about the same, and if there is a legislation of the Parliament dealing with the matter, the property would not be subject even to legislation of the State. The Act under consideration is an Act of Parliament dealing with the property of the Union and the mere fact that subsequently the Punjab Legislature also passed a similar Act which dealt only with "premises belonging to, or taken on lease or requisitioned by, or on behalf of, the State Government * * * * * * *" would not mean that that Act is a legislation of the State Government dealing with the property in dispute. In fact, in view of the definition of 'public premises' as given in the Punjab Act, that Act has nothing to do except with the property belonging to the State Government. In view of the above, therefore, it is obvious that under item 32 the central legislation can and has dealt with the property belonging to the Union and the legislation in dispute cannot be impugned on that ground.

For the reasons given above, I find no force in this petition and consequently dismiss the same and discharge the rule. There would, however, be no order as to costs.

B.R.T.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

DEBI RAM AND ANOTHER,—*Appellants.*

versus

CHAMBELI AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 1466 of 1962.

1963

March, 13th.

Punjab Pre-emption Act (I of 1913)— S. 15(1) and (2)—Respective scope of—Sub-section (2)—Whether overrides sub-section (1).

Held, that the clear effect of the words 'notwithstanding anything contained in sub-section (1) in sub-section (2) of section 15 of the Punjab Pre-emption Act is that the provisions of sub-section (1) of section 15 giving right of pre-emption to a co-sharer under sub-clause (fourthly) of clause (b) must give way to what is provided for in sub-section (2). In the case of the property to which females have succeeded through their father, brother or husband, the right of pre-emption is given only to very close relations and certainly not to co-sharers even if the *khata* is joint. A co-sharer has no right of pre-emption under sub-section (2) of section 15 even though it may be held that the vendee did not in fact stand in the relationship to entitle him to be treated preferentially to a co-sharer under sub-clause "secondly" in sub-section (1) of section 15.

Regular Second Appeal from the decree of the Court of Shri Hari Narain Singh, Senior Sub-Judge, with Enhanced Appellate Powers, Gurgaon, dated the 15th day of October, 1962, reversing that of Shri Raghbir Singh Gupta, Sub-Judge 1st Class, Palwal dated the 10th January, 1962, and dismissing the plaintiffs' suit and leaving the parties to bear their own costs throughout.

J. N. KAUSHAL, ADVOCATE, for the Appellants.

H. L. SARIN, ADVOCATE, for the Respondents.

JUDGMENT

Shamsher Bahadur, J.

SHAMSHER BAHADUR, J.—This is an appeal of Debi Ram and his brother Dharam Pal whose claim to pre-empt the suit property measuring 71 *kanals* and 10½ *marlas* of agricultural land in village Tilpat of Balabgarh Tehsil in Gurgaon District, has not been accepted by the lower appellate Court.

The sale of the suit property was made on 11th of August, 1960 by Smt. Chambeli in favour of her brother's son Daulat Ram for a sum of Rs. 25,000. The plaintiffs, who assert to be co-sharers in the land, claim a right of pre-emption. It was

pleaded by them that the vendee was not in fact the son of the vendor's brother Hari Krishan, and that the price of Rs. 25,000 was not fixed in good faith. The trial Judge found in favour of the plaintiffs and granted a decree for pre-emption on payment of Rs. 10,000. The learned Senior Sub-ordinate Judge, in appeal, however, found that the plaintiffs, though co-sharers in the land, did not have a better right of pre-emption than the vendee who was found to be the son of the vendor's brother. The suit of the plaintiffs was accordingly dismissed.

In appeal, Mr. Jagan Nath Kaushal, the learned counsel for the plaintiffs pre-emptors, has urged that sub-sections (1) and (2) of section 15 of the Punjab Pre-emption Act read together, give the co-sharer in the joint *khata* a right of pre-emption and in any event the vendee has not been proved to be the son of the vendor's brother.

Before dealing with the contentions of Mr. Kaushal, it would be well to reproduce the relevant provisions of section 15 of the Punjab Pre-emption Act. Under sub-section (1) the right of pre-emption in respect of agricultural land vests—

> "(b) where the sale is of a share out of joint land or property and is not made by all the co-sharers jointly,—
>
> First, in the sons or daughters or sons' sons or daughters' sons of the vendor or vendors;
>
> Secondly, in the brother's or brothers' sons of the vendor or vendors,

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Thirdly, in the father's brothers or father's brother's sons of the vendor or vendors;

Fourthly, in the other co-sharers,

Fifthly, ...

