

be taken but they would not strictly be samples of articles of food visualised under section 10(1)(a)(i), (ii) and (iii). Difficulties of establishing the ownership, origin, and on whom the liability for the adulteration is to fall in cases of samples taken in the absence of such persons is too plain to call for elaboration. With respect I opine that the view that a determined refusal by a seller, conveyer or consignee to give a sample or deliberate or evasive withdrawal from the place does not amount to prevention would in effect tend to erode the basic purpose and objects of the statute. I would, therefore, record my respectful dissent from such proposition.

(21) In the light of the above mentioned discussion, I hold both on principle and precedent that *Bishan Das Telu Ram's case* has wrongly been decided and would hereby overrule the same.

(22) The plea on behalf of the petitioner that on the prosecution allegation itself, no offence is made out is thus untenable and is hereby rejected. The petition is dismissed and the case is sent back to the trial Court for expeditious disposal.

K.T.S

REVISIONAL CIVIL

Before Harbans Lal, J.

J. S. ARORA (DR.)—(J. D.)—*Petitioner.*

versus

J. S. ARORA (PROF.) AND ANOTHER—(D. H.)—*Respondents.*

Civil Revision No. 1056 of 1977

March 27, 1978.

East Punjab Urban Rent Restriction Act (III of 1949) as amended by the East Punjab Urban Rent Restriction (Chandigarh Amendment) Ordinance (14 of 1976)—Sections 13, 13-A, 15, 17 and 18-B—Order of eviction passed during the operation of the Ordinance—Ordinance lapsing by efflux of time—Eviction order—Whether becomes inexecutable after the lapse—Order under section 13-A—Whether can be deemed to be an order under section 13.

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Held that keeping in view the entire scheme of the East Punjab Urban Rent Restriction (Chandigarh Amendment) Ordinance 1976 and the purpose which it was required to serve, it cannot be said that by enacting the Ordinance, the law making authority wanted to create a new drastic right of eviction of a permanent or durable character. It is quite clear from section 2 of the Ordinance that the rights of eviction and immediate possession conferred on the landlords under section 5 of the Ordinance to which the provisions of the East Punjab Urban Rent Restriction Act 1949 were made subject, were to enure only for the period of the operation of the Ordinance and not thereafter. From all the circumstances and the background of the temporary legislation, it is clear that if during the period of the Ordinance any landlord was successful in taking possession of his premises on lease with the tenant, the order of eviction was carried out, in fact, and in substance, to its logical end, the right of tenant to be restored to the demised premises will not be revived. However, in cases where the order of eviction under Section 13-A was passed by the Rent Controller but the same was not executed inasmuch as the tenant remained in possession of the premises in dispute, the life of the order could not be extended after the automatic end of the Ordinance.

(Para 6)

Held, that whereas under section 13 of the Act both the landlord and the tenant are entitled and required to lead evidence to prove and establish their respective claims before the petition for eviction is decided a summary procedure was provided for under section 6 of the Ordinance by adding section 18-B to the principal Act and it was clearly prescribed that the tenant will not be entitled to lead any evidence except when specifically provided by the Rent Controller. Further the Rent Controller for the purposes of Section 13-A is to follow the procedure of a Court of Small Causes. The tenant was also deprived of his right to appeal, which he otherwise had under section 15 of the Act. In view of the nature of the right and the manner in which the same was adjudicated upon, the order of eviction under section 13A cannot be held to be one under section 13 of the Act. Order under section 13A is a distinct and independent order without having any relation to section 13. Thus the bar under section 13(1) of the Act is at once attracted after the expiry of the Ordinance and the order under Section 13A cannot be executed.

(Para 9)

Petition under section 15(5) of Act III of 1949 and section 115 of the C.P.C. for revision of the order of the Court of Shri J. P. Gupta,

Sub Judge 1st Class, Chandigarh, dated the 30th July, 1977 dismissing the objections filed, but without costs.

Gokal Chand Mittal, Advocate with Arun Jain, Advocate, for the Petitioner.

R. P. Bali, Advocate, for the respondents.

JUDGMENT

Harbans Lal, J.

