Before S. S. Sandhawalia, C.J. and M. R. Sharma, J.

SHANTI NARAIN,—*Appellant*

versus

JAI DAYAL and others,—Respondents.

Regular Second Appeal No. 557 of 1978.

January 5, 1981.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 3—Haryana Urban (Control of Rent and Eviction) Act (XI of 1973) as amended by Haryana Urban (Control of Rent and Eviction) Amendment Act (XVI of 1978)—Sections 1, 3 and 24—Punjab General Clauses Act (I of 1898)—Section 22—Buildings constructed in 1968, 1969 and 1970 exempted by a notification under section 3 from the operation of the old Act for a period of five years—Old Act repealed and substituted by the new Act—Section 1(3) of the new Act exempted such buildings from the provisions of the new Act for all times—Section 1(3) of the new Act amended retrospectively and exemption restricted to buildings constructed on or after the commencement of the new Act for a period of ten years—Aforesaid notification under section 3 of the old Act—Whether continues to be in force—Such notification—Whether inconsistent with the provisions of the new Act—Ejectment of a tenant from a building covered by such notification sought through a Civil Court in 1973—Civil Court—Whether had jurisdiction to entertain the suit.

Held, that on the date on which the Haryana Urban (Control of Rent and Eviction) Act, 1973 as amended by the Amendment Act of 1978 was enacted, two important events occurred—Firstly, the old Act was repealed and secondly, the buildings constructed after the coming into force of the new Act were exempted from the provisions of the said Act for a period of ten years. Since the old Act and the new Act were statutory measures concerning the same subject and section 3 of the new Act also empowered the State Government to exempt rented lands or buildings of any class, the notification issued by the Governor of Haryana under section 3 of the old Act exempting the buildings constructed during the years 1968, 1969 and 1970 would be deemed to have been issued under the latter provision in view of section 22 of the Punjab General Clauses Act, 1898. Thus, in spite of the repeal of the old Art, the notification would have to be deemed as a valid piece of law. (Paras 11 and 12).

Held, that a reading of section 1 of the new Act shows that primarily the Act was made applicable to all urban areas excluding the cantonment areas, but special type of buildings were expressly excluded by the Legislature from the field of operation of the Act. At the same time, the Legislature authorised the Government by enacting section 3 to exclude from the operation of the Act any class of rented lands or buildings. Thus, the scheme of this section and that of section 3 shows that the Legislature itself kept some buildings out of the control of the Act and also authorised the State Government to achieve the same result by issuing a notification. There is no inconsistency in these two provisions. The Legislature thought that it would be advisable to clothe the Government with the power to exempt certain classes of buildings to remove hardship. In exercise of power under section 3 of the new Act, the Government could have exempted even buildings which were constructed prior to the date on which this Act came into force. This position of law cannot be disputed because the buildings constructed before and after the coming into force of the Act formed two distinct classes and the provisions made for these two classes can stand side by side. In this view of the matter the amendment of the new Act brought about in the year 1978 did not affect the validity of the notification issued by the Governor of Haryana under the old Act and the same continues to be in force either under section 22 of the Punjab General Clauses Act or under section 24(2) of the new Act. When looked at either way, it is held that the civil court had jurisdiction to entertain the suit of the landlord in 1973 who sought the ejectment of his tenant. (Para 13).

Held, that the new Act does not expressly lay down anything which has the effect of annulling notifications isssued under the old Act. On the other hand, there is a specific provision incorporated in it in the form of section 24(2) which keeps alive the rights and liabilities regarding the actions taken under the old law. Thus, on a proper interpretation of the provisions of the various statutes it is held that the civil court had the jurisdiction to entertain the suit when the same was instituted. (Para 15).

Regular Second Appeal from the order of Shri I. P. Vashishth Additional Distrirt Judge, Hissar, dated 16th February, 1978, affirming that of Shri K. K. Doda, Sub-Judge, Ist Class, Fatehabad, dated 30th September, 1976 decreeing the suit of the plaintiff for possession of the shop in dispute and further passing a decree of Rs. 4,846 in favour of plaintiff and against the defendant Shanti Narain giving him one month's time to vacate the shop in dispute.

S. C. Mohunta, Advocate with Asutosh Mohunta, Advocate, *for the Appellant.*

H. L. Sibal, Senior Advocate and H. L. Sarin, Senior Advocate, M. S. Liberhan, M. L. Sarin & R. L. Sarin, Advocates, *for the respondents.*

JUDGMENT

M. R. Sharma, J. (Oral).

(1) In this case, we are called upon to determine the impact of statutory changes on the right of a landlord to get his tenant evicted from a non-residential building through the help of a civil court.

