For the foregoing reasons, all the four questions are answered in favour of the Revenue and against the petitioners in all the four references. In the peculiar circumstances of the case, however, I make no order as to costs.

R. S. NARULA, J.— I agree.

*R. S.*

REVISIONAL CIVIL

*Before Prem Chand Pandit, J.*

RAJINDER KUMAR,—*Petitioner*

*versus*

BASHESHAR NATH,—*Respondent*

**Civil Revision No. 325 of 1962.**

1965

April, 29th.

*East Punjab Urban Rent Restriction Act (III of 1949)—Ss. 2(i) and 13—Tenancy of the tenants terminated by notice before the Act became applicable to the shops but tenants continued to be in possession thereof when the Act became applicable to them—Decrees for their eviction obtained from the civil Court—Whether can be executed after the Act became applicable—Such tenants—Whether entitled to apply for fixation of fair rent—S. 15(3)—Appellate Authority—Whether entitled to remand case for further enquiry.*

The Punjab Government by notification exempted for five years the buildings constructed in the years 1953, 1954 and 1955, from the provisions of the East Punjab Urban Rent Restriction Act, 1949, and this period of five years was to commence from the date of the completion of the building. The tenants in the present cases were of the shops which had been completed in January, 1955. Their tenancy had been terminated by notice under section 106 of the Transfer of Property Act with effect from 30th November, 1959, when the Rent Restriction Act was not applicable to these shops. The decrees for their eviction were passed by the civil Court on 30th November, 1960. They applied for fixation of fair rent on 2nd January, 1960 and the question arose whether they could be evicted in execution of the decrees passed against them and whether their applications for fixation of fair rent were maintainable.

*Held,* that according to the definition of tenant in section 2(i) of of the East Punjab Urban Rent Restriction Act, 1949, a tenant continuing in possession after the termination of the tenancy in his

favour is also included therein. Therefore, it cannot be said that the tenants in the present cases can be treated as trespassers as alleged by the landlord. It is further true that the Rent Act was not applicable to these shops on 30th November, 1959 when the tenancy stood terminated. The argument that the subsequent application of the provisions of the Act to the shops could not revive the tenancy is without any force, since no question of the revival of the tenancy arises, because the respondents would still remain "tenants" by virtue of the definition in section 2(i). Further, section 13(1) of the Act, which deals with the eviction of the tenants, provides that 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. It means that even if the tenancy of a tenant has been determined and a decree for his eviction has been passed either before or after the commencement of this Act, he cannot be evicted except in accordance with the provisions of this Act. In the present cases, the tenancies stood terminated with effect from 30th November, 1959 and the decrees for eviction on the basis of the same were passed on 30th November, 1960, that is, when the Act applied to the shops in question. These decrees cannot, therefore, be executed against the tenant and they can only be evicted in accordance with the provisions of the Act.

*Held,* that the tenants in the present cases were competent to make applications for fixation of fair rent when the period of exemption of five years had expired.

*Held, also,* that by virtue of section 15(3) of the Act, very wide powers have been conferred on the Appellate Authority and in order to decide these applications, it could make such further enquiry through the Rent Controller as it thought fit. In the present case, the Appellate Authority was of the view that the evidence of the witnesses produced on the point debated was vague and, therefore, it correctly remanded the case to the Rent Controller for making further enquiry regarding that matter.

*Petition under section* 15(5) *of Act No.* 29 *of* 1956, *for revision of the order of Shri R. S. Sarkaria (Appellate Authority), District Judge, Ludhiana, dated* 28*th February,* 1962, *reversing that of Shri Radha Krishan, Rent Controller, Ludhiana, dated* 4*th May,* 1961, *remanding the case to the lower Court for further evidence and comments.*

M. L. JHANJI, A. L. BAHRI AND M. R. AGNIHOTRI, ADVOCATES, for the petitioner.

RAJ KUMAR, AGGARWAL, ADVOCATE, for the Respondents.

