case as it existed (before its amendment which came into force with effect from 1st April, 1968) at the time of the filing of the first return dated the 21st April, 1967. Consequently, the answer to the question referred for the opinion of this Court is rendered in the affirmative, that is, in favour of the assessee and against the Revenue. The asessee would also be entitled to his costs.

S. S. Sandhawalia, C.J.
D. S. Tewatia, J.
Gokal Chand Mital, J.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., B. S. Dhillon and S. P. Goyal, JJ.

SAWAN RAM,—*Petitioner.*

versus

GOBINDA RAM and another,—*Respondents.*

Civil Revision No. 1324 *of* 1978.

October 15, 1979.

Haryana Urban (Control of Rent and Eviction) Act (11 of 1973)—*Sections* 2(*b*), (*c*) *and* (*h*), 13(1) *and* 15—*Suit for ejectment of a tenant filed in a Civil Court—Rent Act applicable to the premises in dispute—No specific provision in the Act barring jurisdiction of a Civil Court—Section* 13(1)—*Whether impliedly bars such jurisdiction.*

Held, that the Haryana Urban (Control of Rent and Eviction) Act 1973 is a complete Code about the tenant-landlord relationship as regards the matters for which it specifically provides. Section 2 is the defining provision and sub-sections (c) and (h) thereof specify with some precision the meanings which are to be attached to the words 'landlord' and 'tenant'. Significantly, section 2(b) also defines the Controller who is to be appointed by the State Government to perform the functions under the Act. For all practical purposes, jurisdiction with regard to the matters covered by the Act is taken away from the ordinary run of the Civil Courts and vested in the Controller. Particular reference, in this context is

called for to section 13 pertaining to the eviction of tenants and section 15 which spells out the appellate and revisional power under the same. The appellate authority which is again to be constituted by the State Government is solely vested with this jurisdiction and specifically sub-section (6) of section 15 constitutes the High Court as the revisional authority. Sub-section (1) of section 13 lays down in no uncertain terms that a tenant is not to be evicted except in accordance with the provisions of this very section. That this provision is exclusory in nature is patent and that it bars all other laws and confines the remedy to what is spelt out in the statute itself is, therefore, manifest. Coupled with this is the fact that the procedural jurisdiction to decide questions in accordance with section 13 is again vested only in the Controller subject, of course, to the decision of the appellate authority constituted under the Act and the final revisional jurisdiction has been conferred expressly on the High Court. It is thus evident that both as regards the substantive law applicable and also the forum in which it is to be enforced, the Act covers the field to the total exclusion of all other laws. It excludes on the substantive aspect the general law of the tenant-landlord relationship and on the procedural aspect bars the forum of the ordinary run of the Civil Courts. (Paras 5 and 6).

Debi Parshad vs. *M/s Chaudhari Brothers and others* A.I.R. 1949 East Punjab 357.

Sadhu Singh vs. *The District Board and another* 1962 P.L.R. 1.

Suresh Kumar vs. *Bhim Sain*, 1978 P.L.R. 751. OVERRULED.

Case referred by Hon'ble Mr. Justice S. P. Goyal on 16th March, 1979 to the larger Bench for decision of following an important question of law. The Full Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice B. S Dhillon and Hon'ble Mr. Justice S. P. Goyal finally decided the case :—

> *"Whether the jurisdiction of the Civil Courts is impliedly barred from the field covered specifically and squarely by the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973."*

Petition under section 115 of C.P.C. for revision of the order of the Court of Sub-Judge 1st Class Fatehabad, dated the 29th July, 1978 dismissing the application of the petitioner with costs.

S. C. Mohunta, Advocate with Asutosh Mohunta, Advocate.

N. C. Jain, Advocate with Arun Jain, and S. S. Jain, Advocates,

JUDGMENT

S. S. Sandhawalia, C.J. :

(1) Whether the jurisdiction of the Civil Courts is impliedly barred from the field covered specifically and squarely by the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 is the significant and the pristinely legal question which is before this Full Bench on a reference.

