

able to tell the Sangat that there is no place for a patit, dishonest, or man of bad character or drunkard in the employment of the SGPC would be frustrated.

(13) These writ petitions in our opinion are not maintainable. Petitioners are relegated to alternative remedy provided in the Sikh Gurudwara Act, 1925 itself.

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*R.N.R.*

*Before V.K. Bali & M.L. Singhal, JJ*

JUNAID ALI KHAN & OTHERS,—*Petitioners*

*versus*

STATE OF PUNJAB & OTHERS,—*Respondents*

*CWP No. 17069 of 1997*

*The 28th April, 1998*

*Constitution of India, 1950—Art. 226—East Punjab Urban Rent Restriction Act, 1949—S.3—Punjab Municipal Act, 1911—S.71—Exemption from Rent Act—Buildings and rented lands falling in Mohali Municipal Area exempted from applicability of Act till 1st April, 1995—From 1st April, 1995, Rent Act made applicable—Punjab Government issuing notification on 6th March, 1997 exempting Mohali Municipal Area retrospectively from 1st April, 1995—Such notification whether valid—Held, notification is constitutionally valid and ejection suits filed and pending from 1st April, 1995 to 6th March, 1997 not liable to be proceeded with in absence of applicability of Rent Act.*

*Held that, notification Annexure P-2 will, thus, apply to pending proceedings also. Although earlier notification was for a period till 31st March, 1995 exempting the applicability of the Act to buildings and rented lands in the entire area of Mohali, notification Annexure P-2 dated 6th March, 1997 operative retrospectively with effect from 1st April, 1995 to 31st March, 2000 is valid.*

(Para 11)

*Further held that we do not find any unconstitutionality in*

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notification. Annexure P-2, as Courts normally do not interfere with the policy of legislature. Legislature is the best judge whether particular legislation will effectuate a particular object or meet a particular requirement. The Courts will generally presume in favour of the constitutionality of a piece of legislation. No violation of fundamental rights or any statutory violation has been pointed out as also there is no proof of *mala fides* against any bureaucrat or politician while issuing the notification in question.

(Para 13)

Ashok Aggarwal, Sr. Advocate , Rajesh Garg, Advocate, *for the Petitioner*

S.C. Kapoor, Sr. Advocate with Ashish Kapoor, Advocate, *for the Respondents*

### JUDGMENT

*M.L. Singhal, J.*

(1) *Vide* notification Annexure P-2 dated 21st February, 1997, the Governor of Punjab in exercise of powers conferred by Section 3 of the East Punjab Urban Rent Restriction, 1949 (East Punjab Act No. 3 of 1984) read with Section 71 of the Punjab Municipal Act, 1911 (Act No: III of 1911) and all other powers enabling him in this behalf directed that the provisions of the said Act shall not apply to the buildings and rented lands situated in the urban area administered by the Municipal Council, Sahibzada Ajit Singh Nagar, (Mohali), for another period of 5 years with effect from 1st April, 1995 to 31st March, 2000. This notification was published in the Punjab Government Gazette Extraordinary on 6th March, 1997. Petitioners are tenants in the commercial and residential buildings owned and possessed by respondents No. 2 to 6. Respondents No. 2 to 6 filed suit for possession against them after the termination of their tenancy in terms of Section 106 of the Transfer of Property Act. Said suits are pending adjudication at different stages, as for instance suit for possession filed against Paul Mohinder Singh by Taranjeet Singh is pending in the Court of Sub-Judge, Kharar. Suit for possession filed against Rajinder Singh by Lt. Col. Devinder Singh is pending in the Court of Balbir Singh, Sub Judge, Kharar. In suit for possession filed against Junaid Ali Khan by Avtar Singh, RSA No. 2807 of 1997 is pending in the Court. Similarly in suit for possession filed against K.K. Nayar by Amarjeet Singh RSA No. 3243 of 1996 is pending in the High Court. In suit for possession