(1) This order will dispose of Civil Revision Nos. 1056, 1656, 1320, 1669, 1714, 1720 and 1799 of 1977, as similar questions of fact and law arise from the orders against which the revision petitions have been filed. In order to properly appreciate the contentions of the parties, facts relating to Civil Revision No. 1056 of 1977 are briefly narrated.

(2) The order of eviction was passed by the Rent Controller on April 27, 1977, against the petitioner on the application of the respondents under section 13-A of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter called the Act), as amended by the East Punjab Urban Rent Restriction (Chandigarh Amendment) Ordinance (No. 14 of 1976), (hereinafter called the Ordinance). Thereafter, execution proceedings were taken for dispossessing the petitioner from the premises, in dispute. The petitioner filed objections under section 47, read with section 151, Code of Civil Procedure, contending that the Ordinance had lapsed and had ceased to operate with effect from May 9, 1977. Consequently, the order of eviction had also lapsed and was inexecutable. This was challenged by the decreeholders, respondents. The objections were dismissed by the Subordinate Judge, First Class, Chandigarh,—*vide* impugned order. The present revision petition is directed against the said order.

(3) The executability of the order of eviction passed against the petitioner has been challenged mainly on the following grounds:

- (1) that the order of eviction, dated April 27, 1977, was valid at the time it was passed, but the same exhausted itself and became lifeless after the Ordinance under which the same had been passed lapsed on May 9, 1977;
- (2) that even if the eviction order was valid, after the expiry of the Ordinance the same was inexecutable under section 13 of the Act; and
- (3) that the eviction order was passed under section 13A, as introduced by the Ordinance in the Act, but no machinery

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had been provided for execution of such orders. The same could not be executed under section 17 of the Act.

It has been contended by Mr. H. L. Sarin and Mr. G. C. Mittal, the learned counsel for some of the revision petitioners, that before the enforcement of the Ordinance on December 17, 1976, the order of eviction could be passed by the Rent Controller on the grounds as mentioned in section 13 of the Act. Through the Ordinance, section 13A was introduced after section 13 of the Act. Under this provision, if a landlord who was in occupation of any residential building allotted to him by the Central Government or any other local authority had been ordered to vacate the same on the ground that he was owner of a residential or scheduled building either in his own name or in the name of his wife or dependent child in the Union Territory of Chandigarh, he was conferred the right to recover immediate possession of the residential building leased out by him to the tenant in accordance with the procedure as laid down in section 18B. The order of eviction under section 13A was, thus, based on entirely different considerations from those as prescribed in section 13 of the Act. The Ordinance under which sections 13A and 18B and other provisions had been introduced in the principal Act, remained in existence for six months in accordance with the Constitution. The same lapsed on May 9, 1977, as the Parliament did not pass any statute extending the provisions of the Ordinance, nor was its life extended under any provision of the Constitution. After the expiry of the Ordinance, which was obviously a temporary law, all orders of eviction passed under its provisions also lost their life and vitality and were exhausted. The rights conferred under any statute and having become vested continue to remain operative in favour of the persons concerned only under section 6 of the General Clauses Act, but the said provision was applicable only to those statutes and laws which were repealed by a repealing or amending Act and the same was not applicable to those which were for a temporary period and ceased to exist by merely efflux of time. Reliance was placed on *B. Bansgopal v. Emperor* (1), *Jatindra Nath Gupta v. Province of Bihar* (2), *S. Krishnan and others v. The State of Madras and another* (3), and *Gopi Chand v. Delhi Administration*, (4).

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- (1) A.I.R. 1933 Allahabad 669.
 - (2) A.I.R. 1949 Federal Court 175.
 - (3) A.I.R. 1951 S.C. 301.
 - (4) A.I.R. 1959 S.C. 609.

(4) It was held in *S. Krishnan's case* (supra) by Patanjali Sastri, J. (as he then was), who spoke for the Court, that the general rule in regard to a temporary statute is that in the absence of special provision to the contrary, proceedings which are being taken against a person under it will *ipso facto* terminate as soon as the statute expires. This principle of law was approved in *Gopi Chand's case* (supra). However, in all the cases, mentioned above, the question was whether the trial of the accused for the offence which had been created by a temporary statute could be proceeded against after the expiry of the statute, and it was held that the trial proceedings come to an end on the expiry of a temporary statute.

