The Indian Law Reports

Before D. S. Tewatia and D. B. Lal, JJ.

AMARJIT SINGH and others—*Petitioners.*

versus

FINANCIAL COMMISSIONER, TAXATION and others—*Respondents.*

Civil Writ Petition No. 3097 *of* 1977

June 2, 1978.

Punjab Security of Land Tenures Act (X of 1953)—Section 10(A)—Constitution of India, 1950—Article 226—Writ Petition against an order of Financial Commissioner dismissed by the High Court in limine—Financial Commissioner—Whether competent to review his order after such dismissal—Principle of merger of inferior court's order with that of the superior court—Whether applicable to an order under Article 226.

Held, that the decision of the High Court *in limine* is final. Review of an order by the Financial Commissioner after a writ petition against his order has been dismissed *in limine* is not permissible on the application of the doctrine of merger. The earlier decision of the Financial Commissioner merged into the decision of the High Court which is a superior court and since that decision subsists, the order cannot be reviewed by any inferior court. Unless the *limine* decision of the High Court is set at naught by way of review petition or by taking steps to file an appeal to the Supreme Court or by having recourse to a petition to the Supreme Court under Article 32 of the Constitution, the writ decision will stand and control the field between the parties. The decision, even if *in limine,* cannot be set aside by an inferior court.

(Paras 7 and 8)

Rajwant Singh and others v. *The Financial Commissioner and others* 1973 P.L.J. 681 OVERRULED.

Petition under Articles 226/227 of the Constitution of India praying that :

(*i*) *a writ in the nature of certiorari quashing the order Annexure P-2, be issued ;*

(ii) *any other writ, order or direction as this Hon'ble Court may deem fit and proper, under the circumstances of the case, be issued;*

(iii) *the record of the case be ordered to be sent for;*

(iv) *the costs of the petition be awarded to the petitioners, and further praying that during the pendency of the writ petition the dispossession of the petitioners be stayed and further praying that the condition of issuing advance notices to the respondents be dispensed with.*

Kuldip Singh, Advocate with S. S. Shergill, Advocate, *for the Petitioner.*

G. S. Bains, A. A. G. Punjab, *for respondent No.* 1.

N. L. Dhingra Advocate with B. S. Shant, Advocate, *for Respondents* 2 *and* 3.

JUDGMENT

D. B. Lal, J.

(1) These five writ petitions (C.W.P. No. 3097 of 1977, 3255 of 1977, 3254 of 1977, 3253 of 1977 and 3252 of 1977) deal with a common question of law and fact and hence can conveniently be disposed by a single judgment. The petitioners claim to be land-owners of different parcels of land situate in Village Mehmood Khera, Tehsil Muktsar, District Faridkot. The land originally belonged to one Balwant Singh, who died on January 13, 1967 and the petitioners became owners by succession and respondents 2 and 3 are tenants and since they failed to pay rent from Rabi 1968 to Kharif 1970, and also failed to cultivate the land properly and thus they rendered it unfit for cultivation, the petitioners filed an application under Section 9(1)(ii) of the Punjab Security of Land Tenures Act, for the ejectment of the respondents 2 and 3. The plea of the respondents 2 and 3 was that they had paid rent to one Paras Ram, who held power of attorney from the petitioners. The plea prevailed with the Assistant Collector and the application of the petitioners was dismissed on January 24, 1972. Thereafter the petitioners filed appeal before the Collector, Faridkot, which too was dismissed. Thereafter a revision petition was filed before the Commissioner, Patiala Division, which was also dismissed in the year 1973. Finally a revision was filed by the petitioners before the Financial Commissioner,