(2) The plaintiff-respondent No. 1 filed a suit for ejectment and arrears of rent in respect of the shop in dispute on the ground that the shop had been leased out by him to Shanti Narain, appellant and Lekh Raj now deceased with effect from May 1, 1971 to March 31, 1972, on an annual rent of Rs. 2,500 and the agreed rent beyond October 1, 1971, remained unpaid. The plaintiff-respondent asserted that because of a notification issued under section 3 of the East Punjab, Urban Rent Restriction Act, 1949, the shop in dispute was exempted from the provisions of this Act because the same had been built in the year 1969. The arrears of rent along with interest at the rate of 12 per cent per annum were claimed at Rs. 5,216.66. The landlord also asserted that he had sent notices under section 106 of the Transfer of Property Act and the one meant for Lekh Raj (now deceased) was not accepted by him and the one meant for Shanti Narain appellant had been served upon him.

(3) During the pendency of the litigation, Lekh Raj passed away and his legal representatives were brought on record. They, however, did not contest the claim of the landlord. Shanti Narain appellant alone contested the suit. In the written statement filed by him, he agreed to have executed the rent note, but asserted that the agreed rent was Rs. 2,200 per annum which had been paid up to March 31, 1972. He denied having received any notice under section 106 of the Transfer of Property Act. According to him, the rent restriction laws applied to the case and civil court had no jurisdiction to entertain the suit for ejectment.

(4) The learned trial Judge found on all the points against the appellant but he allowed interest on the arrears of rent only at the rate of 8 per cent per annum. Consequently, the suit of the plaintiff-respondent No. 1 for ejectment of the appellant from the shop in dispute and for arrears of rent including interest to the tune of Rs. 4,846 was decreed. The appeal filed by the appellant was dismissed by the learned lower appellate Court. He came in second

appeal which came up for hearing before me. In view of the importance of the question of law involved and some observations made by a learned Judge of this Court in *Suresh Kumar* v. *Bhim Sain* (1), I was of the view that it would be proper if the case is decided by a Division Bench. Under orders of Hon'ble the Chief Justice, the case has been placed before us for decision.

(5) We may now make a brief survey of the statutory provisions. The East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the "old Act"), was brought on the statute book primarily in order to give relief to the tenants. It was made applicable to all urban areas in the State of Punjab excluding the cantonment areas. Section 3 of this Act enabled the State Government to direct 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. The jurisdiction to entertain applications for ejectment and fixation of fair rent etc. was vested in the Rent Controller. On October 22, 1971, the Governor of Haryana issued the following notification:—

> "No. 5601-S.T.A.-71/30701 : In exercise of the powers conferred by section 3 of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act 3 of 1949), the Governor of Haryana hereby exempts every building constructed during the years, 1968, 1969 and 1970 from the provisions of the said Act for a period of five years from the date of its completion."

(6) The effect of this notification was that the special jurisdiction of the Rent Controller created under the said Act was ousted and the landlords could approach ordinary civil courts for seeking ejectment of their respective tenants from the buildings covered by the notification.

(7) The Governor of Haryana gave his assent to the Haryana Urban (Control of Rent and Eviction) Act, 1973, on April 25, 1973 (hereinafter referred to as the "new Act"). The old Act was

(1) 1978 P.L.R. 751.

repealed by section 24 of the Act. Sections 1, 3 and 24 of the Act read as under :—

"*Section* 1—*Short title and extent*:

(1) This Act may be called the Haryana Urban (Control of Rent and Eviction) Act, 1973.

(2) It shall extend to all urban areas in Haryana but nothing herein contained shall apply to any cantonment area.

(3) Nothing in this Act shall apply to—

(i) any residential building the construction of which is completed on or after the commencement of this Act for a period of ten years from the date of its completion.

(ii) any non-residential building construction of which is completed after the 31st March, 1962;

(iii) any rented land let out on or after 31st March, 1962.

Section 3—*Exemptions*:

The State Government may direct that all or any of the provisions of this Act shall not apply to any particular building or rented land or to any class of buildings or rented lands.

Section 24—*Repeal and Savings*:

(1) The East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act No. 3 of 1949), is hereby repealed :

Provided that such repeal shall not affect any proceedings pending or order passed immediately before the commencement of this Act, which shall be continued and disposed of or enforced as if the said Act had not been repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Act so repealed (including any rule,

notification or order made) which is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act as if this Act were in force at the time such thing was done or action was taken, and shall continue to be in force, unless and until superseded by anything done or any action taken under this Act."