(5) The learned counsel for the respondents, on the other hand, has placed reliance on the *State of Orissa v. Bhupendra Kumar Bose and others* (5), wherein elections to a Municipal Committee had been held as invalid by the High Court in a writ petition. Thereafter, the Orissa Municipal Election Validation Ordinance was passed which validated those elections in spite of the decision by the Court. The said Ordinance lapsed after six months. The party who had secured an order from the Court invalidating municipal election, again filed a writ petition *inter alia* contending that after the expiry of the said Ordinance by efflux of time, the invalidity of the municipal elections, which had been cured by the aforesaid Ordinance, was revived. It was held by their Lordships of the Supreme Court that the provisions of section 6 of the General Clauses Act, in relation to the Repealing Act do not apply to a temporary Act and that it was a general rule that the proceedings taken against a person under a temporary law will *ipso facto* terminate as soon as the statute expires and that it is for the legislature to take necessary steps to avoid anomalous consequences by enacting a special provision in a temporary statute. After considering *S. Krishnan's case* (supra), their Lordships held,—

“But the general rule about the effect of the expiration of a temporary Act is not inflexible and admits of exceptions. What the effect of the expiration of a temporary Act would be must depend upon the nature of the right or obligation resulting from the provisions of the temporary Act and

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upon their character whether the said right and liability are enduring or not. Therefore, in considering the effect of the expiration of a temporary statute, it would be unsafe to lay down any inflexible rule. If the right created by the statute is of an enduring character and has vested in the person, that right cannot be taken away because the statute by which it was created has expired. If a penalty had been incurred under the statute and had been imposed upon a person, the imposition of the penalty would survive the expiration of the statute. That appears to be the true legal position in the matter."

The *ratio* of the decision in *Bhupendra Kumar Bose's case* (5 supra), was approved in *M/s. Velji Lakhamsi and Co. and others v. M/s. Benett Coleman and Co. and others*, (6), wherein the landlord had constructed a godown which was destroyed in April, 1944 in the Bombay Docks. In order to promote planned development of the devastated area, the Governor of Bombay, passed the City of Bombay (Building Works Restriction) Act, 1944, preventing reconstruction except with the permission of the Municipal Commissioner. The Municipal Commissioner granted written permission to the landlord to raise temporary structure in the form of a godown subject to the condition that in pursuance of any improvement of town planning scheme, the said construction may be ordered to be demolished at any time. The landlord built godowns and gave them on lease to the appellant before the Supreme Court. After the finalization of the town planning scheme, the landlord issued notice to the lessee to quit the same. Meanwhile, in September, 1958, the Municipal Commissioner issued notice to the landlord to demolish the structure built by him in pursuance of the permission granted. On failure of the lessee to vacate the premises, suit for eviction was filed, under the Rent Control Act, enforced in Bombay. The order of eviction was passed by the trial Court, but the same was set aside in appeal. In second appeal, the order of eviction was restored by the High Court. In appeal to the Supreme Court, one of the contentions raised was that the Bombay Act of 1944 under which the Municipal Commissioner had granted the permission conditionally was a temporary statute and so, on expiry of the same, he had no jurisdiction to order

demolition. It was held by their Lordships of the Supreme Court in paragraph 15 :

“It is true that the offences committed against a temporary statute have, as a general rule, to be prosecuted and punished before the statute expires and in the absence of a special provision to the contrary, the criminal proceedings which are being taken against a person under the temporary statute will *ipso facto* terminate as soon as the statute expires. But the analogy of criminal proceedings or physical constraint cannot, in our opinion, be extended to rights and liabilities of the kind with which we are concerned here for it is equally well settled that transactions which are concluded and completed under the temporary statute while the same was in force often endure and continue in being despite the expiry of the statute and so do the rights or obligations acquired or incurred thereunder depending upon the provisions of the statute and nature and character of the rights and liabilities.”

