

appears that in the trial Court the question of interest was not agitated nor does it find any mention in the grounds of appeal. Consequently it cannot be entertained at this stage.

Ram Labhaya  
v.  
The Municipal  
Committee,  
Amritsar  

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Grover, J.

In the result, the appeal is allowed and the decree of the Court below is set aside. The plaintiff is hereby granted a decree in the sum of Rs. 4,080. Keeping in view the difficult nature of the points involved, the parties are left to bear their own costs throughout.

K.S.K.

LETTERS PATENT APPEAL.

Before D. Falshaw, Chief Justice and Mehar Singh, J.

RAMA NAND,—Appellant.

versus

JIWAN DASS AND OTHERS,—Respondents.

Letters Patent Appeal No. 14 of 1962.

*East Punjab Urban Rent Restriction Act (III of 1949)—S. 3— Notification exempting buildings constructed during certain years from the provisions of the Act—Whether applies to buildings constructed by the landlords alone—Tenant constructing a building on a part of vacant land leased out to him—Whether governed by the provisions of the Act as regards ejection.* 1965  
September, 22nd.

Held, that the notification issued under section 3 of the East Punjab Urban Rent Restriction Act, 1949, by the Governor exempting buildings constructed during certain years from the provisions of the Act for a period of five years from the dates of their completion applies to buildings constructed by the landlords and has no application to a construction made by the tenant of his own in defiance of the landlord. If the landlord wishes to eject his tenant from the building leased out to him as well as the building constructed by him on a part of the vacant land included in his lease, he must have recourse to the provisions of the said Act and a suit for ejection of the tenant from such a building is not competent in a civil Court.

*Letter Patent Appeal under Clause 10 of the Letters Patent from the judgment and decree of the Hon'ble Mr. Justice Harbans Singh passed in S.A.O. No. 62 of 1959 dated 5th September, 1961.*

SHAMAIR CHAND AND PARKASH CHAND, ADVOCATES, for the Appellant.

G. P. JAIN AND S. S. MAHAJAN, ADVOCATES, for the Respondents.

## JUDGMENT

Mehar Singh, J. MEHAR SINGH, J.—In this appeal under clause 10 of the Letters Patent from the judgment, dated September 5, 1961, of a learned Single Judge, the facts are no longer in dispute.

The appellant, Rama Nand, is the owner of the demised premises, a shop. Jiwan Das, respondent, became tenant of the same sometime in 1948-49 and a formal rent-note came into existence in 1952. One application under section 13 of the East Punjab Urban Rent Restriction Act, 1949, (East Punjab Act 3 of 1949), for eviction of this respondent by the appellant was dismissed in 1955 and another he withdrew in 1956. The demised premises have a shop with four portions, shown in the plan as F.E.D.C. Roof of one portion of the shop has fallen down, and the remaining three portions are in a somewhat dilapidated condition with leakage obviously in the roof. In front of the shop there is a platform shown as A.B.E.F. in the plan, of which the area is one-fifth of the total area under the demised premises. On that platform A.B.E.F., the tenant constructed a building in June, 1956. It is not quite clear whether that new construction is a continuation of the original dilapidated shop or the two stand apart as independent buildings. But that will not make any substantial difference.

There is notification No. 9186-LB (CH)-55/35123, of December 29, 1955, under section 3 of the Act, which reads thus—"In exercise of the powers conferred by section 3 of the East Punjab Rent Restriction Act, 1949 (Punjab Act 3 of 1949), the Governor of the Punjab is pleased to exempt all buildings constructed during the years 1956, 1957 and 1958, from the provisions of the said Act, for a period of five years with effect from the date of completion of such buildings." The appellant claims that the new building on the area A.B.E.F., of the platform has been constructed in June, 1956, and thus falls within the scope of this notification exempting it from the provisions of the Act. It is on this basis that the appellant brought a suit for ejectment of the respondent, along with two others, probably tenants under the respondent. The contest is, however, only between the two, namely, the appellant and Jiwan Das respondent.

The trial Court dismissed the suit, but the Court of first appeal decreed it on the ground that the claim is covered by the said notification, and in second appeal the learned Single Judge has dismissed the suit, agreeing with the trial Court that that notification does not apply to the facts of the case.

Rama Nand  
v.  
Jiwan Dass  
and others

Mehar Singh, J.