JUDGMENT

PANDIT, J.—This order will dispose of six connected cases (Civil Revisions Nos. 325, 484 and 485 of 1962 and Execution Second Appeals Nos. 1145, 1146 and 1147 of 1962). Pandit, J

The facts giving rise to these are—Rajinder Kumar was the owner of three shops situate in Ludhiana, which were occupied by three tenants, Basheshar Nath, Thakar Singh and Messrs Panesar Mechanical Works (Private) Limited, Ludhiana, on a monthly rent of Rs. 105 each. On 28th October, 1959 a notice under section 106 of the Transfer of Property Act was served by the landlord on them terminating their tenancy with effect from 30th November, 1959. This was followed by three suits for their ejectment in the civil Court on 14th December, 1959, since they had not vacated the premises. These suits were decreed on 30th November, 1960. On 3rd February, 1961, the landlord filed suits against them for the recovery of damages for use and occupation of the premises for the period 1st December, 1959 to 31st December, 1960 at the rate of Rs. 210 per mensem, that is, double the amount of rent. These suits were also decreed on 30th October, 1961 and the appeals filed against them by the tenants failed on 15th November, 1961. On 24th November, 1961, other similar suits for the period, 1st January, 1961 to 31st October, 1961 were filed and they were decreed on 5th June, 1962. The tenants' appeals against them were dismissed on 26th March, 1963. In the meantime, on 2nd January, 1960, the tenants filed applications under section 4 of the East Punjab Urban Rent Restriction Act (hereinafter referred to as the Act) before the Rent Controller for the fixation of fair rent of these premises and the same was fixed at Rs. 30 per mensem on 4th May, 1961. Against this order, the landlord filed appeals, which were accepted on 5th December, 1961 and the applications of the tenants under section 4 of the Act were dismissed on the ground that the shops in question having been completed in January, 1955, the provisions of the Act did not apply to them in view of the Punjab Government notification, No. 10665-LB-53/957, dated 19th January, 1957, which exempted for five years the buildings constructed in the years 1953, 1954 and 1955 from the provisions of this Act and this period of five years was to

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commence from the date of the notification, as was held by a Bench decision of this Court in *Balkishan* v. *Subash Chand and another* (1). Soon after, applications for review of the order, dated 5th December, 1961 were filed by the tenants on the ground that a subsequent notification No. 2959-C-III-60/25151, dated 4th June, 1960 and published in the Punjab Gazette on 6th June, 1960 had clearly stated that the operation of five years' exemption had to be computed from the date of the completion of the buildings and that being so, the exemption period in the instant cases would expire some time in January, 1960 and thus the applications for fixation of fair rent filed on 2nd January, 1960 were competent. These review applications were accepted, the orders dated 5th December, 1961 were set aside and it was directed that the appeals of the landlord be heard on merits. On 28th February, 1962 these appeals were heard by the Appellate Authority, who came to the conclusion that the evidence produced by the parties was insufficient to determine the fair rent. He, consequently, passed the following order—

> "I would, therefore, in exercise of my powers under section 15(3) of the East Punjab Urban Rent Restriction Act, III of 1949, make a further enquiry, through the Controller, and send the case back to him with the direction that he should re-call Inder Singh and Kundan Singh and record their supplementary statement. He should also examine the landlord or his attorney conversant with the facts of the case and such other evidence as he may wish to produce with regard to the issue of fair rent. In short, he should bring evidence on the record to show whether the shops in the occupation of Inder Singh and Kundan Singh are situated in the same locality and have similar accommodation in similar circumstances. He should also give the tenant applicants an opportunity of leading further evidence and, thereafter, send the case back to this Court, with his comments, preferably within one month from the date the records are received by him."

(1) I.L.R (1961) 2 Punj. 262=1961 P.L.R. 723.

Against this order, the present three civil revisions have been filed by the landlord against the tenants under section 15(5) of the Act.