Punjab, respondent No. 1 and by his order, dated April 2, 1976, the plea of the petitioners was accepted and the order of ejectment was passed against the respondents 2 and 3 from the land in dispute. Being dissatisfied with the order of the Financial Commissioner, the respondents filed a Civil Writ Petition before the High Court, which was dismissed *in limine* by a Division Bench on May 5, 1976. After the judgment was pronounced in the Civil Writ Petition, respondents 2 and 3 were ejected from the disputed land and possession was delivered to the petitioners. Since then, the petitioners are in possession over the land. Respondents 2 and 3, however, became active once again and filed an application for review before the Assistant Collector, Muktsar, stating that they were resettled tenants over the surplus land of which the original owner was Balwant Singh, and under para No. 13 of the Punjab Utilisation of Surplus Area Scheme, 1973 (hereinafter to be referred as 'the Scheme') they were not the tenants and as such could not be ejected from the land. The said application was, however, dismissed by the Assistant Collector. Thereafter respondents 2 and 3 filed review application before the Financial Commissioner, respondent No. 1, on the very same ground and succeeded. The Financial Commissioner held that he can review his previous order and held respondents 2 and 3 to be allottees of the disputed land within the meaning of para 13 of the Scheme and as such they were not liable to ejectment. The petitioners contended that the order of the Financial Commissioner, Annexure P-1, which was confirmed by the High Court in the Civil Writ Petition could not be reviewed by the Financial Commissioner. It was no longer the order of the Financial Commissioner but had merged into the order of the High Court and the Financial Commissioner had no jurisdiction to review that order. Besides, it was also contended that the review application was barred by limitation as prescribed under Section 82(1)(b) of the Punjab Tenancy Act. Therefore, the petitioners claimed for a Writ in the nature of Certiorari quashing the order Annexure 'P-2' of the Financial Commissioner, respondent No. 1, whereby he reviewed his previous order and held respondents 2 and 3 to be allottees and not tenants under the petitioners.

(2) The contentions of respondents 2 and 3 are that they were ejected tenants under Section 9(1)(i) of the Punjab Security of Land Tenures Act, 1953 (hereinafter to be referred as Act No. X of 1953) and under section 10(A) of this Act, they were to be resettled as

tenants over the surplus area of the said Balwant Singh. That being so, under Para No. 13 of the Scheme, they were rightly held to be allottees and not the tenants. Since the previous order of the Financial Commissioner was obviously illegal, the same was set aside in review before the same authority. In fact respondents 2 and 3 could not urge the said contention before the Assistant Collector, Collector, Commissioner and the Financial Commissioner and even in the High Court due to a mistake committed by their counsel. It was only later on that they learnt about the plea and hence got the matter reviewed by the Financial Commissioner. The Financial Commissioner had in fact condoned the delay, whatever committed in filing the review application and as such the same was competent before him. Regarding the merger of the order of Financial Commissioner with the order of the High Court in the Civil Writ Petition, it was submitted that since the petition was dismissed *in limine* and the present plea was not contended in that petition, the order of the High Court could not be deemed to have decided this plea and as such the Financial Commissioner was at liberty to review his previous decision. In fact he had not reviewed the order of the High Court but he had reviewed his own order for which he had the jurisdiction. It was also stated that it was an admitted case between the parties that respondents 2 and 3 were resettled tenants within the meaning of Section 10(A)(a) of the Act No. X of 1953. On these allegations it was contended that the writ petitions have no force and that the same be dismissed.

(3) As the said pleadings would indicate the main contention between the parties is as to whether the previous order of the Financial Commissioner merged with the order of the High Court dismissing the writ-petition *in limine*. If that is so, could the Financial Commissioner exercise his power of review as it directly negatived the order of the High Court. Shri Nand Lal Dhingra, the learned counsel for the respondent, in that connection relied on a decision of this Court in *Rajwant Singh and others*, v. *The Financial Commissioner, Haryana and others* (1). A learned Judge of this Court was dealing with a case, where the allotment in favour of a displaced person was cancelled by the Chief Settlement Commissioner. Against the order of the Chief Settlement Commissioner, a writ petition was filed in the High Court and the same was dismissed in *limine*. Thereafter the aggrieved party filed a petition under Section

(1) 1973 P.L.J. 681.