(8) A reference to section 1 (3) (ii) of the new Act would show that these provisions were not made applicable to the non-residential buildings completed after March 31, 1962. Thus the civil suit filed by the landlord-respondent was properly entertained by the Sug-Judge 1st Class, Fatehabad, on August 2, 1973. The same was decreed by him on September 30, 1976. If the matters had rested here, no objection could have been raised against the jurisdiction exercised by the learned trial Court. However, the new Act was amended by the Haryana Urban (Conrol of Rent and Eviction) Amendment Act, 1978, which received the assent of the Governor of Haryana on April 25, 1978. By section 2 of this Amendment Act, sub-section (3) of section 1 of the new Act was recast and all buildings completed after the coming into force of the new Act were exempted from its operation for a period of ten years.

On the basis of this provision, it has been argued on behalf of the appellant that the earlier exemption granted either under the notification, dated October 22, 1971, or under section 1 (3) (ii) of the new Act has been taken away. According to Mr. Mohunta, this Court had to take notice of change of law even in second appeal and since the Legislature chose not to make any provision regarding the earlier exemptions, it should be presumed that the same had been unconditionally taken away.

(9) The validity of this argument depends upon the extent to which effect can be given to the deeming provision contained in section 2 of the Amendment Act, which reads as under:—

"*Section* 2.—Amendment of section 1 of Haryana Act 11 of 1973:

For sub-section (3) of section 1 of the Haryana Urban (Control of Rent and Eviction) Act, 1973, the following sub-section shall be

substituted and shall always be deemed to have been substituted, namely:—

'(3) Nothing in this Act shall apply to any building the construction of which is completed on or after the commencement of this Act for a period of ten years from the date of its completion.'

(10) The words "shall be substituted and shall always be deemed to have been substituted" imply that the new provision would have to be read as if it had been enacted at the time when the new Act, i.e., Act No. 11 of 1973, was brought on the statute book. This matter admits of no doubt and has been finally set at rest by their Lordships of the Supreme Court in *State of Bombay* v. *Pandurang Vinayak and others* (2), wherein it was held—

"When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion. (*Vide* Lord Justice James in *ex parte Walton*) In re Levy (3). If the purpose of the statutory fiction mentioned in section 15 is kept in view, then it follows that the purpose of that fiction would be completely defeated if the notification was construed in the literal manner in which it has been construed by the High Court. In *East and Dwellings Co. Ltd.* v. *Finsbury Laraugh Council* (4), Lord Asquith while dealing with the provisions of the Town and County Planning Act, 1947, made reference to the same principle and observed as follows:—

'If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also amagine as real the consequences and incidents which if the putative, state of affairs had in fact

(2) A.I.R. 1953 S.C. 244.
(3) 17 Ch. D. 748.
(4) (1952) A.C. 109 (B).

existed, must inevitably have flowed from or accompanied it ..... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.'

(11) In other words, on April 25, 1973, the date on which Haryana Act No. 11 of 1973 was enacted, two important events occurred. Firstly, the old Act was repealed and secondly, the buildings constructed after the coming into force of Act were exempted from the provisions of the said Act for a period of ten years. We have to consider whether the notification issued by the Governor of Haryana on October 22, 1971, exempting the buildings constructed during the years 1968, 1969 and 1970 remained in force or not. The answer to this question is provided by section 22 of the Punjab General Clauses Act, 1898. It reads as under:—

"Where any Punjab Act is repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form or bye-law made or issued under the repealed Act, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted unless and until it is superseded by any appointment, notification, order, scheme, rule, form or bye-law made or issued under the provisions so re-enacted."

(12) Since the old Act and the new Act were statutory measures concerning the same subject and section 3 of the new Act also empowered the State Goverment to exempt rented lands or buildings of any class the said notification would be deemed to have been issued under the latter provision. Thus, in spite of the repeal of the old Act the notification would have to be deemed as a valid place of law.

(13) Faced with this situation, the learned counsel for the appellant submitted that the notification was inconsistent with the provisions of the new Act inasmuch as the latter exempted only the buildings constructed after it came into force and purposely did