On 30th September, 1961 the landlord filed applications for the execution of the ejectment decrees passed by the civil Court on 30th November, 1960. On 21st October, 1961 the tenants filed objection petitions under section 47 of the Code of Civil Procedure on the ground that these decrees were not executable, because the period of five years exempting the shops in dispute from the provisions of the Act had already expired and the civil Court had thus no jurisdiction to pass the decrees in question in November, 1960 and they were not liable to be ejected under the provisions of section 13(1) of the Act. These objections were dismissed by the Executing Court and the appeals against the same were also rejected on 5th December, 1961. Thereafter, applications for the review of the orders, dated 5th December, 1961 were filed by the tenants on the ground that by virtue of Punjab Government notification, No. 2959-C-III-60/25151, dated 4th June, 1960, and published in the Punjab Gazette, dated 6th June, 1960, the period of five years had to be counted from the date of the completion of the buildings and thus this period had already expired when the decrees were passed. The review applications were allowed on this ground and the orders dated 5th December, 1961 were set aside and the appeals filed by the tenants were ordered to be heard on merits. On 28th February, 1962 these appeals were accepted, the objections of the tenants were allowed and the decrees were held to be inexecutable against the tenants. This has led to the filing of the present execution second appeals by the landlord against the tenants.

Learned counsel for the landlord-petitioner has raised the following contentions:—

(1) That the Appellate Authority had no jurisdiction to review the orders dated 5th December, 1961, because there was no provision for review in the Act and the Appellate Authority had no inherent power to review his orders. Reliance for this submission was placed on a Full Bench decision of this Court in *Deep Chand and another* v.

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*Additional Director, Consolidation of Holdings, Punjab and another* (2);

(2) that even assuming that the exemption period of five years had to be counted from the date of the completion of the shops, this period had not yet expired on 2nd January, 1960 when the tenants had filed applications under section 4 of the Act, because the shops had been completed in January, 1955. Consequently, these shops were exempt from the provisions of the Act and the Rent Controller had no jurisdiction to entertain these applications;

(3) that after the notice, dated 28th October, 1959 under section 106 of the Transfer of Property Act had been served on the tenants, their tenancy was determined with effect from 30th November, 1959 and after that they became trespassers from 1st December, 1959. There was no relationship of landlord and tenant between the parties on 2nd January, 1960, when the tenants filed applications under section 4 of the Act and a trespasser had no right to apply for the fixation of fair rent. The subsequent applicability of the Rent Act could not revive the tenancy, which had already terminated, and could not convert the same into a statutory tenancy; and

(4) that in any case, the Appellate Authority could not send the cases back for further enquiry and thus give the tenants a chance to fill in the lacunae in their cases. If the evidence on the record was insufficient to assess the fair rent, the proper course for him was either to dismiss those applications or fix the agreed rent as the fair rent of the shops.

In the execution second appeals, the contentions of the learned counsel for the landlord were these—

(1) that the tenants had become trespassers with effect from 1st December, 1959. The suits for

(2) I.L.R. (1964) 1 Punj. 665=1964 P.L.R. 318.

their ejectment were filed in the civil Courts on 14th December, 1959 and the same were decreed on 30th November, 1960. The rights of the parties had to be determined, as they existed on the date of the suit. The East Punjab Urban Rent Restriction Act did not apply to these premises on the date when the tenancy was determined or on the date when the suits for the ejectment of the tenants had been filed. Even if this Act was made applicable to these shops from 1st February, 1960, it would not protect those persons who had become trespassers before this date. The decrees dated 30th November, 1960 could be validly executed against the tenants, who could not get any relief under section 13 of the Act; and

(2) that there were no valid grounds for the learned District Judge to review his order dated 5th December, 1961.

As regards the first contention in the Civil Revisions, there is no force in the same. In the first place, this point was not raised before the learned Appellate Authority when he actually reviewed his order dated 5th December, 1961. Secondly, the petitioner did not file any revision in this Court against the order passed by the learned Appellate Authority allowing the review applications filed by the tenants. Thirdly, the Full Bench Decision relied upon by the petitioner does not lay down so broadly that no order passed by any Tribunal can be reviewed by it, unless the power of review had been expressly given by the statute. Fourthly, the review applications having been accepted and the final order having been passed thereon, I am not inclined to accept this contention of the learned counsel at this late stage.