2. The relevant facts would pale into relative insignificance in view of the primarily legal nature of the issue aforesaid. Nevertheless, the matrix of facts giving rise to the controversy has inevitably to be noticed in the first instance. Gobind Ram respondent-landlord had on May 31, 1975 preferred a suit for possession of a shop claiming that the construction thereof had been completed in the month of August, 1969. During the pendency of the suit, the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter called the Act) was amended with the result that all the non-residential buildings constructed after March, 1962 would also come within the ambit of the Act. As a necessary consequence the ground on which the ejectment of the tenant was sought from the shop in dispute disappeared and the petitioner-tenant preferred an application that the suit may be dismissed atleast **qua** the relief of ejectment. The trial court, however, rejected the application holding apparently that despite the virtual barring of the relief of ejectment by a decree of the Civil Court, the suit was nevertheless maintainable. The petitioner-tenant has come up by way of this Revision Petition.

3. The matter came up before my learned brother S. P. Goyal, J. Noticing the thin and perhaps an unsustainable line of distinction between Section 13(1) of the Act and the East Punjab Urban Rent Restriction Act, 1949 which had been drawn in *Suresh Kumar* v. *Bhim Sen* (1), and further two Division Bench judgments of the Court holding that Section 13(1) of the East Punjab Urban Rent Restriction Act, 1949 did not affect the jurisdiction of the Civil

(1) 1978 Pb. Law Reporter 751.

Court to pass the decree for ejectment, he referred the matter to a Larger Bench to examine the correctness of the view expressed.

4. As the legal position both under the Punjab and the Haryana rent statutes would hereinafter inevitably come for consideration, it becomes necessary to notice the history of this rent legislation in order to place the matter in a correct perspective. The parent statute was enacted nearly four decades ago, when in pre-partition India, in the wake of the 2nd World War and the imposition of taxes on buildings and land within the limits of Lahore Municipality and the other urban areas of the State, it became necessary to promulgate the Punjab Rent Restriction Act, 1941 (Act X of 1941). The primary object thereof was to restrict the increase of rents of certain premises, but the decision of all the questions arising thereunder was still left to the ordinary Civil Courts. However, when six years later the Punjab Rent Restriction Act, 1947 was promulgated on April 14, 1947, more meaningful changes were introduced in the law and the earlier statute was substantially recast. The concept of a Controller to be appointed by the Provincial Government, to perform the functions under the Act, was introduced and the material issues arising for determination under the Act were designedly excluded from the ordinary run of Civil Courts and vested in the Controller so appointed. This Act applied to all urban areas in the undivided Punjab (including the territories now in Haryana) and set up a new machinery for determining the fair rent and performing the other functions under the Act by the Controller and appeals therefrom were prescribed to lie before an Appellate Authority. This procedure was given finality and sub-section 15(4) of 1947 Act provided that these decisions would not be liable to be called in question in any court of law, whether in a suit or other proceedings by way of appeal or revision. These provisions of the aforesaid Act continued to hold sway after the partition till the enactment of the Punjab Urban Rent Restriction Act, 1949. The said staute continued to apply with amendments to both the States of Punjab and Haryana till in 1973 the Haryana Urban (Control of Rent & Eviction) Act, 1973 was enacted.

5. Now it has not been disputed before us that the Haryana Act is a complete Code about the tenant-landlord relationship as regards the matters for which it specifically provides. It would,

therefore, be wasteful to elaborate this question in any great detail. Nevertheless, a bird's eye view of some provisions of the Act is inevitably called for. Section 2 is the defining provision and sub-sections (c) and (b) thereof specify with some precision the meanings which are to be attached to the words 'landlords' and 'tenant', Significantly, Section 2(b) also defines the Controller who is to be appointed by the State Government to perform the functions under the Act. Perhaps at this very stage, it may be highlighted that for all practical purposes, jurisdiction with regard to the matters covered by the Act is taken away from the ordinary run of the Civil Courts and vested in the Controller. Particular reference, in this context is called for to Section 13 pertaining to the eviction of tenants and Section 15 which spells out the appellate and revisional power under the same. Perhaps it bears repetition that the appellate authority which is again to be constituted by the State Government is solely vested with this jurisdiction and specifically sub-section (6) of Section 15 constitutes the High Court as the revisional authority.

