that the principles of natural justice have been violated in the instance case. I am, therefore, of the opinion that in proceeding *ex parte* against the petitioner and giving the impugned award, respondent No 1 had acted in an arbitrary manner which had resulted in injustice to the petitioner. The impugned award, consequently, deserves to be set aside.

(10) I would, therefore, allow this petition, quash the award dated 3rd June, 1967, given by respondent No. 1 and direct him to proceed further with the case in accordance with law from the stage prior to 3rd of June, 1967. There will, however, be no order as to costs.

R.N.M.

CIVIL MISCELLANEOUS

Before D. K. Mahajan and Prem Chand Pandit, JJ.

M/S NIAMAT RAI MILKH RAJ AHUJA,—*Petitioner*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents*

Civil Writ No. 1171 of 1968.

May 17, 1968

Punjab General Sales Tax Act (XLVI of 1948)—S. 5(3)—as amended by Punjab General Sales Tax (Amendment and Validation) Act (VII of 1967)—Whether ultra vires *Articles 303 or 14 of the Constitution—Section—Whether violates section 15 of the Central Sales Tax Act (LXXIV of 1966)—Infirmities and lacuna in the Act pointed out by the Supreme Court—Whether removed by the Amending Act—"Last purchase by a dealer liable to pay tax under the Act"—Meaning of—Interpretation of Statutes—Legislature—Whether can validate laws declared invalid.*

Held, that Articles 303 of the Constitution of India is specifically limited to the entries concerning trade and commerce and does not touch the laws made under other entries. Taxation is treaed as a distinct matter for the purposes of lagislative competence. Section 5(3) of the Punjab General Sales Tax Act, as amended with retrospective effect from 1st October, 1958 is not violative of the said Article. Nor is this section *ultra vires* Articles 14 of the Constitution as there is no discrimination in the case of declared goods.

(Paras 9, 14 and 18)

Held, that as market fee is not a tax, but is only a charge for services rendered, section 5(3) of the Act does not infringe section 15 of the Central Sales Tax Act and, therefore, is not void.

Held that the addition of sub-section (3) of section 5 by the Amending Act has removed all the lacuna and infirmities that were pointed out by the Supreme Court in the Act. The basis of the Supreme Court decision was that no stage had been fixed for the levy of the tax; and, therefore, it was not possible to determine who was liable for it under the Act. The Amending Act added sub-section (3) to section 5 with effect from the 1st of October, 1958. This provision provides that 'in respect of declared goods, tax shall be levied at one stage and that stage shall be in the case of goods liable to purchase tax, the stage of purchase of such goods by the last dealer liable to pay tax under this Act'. Thus it is clear that only one single stage for the levy of purchase tax has been prescribed. It is not difficult for any dealer to ascertain whether he is the last purchaser liable to pay tax. (Paras 21, 23 and 25)

Held, that 'the last purchase by a dealer liable to pay tax under this Act' will be the purchase by the dealer who himself consumes it or sells to a consumer or to a dealer in the course of inter-State trade or commerce so that as long as the goods remain with him in the condition he purchased them, he does not become liable to pay the tax. (Para 23)

Held, that the Legislature has the power of validation of laws declared invalid by the courts and can do away with the effect of any decree or order of any Court. (Para 27)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of mandamus or any other appropriate writ, order or direction be issued restraining the respondents to give effect in any manner in the Punjab General Sales Tax (Amendment and Validation) Ordinance No. 12, 1967 and also to the Punjab General Sales Tax Act 46 of 1948, as amended by the Ordinance and the Central Sales Tax Act No. 74 of 1956; and further praying that a direction be issued to the respondents that they should not make any assessment and enforce payment of tax under the State Act as amended by he Ordinance and not to state the assessment proceedings under the Central Sales Tax Act.

H. L. Sibal, Senior, Advcate with K. Srinivasan, R. N. Narula, S. C. Sibal, C. D. Garg, *and* S. C. Garg, Advocates, for the Petitioner.