not make any mention about the buildings constructed earlier. We are not impressed with this argument either. A reading of section 1 of the new Act shows that primarily the Act was made applicable to all urban areas excluding the cantonment areas, but special type of buildings were expressly excluded by the Legislature from the field of operation of the Act. At the same time, the Legislature authorised the Government by enacting section 3 to exclude from the operation of the Act, any class of rented lands or buildings. Thus, the scheme of this section and that of section 3 shows that the Legislature itself kept some buildings out of the control of the Act and also authorised the State Government to achieve the same result by issuing a notification. It cannot possibly be contended that there is some inconsistency in these two provisions. The Legislature thought that it would be advisable to clothe the Government with the power to exempt certain classes of buildings to remove hardship. In exercise of the powers under section 3 of the new Act the Government could have exempted even the buildings which were constructed prior to the date on which this Act came into force. This position of law is not contested by the learned counsel for the appellant and indeed he could not have possibly done so because the buildings constructed before and after the coming into force of the Act formed two distinct classes and the provisions made for these two classes can stand side by side. We are accordingly of the view that the amendment of the new Act brought about in the year 1978 did not affect the validity of the notification. dated October 22, 1971, issued by the Governor of Haryana under the old Act and the same continues to be in force either under section 22 of the Punjab General Clauses Act, 1898, or under section 24(2) of the new Act. When looked at either way, there appears to be no merit in the claim of the appellant that the Civil Courts had no jurisdiction to entertain the suit out of which the present appeal arises.

(14) However, before concluding, we would like to notice another ancillary argument raised by Mr. Mohunta. It was submitted that the exemption granted to the non-residential buildings under the new Act, as it originally stood, was of much wider amplitude inasmuch as all the buildings constructed after March 31, 1962, were covered by the same, and since his exemption either dwarfed or consumed the smaller exemption contained in the notification, dated October 22, 1971, issued by the State Government, we should hold

that the latter exemption stood completely wiped out when the the new Act was brought on the statute book. It was further argued that something which had been completely wiped out could not be revived merely because the relevant provision was subsequently amended in the year 1978. This argument is wholly devoid of merit. Its acceptance would imply that for the purpose of obliterating the exemption granted under the notification, dated October 22, 1971, we should assume that the repealed provisions of the 1973 Act continued to remain in force but they were non-existent for all other intents and purposes. This approach would certainly introduce an element of inconsistency in our decision. Besides, if we accept the same, it would mean a giving of go-by to the principle enunciated by the Supreme Court in *Pandurang Vinayak's case* (supra), relating to the manner in which a deeming provision is to be interpreted. When a statute is repealed and the repeal is followed by a fresh legislation on the subject, the provision of the new act have to be looked at in the manner indicated by the Supreme Court of India in *Jayantilal Amratlal* v. *The Union of India and others* (5), wherein it was laid down:—

> "In order to see whether the rights and liabilities under the repealed law have been put an end to by the new enactment, the proper approach is not to enquire if the new enactment has by its new provisions kept alive the rights and liabilities under the repealed law but whether it has taken away those rights and liabilities. The absence of a saving clause in a new enactment preserving the rights and liabilities under the repealed law is neither material nor decisive of the question."

(15) The new Act does not expressly lay down anything which has the effect of annulling notifications issued under the old Act. On the other hand, there is a specific provision incorporated in it in the form of section 24(2) which, keeps alive the rights and liabilities regarding the action taken under the old law. As noticed earlier, on a proper interpretation of the provisions of the various statutes, we have come to the conclusion that the Civil Court did have the jurisdiction to entertain the suit out of which this appeal arises at the time when the suit was instituted. If the argument raised by

(5) A.I.R. 1971 S.C. 1198.

Mr. Mohunta were to be accepted, then we would be annulling a valid decree passed by a Civil Court by placing a somewhat dubious interpretation on the statutory provisions. This we are not entitled to do because it is our solemn duty to zeelously guard the jurisdiction of the Civil Courts.

(16) For reasons aforementioned, we are firmly of the view that the suit out of which the present appeal arises was validly entertained and decreed by the learned Courts below against the appellant. We find no force in this appeal which is hereby dismissed.

S. S. Sandhawalia, C.J.—I agree.

N. K. S.

Before B. S. Dhillon and J. V. Gupta, JJ.

PRITAM SINGH,—*Petitioner.*

versus

THE COLLECTOR SIRSA and others,—*Respondents.*

Civil Writ Petition No. 1017 *of* 1980.

February 16, 1981.

Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Section 4(3) (ii)—Word 'person' used in section 4(3) (ii)—Whether includes predecessor-in-interest—Person claiming protection of section 4(3) (ii)—Possession of his predecessor-in-interest—Whether can be tacked for calculating the period of 12 years.

Held, that in order to find out the cultivating possession of the persons at the commencement of the Punjab Village Common Lands (Regulation) Act, 1953 or the PEPSU Village Common Lands (Regulation) Act, 1954, the earlier possession of their predecessors-in-interest, if any, can also be taken into consideration while calculating the period of 12 years, provided it has been continuous and without any interruption. This will be in consonance with the purpose of the Punjab Village Common Lands (Regulation) Act 1961 under which the exemption has been granted to those persons who are in cultivating possession at the commencement of the 1953 Act or the 1954 Act. Moreover, under the common law as well,