33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, before the Central Government. The argument raised was that the order of the Chief Settlement Commissioner had merged with the order of the High Court and as such the Central Government could not review that order under Section 33 of that Act. It was also argued that the decision in the writ petition operated as *res judicata* between the parties. While repelling this argument, the learned Judge observed that the principle of merger of orders is only applicable where a statutory remedy by way of appeal or revision is provided in the statute, and in a heirarchy of Courts or Tribunals. According to the learned Judge, the remedy under Article 226 and 227 of the Constitution is not an ordinary remedy but an extra-ordinary remedy and in exercise of that jurisdiction the High Court can either grant the petition as a whole, or in part or dismiss the writ petition. It does not affirm the order of the Tribunal impugned in the writ petition when the petition is dismissed. The principle of merger of the order of the inferior Court with the order of the superior Court is wholly inapplicable to an order under Articles 226 and 227 of the Constitution. Being fortified with this observation of the learned Judge, Shri Dhingra contended that the decision of the High Court in the present dispute was not as a result of appeal or revision to that Court. The High Court exercised extraordinary jurisdiction under Article 226 and as such the decision of the Financial Commissioner did not merge in the decision of the High Court. Shri Dhingra also relied on other observations of the learned Judge in that case, inasmuch as it was held that a decision of dismissal *in limine* of the writ petition being not a decision on merits did not operate as *res judicata*. At the same time the learned Judge held that such a dismissal would, however, bar a second petition on the same facts in the High Court. A further point was raised by Shri Dhingra that the statutory remedy of review provided under Section 82 of the Punjab Tenancy Act was not barred even though the High Court had dismissed the writ petition *in limine*.

(4) The doctrine of merger is well recognised in law. Much less to say, the doctrine has a direct bearing on the principle of *res judicata*, as the objects to be achieved by the application of this doctrine are two fold; (a) to avoid multiplicity of proceedings, and (b) to achieve the finality in decision. The rule of *res judicata* has always been applied to a decision of High Court in writ petition. The basis on which the rule of *res judicata* is founded, is on a

principle of public policy. It is in the interest of the public that finality is attached to a binding decision pronounced by a Court of competent jurisdiction and it is also in the public interest that individuals should not be vexed twice over for the same litigation. The doctrine of merger comes in when the decision of the inferior Court merges with the decision of the superior Court and thereafter if any body wants to challenge that decision, he is to direct his efforts against the decision of the superior Court. This question very often arises whenever a challenge is made to the decision arrived at and a question of limitation arises or a question of jurisdiction crops up. It may as well be that a dispute arises as to what were the questions of fact and law decided by the Court. For all these considerations one has to look into the decision of the superior Court and it is that decision which prevails over the decision of the inferior Court. It is settled that the High Court was a superior Court as compared to the Financial Commissioner. The learned Judge who decided *Rajwant Singh and others'* (supra) emphasised on the heirarchy of Courts and pointed out to the extraordinary jurisdiction of the High Court. In our opinion the doctrine of merger cannot be made to depend on any such conception, so long it is held that the superior Court was competent to go into the very same question which arose before the inferior Court. It could be in ordinary revision or appeal, or it could be a constitutional remedy or it could be a writ-petition filed in the High Court. It is nevertheless correct that the High Court had also exercised the statutory jurisdiction under Article 226. Therefore, the decision of the High Court being the decision of a superior Court, if it deals with the very same question of law and fact, which had culminated in the decision of the Financial Commissioner, then in our opinion the decision of the Financial Commissioner positively merged in the decision of the High Court. Therefore, the emphasis of Shri Dhingra on the basis of *Rajwant Singh and others'* (supra), that the High Court did not fall within the heirarchy of Courts starting from Assistant Collector and ending with the Financial Commissioner and that the High Court exercised extraordinary jurisdiction in writ petition, would be of no consequence. This is so spelled out from so many other decisions of the Supreme Court in which the plea of merger was successfully raised and upheld by that Court. Even the conception of a statutory remedy under a different statute would be of no avail. The contention of Shri Dhingra is that because of that statutory remedy the decision by a superior Court even on merits, would be brushed aside by an inferior Court provided the latter exercises

jurisdiction under a statute and a specific remedy is given. This would not only be against the public policy, but would also greatly affect the doctrine of *res judicata* and would confer jurisdiction on inferior tribunals to set at naught the decisions of superior Courts including of the High Court in writ jurisdiction. This could not conceivably be the position.