Bal Raj Tuli, Senior Advocate *for* Advocate-General (Punjab) with S. S. Mahajan, Advocate *and* G. R. Majithia, Deputy Advocate-General (Pb.), for the Respondents.

JUDGMENT

MAHAJAN, J.—This is a petition under Article 226 and 227 of the Constitution of India, seeking the writ of mandamus or prohibition against the respondents requiring them to desist from proceeding to assess tax under the Punjab General Sales Tax Act (No. 46 of 1948) (hereinafter called the Principal Act), as amended by the Punjab General Sales Tax (Amendment and Validation) Act (No. 7 of 1967) (hereinfater called the Amending Act) and the Central Sales Tax Act (No. 74 of 1966) (hereinafter called the Central Act).

(2) The respondents are the State of Punjab and the Assessing authority. The petitioner is a partnership concern with its head office at Abohar, district Ferozepore, Punjab. The petitioner mainly deals with cotton and oilseeds, both of which are declared goods as defined in Section 14 of the Central Sales Tax Act. The facts up to the date, the new States of Punjab and Haryana came into being by reason of the States Reorganization Act, have been fully stated in Civil Writ No. 311 of 1968, which deals with a similar controversy regarding the State of Haryana. That order should be read as part of this order because there are cetrain contentions which have been dealt with in the Haryana case and do arise in this petition as well. It may be mentioned that the points common to both the Punjab and Haryana petitions deal with the State of affairs prevailing before the 1st of November, 1966. Up to this date, the States of Punjab and Haryana were part of the old State of Punjab. The legislation, after this date, has taken a slightly different turn because each of the States has amended the Act to suit its own requirements. That is why it has been necessary to deal only with the matters that arise after the 1st of November, 1966. This order is, therefore, confined to only these points. And to repeat, the order in the Haryana case has fully covered the ground relating to the period prior to the 1st of November, 1966. The points, which require determination now, in view of the observations made above, are set out below:—

(1) Section 5(3) of the Punjab General Sales Tax Act, as amended with retrospective effect from 1st October, 1958, is violative of Article 303 of the Constitution of India;

(2) Section 5(3) is also violative of Article 14 of the Constitution;

(3) Section 5(3) is violative of Section 15 of the Central Sales Tax Act; and

(4) That the assessments, that have been quashed by the Supreme Court,—*vide* the case—*Bhawani Cotton Mills Ltd.* v. *The State of Punjab and another* (1), could not be validated by the Legislature.

Point No. (1):

(3) Before proceeding to deal with this point, it will be proper to set out the provision of Section 5(3) of the Punjab Act, as amended, and also the provisions of Article 303 of the Constitution of India:—

"5 (1) * * * * *.

* * * * *

(2) * * * * * *

* * * * *

* * * * *

(3) Notwithstanding anything contained in this Act,—

(a) in respect of declared goods, tax shall be levied at one stage and that stage shall be—

(i) in the case of goods liable to sales tax, the stage of sale of such goods by the last dealer liable to pay tax under this Act;

(ii) in the case of goods liable to purchase tax, the stage of purchase of such goods by the last dealer liable to pay tax under this Act;

(b) the taxable turnover of any dealer for any period shall not include his turnover during that period on any sale or purchase of declared goods at any stage other than the stage referred to in sub-clause (i) or as the case may be, sub-clause (ii) of clause (a).".

* * * * *

"Article 303:

(1) Notwithstanding anything in article 302, neither Parliament nor the Legislature of a State shall have power to make any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making, of any discrimination between one

(1) 20 S.T.C. 290.

State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule.

(2) Nothing in clause (i) shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India."