filed against Kehar Singh by Pushpinder Singh, RSA No. 3295 of 1997 is pending this Court. Petitioners are challenging the constitutionality of notification Annexure P-2 exempting the buildings and rented lands situated in the urban area of Municipal Council, Mohali for a period of 5 years from 1st April, 1995 to 31st March, 2000. It is alleged that this notification is in partial modification of the earlier notification dated 9th February, 1984 exempting buildings and rented lands situated in the urban area of Mohali for the period 21st December, 1983 to 31st March, 1995. East Punjab Urban Rent Restriction, 1949 was enacted to restrain the increase of rent of certain premises situated within the limits of urban area and eviction of the tenants therefrom. This Act was enacted in view of the shortage of the houses and high rent being charged by the landlords.

(2) The rent control legislation in these circumstances, is a social legislation enacted for the benefit of tenants so that they are not fleeced by the landlords out of proportion. It was designed to protect the tenants from eviction by the landlords on frivolous and inadequate grounds. It was enacted with a view to remove the evil of exploitation of landlords in view of scarcity of accommodation and to curb the process of eviction of tenants with a view only to increase the rent. Keeping in view the growth of the area, Notified Area Committee was constituted at Mohali on 28th December, 1983 under Section 241 of the Punjab Municipal Act, 1911. Notified area is the area which is a town as yet not satisfying the requirements of municipality as contemplated under Section 3(9) of the Punjab Municipal Act. Consequent to 74th constitution amendment the Punjab Municipal Act, 1911 was amended by Punjab Act No. 11 of 1994. Consequent to such amendment notified area of Mohali was classified as smaller urban area and a Class-I Municipal Council was constituted as per schedule III attached to the Punjab Municipal Act in terms of Section 4(6) of the Punjab Municipal Act. (as amended) Therefore the area of Mohali is administered by the Municipal Council. Mohali is well established urban area governed by the Punjab Municipal Act, 1911 as amended. The East Punjab Urban Rent Restriction Act became applicable to the urban area of Mohali soon after the notified area committee was constituted in the year, 1983. In spite of the applicability of the East Punjab Urban Rent Restriction Act to urban area of Mohali, the State Government issued notification purportedly in exercise of the powers under Section 3 of the Act whereby it exempted applicability of the Act and the rented land in the entire urban area for a period till 31st

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March, 1995 but subsequently modified such notification on 6th March, 1997 applying such notification with retrospective effect i.e. 1st April, 1995 till 31st March, 2000. Once the Act has been made applicable to all the urban areas, the State Government by a piece of delegated legislation cannot annul Section 1(2) of the Act. The power granted to the State Government under Section 3 of the Act, is in respect of particular building or rented land or any class of building or rented land within urban area but cannot be extended in respect of all the buildings and all the rented lands within the entire urban area. Such notification is thus against the legislative mandate of applicability of the Rent Act to all the urban areas. The State Government has no power to issue notification with retrospective effect. The notification dated 9th February, 1984 exempted the buildings and the rented lands till 31st March, 1995. The provisions of the Act became applicable with effect 1st April, 1995 to the urban areas of Mohali and all the buildings and rented lands became entitled to the protection of the Rent Act. Once the protection was given to the tenants, the rights of the tenants could not be taken away by the State Government by way of notification exempting the applicability of the Act with retrospective effect. Notification is wholly illegal, unjust and beyond the jurisdiction of the State Government. By exempting the buildings and rented lands from the urban area of Mohali, the State Government negated the provisions of Section 1 of the Act which lays down that the Rent Act is applicable to all the urban areas. Once the substantive provisions of the Act had been made applicable to all the urban areas, the State Government could not by executive authority say that it shall not apply to a particular area. The State Government could only exempt building or class of buildings without such urban area but could not exempt all the buildings within said urban area. Section 3 of the Rent Act empowers to exempt the buildings or rented lands as defined respectively under Sections 2(a) and 2(f) of the Act. Exemption can be granted only to buildings and rented lands and not to the entire urban area so as to make the Act inapplicable to the entire town. Notification Annexure P-2 is contrary to the objects and purposes of the Act. No guidelines have been given for the exercise of the power conferred by Section 3 of the Act by the State Government to exempt the building or class of buildings and rented lands. In the absence of any guidelines, power to exempt can be misused. In this case this power has been misused with a view to give handle to the senior bureaucrats and politicians who have property in Mohali to eject their tenants with the object to earn more rent. Notification exempting every building and rented land