(5) The question of merger arose in several cases before the Supreme Court. In *Sita Ram Goel* v. *Municipal Board, Kanpur and others* (2) the Supreme Court was deciding a case in which a municipal overseer was dismissed under a resolution of the Municipal Board. The order of dismissal was communicated to the municipal overseer. He appealed to the Government against that order. The Government dismissed the appeal. Thereafter, the municipal overseer filed a suit challenging his dismissal. The question arose whether the suit was time-barred and the period would commence from the date of the dismissal of the plaintiff. It was contended that the resolution of the municipal board merged into the decision of the Government in appeal and hence the limitation should start from the date of the dismissal of the appeal. Their Lordships observed:—

> "The special resolution passed by the Board dismissing the plaintiff could not be equated with a decree inasmuch as departmental enquiries even though they culminated in decision on appeals or revision could not be equated with proceedings before the regular Courts of law. Hence it was not possible to apply the principle relating to decrees and hold that though the cause of action for the suit arose on the date on which the order of the board was communicated to the plaintiff, the filing of the appeal within the prescribed period of limitation suspended that cause of action and merged that cause of action in the cause of action which would accrue to him on the decision of his appeal by the State Government."

(6) It is obvious that the doctrine of merger was not applied because it was held that the proceedings could not be equated with proceedings before a regular Court of Law. In other words if the proceedings were before the regular Courts of Law, the principle of doctrine of merger would have applied. In *Somnath Sahu* v. *The*

(2) A.I.R. 1958 S.C. 1036.

State of Orissa (3), the Court was dealing with a case of a person dismissed for mis-conduct. He appealed to the State Government and in that connection the Supreme Court observed:—

> "Since the appellant preferred an appeal to the State Government against the order of respondent No. 4, the order of respondent No. 4 has merged in the appellate decision which alone subsists and is operative in law and is capable of enforcement. Unless the Appellant is able to establish that the appellate decision of the State Government is defective in law, he will not be entitled to the grant of any relief.—
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> x x x x x x x x
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> As a result of the confirmation or affirmation of the decision of the Tribunal by the appellate authority the original decision merges in the appellate decision and it is the appellate decision alone which is subsisting and is operative and capable of enforcement."

Apparently there was no question of heirarchy of Courts in that decision. The simple proposition was laid down that the decision of the superior Court merges with the decision of the inferior Court and in a subsequent proceeding, the decision of the superior Court alone can be taken into consideration. The question of merger again arose before the Supreme Court in *Sankar Ramchandra Abhyankar* v. *Krishanaji Dattatraya Bapat* (4). It was a case under the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 and the High Court dismissed the revision filed under the Act. Thereafter a writ petition was filed under Article 226/227 of the Constitution. The revision before the High Court was against the order of the appellate authority under that Act. The Court held that the order of the Appellate Authority merged in the order of the High Court in revision, as the latter was an order by a superior Court and as such one had to deal with the order of the High Court and not with the order of the Appellate Authority. As such before the High Court the writ petition was directed against the very same order, which was passed by the High Court in revision under Section 115 of the Civil Procedure Code. It was observed that the order of the appellate Court

(3) Unreported Judgments (Supreme Court) 75(1969).

(4) A.I.R. 1970 S.C. 1.

became merged with the order of the High Court in revision and, therefore, the appellate order could not be challenged by another set of proceedings in the High Court under Articles 226 and 227 of the Constitution. The Court further observed that the principle of merger of orders of inferior Courts would not become affected or inapplicable by making any distinction between a petition for revision or an appeal.

(7) As regards the contention of Shri Kuldip Singh, the learned counsel for the petitioners, that the decision by the High Court has become *res judicata* between the parties, Shri Dhingra contended that the said decision being *in limine* was not on merits and as such cannot operate as *res judicata*. There is consensus in the judicial authorities that a similar petition on the same facts could not be filed in the High Court. The decision *in limine* can only be set aside in one of the three modes referred to by their Lordships in *Bansi and another* v. *The Additional Director, Consolidation of Holdings, Rohtak and others* (5). A Full Bench of this Court was dealing with the applicability of the principle of *res judicata* to a decision in writ petition. It was held that when a petition under Article 226 of the Constitution had been dismissed *in limine*, it cannot be revived by the same petitioner by another petition in which substantially the same allegations are made again. But such a dismissal *in limine*, not on merits, but for the laches or on the ground of availability of alternate remedy does not bar the second petition under Article 32, the reason being that an order under Article 226 by the High Court is not final so far as the Supreme Court is concerned and not only such order is appealable to the Supreme Court, but the aggrieved party may, in proper cases, after failing in the High Court, approach the Supreme Court under Article 32. At the same time their Lordships emphasised that the *in limine* order passed by the High Court is final so far as that Court is concerned and it can be challenged either by way of review petition, or by taking steps to file an appeal to the Supreme Court, or of course, by having recourse to a petition to the Supreme Court under Article 32 of the Constitution. To entertain the second petition on the same grounds would amount to by passing the recognised legal procedures. According to their Lordships, such a course would also be wrong not only on a legal principle but also on grounds of propriety and pubilc policy, which