6. Coming now to the specific provisions, the relevant parts thereof may be read at the very out set:

"*S.* 13. *Eviction of tenants.*

(1) A tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of this section."

* * * * * * *

* * * * * * *

"*S.* 15. *Appellate and Revisional Authorities.*

* * * * * * *

(5) The decisions of the appellate authority and subject to such decision, the order of the Controller shall be final and shall not be liable to be called in question in any court of law except as provided in sub-section (6) of this section."

Now particular emphasis is called for to the afore-quoted sub-section (1) of Section 13, which lays down in no uncertain terms that a tenant is not to be evicted except in accordance with the provisions of this very Section. That this provision is exclusory in nature is patent and that it bars all other laws and confines the remedy to what is spelt out in the statute itself is, therefore, manifest. Coupled with this is the fact that the procedural jurisdiction to decide the questions in accordance with Section 13 is again vested only in the Controller subject, of-course, to the decision of the appellate authority constituted under the Act and the final revisional jurisdiction has been conferred expressly on the High Court by the amending Act of 1956. It is thus evident that both as regards the substantive law applicable and also the forum in which is to be enforced, the Act covers the field to the total exclusion of all other laws. What exactly, therefore, does it exclude ? Plainly it excludes on the substantive aspect the general law of the tenant-landlord relationship and on the procedural aspect bars the forum of the ordinary run of the Civil Courts.

7. Reference in this context may again be instructively made to Section 15 (6) of the Haryana Act. As has been made evident from the history of the legislation in the preceding enactments, the corresponding provisions of Section 15(4) of the East Punjab Urban Rent Restriction Act, 1949 do indeed attach finality to the orders of the Controller and the Appellate Authority as the case may be even to the exclusion of the revisional jurisdiction of the High Court. This was so held by the Full Bench Judgment in *M/s. Pitman's Shorthand Academy* v. *M/s. B. Lila Ram & Sons* (2). It would thus be plain that prior to 1956 in the rent jurisdiction, the Civil Courts in this particular field were so totally excluded so as to even bar any interference by the High Court itself. It was only by Punjab Act No. 29 of 1956 that the revisional jurisdiction of the High Court was expressly inducted. Therefore, the provisions of Section 15(5) of the Haryana Act and the corresponding provisions of the Punjab Act are a strong pointer to the fact that in matters comprising the tenant-landlord relationship and all others for which the rent legislation provided the final determination was left to the Controller

(2) (1950) 52 P.L.R. 1.

and the appellate Authority appointed under the Act and the revisional jurisdiction expressly vested thereby in the High Court to the total exclusion of the other Civil Courts.

8. It appears to be plain from the aforesaid discussion that the history of the legislation, the larger scheme of the Act and the construction of the specific statutory provisions are all pointers to the only conclusion that the intent of the legislature writ large over the provisions was to exclude both the jurisdiction of the Civil Courts as also the application of the general law of landlord and tenant.

9. What thus appears to be plain on principle and the statutory provisions is equally buttressed by the high authority in *Secretary of State* v. *Mask & Co.* (3). Their Lordships were construing a similar exclusory provision in Section 188 of the Sea Customs Act (1878) attaching finality to the decision and orders of the authorities therein. It was held as follows:—

> "By Ss. 188 and 191 a precise and self contained code of appeal is provided in regard to obligations which are created by the statute itself, and it enables the appeal to be carried to the supreme head of the executive Government. It is difficult to conceive what further challenge of the order was intended to be excluded other than a challenge in the Civil Courts....".