It was further held after discussing a number of English cases on the subject as under :

“The foregoing discussion makes it abundantly clear that the question as to whether the restrictions, rights and obligations flowing from the provisions of a temporary statute which come to an automatic end by efflux of time expire with the expiry of the statute or whether they endure and survive after the expiry of the statute depends upon the construction of the statute and the nature and character of the rights, restrictions and obligations and no rigid or inflexible rule can be laid down in this behalf. We must, therefore, scrutinise the provisions of the temporary statute in question viz., the Bombay Act, 1944, which has long since expired and the permit (Ex. ‘A’) to ascertain as to whether the restrictions, rights and obligations arising from any part of it endured and survived after the expiry of the Act. The Act, as evident from its preamble and statement of Objects and Reasons was designed to prevent the growth of buildings in a haphazard fashion which might conflict with the contemplated scheme of systematic town planning in the aforesaid area devastated by explosions. Section 3 of the Act which related to the imposition of restrictions on building works in the said area including the

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plot in question authorised the Municipal Commissioner to impose such conditions as he might think fit to specify while granting permission for construction of a building or a structure. In the instant case, the Municipal Commissioner gave permission to the respondents to build on the plot in question subject to the express condition that the structures would be pulled down by them whenever required to do so to give effect to any improvement scheme that might be made under the Bombay Building Town Planning Act. The rights and obligations flowing from the conditions subject to which the permission to build was granted to respondent were annexed to the ownership of the building for all time to come and were not limited to the duration of the Bombay Act, 1944. Accordingly, we are satisfied that the provisions of section 3 and 8 of the Bombay Act, 1944, were permanent as to the restrictions, rights and obligations imposed, acquired and incurred thereunder. *A fortiori*, the rights acquired by the Municipal Commissioner, Greater Bombay, by virtue of the express conditions imposed by him while granting the permit (Ex. 'A') were not subject to a time limit and did not lapse with the expiry of the Act."

(6) Thus, keeping the above dictum of law as our guiding star, we have to scrutinise the scheme of the ordinance and the nature of the rights created thereunder. In order to keep balance between the conflicting interests of the landlords who were very anxious to evict the tenants without any restriction on their right and unmindful of the consequent hardship to the tenants as well as of the tenants who were equally eager to keep the premises under their possession in spite of even the *bona fide* requirement of the landlord; rent restriction laws were passed almost in every province and the East Punjab Urban Rent Restriction Act, 1949, was passed in Punjab. All the grounds under which a landlord could evict a tenant or the latter could protect his lease were embodied in the various sub-clauses of section 13. The aggrieved party was also conferred the right to challenge the order of the Rent Controller by way of appeal under section 15(1)(b) and also the right of revision in the High Court under sub-section (5) of section 15. The order of eviction could be executed by the landlord as a decree of the Civil Court having jurisdiction, under section 17. In 1976, the Government of India took a policy

decision that those employees who had constructed residential or scheduled buildings of their own in their own name or in the name of their wife or dependent children, should not be allowed to live in Government buildings. In order to achieve this object, summary powers were conferred on the Rent Controller under the Act to pass orders of eviction against the tenants of such employees on applications made by the landlords by enforcing the Ordinance. It was under this Ordinance that the landlord was conferred the right to recover immediate possession of his premises from the tenant under section 13-A which was added under the Ordinance. A separate procedure was also prescribed for decision by the Rent Controller in summary manner under section 18-B in which the tenant was deprived his normal right to defend himself against the petition for eviction by the landlord under sub-section (4) of section 18-B. The tenant on receiving the summons from the Rent Controller had to seek special permission to defend himself. Unless this was granted, it was to be deemed that the application for eviction of the tenant had been admitted by the tenant. In sub-section (7) it was further provided that the Controller was to "follow practice and procedure of a Court of Small Causes including the recording of evidence." Under sub-section (8), the right of appeal or the second appeal was also taken away. However, the Ordinance issuing authority appeared to be quite conscious of the drastic nature of the provisions embodied in the Ordinance and made its intention to treat the same as of a temporary character quite clear in section 2 of the Ordinance, which is reproduced :

"During the period of operation of this Ordinance, the East Punjab Rent Restriction Act, 1949, as in force in the Union Territory of Chandigarh (hereinafter referred to as the Principal Act), shall have effect subject to the amendments specified in sections 3, 4, 5, 6, 7 and 8."