The learned Single Judge has referred to a decision of a Division Bench, to which I was a party, in *Sadhu Singh v. District Board, Gurdaspur* (1), that a part of a building when let as such is building within the scope of the definition of that word in section 2(a) of the Act, and in fact it could not be otherwise, for that provision says so in so many words. The learned counsel for the appellant has also relied upon the same case. The objection on his part is that as the building on the area of the platform A.B.E.F. was constructed in June, 1956, so a part of the building was constructed within the scope of the said notification, with the result that the Act does not apply to the whole of the demised premises, including the shop originally let. The learned Single Judge does not agree with this approach and points out that by no stretch of imagination can it be said that the entire unit which was with the tenant has been rebuilt or reconstructed in 1956. This is factually so. The learned counsel for the appellant has further contended that within the scope of that notification what is to be seen is the construction in one of the years mentioned therein without reference to who has done the construction. This seems to be an obviously wrong way of reading the notification with the provisions of the Act, for no tenant will, nor has any tenant a right to, build a new building or add to the old building or reconstruct the old building, unless there is a contract to that effect by him with the landlord, or, in any case, subsequent agreement for that with the landlord. Apparently when the notification refers to construction in those years, it refers to the same done by the owner of the property, that is to say, the landlord. In this case, nobody has even suggested that there was any initial contract between the appellant and respondent Jiwan Das, that the latter would have a right to construct on the demised premises, nor that subsequently any such agreement was reached between them. In the circumstances it is patent that the

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

Rama Nand  
v.  
Jiwan Dass  
and others

notification has no application to a construction made by the tenant of his own in defiance of the landlord. On this consideration that there has been no construction by the appellant, the appeal does not succeed.

Mehar Singh, J.

There is, however, another aspect of the matter which renders the claim of the appellant somewhat anomalous. If what is urged on the side of the appellant is to be accepted, the result will be that the Act, because of the notification, does not apply to the part of the demised premises on what was previously the platform A.B.E.F., because of new construction in June, 1956, but it continues to apply to the remaining part of the demised premises for that part does not fall under the notification. This would split the tenancy into two, one coming within the scope of the Act and the other falling out of it and coming within the scope of the general law of landlord and tenant. The situation is to be so stated for the argument to be negatived as entirely untenable.

So the approach of the learned Single Judge is not open to exception that to the demised premises the said notification has no application and it is East Punjab Act 3 of 1949 that applies, and it is only in the manner stated in that Act that the appellant can seek eviction of respondent Jiwan Das, from those premises.

The learned counsel for the appellant, then urges that the trial Court settled four issues in the suit, but disposed it of on decision of issue 1, which read—"Was the building in dispute constructed in 1956 and is exempt from the provisions of East Punjab Urban Rent Restriction Act?", and even if the decision was to be as given by the learned Single Judge, the case should have been remanded back to the trial Court for decision of the remaining issues and then disposal. But the remaining three issues could only arise if the appellant had a decision on issue 1 in his favour, for issue 2, just says whether a valid notice of ejection was given, issue 3 concerns liability for ejection of respondent Jiwan Das, or otherwise in the event of proof of issues 1 and 2, and issue 4 says whether the suit is barred on account of dismissal of the previous applications of the appellant under the Act. On decision of issue 1 against the appellant, the other issues do not arise, and there was no occasion for the learned Single Judge to

remand the case to the trial Court for decision of those issues.

Rama Nand  
v.  
Jiwan Dass  
and others

The appeal fails and is dismissed with costs.

D. FALSHAW, C.J.—I agree.

Mehar Singh, J.  
Falshaw, C.J.

*B.R.T.*

REVISIONAL CRIMINAL.

Before D. Falshaw, Chief Justice.

V. N. CHOKRA,—Petitioner.

versus

THE STATE,—Respondent.

Criminal Revision No. 64(R) of 1965.

*Prevention of Food Adulteration Act (XXXVII of 1954)—S. 19—Supplier of adulterated article of food to the dealer—Whether can be prosecuted along with the dealer.*

1965  
September,  
24th.

Held, that there is no justification for the prosecution of a person, firm or company who is alleged to have supplied goods to the dealer from whom the sample is actually purchased by the Food Inspector, in the same trial as the dealer from whom the sample was taken. The only section which brings a third party into the matter when an adulterated sample has been taken in section 19 of the Prevention of Food Adulteration Act, 1954, according to which the dealer has first to set up and establish the defence contemplated in section 19(2) and comply with the other provisions of the sub-section. The question of prosecuting the supplier who is alleged to have given a warranty will arise after the trial of the actual vendor has concluded with a successful defence by him under the provisions of section 19(2) and the supplier of the goods to the actual vendor has been heard.

*Case reported under Section 438, Criminal Procedure Code, by Shri R. S. Bindra, Sessions Judge, Hoshiarpur at Dharamsala with his letter No. 60/RK, dated 16th March, 1965 for revision of the order of the Chief Judicial Magistrate, Dharamsala, dated 21st December, 1964 ordering that the bailable warrants in the sum of Rs. 200 be issued.*

M. R. MAHAJAN, V. M. GAIND, ADVOCATES, for the Petitioner.

L. K. SUD. ADVOCATE FOR ADVOCATE-GENERAL, for the Respondent.