(5) A.I.R. 1967 Pb. 28 (F.B.).

subject to the well recognised exception, requires finality of judicial proceedings so far as the same Court is concerned. Therefore, the decision of the High Court *in limine* in the instant case was final and can be set aside in one of the three modes prescribed by their Lordships in this decision. Instead of taking that recourse, respondents 2 and 3 got through a review by the Financial Commissioner and set at naught the decision of the High Court. This cannot be permissible on the application of the doctrine of merger for the simple reason that the prior decision of the Financial Commissioner merged into the decision of the High Court and since the decision of the High Court was not set aside in one of the defined modes, that decision subsists and cannot be reviewed by any inferior Court. The controversy that the decision of the High Court was *in limine* and hence could be held not to be on merits, cannot be gone into in these proceedings. The petitioners have challenged the decision of the Financial Commissioner who has reviewed his previous order and thereby rendered nugatory the order of the High Court. To that extent the petition of the petitioner is well founded. It could even be argued that the present plea agitated by the respondents 2 and 3 ought to have been raised before the High Court and since it was not raised, the principle of constructive *res judicata* was applicable to the decision arrived at in the writ petition. That plea could even be now barred as could be deemed to have been decided against the respondents 2 and 3. At any rate, the decision of the Financial Commissioner cannot be upheld because the *in limine* decision of the High Court still retains its authority and it does affect the rights and obligations between the parties.

(8) We are, therefore, in respectful disagreement with the decision of this Court in *Rajwant Singh and others* (supra) inasmuch as the learned Judge refused to apply the doctrine of merger to a decision by the High Court in writ jurisdiction. Similarly we are of the firm opinion that unless the *limine* decision of the High Court is set at naught in one of the modes delineated in *Bansi and another* (supra) the said decision stands and controls the field between the parties. The decision, even if *in limine*, cannot be set aside by an inferior Court even though it may exercise the statutory remedy by way of review.

(9) As regards the contention of the respondents 2 and 3 that they were allottees and not tenants so that they could not be evicted under section 9(1)(ii) of the Act No. X of 1953, there appears to be

no exception. It is admitted case between the parties that the respondents 2 and 3 were settled tenants on the surplus areas within the meaning of section 10-A, having been ejected under section 9 of that Act. Under section 10-A, the State Government was competent to utilise any surplus area for the resettlement of tenants ejected under clause (i) of sub-section (1) of section 9. Respondents 2 and 3 belonged to that category of tenants. Under section 18, respondents 2 and 3 had a right to purchase the land provided they satisfied the conditions laid down in that section. It is manifest they have not purchased the land as yet. The utilisation of surplus area under Act, No. X of 1953 was obviously the resettlement of tenants on such area with a subsequent right to purchase the land conferred on them under section 18. The Punjab Land Reforms Act, 1972 repealed Act No. X of 1953 and the conception of utilisation of surplus area under went a drastic change under that Act. In Act No. X of 1953, the land-owners never ceased to be owners of the land as such. That status no doubt continued until under section 18 of that Act, the tenant exercised his right of purchase. The process of utilisation was complete no sooner the ejected tenant under section 9(1)(i) was resettled under section 10-A of that Act. Under the Punjab Land Reforms Act, 1972, however, the utilisation of surplus area could only be held complete when the rights of ownership were conferred upon the tenants. Therefore, under section 8 of that Act, the land was vested in the State Government after delivery of physical or constructive possession to the Government. Under Section 10 of the Act, the State Government had to pay compensation to the land-owner. Section 11, the relevant portion of which is reproduced below, does contemplate utilisation of surplus area only when conferment is made of right of ownership on the tenant:—

> "11. *Disposal of surplus area.*—(1) the surplus area, which was vested in the State Government under section 8, shall be at the disposal of the State Government.
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> (2) The State Government may, by notification in the official Gazette, frame a scheme for utilizing the surplus area under the Punjab Law, the Pepsu Law or this Act by,—
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> (a) conferment of rights of ownership on tenants in respect of such land as is comprised in the surplus area of the landowner of such a tenant; and
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> * * * * *".