Coming to the second contention, the finding given by the Appellate Authority is to the following effect:—

".....the finding of the lower Court is that the construction of the shops in question was completed 'sometime' in January, 1955. The evidence on the record did not warrant a more precise

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finding. There was no evidence on the record to show that it was completed by the end of January, 1955. The notification of the Punjab Government, issued under section 3 of the East Punjab Urban Rent Restriction Act, 1949, granted an exemption from the operation of the Rent Restriction Act to the landlord for a period of five years computed from the date of the completion of the building. The fact as to when the construction was completed, was a fact which could be within the special knowledge of the landlord. Section 106, Evidence Act, makes it clear that the capacity of parties to give evidence may affect the burden of proof. A person will not be forced to show a thing which lies not within his knowledge. It may be noted that the landlord has not cared to appear in the witness-box to throw light on this peculiar fact within his knowledge. It cannot, therefore, be said that the petitions under section 4 were made by Thakar Singh, etc., before the expiry of the five years exemption period. Even if it was premature on that date, the Court has to take notice of subsequent events. It would not be fair to compel the tenants to start fresh litigation, particularly when the precise date of the termination of the exemption in January, 1960, is not known."

This is a finding of fact and has not been shown to be vitiated by any error of law. The same cannot, therefore, be interfered with in these proceedings. Under these circumstances, it cannot be said that the exemption period of five years had not yet expired on 2nd January, 1960, when the tenants had filed their applications under section 4 of the Act for the fixation of fair rent. This contention, therefore, is without any merit.

So far as the third contention in the Civil Revisions and the first contention in the Execution Second Appeals are concerned, it is true that the tenancy was determined with effect from 30th November, 1959, but the fact remains that the tenants continued in possession of the shops in dispute and were not evicted therefrom on or before 2nd

January, 1960, when they made applications under section 4 of the Act. The word "tenant" has been defined in section 2(i) of the Act as under:—

> " 'tenant' means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building or rented land by its tenant, unless with the consent in writing of the landlord, or a person to whom the collection of rent or fees in a public market, cart-stand or slaughter-house or of rents for shops has been farmed out or leased by a municipal town or notified area committee."

According to this definition, a tenant continuing in possession after the termination of the tenancy in his favour is also included therein. Therefore, it cannot be said that the tenants in the present cases can be treated as trespassers as alleged by the landlord. It is further true that the Rent Act was not applicable to these shops on 30th November, 1959, when the tenancy stood terminated. The argument that the subsequent application of the provisions of the Act to the shops could not revive the tenancy is without any force since, no question of the revival of the tenancy arises, because the respondents would still remain "tenants" by virtue of the definition mentioned above. Further, section 13(1) of the Act, which deals with the eviction of the tenants, provides that 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. It means that even if the tenancy of a tenant has been determined and a decree for his eviction has been passed either before or after the commencement of this Act, he cannot be evicted except in accordance with the provisions of this Act. In the present cases, the tenancies stood terminated with effect from 30th November, 1959 and the decrees for eviction on the basis of the same were passed on 30th November, 1960, that is, when the Act applied to the shops in question. These

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decrees cannot, therefore, be executed against the tenants and they can only be evicted in accordance with the provisions of the Act.

Pandit, J.

A Full Bench of this Court in *Sham Sunder* v. *Ram Dass* (3), considered the provisions of section 9(1) of the Delhi and Ajmer Merwara Rent Control Act, 1947, the relevant portion of which is reproduced below and which is in somewhat similar terms as the provisions of section 13(1) of the Act—

> "Notwithstanding anything contained in any contract, no Court shall pass any decree or make any order whether in execution of a decree or otherwise, evicting any tenant, whether or not the period of tenancy has terminated unless it is satisfied either....."

