

absence of the assessors for the purposes of section 65(1) (a) because they have actively participated in the proceedings and had invited a decision by the President of the Tribunal which in material parts run in their favour as well.

(20) With the rendering of aforesaid decision on the two material legal issues, which had necessitated their consideration by the Division Bench, we would accede to the common prayer of the learned counsel for the parties that these cases be now sent to a learned Single Judge for a decision on the merits of such case. It is ordered accordingly. There will be no order as to costs.

S. C. K.

Before S. S. Sandhwalia, C.J., and Surinder Singh, J.

RAM PARKASH,—Petitioner.

versus

SMT. SURINDER SHARMA,—Respondent.

Civil Revision No. 2034 of 1980.

April 29, 1981.

*East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(1)—Code of Civil Procedure (V of 1908)—Section 47—Government notifications exempting certain buildings from the provisions of the Rent Act for a period of five years—Decree for ejectment passed by a Civil Court during the period of exemption or thereafter—Such decree—Whether can be executed despite the bar contained in section 13(1).*

*Held, that a decree for ejectment passed by a Civil Court during the period of exemption from the applicability of the East Punjab Urban Rent Restriction Act, 1949 or thereafter, which has become final, can be executed in spite of the bar contained in section 13(1) of the Act.* (Para 7).

*Petition Under Section 115 of C.P.C. for revision of the order of Shri Gopi Chand Sub-Judge 1st Class, Samrala, dated 29th August, 1980, dismissing the application.*

V. P. Sarada, Advocate, for the Petitioner.

Puran Chand, Advocate, Har Har Kaushik & Nirmal Aggarwal with him, for the Respondent.

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### JUDGMENT

*Surinder Singh, J.—*

(1) This matter was referred to a Larger Bench by my order, dated January 23, 1981, for the reasons indicated therein which may be, briefly, recapitulated. A decree for eviction of the petitioner Ram Parkash who was a tenant under Shrimati Surinder Sharma, respondent in two godowns, a compound and a passage situated at Samrala was passed in favour of the landlord by a Civil Court, i.e., Subordinate Judge, First Class, Samrala. The decree-holder proceeded to execute the decree and in these proceedings, the petitioner-judgment-debtor filed an objection petition under section 47 of the Code of Civil Procedure, urging mainly that the execution of the decree was barred on account of the provisions of section 13(1) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Act or the Rent Act). The decree holder, however, asserted that the provisions of the Act are not applicable to the present case as the building in question was exempt from the provisions of the said Act on account of the fact that the disputed building had been constructed within five years from the date of the institution of the suit. The landlord further contended that the Civil Court was competent to pass a decree and to execute the same. The matter was considered by the executing Court who dismissed the objection petition of the petitioner-judgment-debtor. The present Revision petition was, therefore, filed impugning the said order of the executing Court.

(2) It may be of assistance to note here that by means of a Notification No. 13701-A-4CI-70/13158, dated November 29, 1970, it was prescribed that the provisions of section 13 of the Act shall not apply to buildings exempted from the purview of the Act for a period of five years, in respect of decrees passed by the Civil Courts in suits for ejection of tenants, whether such decrees were or are passed during the period of exemption or at any time thereafter. Another Notification No. 5818-4CI-71/10565, dated June 21, 1971 was promulgated as per which the President of India granted exemption to every building constructed during the years 1968, 1969 and 1970 from the provisions of the Act for a period of five years from the date of its completion. The main argument on behalf of the petitioner is that the building in dispute fell within the category mentioned in the above Notifications and

hence, the Rent Act was not applicable to the same and as a necessary consequence the decree passed by the Civil Court was not executable in view of the bar under the Rent Act.

(3) It is not disputed that a decree for possession of the demised premises was passed in favour of the respondent and against the petitioner on July 30, 1977 by the Civil Court, i.e., Subordinate Judge, First Class, Samrala. The petitioner went up in appeal before the Additional District Judge, Ludhiana, who affirmed the decree of the trial Court on November 10, 1979. There is further no contest on the point that the petitioner-judgment-debtor pursued the matter right up to the High Court praying for the stay of his dispossession during the execution proceedings, but his prayer was declined by this Court,—*vide* order, dated December, 11, 1979. It is nobody's case that the matter was taken further to the Supreme Court. As a result of the above, the judgment of the Civil Court directing the eviction of the petitioner had become final for all intents and purposes.