(4) It is common ground that section 5(3) applies to the petitioners in the present petition as well as in the other connected petitions because all such petitioners fall in the category of 'last purchasers'. The contention of the learned counsel for the petitioners is that section 5(3) (a) (ii) violates Article 303 of the Constitution of India because 'purchase tax' is levied on the last dealer who consumes the goods. If the goods are exported out of Punjab, no such purchase tax is leviable because vis-a-vis those goods, the person selling would not be a dealer within the definition of the word 'dealer'. The contention proceeds that in the State of Punjab discrimination has been made against the residents of Punjab, inasmuch as if the goods are consumed in the State of Punjab, the residents of Punjab pay 'purchase tax', whereas if the goods are not consumed in the State of Punjab and are sold in the inter-State trade, etc., there is no purchase tax on them. In this situation, there is discrimination against the person who consumes goods in Punjab; as against a person, who consumes goods outside the State of Punjab.

(5) Mr. B. R. Tuli, learned counsel for the State of Punjab, in reply, contends in the first instance that Article 303 does not come into play because this Article has nothing to do with taxation. The Article merely deals with entries concerning 'trade and commerce' and does not touch the laws made under other entries. Taxation is a distinct matter for the purposes of legislative competence. Taxation on goods consumed within the State has no relevance so far as inter-State trade is concerned. Article 303 comes into play when one State wants to discriminate against another State in the matter of inter-state 'trade and commerce'. In support of his contention, the learned counsel has placed reliance upon the decision in ***East India Sandal Oil Distilleries Ltd., and others*** v. ***State of Andhra Pradesh and another*** (2), *M. P. V. Sundararamier & Co.* v. *The State of Andhra*

(2) A.I.R. 1962 A.P. 204.

Pradesh and another (3), *and Atiabari Tea Co., Ltd.* v. *The State of Assam and others* (4).

(6) His second contention is that no restrictions are placed in the course of inter-State trade and commerce, etc., by the impugned provision. In the case of purchase in the course of export, the goods go out of the country and there is, thus, no question regarding inter-State trade and commerce. In the case of purchase and sale in the course of inter-State trade, 'purchase tax' is payable in the State from which the movement of goods commences and so far as movement of goods from Punjab is concerned, it will be the State of Punjab and the tax will be levied thereon. In the case of purchase and transfer of goods to places outside the State of Punjab without transfer of title, the purchase tax will be leviable in the State of Punjab, as the purchase made in the State occasioned the movement of goods which commenced from the State of Punjab. So far as purchase and consumption in the State of Punjab is concerned, Mr. Srinivasan, learned counsel for the petitioners, admitted that the purchase tax would be leviable.

(7) The third contention of the learned counsel for the State is that every dealer, who is liable to pay tax under the Act, makes an application under section 7 for registration. Only such dealer has to make the application who falls within the definition of 'dealer' and it is his taxable turnover which will be determined and taxed. Thus it is for him to claim the deductions admissible to him under the Act from his 'taxable turnover'. Only those taxes, which directly and immediately restrict trade, fall within the purview of Article 301; and as there is no such result accruing from the impugned provision, even on merits, the petitioners have no case.

(8) After examining the respective contentions of the learned counsel for the parties, I am of the view that the contentions advanced by the learned counsel for the petitioners are not sound; whereas those advanced by the learned counsel for the State are well-founded and must prevail.

(9) In the first place, Article 303 does not come into play. This Article is specifically limited to the entries concerning trade and commerce and does not touch the laws made under other entries.

(3) A.I.R. 1958 S.C. 468.
(4) A.I.R. 1961 S.C. 232.

Taxation is treated as a distinct matter for the purposes of legislative competence. Therefore, this Article cannot be invoked. Reference in this connection may be made to the decision of the Andhra Pradesh High Court in *East India Sandal Oil Distilleries' case* (2), and the two decisions of the Supreme Court in *M. P. V. Sundararamier & Company* (3) *and Atiabari Tea Company's case* (4). At page 404 of the report in *M. P. V. Sundararamier & Company's case* (3), their Lordships observed as follows:—

"* * * * * *

State trade and commerce under entry 42 does not include the power to impose a tax on sales in the course of such trade and commerce. It is under entry 54 that tax can be imposed on the sale of goods including inter-State sales-tax. * * * *"

(10) To the similar effect are the observations in *Atiabari Tea Company's case* (4).