To the same tenor are the following observations in the basic judgment of Their Lordships with regard to the exclusion of the jurisdiction of the Civil Courts in *Dhulabhai etc.* v. *State of Madhya Pradesh and another* (4) :—

> "....The result of this inquiry into the diverse views expressed in this Court may be stated as follows:
>
> (1) Where the statute gives a finality to the orders of the special tribunals the civil Court's jurisdiction must

(3) A.I.R. 1940 Privy Council 105.
(4) A.I.R. 1969 S.C. 78.

be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

It is thus obvious that the statutory provisions of both the Punjab and Haryana Act which fall for construction amply satisfy the aforesaid test. It is unnecessary to multiply authorities and it would suffice to mention that the reiteration of the view in *Dhulabhai etc., case* (supra) has been unreservedly made in *The State of West Bengal* v. *The Indian Iron and Steel Co. Ltd.* (5), *and the Premier Automobiles Ltd.* v. *Kamalkar Shantaram Wadke and others* (6). The latest enunciation in refreshing terms is as follows, in *Gujarat State Co-operative Land Development Bank Ltd,* v. *P. R. Mankad and others* (7).—

"... In substance, it was an industrial dispute. It was not restricted to a claim under the contract or agreement of employment. The Civil Court cannot grant the reliefs claimed by the second respondent. As rightly submitted by Mr. Rama Reddy, if a court is incapable of granting the relief claimed, normally, the proper construction would be that it is incompetent to deal with the matter."

10. On behalf of the respondent, some argument was sought to be raised on the ground that the draftsmen of the rent statutes had not resorted to the usual or the express provision declaring that the jurisdiction of the Civil Courts is barred. The answer to this appears to be plain. Despite the enactment of the rent statutes, undoubtedly there are certain areas which are yet left open for the applicability of the general law of the land and the jurisdiction of the Civil Courts as also there are certain specific exemptions granted by the rent statutes themselves. In these areas, inevitably neither the application of the general law is excluded nor the forum of the

(5) A.I.R. 1970 S.C. 1298.

(6) A.I.R. 1975 S.C. 2238.

(7) (1979) 3 S.C. Cases 123.

ordinary run of the Courts is barred. The case in hand is itself a specific example of this nature. Herein, when the suit was originally preferred in 1975, the building in dispute was not within the ambit of the Haryana Act, because the construction thereof had been completed in the months of August, 1969. Therefore, the general law was applicable and a suit for possession was competent. However, by an Amending Act, these buildings were also brought within the ambit of the Haryana Act. This case, therefore, is a specific example which would show that any blanket exclusion of the Civil Courts in the statute itself was neither possible nor perhaps practicable or desirable.

11. Apparently taking a cue from the observations of R. N. Mittal, J., in *Suresh Kumar* v. *Bhim Sain* (1 supra), it was argued that Section 13(1) of the East Punjab Urban Rent Restriction Act, 1949 makes a reference to Civil Courts' decrees passed before and after the coming into force of that Act and this was indicative of the fact that the statute itself visualized civil suits and the passing of decrees therein despite the enactment of this Rent Act. Though ingenuous, the argument on an indepth analysis turns out to be fallacious. It is well met on two patently strong grounds. When first enacted, Section 13(1) of the Punjab Rent Restriction Act had obviously to make a provision against ejectment orders which might have been passed prior to its enactment and which might be binding or possible of execution thereafter. Inevitably, therefore, it was provided that because of the protection being afforded to the tenants under the Act, the earlier decrees would be rendered inexecutable and the tenants should not be evicted thereunder. The second aspect which had been taken in mind and was plainly in the ken of the legislature when enacting the rent legislation was the fact that this applied only to the specified urban areas coming within its ambit and not uniformally to the whole of the geographical jurisdiction of the State. Now what is an 'urban area' to which the Act would be applicable may fluctuate and the Rent Restriction Act may designedly be extended to areas which were earlier out of its reach and where consequently civil suits for ejectment and inevitably decrees were both possible. Therefore, to visualise one situation, the statute had to provide that such like decrees though granted after the promulgation of the Act would again be rendered infructuous by the extension of the Act to a new area. Taking an

example nearer home, if we may assume that a small township like Morinda which may earlier have not been an urban area, was later brought within the ambit of the Act, then the decrees of eviction granted under the general law by the Civil Courts would be rendered inexecutable by Section 13(1) and the object of granting protection to the tenants fulfilled. Therefore, Section 13(1) of the Punjab Act had to take into account all the eventualities out of which some have been visualised above. Consequently, the language of the provision designed to meet these situations appears to us as no warrant for the proposition that the legislature had itself curiously contemplated either suits for ejectment in Civil Courts or decrees to be granted therein, even in areas and fields covered exclusively by the rent legislation.