This intention was further reinforced by the fact that after the expiry of six months, this Ordinance was not passed into a statute by enacting proper law in the Parliament, nor was the same extended under the provisions of the Constitution. I am told that the policy of the Central Government that its employees should be asked to vacate the Government premises allotted to them in case they owned their own premises was also abandoned. This seems to be the reason why the law as embodied in the Ordinance was not made a permanent statute. Even at the time of enforcing the Ordinance, the

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Government of India did not appear to be anxious to implement the basic policy underlying therein permanently. Thus, keeping in view the entire scheme of the Ordinance and the purpose which it was required to serve, it cannot be held that by enacting the Ordinance, the law making authority wanted to create a new drastic right of eviction of a permanent or durable character. It is quite clear from section 2 of the Ordinance that the rights of eviction and immediate possession conferred on the landlords under section 5 of the Ordinance to which the provisions of the principal Act were made subject, were to enure only for the period of the operation of the Ordinance and not thereafter. From all these circumstances and the back ground of the temporary legislation, it is quite reasonable to hold that if during the period of the Ordinance any landlord was successful in taking possession of his premises, on lease with the tenant, the order of eviction was carried out, in fact, and in substance, to its logical end, the right of tenant to be restored to the demised premises will not be revived. However, in cases where the order of eviction under section 13-A was passed by the Rent Controller, but the same was not executed inasmuch as the tenant remained in possession of the premises, in dispute, the life of the order could not be extended after the automatic end of the Ordinance.

(7) In the light of the above interpretation, the contention of the learned counsel for the respondents, that the order of eviction passed in favour of the landlords under section 13-A of the Act, survived the lapsing of the Ordinance and the same was equally executable as the order of eviction under section 13 of the Act, cannot be sustained and has to be repelled. Even if it were to be held that the order of eviction under section 13-A still survives after the Ordinance, the next question is whether such order is executable or not after the Ordinance has gone out of existence ?

(8) According to the learned counsel for the petitioner, the mandate of the legislature has been specifically embodied in section 13(1) of the Act, that no tenant can be evicted except in execution of the order of eviction passed on any of the grounds mentioned in section 13. The said provision is reproduced below :

“13(1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed

before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section or in pursuance of an order made under section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended.”

It is argued that in the present cases, the order of eviction passed under section 13-A cannot partake the character of order of eviction under section 13. The learned counsel even went to the length of stressing the proposition that even during the enforcement of the Ordinance, the order of eviction passed under section 13-A was not executable under section 17 of the Act which provides for execution of orders only under section 10 or section 13 and not any other order. According to the learned counsel for the respondents, by enacting section 13-A by means of the Ordinance, only one additional ground of eviction was prescribed and section 13-A in these circumstances, should be construed as a part of section 13 of the Act or as an exception or a proviso to the same. On behalf of the petitioner, reliance has been placed on *Shrimati Padma Wati v. Mehta Faqir Chand* (7), and *Matu Ram v. Ram Ditta and another* (8). According to the learned counsel for the respondents, the *ratio* of the aforesaid decisions was not applicable to the facts of the present cases as in those cases, the order of eviction had been passed in suits under the Transfer of Property Act, and not under the provisions of the Act, and, therefore, the orders of eviction could not possibly be treated as the orders under section 13 of the Act. If the order of eviction under section 13-A can be treated as one under section 13 of the Act, obviously the bar placed under section 13(1) will not be there and the argument raised on behalf of the petitioner will be bereft of all substance and such order will also be executable under section 17 of the Act. However, if the order of eviction under section 13-A as in the present cases, is not held as one under section 13, the further question will be: whether the same is executable after the expiry of the Ordinance even if the same was executable during the life time of the Ordinance ?

(9) From a close perusal of section 2 of the Ordinance, no doubt is left that during the life of the Ordinance, the provisions of the Act, were subject to the provisions contained in the Ordinance and

(7) L.P.A. 285 of 1959 decided on 29th November, 1960.