In oder to attract the levy of purchase tax under section 5(3) (a) (iii), three conditions must exist:—

(1) The person purchasing must be a dealer;

(2) he must be the last dealer; and

(3) he must be liable to pay tax under the Act.

(11) Section 2(d) defines 'dealer' in the following terms:—

" 'Dealer' means any person including a Department of Government who in the normal course of trade sells or purchases any goods that are actually delivered for the purpose of consumption in the State of Punjab irrespective of the fact that the main place of business of such person is outside the said State and where the main place of business of any such person is not in the said State, 'dealer' includes the local manager or agent of such person in Punjab in respect of such business.

Explanations.—(1) A co-operative society or a club or any association which sells or supplies goods to its members or purchases goods specified in Schedule C is a dealer within the meaning of this clause.

"* * * * *"

(12) Thus there are four ways in which the goods may be dealt with by a dealer, namely:—

(1) Purchase for purposes of export;
(2) Purchase for purposes of inter-State trade;
(3) Purchase and transfer of goods to places outside the State of Punjab without transfer of title; and
(4) purchase and consumption within the State of Punjab.

(13) According to Mr. Srinivasan, the persons entering into transactions (1), (2) and (3) are not dealers because they do not purchase the goods for consumption in the State of Punjab; whereas only those falling in category (4) are dealers. He maintains that section 5(3)(a)(ii) was only amended with reference to the persons falling in category (4). So far as the persons falling in the first category are concerned, they need not be considered because they are exempt under Article 286 of the Constitution of India. But purchase tax is leviable in the case of the remaining three transactions. In the case of purchase and sale in the course of inter-State trade, the purchase tax is payable in the State from which the movement of goods commences and in the instant case, it will be Punjab. In the case of third category of persons, the purchase tax will be leviable in the State of Punjab as the purchase made in the State occasioned the movement of the goods. And so far as the fourth category of persons are concerned, they admittedly fall within the ambit of the purchase tax. Thus it will be seen that the contention, that there is discrimination regarding purchase tax *inter se* these four categories of dealers, is without foundation. Thus there would be no violation of Article 303 of the Constitution.

(14) Even on merits, the petitioners must fail. The petitioners are registered dealers. Every dealer's taxable turnover is determined and thereafter the tax is imposed. Every dealer can claim the deductions admissible under the Act. Moreover, only those restrictions are bad which directly and immediately restrict or impede the free flow and movement of goods in the course of trade. No doubt, taxes can do so. But only those taxes will bring about this result which directly and immediately restrict trades, as held in *Atiabari Tea Company's case* (4) :—

> "In determining the limits of the width and amplitude of the freedom guaranteed by Article 301, a rational and workable test to apply would be:—
>
> Does the impugned restriction operate directly and immediately on trade or its movement?"

(15) Therefore, unless proper facts are pleaded which show that the impugned tax has brought about directly and immediately restriction on the free flow of trade or movement of goods and has hampered the same, no relief would be admissible to the petitioners. In *The Andhra Sugars Limited and another* v. *The State of Andhra Padesh and others* (5), it was held, that—

> "Normally a tax on sale of goods does not directly impede the free movement and transfer of goods and is not violative of Article 301."

(16) No facts have been placed on record which bring about this result.

(17) Therefore, it is clear that in whatever perspective the first contention is examined, it has no merit and I accordingly repel the same.

Point No. (2):

(18) This point has merely to be stated to be rejected. The contention of Mr. Srinivasan was that section 5(3) of the Punjab Act, as amended, violates Article 14 of the Constitution inasmuch as it discriminates between the consumers within the State of Punjab and consumers outside the State of Punjab. This contention must fail on the short ground that there is no discrimination in the case of declared goods. The dispute in the present controversy is regarding 'cotton', and 'cotton' is one of the declared goods. Whether the cotton is consumed in the State or sent out to other States in the course of inter-State trade, the purchase tax is leviable in the State. Therefore, the very basis, on which the argument proceeds, goes. It is not disputed that on declared goods, the tax is the same, whether the goods are consumed within the State or sent outside the State for consumption in the course of inter-State trade.