(4) During the course of the arguments in this Civil Revision before me while I sat singly, an argument was advanced on behalf of the petitioner that certain observations had been made by Hon'ble the Supreme Court in *Mani Subrat Jain v. Raja Ram Vohra* (1), to the effect that as per definition of tenant in section 2(i) of the Act, the same includes a quondam tenant whose nexus with the property is continuance in possession and that the word "tenant" also includes as ex-tenant against whom a decree for eviction might have been passed. The learned counsel submitted on the basis of these observations that even though a decree for possession had been finally passed against the petitioner, the same could not be executed except by fresh proceedings for ejection being launched under section 1' of the Rent Act. The learned counsel for the respondent had, however, referred to *Firm Amar Nath Basheshur Dass v. Tek Chand* (2), wherein the facts were quite parallel to those in the case in hand and their Lordships of the Supreme Court were pleased to hold that if the suit was filed before the expiry of the time prescribed under a Notification granting exemption to certain buildings but the decree was passed

(1) A.I.R. 1980, S.C. 299.

(2) A.I.R. 1972 S.C. 1548.

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after the lapse of the period of exemption, the landlord decree-holder would be well within his rights to execute the decree passed in his favour. In view of the above-mentioned two judgments of the Supreme Court, I made a reference to a Larger Bench by formulating the following two questions for consideration :

- (i) Whether a decree for ejection/possession passed by a Civil Court is or is not executable under all circumstances on account of the bar contained in section 13 of the East Punjab Urban Rent Restriction Act, 1949?
- (ii) What is the effect of the notifications, dated November 29, 1970, and June 21, 1971, issued under the East Punjab Urban Rent Restriction Act, 1949, exempting certain buildings, from the purview of the said Act, in respect of which a decree has been passed during the exemption period or hereafter ?

(5) The case is now before us in the above context. So far as the facts of the case are concerned, as already noticed there is hardly any controversy, nor is it disputed that in case the present matter is covered by *Firm Amar Nath Basheshar Dass's case* (supra), the petitioner will have no claim to continue in possession of the disputed property by merely raising an objection that the Civil Court decree in favour of the respondent was not executable against him. A perusal of the judgment in *Firm Amar Nath Basheshar Dass's case* (supra) which is a judgment of three Hon'ble Judges of the Supreme Court would show that it was clearly laid down by their Lordships that one of the duties imposed on the Courts in interpreting a particular provision of law, rule or notification is to ascertain the meaning and intention of the legislature and in doing so, we must always presume that the impugned provision was designed to effectuate a particular object or to meet a particular requirement and not that it was intended to negate that which it sought to achieve. Their Lordships further observed that it was clear that the Government by enacting the Notification exempting certain buildings from the purview of the Act, had granted certain inducements to persons who had the means to construct buildings by exempting such buildings for a certain period. It was also observed that where the buildings in question was completed and a suit for eviction of the tenant was filed even before the expiry of the period of

exemption but the decree was passed after the period of exemption, the exemption from section 13 of the Act was available to the landlord and the decree passed in his favour by the Civil Court was executable. In giving this finding, their Lordships had approved the decision of this Court in *Tek Chand Melamal v. Firm Amar Nath Basheshar Das*, (3).

(6) The learned counsel for the petitioner has, however, merely concentrated on the observations in *Mani Subrat Jain's case* (supra) in which the focus was on the definition of the word "tenant" as contained in section 2(i) of the East Punjab Urban Rent Restriction Act, 1949. A Division Bench of the Supreme Court interpreted the word "tenant" to include a quondam tenant continuing in possession and hence entitled to the immunity from execution under section 13(1) of the Act. The case had no reference whatsoever to the five year holiday granted by the two Notifications referred to above and the effect thereof, nor was this point in issue in the said case. It may be observed here that even if there is a remote conflict in the two decisions of the Supreme Court noticed above, this Court has to follow the one rendered by the Larger Bench, i.e., A.I.R. 1972 Supreme Court, 1548.

(7) The questions referred to the Bench are answered as follows in a consolidation form :—

- (i) and (ii) "A decree for ejection of possession passed by a Civil Court during the period of exemption from the applicability of the East Punjab Urban Rent Restriction Act, 1949 or thereafter, which has become final, can be executed in spite of the bar contained in section 13(1) of the Rent Act."

(8) In view of what has been held above, the Revision Petition is dismissed, but with no order as to costs. The demised premises being commercial in nature, the petitioner is allowed two months time with effect from today to vacate the same.

S. S. Sandhawalia,  
C.J.—I agree.

N. K. S.

(3) A.I.R. 1972 Punjab and Haryana 46.