12. Having dealt with the matter on principle, one must inevitably turn to precedent. Now the corner stone of the stand on behalf of the respondent, boh chronologically and logically is based on the observations of Harnam Singh, J., in *Debi Parshad* v. *Messrs Choudhari Brothers Ltd., Narwana and others* (8), wherein, he had cryptically observed as follows:—

> "Now, Section 13(1) clearly contemplates decrees for the eviction of tenants in possession of a building or rented land being passed subsequent to 15th April, 1947, when the Act came into force. Now, if a decree can be passed in a suit for the eviction of a tenant in possession of a building or rented land after the commencement of Act VI(6) of 1947, a suit for the eviction of any such tenant is not prohibited by the Act.
>
> Again, I am fortified in my view set out in the preceding paragraph, for I find that wherever the Legislature intended to prohibit the institution of a suit it has in express words provided for such prohibition....."

And, thereafter seems to have concluded that there was no implied prohibition to the jurisdiction of the Civil Courts in Section 13(1) of the Act.

(8) A.I.R. (36) 1949 East Pb. 357.

13. A bare look at the aforesaid judgment would make it manifest that the matter was not adequately canvassed before the learned Single Judge. Neither the history of the rent legislation nor the material provisions of the Act were adverted to in a larger perspective. In particular, the implied exclusion of the jurisdiction of the Civil Courts flowing from the provisions referred to above, was not at all noticed in the judgment, especially the provisions of Section 15(4) and the others which have been discussed in the earlier part of this judgment attaching finality to the orders of the Controller and the Appellate Authority, etc., as also the whole scheme of the Act was not kept in view in a broad conspectus. As has already been noticed by looking narrowly at Section 13(1) and placing overly reliance thereon in isolation, the conclusion was arrived at by Harnam Singh, J. With great respect it appears to me that for the reasons earlier recorded the said view is untenable. There appears to be no option but to overrule the said judgment.

14. The Division Bench in *Sadhu Singh* v. *District Board, Gurdaspur and another* (9), had merely followed the observations in *Debi Parshad's case* (supra). It is plain from a reference to para No. 21 of the report that neither the correctness of the earlier view was challenged nor any discussion what-so-ever on principle or otherwise was made. For the identical reasons given earlier the observations of the Division Bench in this context have, therefore, to be also overruled.

15. It would be conducive to clarity of precedent if we notice that some misleading reliance on the Full Bench judgment in *Sham Sunder* v. *Ram Das* (10), was sought to be placed on behalf of the respondent. This judgment, however, is totally and completely distinguishable. What deserves highlighting herein is the fact that the question before the Full Bench was entirely with regard to the provisions of the Delhi and Ajmer—Merwara Rent Control Act, 1947 and had been formulated in the following terms:—

> "Whether S. 9 (1), Delhi and Ajmer-Merwara Rent Control Act, 1947, applies to decrees passed before the Act came into force?"

(9) 1962 P.L.R. 1.

(10) A.I.R. (38) 1951 Pb. 52.

Now a reference to the Delhi and Ajmer-Merwara Rent Control Act, 1947 and in particular to Section 14 thereof would make it plain that thereby the jurisdiction under the said Act continued to vest in the Civil Courts and consequently not even a hint of a question regarding the exclusion of their jurisdiction could possibly arise under the said statute. Indeed a reference to the Delhi and Ajmer-Merwara Rent Control Act, 1947 would show that thereunder as yet, the very concept of the Rent Controller and the Appellate Authority was totally alien to the statute. The very tribunal being non-existent under the said statute, the issue of the exclusion of the jurisdiction of Civil Courts could not, therefore, possibly arise. Therefore, the passing observations made in the Full Bench, in the context of the Delhi and Ajmer-Merwara Rent Control Act, 1947 have little or no relevance to what is now before us under the Punjab and the Haryana statutes. Nevertheless, as a matter of abundant Caution it may be noticed that Harnam Singh, J., who prepared the judgment of the Full Bench, in passing, repeated the trend of reasoning which he had earlier taken in *Debi Parshad* v. *Messrs Choudhari Brothers Ltd., Narwana* (8 supra) *and others*. No great argument is needed to conclude that in the context of the Delhi and Ajmer-Merwara Rent Control Act, 1947, any reference and observations with regard to Section 13(1) of the Punjab Rent Restriction Act were totally obiter being not even remotely in issue. It is significant to repeat that neither the Punjab Rent Restriction Act nor any provisions thereof had fallen for construction before the Full Bench in *Sham Sunder's case* (supra) and consequently any passing observation made therein was plainly obiter and could not possibly lay down any binding principle.