situated in the urban area of Mohali from the operation of the Act is not based on any intelligible differentia. Tenants in Mohali require to be protected against the onslaught of the landlords managing ejection proceedings against them for no good cause. The Act has not laid down any guidelines as to when building or class of buildings can be exempted from the provisions of the Act. In the absence of any guidelines, the executive cannot issue notification under Section 3 of the Act any time and thus rendering the provisions of the Act nugatory. In other notified area committees, there is no such notification making the protection granted to the tenants against eviction nugatory.

(3) Respondent contested this writ petition, urging that exemption granted is valid and was mandated by the fact that a large number of buildings at Mohali are still lying vacant and with a view to encourage building activities, notification was issued. Purpose of the Rent Act was not to make the tenants owners of the premises and the exemptions granted for specific period are valid. It was urged that none of the petitioners can have any grievance inasmuch as when the premises were let out to them, the Rent Act was not applicable.

(4) We have heard learned counsel for the parties and have gone through the record.

(5) It has been submitted by learned counsel for the petitioners that the East Punjab Urban Rent Restriction Act, 1949 was enacted with a view to provide protection to the tenants against the exploitation by the landlords. This Act came into vogue at a time when due to the partition of the country in 1947 there was exodus of population from that part of the country to this part of the country. This gave rise to paucity of accommodation and with a view to restrain the increase of rent of certain premises situated within the limits of urban area and eviction of the tenants therefrom arbitrarily, this Act was enacted. It is a piece of beneficent social legislation enacted for the benefit of the tenants designed to protect them from eviction by the landlords on frivolous and insufficient grounds. Section 3, however, empowers the State Government to notify that all or any of the provisions of this Act shall not apply to any particular building or rented land or any class of buildings or rented lands. Section 3 is thus an exception. The State Government is required to exercise this power in a manner that the provisions of the Act are not rendered nugatory and landlords are not armed with a

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handle to eject tenants for no reason whatsoever. In *Mani Subrat Jain vs. Raja Ram Vohra*,<sup>(1)</sup> Hon'ble Supreme Court observed that rent control legislation in a country of terrible accommodation shortage is a beneficial measure whose construction must be liberal enough to fulfil statutory purpose and not frustrate it. So construed, the benefit of interpretative doubt belongs to the potential evictee unless the language is plain and provides for eviction. That intendment must by interpretation, be effectuated. It is no doubt true that we have to construe the provisions of the Act in a manner that the protection granted to the tenants against eviction is not rendered nugatory but at the same time we are not concerned with the policy of the legislature or with the result of giving effect to the language of the statute. It is their duty to ascertain the meaning and intendment of the legislature in doing so. Court will always presume that impugned provision was necessary to effectuate a particular object or to meet a particular requirement and not that it was intended to negative that which it sought to achieve.

(6) In *Firm Amar Nath Basheshar Dass, Appellant vs. Tek Chand, Respondent*<sup>(2)</sup> the facts were as follows :

(7) The respondent who was construction a building had leased it out on a monthly tenancy to the appellant on the 1st November, 1959. The building was ultimately completed in March, 1960. On 14th January, 1963 he filed a suit and got a decree for ejection on 14th August, 1969. On 29th August, 1969 he filed an execution petition but the executing court dismissed it on 16th April, 1970 on the ground that the conditions prescribed in the notification of the Government of Punjab under section 3 of the Punjab Urban Rent Restriction Act, 1949 dated 30th July, 1965 exempting; such decrees from Section 13 of the said Act were not complied with. An appeal against this judgment was unsuccessful. On a second appeal the High court; held that the decree was executable in as much as that decree was exempted under the notification. The tenant took the matter by special leave petition to the Hon'ble supreme Court. The Hon'ble Supreme Court dismissed the appeal holding that the construction placed by the High Court is the only construction that is possible on the language of the notification. In AIR 1972 SC 1548 (supra) notification with which the Hon'ble Supreme Court was