(8) 1966 P.L.R. Short Notes of Cases 21.

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thus the order of eviction passed under section 13-A had to be treated as one passed under the provisions of the Act. Though section 13-A was not specifically referred to under section 17 in which execution of the eviction order has been provided for, the order under section 13-A could not be rendered inexecutable during the subsistence of the Ordinance by adopting the interpretation that no machinery had been provided under the Ordinance for executing the orders of eviction. The intention of the Ordinance making authority was quite clear that the order of eviction under section 13-A was intended to confer the right of immediate possession on the landlord and consequently, the tenant had to be under a liability to deliver immediate possession. As the machinery regarding execution of the eviction order had been provided only under section 17 of the Act, there is no escape from the conclusion that in order to carry out the intention of the Ordinance, it must be held that the order of eviction under section 13-A was executable under section 17 in the same manner as one under section 13 of the Act. However, from this, it is not possible to jump to the conclusion that the orders under section 13-A are, in fact, orders under section 13 of the Act. Whereas under section 13, both the landlord and the tenant are entitled and required to lead evidence to prove and establish their respective claim before the petition for eviction is decided one way or the other, a summary procedure was provided under section 6 of the Ordinance by adding section 18-B to the principal Act, and it was clearly prescribed that the tenant will not be entitled to lead any evidence except when specifically permitted by the Rent Controller and further that the Rent Controller for the purpose of passing the order under section 13-A will follow the procedure of a Court of Small Causes. The tenant was also deprived of his right of appeal, which he otherwise had under section 15 of the Act. A close perusal of the Ordinance and the Act clearly shows that not only a new and drastic right of eviction was conferred on the landlord who was an employee of the Central or State Government, but a separate summary procedure was also prescribed. In view of the nature of the right and the manner in which the same was adjudicated upon, the order of eviction under section 13-A cannot be held as one under section 13 of the Act. This being the position and the order under section 13-A being a distinct and independent order without having any relation to section 13, the bar of section 13(1) of the Act will be at once attracted after the expiry of the Ordinance and the order under section 13-A cannot be executed.

(10) Thus, it is held that the order of eviction under section 13-A in the present cases exhausted itself after the expiry of the Ordinance, nor is the same executable. In view of this conclusion, all the revision petitions are allowed and the impugned orders are set aside. However, there will be no order as to costs.

K. T. S.

REVISIONAL CRIMINAL

Before S. S. Sandhawalia and J. M. Tandon, JJ.

KARTAR SINGH—Petitioner

versus

STATE—Respondent.

Criminal Revision No. 639 of 1973

March 29, 1978.

Punjab Excise Act (I of 1914)—Sections 3 Clause 13-A and 61 (1) (c)—Indian Evidence Act (I of 1872)—Section 45—Recovery of Lahan from a working still—Evidence of Excise Inspector not elucidating training he received nor specifying how testing of Lahan was a part of his training—Such evidence—Whether can be accepted—Lahan—Whether to be proved to be so by expert testimony.

Held that there is no basis for the assumption that *Lahan* is to be proved to be so by the testimony of an expert and there is no statutory rule or other principle for this proposition. Since neither the mode of proof is prescribed by the Punjab Excise Act 1914 nor is it laid down that it must be so done on the basis of the expert testimony, it cannot be said that the testimony of the Excise Inspector must be brought within the ambit of section 45 of the Indian Evidence Act 1872. It follows that the prosecution has to discharge the burden in the ordinary way to bring the recovered material within the definition laid down by law. Once that is so, one must fall back on the general rule of the appraisal of evidence and the weight attached thereto. Therefore, the prosecution can bring in even an ordinary witness in order to satisfy the requirements of section 3 clause 13 A of the Punjab Excise Act.

(Paras 9 and 10)

Gardawar Singh v. The State of Punjab, 1975, C.L.R. 246.

Raghubir Singh v. The State of Punjab, 1976, C.L.R. 81.

OVERRULED.

Amar Dutt, Advocate, for the petitioner.

D. D. Jain, Advocate, for A. G.