Point No. (3):

(19) The contention of Mr. Srinivasan is that section 5(3) of the Punjab Act, as amended, infringes section 15 of the Central Sales Tax Act; and, therefore, is void. In the first instance, he contended that cotton is purchased from various Mandies (Markets) and the Market Committees charge fees on the transactions of purchase and sale. According to him, this fees must be added to the purchase tax.

(5) (1968) 21 S.T.C. 212 (S.C.)

The purchase tax limit being the maximum as prescribed in the Central Sales Tax Act, the addition of this fees will necessarily lead to the excess in the limit prescribed by section 15 of the Central Act. The learned counsel places his reliance on the decisions in *Kasturi Seshagiri Pai and Company* v. *Deputy Commissioner of South Kangra* (6), and *Pendakur Virupanna Setty & Sons* v. *State of Mysore and others* (7). This contention must fail on the short ground that market fee is not a tax; but is only a charge for services rendered. It was conceded that if market fee was held not to be a tax, the contention would necessarily fail. Therefore, the only question, that requires determination, is, whether market fee is a tax? The matter is *not res integra*. It was held in *Shri Piara Ram* v. *State of Punjab* (8), decided by Falshaw, C.J., and Harbans Singh, J., that the market fee is not a tax. To the similar effect is the decision of the Supreme Court in *Mohammad Hussain Gulam Mohammad and another* v. *The State of Bombay and another* (9), where a similar question was raised regarding the Bombay Agricultural Produce Markets Act, 1939 (Act No. 22 of 1939); and it was held as follows:—

> "The market committee which is authorised to levy fee provided by S. 11 renders services to the licences, particularly when the market is established. Under the circumstances, it cannot be held that the fee charged for services rendered by the market committee in connection with the enforcement of the various provisions of the Bombay Agricultural Produce Markets Act, 1939, and the provisions for various facilities in the various markets established by it, is in the nature of sales tax. It is true that the fee is calculated on the amount of produce brought and sold but that is only a method of realising fees for the facilities provided by the Committee".

(20) These decisions really conclude the matter. So far as the Mysore decisions are concerned, they do not help Mr. Srinivasan because in those cases, the Market Committee had been authorised to levy a cess by way of sales-tax on any commercial crop brought

(6) A.I.R. 1962 Mysore 1.

(7) 13 L.R. 327 (Mysore).

(8) C.W. 308 of 1963 decided on 5th November, 1963.

(9) A.I.R. 1962 S.C. 97.

or sold in the notified area. There was no question of the levy of the market fee for services rendered. Thus the so-called cess or fee being in fact a tax, the learned Judges of the Mysore High Court rightly took the view that the same were taxes and not fees. These decisions have no parallel so far as the present case is concerned. Therefore, this contention has no merit.

(21) The next contention of Mr. Srinivasan was that 'taxable turnover' is defined by section 5 (2) of the Punjab Act after giving certain deductions and one of them being under section 5(2) (a) (vi). Since section 5(2) (a) (vi) has not been amended, taxable turnover cannot be ascertained with the consequence that no purchase tax can be levied. Therefore, it is maintained that the infirmity, which was pointed out by Supreme Court decision in *Bhawani Cotton Mills, Ltd.*, v. *The State of Punjab and another* (1), still persists. In my opinion, this contention is not sound. The real basis of the Supreme Court decision was that no stage had been fixed for the levy of the tax; and, therefore, it was not possible to determine who was liable for it under the Act. This will be clear from pages 327-328 of the report in *Bhawani Cotton Mills case*. For facility of reference, the relevant observations are quoted below:—

> "* * * * The mere injunction, by the Legislature * * * * * that the levy must be at one stage, as again mentioned in the Central Act, will be of no avail, unless the Act, or the rules framed under it, make it very clear that there will be no levy or collection of tax, except from the persons who are bound to pay, as per the Central Act. It is here that there is considerable difficulty caused by the absence of any provisions, either in the Act or in the rules or the forms, indicating the stage at which the tax is to be levied. In the case of commodities, like cotton, which come under the category of 'declared goods', tax can be levied only at a single point, as is made clear by section 15(a) of the Central Act, and, in our opinion, there can be no legal liability for payment of tax accruing; until and unless the Act or the rules framed thereunder, prescribe a single point for taxation. For the matter of that, even in the final return to be sent by a dealer under the Act, the dealer will have to show in the taxable turnover all purchases of cotton effected by him during the accounting year. * * * *".