(2) Notwithstanding anythihng contained in sub-section (1),—

(a) where the sale is by a female of land or property to which she has succeeded through her father or brother or the sale in respect of such land or property is by the son or daughter of such female after inheritance, the right of pre-emption shall vest,—

(i) if the sale is by such female, in her brother or brother's sons;

(ii) if the sale is by the son or daughter of such female, in the mother's brothers or the mother's brother's sons of the vendor or vendors;

(b) where the sale is by a female of land or property to which she had succeeded through her husband, or through her son in case the son has inherited the land or property sold from his father, the right of pre-emption shall vest,—

First, in the son of daughter of such female;

Secondly, in the husband's brother or husband's brother's son of such female."

The first contention of Mr. Kaushal is based on the assumption that the vendee has not been able to establish his relationship with the vendor. On

this assumption, it is argued that sub-clause (fourthly) in clause (b) of sub-section (1) vests the pre-emptive right in co-sharers irrespective of what is said in sub-section (2). In my opinion, this argument ignores altogether the meaning and content of the words "notwithstanding anything contained in sub-section (1)". These important words in sub-section (2) indicate that whatever is stated in sub-section (2) would prevail over the rights recognised in sub-section (1). The legislature would not have gone to the extent of using these words if it had been intended to keep intact the rights of the co-sharers. Sub-section (2), it would be noted, deals with the sale of properties belonging to females to which they have succeeded either paternally or through their husbands. In either event, the co-sharers do not come into the picture at all as possible pre-emptors. The property which has been sold by Smt. Chambeli was owned by her husband and a portion of it came to her from a collateral of her husband. In both cases, she succeeded to this property "through her husband" and as such the only pre-emptors would be "the son or daughter of such female" and "the husband's brother or husband's brother's son of such female". The co-sharers, even if the *khata* is joint, are excluded altogether from exercising the right of pre-emption to which they are undoubtedly entitled under sub-clause (fourthly) of clause (b) of sub-section (1) of section 15. Similar words have been construed to have the same effect in certain decisions of the Supreme Court. It would be necessary only to mention *Budhan Choudhry and others* v. *State of Bihar* (1), As explained by Justice S.R. Das, as he then was, at page 194:—

> "It will be noticed that section 28 begins with the clause 'subject to the other

(1) A.I.R. 1955 S.C. 191.

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provisions of this Code'. This means that the section and the second schedule referred to therein are controlled by the other provisions of the Code including the provisions of section 30. Further, the text of section 30 itself quite clearly says that its provisions will operate 'notwithstanding anything contained in section 28 or section 29'. Therefore, the provisions of section 28 and the second schedule must give way to the provisions of section 30."

Likewise, in the present case, the clear effect of the words 'notwithstanding anything contained in sub-section (1)' is that the provisions of sub-section (1) of section 15 giving right of pre-emption to a co-sharer under sub-clause (fourthly) of clause (b) must give way to what is provided for in sub-section (2). In the case of the property to which females have succeeded through their father, brother or husband, the right of pre-emption is given only to very close relations and certainly not to co-sharers.

On this construction of sub-section (2) of section, 15, the petitioners, who claim to be co-sharers, must fail even though it may be held that the vendee did not in fact stand in the relationship to entitle him to be treated preferentially to a co-sharer under sub-clause "secondly" in sub-section (1) of section 15. It would be sufficient to indicate the contention of Mr. Kaushal that the finding of the lower appellate Court regarding the relationship of the vendee has not been borne out by evidence which is admissible under section 50 of the Indian Evidence Act. This line of argument need not be pursued as a person claiming to be a co-sharer cannot possibly succeed in the case as

the right of pre-emption is claimed in respect of property which a female has sold and to which she has succeeded through her husband. There is, thus, no force in this appeal which fails and is dismissed. In the circumstances, however, I would leave the parties to bear their own costs.

B.R.T.

CIVIL MISCELLANEOUS

Before D. Falshaw, C.J.

HABIB-UL-HAQ,—*Petitioner.*

versus

THANKAR DASS AND ANOTHER,—*Respondents.*

Civil Writ No 624-D of 1962.

1963

March, 15th.

Slum Areas (Improvement and Clearance) Act (LXXXXVI of 1956)—S. 19—Competent Authority passing a conditional order—Authority to determine whether the conditions have been complied with or not—Whether Competent Authority or executing Court.

Held, that all that is provided in sub-section (3) of section 19 of the Slum Areas (Improvement and Clearance) Act, 1956, is that when the landlord applies for permission to execute a decree for ejectment and the Competent Authority has heard the parties and made such enquiry into the circumstances of the case as it thinks fit, it shall be an order in writing either granting such a permission

Authority under the Act refusing the landlord permission to execute his decree on the condition of the tenant's surrendering possession of part of the permises in dispute by a certain date, and granting the landlord the permission if the condition is not fulfilled in time, it should be as an iterim order to be followed, after the expiry of the period prescribed for carrying out the condition, by a final order either granting or refusing permission to the landlord. The executing Court can only proceed to execute