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(1) AIR 1980 S.C. 299

(2) AIR 1972 S.C. 1548

concerned was issued on 30th July, 1965 and was in the following terms :—

“In exercise of the powers conferred by section 3 of the Punjab Urban Rent Restriction Act, 1949 and all other powers enabling him in this behalf, the Governor of Punjab is pleased to direct that the provisions of section 13 of the said Act shall not apply in respect of decrees for ejection of tenants in possession of building which satisfy the following conditions namely:

- (a) Buildings constructed during the years 1959, 1960, 1961, 1962 and 1963 are exempted from all the provisions of the said Act for a period of five years to be calculated from the dates of their completion, and
- (b) During the aforesaid period of exemption suits for ejection of tenants in possession of those buildings were or are instituted in civil courts by the landlords against the tenants and decrees of ejection were or are passed.

(8) The Hon'ble Supreme Court held that the filing of the suit by itself does not confer any exemption because what is exempted from the provisions of section 13 is the decree. A suit filed, therefore, must end in a decree though that decree may be passed subsequent to the expiry of the 5 years' period during which exemption from the application of S. 13 has been granted. The filing of the suit within the period of exemption is the only condition that is necessary to satisfy one of the requirements of the exemption, the other requirement being the passing of the decree in respect of which no time has been prescribed. In *Ram Parkash-petitioner vs. Smt. Surinder Sharma-respondent*. (3) a Full Bench of this Court held that a decree for ejection of tenant passed by the civil Court during the period of exemption from the applicability of the Urban Rent Restriction Act, 1949 or thereafter which has become final can be executed in spite of bar contained in Section 13(1) of the Rent Act.

(9) In *D.C. Bhatia and others v. Union of India and another*, (4) the Hon'ble Supreme Court observed that it is for the legislature to decide as to which section of people should be protected and what should be the basis of classification i.e. income basis, rent basis etc.

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(3) AIR 1981 Pb. & Haryana 291

(4) (1995) 1 S.C.C. 104

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Court cannot interfere with the legislative policy. In order to strike a balance between the interests of the landlords and also the tenants and for giving a boost to house-building activity, the legislature in its wisdom has decided to restrict the protection of the Rent Act only to those premises for which rent is payable up to the sum of Rs. 3500 per month and has decided not to extend this statutory protection to the premises constructed on or after the date of coming into operation of the Amending Act for a period of ten years. The classification has been made on the basis of the rent payable on the premises. In (1995) 1 SCC 104 (supra) appellant filed a writ petition in the Delhi High Court challenging the validity of newly inserted Section 3(c) in the Delhi Rent control Act, 1958. Section 3(c) provided that Delhi Control Act, 1958 shall not apply to any premises whether residential or not whose monthly rent exceeds Rs. 3500. Delhi High Court held that Section 3(c) was a valid piece of legislation and did not contravene any of the provisions of the Constitution. Hon'ble Supreme Court agreed with the view of the Delhi High Court. In para 27 of the report Hon'ble Supreme Court observed that the Rent Act had brought to a halt house-building activity for letting out. Many people with accommodation to spare did not let out such accommodation for the fear of losing the accommodation altogether. As a result of all these, there was an acute shortage of accommodation which caused hardship to the rich and the poor alike. In the light of this experience, the Amending Act of 1988 was passed. The Hon'ble Supreme Court observed that it is for the legislature to decide which class of persons should be given protection and on what basis such protection is to be given. Courts would not interfere with such matters or legislative policy.