(22) If these observations are kept in view, it will be easier to understand the observation of their Lordships in this decision on which considerable stress was laid, namely:—

> "There is no machinery by which a dealer can ascertain whether his vendor of the declared goods has paid the tax already. Even otherwise, it will be seen that if a dealer A sells the declared goods to B, six months after the close of the year, (B being a registered dealer), A becomes liable to purchase tax. But, if B sells the identical declared goods, again after the period mentioned in sub-clause (vi), he will be liable to pay purchase tax. That means in respect of the same item of declared goods, more than one person is made liable to pay tax and the tax is also levied at more than one stage. That is not permissible under section 15 (a) of the Central Act."

(23) I may point out that all these infirmities, that were pointed out by their Lordships of the Supreme Court, have been removed by the Amending Act. The Amending Act added sub-section (3) to section 5 with effect from the 1st of October, 1958. This provision provides that 'in respect of declared goods, tax shall be levied at one stage and that stage shall be in the case of goods liable to purchase tax, the stage of purchase of such goods by the last dealer liable to pay tax under this Act'. Thus it is clear that only one single stage for the levy of purchase tax has been prescribed. It is not difficult for any dealer to ascertain whether he is the last purchaser liable to pay tax. The contention, that the 'last dealer liable to pay tax under this Act' has not been defined, is of no consequence. This expression was not even defined in the Mysore, Madras, Andhra Pradesh and U. P., Acts, which Acts were noticed by their Lordships of the Supreme Court in *Bhawani Cotton Mills case,* vis-a-vis the Punjab Act, which was struck down. Their Lordships compared the Punjab Act and these other Acts to show that the provisions of the Punjab Act were defective, the implication being that the provisions of the Madras and other Acts were not defective. In the Madras Act, section 4 read with Second Schedule, 'cotton' was specified as liable to a single point tax 'at the point of last purchase in the State'. In a case, that went to the Supreme Court and is reported as *The State of Madras* v. *T. Narayanaswami Naidu and another* (10), in assessing the assessee, who was a dealer in cotton and cotton seeds, the Commercial Tax

(10) (1968) 21 S.T.C. 1.

Officer did not exempt purchases to the extent of Rs. 2,27,250 on the ground that cotton of that value was in stock on the last day of the assessment year with the assessee and was liable to be taxed as last purchase. The Appellate Assistant Commissioner (Commercial Taxes) upheld the order, but the Sales Tax Appellate Tribunal accepted the appeal and remanded the case to the Appellate Assistant Commissioner for disposal afresh in the light of observations made by him. The department filed a revision in the Madras High Court which was dismissed,—*vide* (1965) 16 S.T.C. 29. The learned Judges observed "The stage of last purchase or last sales in a State will be reached just before the goods are caught up in the stream of export and go outside the State or just before the goods find their way to a factory when they are manufactured into some other goods". The State of Madras obtained special leave to appeal to the Supreme Court and that appeal was dismissed on April 12, 1967. The judgment is reported in *The State of Madras* v. *T. Narayanaswami Naidu and another* (10). Their Lordships held that under section 4 of the Act read with Second Schedule thereto "a dealer is not liable to pay tax on purchases of cotton until the purchases acquire the quality of being the last purchases inside the State. In other words, when he files a return and declares the stock in hand, the stock in hand cannot be said to have been acquired by last purchase because he may still, during the next assessment year, sell it or he may consume it himself or the goods may be destroyed, etc. He would be entitled to claim before the assessing authorities that the character of acquisition of the stock in hand was undetermined, in the light of subsequent events it may or may not become the last purchase inside the State. In our view, this construction is in consonance with section 15 of the Central Act". It is thus apparent that 'the last purchase by a dealer liable to pay tax under this Act' will be the purchase by the dealer who himself consumes it or sells it to a consumer or to a dealer in the course of inter-State trade or commerce so that as long as the goods remain with him in the condition he purchased them, he does not become liable to pay the tax. Every dealer will thus be able to know whether he is liable to pay the tax under the Act or not and the stage having been prescribed, no machinery is required to be prescribed to ascertain that stage.

