 1951, and deciding on the validity or otherwise of a nomination paper is not a 'Court' within the meaning of sections 195(1)(b), 476, 476-B of the Code of Criminal Procedure. In *Brjncandan Sinha v. Jyoti. Naroin*, : 1956 CriLJ156 this Court held that the Commissioner appointed under the Public Servants (Inquiries) Act 37 of 1850 is not a 'Court' within the meaning of the Contempt of Courts Act, 1952. This Court has therefore definitely taken the view that a mere duty to act judicially either expressly imposed or arising by necessary implication of the nature of the duties required to be performed, does not 'of itself make a tribunal-judicial or quasi-judicial-a 'Court' within the meaning of section 195 Code of Criminal Procedure.'

(33) It is significant that while dealing with Air 1964 S.C. 1154 the Supreme Court observed that the said decision was confined to a peculiar finding which only went to the extent of holding that it was not necessary to decide the general question

whether the Income-tax Officer was a court inasmuch as section 37(4) of the Income-tax Act made the proceedings before the Income-tax Officer 'judicial proceedings' for the purpose of section 193, Indian Penal Code and, therefore, the proceedings before him were to be imperatively treated as proceedings in a court for purposes of section 195(1)(b) of the Code of Criminal Procedure.

(34) 18. The terms employed in section 37(4) of the Indian Income- tax Act being approximate to those employed in the closing part of sub-section (2) of section 36 of the Act which required the proceedings before the Controller to be deemed as judicial proceedings within the meaning of section 193 of the Indian Penal Code, the decisions recorded in : 1964 CriLJ249 lead to the conclusion that the Controller is a Court within the meaning of section 195(2) of the Code.

(35) The conclusion is fortified by the consideration that in all proceed- ings before him the Controller can use the powers enumerated in clauses (a) to (c) of section 36(2) and all such proceedings are to be deemed judicial proceedings within the meaning of section 193 of the Indian Penal Code. In paragraph 25 of : 1969 CriLJ1064 , it was held:-

'25.After carefully considering the powers conferred and the source of authority of the nominee, we have no doubt that the nominee exercising power to make an award under section 96 of the Maharashtra Co-operative Societies Act, 1960, derives his authority not from the statute but from investment by the Registrar in his individual discretion. The power so invested is liable to be suspended and may be withdrawn. He is therefore not entrusted with the judicial power of the State: he is merely an arbitrator authorised within the limits of the power conferred to adjudicate upon the dispute referred to him.'

The converse that where an authority is entrusted with the judicial power of the State, it may be a court, may in particular instances be true.

(36) Where the provisions under which a particular authority under a special statute, even though not described as a court, has the judicial power of the State to have before it the pleadings of the parties. and has to record evidence concerned with the subject-matter in controversy and then is to determine by a

definitive judgment the rights or liabilities of the parties after hearing them, such an authority having all the essential trappings of a civil court would be a court for purposes of section 195(1)(b) of the Criminal Procedure Code. The Controller functioning under the Act is such an authority and a Court within section 195(1)(b) of the Code.

(37) 19. The result is that the complaint in the instant case could not have been filed by a private person. All the proceedings before respondent No. 2 being illegal are hereby quashed. The Criminal Miscellaneous (Main) 45 of 1971 is hereby allowed and accordingly disposed of.

B.C. Misra, J.

(38) I entirely agree with the conclusions of my Lord.

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