(10) In *Parripati Chandrasekharrao and sons vs. Alapatti Jalaiah* (5), notification dated 29th December, 1983 exempted with effect from 26th October, 1983, the buildings whose monthly rent exceeded Rs. 1000 from the provisions of Andhra Pradesh Rent Act, 1960. It was held that the tenant who undoubtedly had the rights and remedies under the Act to claim reliefs against the landlord, lost the same the moment the protection was taken away, the rights and remedies being not vested ones. The Hon'ble Supreme Court observed so keeping in view the distinction between the rights which accrue to a landlord under the common law and the protection which is afforded to the tenant by such legislation or the Act. In Judgments

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(5) J.T. 1995 (4) S.C. 187



Today, 1995(4) SC 187 the facts were that the suit premises were governed by the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 till 29th December, 1983. On 4th February, 1983 and 13th February, 1983 the respondent-tenant filed variously three applications viz. (i) for direction to permit him to deposit rent in the court, (ii) for fixation of fair rent and (iii) to prevent inconvenience. The State Government issued notification dated 29th December, 1983 exempting with effect from 26th October, 1983 from all the provisions of the Act, among others, buildings whose monthly rent exceeded Rs. 1000/-. The Hon'ble Supreme Court held that the notification applied to pending proceeding also. In consequence the applications filed by the tenant were dismissed.

(11) Notification Annexure P-2 will, thus, apply to pending proceedings also. Although earlier notification was for a period till 31st March, 1995 exempting the applicability of the Act to buildings and rented lands in the entire area of Mohali, notification Annexure P-2 dated 6th March, 1997 operative retrospectively with effect from 1st April, 1995 to 31st March, 2000 is valid.

(12) Mohali is a setallite town of Chandigarh. It is a suburb of Chandigarh. It was conceived with a view to ease pressure of population on Chandigarh. There is hardly any distance between Chandigarh and Mohali. Mohali is almost part of Chandigarh: it was with a view to encouraging building activity in the town of Mohali that life of the earlier notification exempting buildings and rented lands from the operation of the East Punjab Urban Rent Restriction Act, 1949 was extended through notification Annexure P-2 for another period of 5 years i.e. with effect from 1st April, 1995 to 31st March, 2000. Ejectment suits pending as on 1st April, 1995 are exempt from the operation of Section 13 of the East Punjab Urban Rent Restriction Act, 1949.

(13) In view of what we have said above, we do not find any unconstitutionality in notification. Annexure P-2, as Courts normally do not interfere with the policy of legislature. Legislature is the best judge whether particular legislation will effectuate a particular object or meet a particular requirement. The Courts will generally presume in favour of the constitutionality of piece of legislation. No violation of fundamental rights or any statutory violation has been

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pointed out as also there is no proof of *mala fides* against any bureaucrat or politician while issuing the notification in question.

(14) For the reasons given above, this writ petition fails and is dismissed.

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**R.N.R.**

*Before G.S. Singhvi & V.S. Aggarwal, JJ*

HARYANA URBAN DEVELOPMENT AUTHORITY THROUGH  
ITS SECRETARY,—*Petitioner*

*versus*

RAJ DULHARI & OTHERS,—*Respondents*

CWP No. 6554 of 1997

5th May, 1998

*Constitution of India, 1950—Art. 226—Alternative remedy—Remedy of Revision—Whether absolute bar to exercise of writ jurisdiction.*

*Held that*, the rule that the High Court will not exercise jurisdiction under Article 226 of the Constitution in favour of a petitioner who can avail alternative remedy is a rule of self imposed restraint evolved by the Courts in order to deny relief to a litigant. The object underlying this rule is that the High Court should not be made a substitute of all other remedies available to an aggrieved party for redressal of its grievance. However, this rule of self-restraint cannot be treated as a constitutional embargo on the exercise of power by the High Court under Article 226 of the Constitution in all those cases in which the petitioner can avail alternative remedy. Rather, the settled law is that in appropriate cases, the High Court can exercise its jurisdiction to nullify the orders passed by the administrative/quasi judicial/judicial authorities if it finds that the impugned order is patently illegal or erroneous and manifestly unjust. Moreover, the remedy of revision is not an effective alternative remedy.

Constitution of India, 1950—Art. 226—Advertisement inviting applications for allotment of plots—Such invitation whether an enforceable promise.