(10) It is manifest the section contemplated resettled tenants sitting over surplus area and the scheme was meant to confer rights of ownership on such tenants. This was the mode of utilisation of surplus area provided for in the Act. Under section 8, the expression "which has not been utilised till the commencement of this Act" referred to such surplus area over which tenants were settled but rights of ownership were not conferred. Under sub-section (6) of section 11, the utilisation of any surplus area before the commencement of this Act will not affect the right of tenant to purchase land in accordance with the provisions of section 15 or the right of the landowner to receive rent from the tenant settled on the surplus area till the tenant becomes the owner thereof. It is abundantly clear that sub-section (6) safeguards the right of the resettled tenant to purchase land provided, he satisfied the conditions laid down in section 15. So long as they do not purchase the land, the right of landowner to receive rent from such tenants is also safeguarded. This would obviously be in a situation when the landowner has not received the compensation under section 10 of the Act. Accordingly, we were referred to para 13 of the scheme and under that para, a tenant resettled on the surplus area under the Punjab Law is deemed allottee of the land in accordance with the provisions of the scheme. The logical consequence is that he is capable of purchasing the land from the State Government by paying its price as laid down under para 10 of the scheme. Since the landlord is already paid the price of the land under section 10 of the Punjab Land Reforms Act, 1972, it is the Government which has to receive the price from the tenant. This being the position, the utilisation of the surplus area under the Punjab Land Reforms Act, 1972 is only complete in respect of the resettled tenant provided para 13 of the scheme is applied in his case and he is made to pay the price to the State Government and proprietary rights are conferred on him. The respondents 2 and 3 could, therefore, be made subject to these provisions and they were allottees and not tenants. In that connection, Shri Dhingra referred to *Swaran Singh* v. *Financial Commissioner, Revenue, Punjab and others* (6), a decision by this Court under paras 10 and 13 of the scheme with reference to sections 8 and 11 of the Punjab Land Reforms Act, 1972. In that decision, the resettled tenants on surplus area under the Punjab Law were held to be allottees of Government on 4th July, 1973, the date on which the scheme came into force. As such, they ceased to be tenants

(6) 1977 P.L.J. 413.

of the landowner and were not liable to be ejected even in execution of a decree obtained before the Punjab Land Reforms Act, 1972 came into force. The ratio of that decision applies to the present tenants.

(11) However, in view of our finding arrived at on the preliminary objection as to the jurisdiction of the Financial Commissioner to review his order, which had merged in the order of the High Court, this writ petition cannot but succeed. In fact, the order of the Financial Commissioner, Annexure 'P-2', was without jurisdiction and hence it is quashed. These writ petitions are, therefore, allowed with costs. Counsel's fee in each petition to be assssed at Rs. 200. In view of rule 1-A of Order XXVII-A of the Code of Civil Procedure, we also decided to give a notice to the Government Pleader and duly heard him before arriving at this decision.

(12) This decision is being given in Civil Writ petition No. 3097 of 1977 and shall govern the decision in the other connected writ petitions. A copy of this judgment shall be kept on the record of the other connected writ petitions.

K. T. S.

Before J. M. Tandon, J.

NARAIN DASS DAULAT RAM—*Petitioner.*

versus

STATE OF HARYANA and another—*Respondents.*

Civil Writ Petition No. 2886 *of* 1978.

June 7, 1978.

Essential Commodities Act (*X of* 1955)—*Sections* 3(2)(d) *and* (g) *and* 5—*The Haryana Milk and Milk Products Control Order* 1978—*Clauses* 1 *and* 3—*Constitution of India* 1950—*Articles* 14, 19 *and* 301—*Control Order prohibiting export of milk from the State—Whether covered by a "class of commercial transactions relating to foodstuffs" within the meaning of section* 3(2)(g)—*Exemption to State controlled organisations from the bar imposed on private exporters—Whether violates article* 14—*Export ban order—Whether a reasonable restriction under article* 19(6)—*Whether violative of Article* 301—*Milk—Whether includes pasteurised milk.*