In this decision, it was held thus—

> "Section 9(1) of the Delhi and Ajmer Merwara Rent Control Act, 1947, applies to decrees passed before the Act came into force. In enacting the section, a retrospective effect was intended affecting decrees passed before the Act came into force. The section prohibits all Courts from making any order evicting any tenant in execution of decrees passed before the Act.
>
> * * *
>
> * * * "
>
> In section 9(1) of the Act, the word 'tenant' is not used in its strict sense, but in its popular sense including not only the current tenant, but the ex-tenant remaining in occupation.

This decision is in consonance with the view that I have taken above with regard to the provisions of section 13(1) of the Act. A similar view was taken by a Full Bench of the Madhya Pradesh High Court in *Shyamlal Lachman* v. *Umacharan Ramdulare Tiwari* (4). While dealing with the provisions of sections 4 and 17 of the Madhya Pradesh

(3) 1951 P.L.R. 159.
(4) A.I.R. 1961 M.P. 49.

Accommodation Control Act, where the relevant provisions are also similar to the provisions of section 13(1) of the Act, the learned Judges have held thus—

> "A person whose tenancy has been determined, but who continues to remain in possession of the tenanted premises without the assent of the landlord after the determination of the tenancy is a tenant for the purposes of the Act and is entitled to the benefit of sections 4 and 17 of the Act."

The decision of this Court by Falshaw, C.J., in *Mahi Dass* v. *Nagar Mal* (5), cited by the learned counsel for the landlord is clearly distinguishable on facts. There, in January, 1962 one Nagar Mal filed an ejectment application against one Mahi Dass on the ground that the latter and his brother, Sain Dass, had mortgaged the house in dispute with him for Rs. 300, with possession and at the same time they had executed a rent-deed in his favour by which they took the house on lease for one year, with effect from 12th September, 1928, on a monthly rent of Rs. 3. Sain Dass had died about 13 years back and Mahi Dass was his only heir and he remained in the sole occupation of the house and did not pay any rent for the last 10 years. The defence was that Nagar Mal had no concern with the house whatsoever and Mahi Dass was in possession as an owner. He further pleaded that there was no relationship of landlord and tenant between the parties and if, according to the allegations of Nagar Mal, it ever existed, it had come to an end under the terms of the lease on 12th September, 1929. In evidence, Mahi Dass admitted the mortgage, but stated that he and his brother had discharged the debt during the first year by working for Nagar Mal and paying him Rs. 100. Since then they had never paid any rent to Nagar Mal, but remained in possession of the house as owners. He further alleged that he and his brother had since long reconstructed the house into a pucca one. Under these circumstances, the Rent Controller came to the conclusion that the lease-deed, on which Nagar Mal had relied, came to an end in 1929, that is, long before the East Punjab Urban Rent Restriction Act of 1949 was enacted and that there was no evidence to

(5) I.L.R. (1965) 1 Punj. 528=1965 P.L.R. 35.

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show that the tenant had never acknowledged Nagar Mal as a landlord after the expiry of the lease. It was also found that there was no evidence of the payment of any rent to Nagar Mal. Under these circumstances, it was held that there was no relationship of landlord and tenant existing between the parties. As regards the mortgage, it was mentioned that it was not for the Rent Controller to decide this matter, which could only be determined after Nagar Mal instituted a suit to enforce the same. As a result, Nagar Mal's application was dismissed. The Appellate Authority reversed this decision and came to the conclusion that Mahi Dass fell within the definition of "tenant" as given in the Rent Act, which included a tenant continuing in possession after the termination of tenancy. When the matter came up in revision to this Court, Falshaw, C.J., came to the conclusion that in the circumstances of this case, the so-called tenancy had terminated 20 years before the Act came into force under the law as it then stood and the same could not be revived merely by the definition of the word "tenant" given in the Act, which could not be taken as retrospective and could not confer any right upon the landlord, which he did not enjoy when the Act came into force. During the course of the judgment, the learned Chief Justice also remarked that the Appellate Authority was quite wrong in embarking on a decision as to whether the mortgage had been redeemed or not, since the latter had expressed some doubt regarding the plea of Mahi Dass about the discharge of the mortgage-debt on the ground that this plea was not specifically taken in the written statement. It was observed that the Rent Controllers should confine themselves in deciding the matters under the Act and not decide rival claims to title in property under the guise of ejectment applications under the Act. These observations were made by the learned Chief Justice on the basis of two earlier unreported decisions of this Court. Thus, it would be seen that in *Mahi Dass's* case the owner himself was in possession of the property and the so-called tenancy alleged by the landlord had terminated some 20 years before the coming into force of the Rent Act and there was nothing on the record to show that any rent was ever paid by Mahi Dass to Nagar Mal. Under these circumstances, the learned Chief Justice observed that simply by the enforcement of the Rent Act, Mahi Dass, who was, admittedly,