16. In view of what is now held above, it necessarily follows that the observations of the learned single Judge in *Suresh Kumar* v. *Bhim Sain* (1 supra) to the effect that the jurisdiction of the Civil Courts to pass the decree for ejectment against a tenant had not been taken away by Section 13(1) of the East Punjab Rent Restriction Act, 1949 are equally unsupportable. The learned Single Judge had merely followed *Sadhu Singh* v. *District Board, Gurdaspur*, (9 supra), and sought sustenance from *Sham Sunder's case*. For the detailed reasons recorded on this specific point, the view of the learned single Judge in *Suresh Kumar* v. *Bhim Sain*, (1 supra), is hereby overruled.

17. So far as the issue has been discussed in the twin context of the provisions of Section 13(1) of the East Punjab Urban Rent Restriction Act, 1949 and the Haryana Urban (Control of Rent and Ediction) Act, 1973. Even at the cost of a little repetition the two provisions may be juxtaposed as under:—

PUNJAB ACT	HARYANA ACT
"13. *Eviction of tenants* s	"13. *Eviction of tenants* s
(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 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)."	(1) A tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provision of this section."

It is plain from the above comparison that the view taken earlier is doubly strengthened in the context of the language of Section 13(1) of the Haryana Act. Herein, there is not the least reference to any decrees of the Civil Court or their inexecutability either before or after the enactment of the statute. It would be reculled that the whole argument before Harnam Singh, J. in **Debi Parshad's case** had turned on the specific language of Section 13(1) of the Punjab Rent Restriction Act, 1947. In the Haryana Act which we are now called upon to costrue, there is nothing even remotely analogous to the pre and post enactment decrees of the Punjab Act. Learned counsel for the petitioner is thus on even surer ground in contending that here at least there is nothing which can give the least inkling for any erroneous assumption that the legislature even after the enactment of the Act visualized the filing of suits for ejectment on the identical cause of action covered by the rent statute or the subsequent passing of decrees which would be plainly inexecutable in

view of the provisions of the Act. It is well settled that the law frowns on merely academic exercises in the forum of courts. It cannot, therefore, possibly enjoin an exercise in futility and, therefore, the Courts should neither be called upon nor litigants harassed to prosecute suits, in which decrees cannot possibly be executed. In short, there should be no prosecution of futile suits and obtaining of sterile decrees.

18. Mr N. C. Jain, learned counsel for the respondent was indeed hard put to take any firm stand on the point, in view of the illogical position to which he was inevitably pushed. More as an argument of despair than with any sense of conviction, he argued that even though the decree granted by the Civil Court may be totally inexecutable, yet a parallel jurisdiction for the grant of the same should be allowed to remain. The learned counsel had to go to the length of faintly contending that at the same time, an application for ejectment before the Rent Controller under the Act could be prosecuted along with a suit for ejectment under the general law before a court of civil jurisdiction. Half-heartedly it was submitted that only at the stage of execution the bar of rent legislation would come in and not earlier. It suffices to say that one cannot possibly sanctify so anomalous a proposition.

19. The answer to the question formulated at the very out set is, therefore, returned in the affirmative.

20. The Civil Revision succeeds and the application of the petitioner seeking a dismissal of the suit, as regards the relief of ejectment, is hereby allowed with costs.

Bhopinder Singh Dhillon, J.—I agree.

S. P. Goyal, J.—I agree.

N. K. S.

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