the owner of the property, could not be converted into a "tenant", merely on the definition of this word given in the Act. These contentions, of the learned counsel, therefore, also fail.

So far as the fourth contention in the revision petitions is concerned, there is no force in the same. By virtue of section 15(3) of the Act, very wide powers have been conferred on the Appellate Authority and in order to decide these applications, it could make such further enquiry through the Rent Controller as it thought fit. In the present case, the Appellate Authority was of the view that the evidence of the witnesses produced on this point was vague and, therefore, it correctly remanded the case to the Rent Controller for making proper enquiry regarding this matter. Reliance for taking such an action had been rightly placed on a decision of this Court in *Dharam Paul* v.. *Yog Raj* (6), where it was held thus—

> "In cases where on an application for fixation of standard rent, the parties omitted to produce necessary evidence, the Controller is not expected to be a mute spectator of the events which took place before him and to make his order solely on the basis of the evidence which the parties have chosen to lead. The law requires him to make an enquiry and it is his duty to make one by calling additional evidence if he finds that the evidence produced by the parties is inherently defective or is insufficient to enable him to assess the fair rent or to pronounce judgment in the case. If he fails to perform the duty, which devolves upon him, it is open to the District Judge in appeal either to remand the case to the Controller for further enquiry or to hold a further enquiry himself."

As regards contention No. 2 in the Execution Second Appeals, the same is also without any merit. The orders, dated 5th December, 1961 were reviewed on the ground that while deciding these appeals, subsequent notification No. 2959-C-III-60/25151, dated 4th June, 1960 issued by the

(6) I.L.R. 1954 Punj. 445=A.I.R. 1953 Punj. 287.

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Punjab Government, amending the earlier notification No. 10665-LB-58/957, dated 19th January, 1957, had not been brought to the notice of the learned District Judge and the effect of that omission was that the operation of the five years' exemption had to be computed from the date of the completion of the buildings and not from the date of the enforcement of the first notification dated 19th January, 1957. The result of the subsequent notification, therefore, was that the exemption of the shops in dispute from the provisions of the Act came to an end in December, 1959 and not 19th January, 1962 as held by him in his order dated 5th December, 1961. According to the learned District Judge, this was a mistake of law patent on the face of the record and he thus reviewed his previous orders dated 5th December, 1961. This was a valid ground for review under the provisions of Order 47, rule 1, Civil Procedure Code (see in this connection a Bench decision of the Lahore High Court consisting of Harries, C.J., and Din Mohammad, J., in *Kehar Singh* v. *Attar Singh and others* (7), and the decision of the Federal Court in *Sir Hari Shankar Pal and another* v. *Anath Nath Mitter and others* (8).

In view of what I have said above, these revision petitions and the execution second appeals fail and are dismissed. In the peculiar circumstances of these cases, however, I will leave the parties to bear their own costs in this Court.

*B. R. T.*

REVISIONAL CIVIL

*Before Inder Dev Dua, J.*

RAMZANI,—*Petitioner*

*versus*

DHANU RAM,—*Respondent*

**Civil Revision No. 483 of 1963.**

*East Punjab Urban Rent Restriction Act (III of 1949)—S. 2(d) and (g)—Residential building —Whether can be held to have been converted into 'non-residential building' when the tenant, in addition to his residence, starts some business therein.*

(7) A.I.R. 1944 Lahore 442.
(8) A.I.R. 1949 F.C. 106.