(24) Mr. Srinivasan then contended that section 5(2) (a) (vi) having not been amended, it is not possible to determine the taxable turnover. This contention has no force in view of section 5(3) (a) which was added by the amending Act. According to this provision

'the taxable turnover of any dealer for any period shall not include his turnover during that period on any sale or purchase of declared goods at any stage other than the stage referred to in sub-clause (i) or as the case may be, sub-clause (ii) of clause (a)'. Thus it is clear that a dealer has to include in his turnover the purchase of those declared goods only in respect of which he becomes liable to pay the tax during the period for which the return is filed. So long as the goods remain in the stock, he need not include their purchase in his turnover for any period. The added clause opens with the words 'notwithstanding anything contained in this Act', and, therefore, section 5(2) (a) (vi) becomes subject to this clause. The Punjab Act was amended by Act No. 28 of 1965, whereby the words 'every year' were omitted from sub-section (1) of section 5, with the result that the period of assessment is not now the financial year but the period prescribed in rules 17—20 of the Punjab General Sales Tax Rules. There is no question now of claiming deduction.

(25) It is, therefore, clear that the addition of sub-section (3) to section 5 by the Amending Act has removed all the lacuna and infirmities that were pointed out by their Lordships of the Supreme Court in *Bhawani Cotton Mills case,* and the Act, as amended, is not open to challenge on those very grounds.

Point No. (4):

(26) So far as this point is concerned, it was not disputed that the same stands concluded by a number of decisions of the Supreme Court, e.g.:—

(1) *Sadasib Prakash Brahmachari* v. *The State of Orissa* (11);
(2) *State of Uttar Pradesh* v. *Dr. Vijay Anand Maharaj* (12);
(3) *Rai Ramkrishna and others* v. *State of Bihar* (13);
(4) *Sohan Lal* v. *The State of Punjab* (14); and
(5) *Thakar Singh* v. *State of Punjab* (15).

(27) The rule is well settled that a Legislature has the power of validation of laws declared invalid by courts and can do away with the effect of any decree or order of any Court. This contention is now totally beyond the pale of any controversy and must be repelled.

(11) A.I.R. 1956 S.C. 432.
(12)) A.I.R. 1963 S.C. 946.
(13) A.I.R. 1963 S.C. 1667.
(14) I.L.R. (1964) 2 Pb. 501.
(15) I.L.R. (1964) 2 Pb. 651.

(28) No other contention was advanced. I have already dealt with the contentions that were pressed in this petition.

(29) For the reasons recorded above, this petition fails and is dismissed; but there will be no order as to costs.

30. PREM CHAND PANDIT, J.—I agree with my learned brother that this petition be dismissed, but with no order as to costs.

R.N.M.

REVISIONAL CIVIL

Before Shamsher Bahadur and R. S. Narula, JJ.

SAWRAJ PAL,— *Petitioner*

versus

JANAK RAJ,—*Respondent.*

Civil Revision No. 344 of 1968

May 22, 1968

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13—Transfer of Property Act (IV of 1882)—S. 106—Contractual monthly tenancy in Punjab—Termination of—Fifteen days notice—Whether necessary—Such notice—Whether to be Co-terminus with the end of month of tenancy—Expression "whether before or after the termination of the tenancy" as used in section 13(1)—Whether enlarges the scope of section 13(2).

Held, that there is no express statutory provision abrogating the requirement of the service of a notice under section 106 of the Transfer of Property Act and the mere fact that the rights of a landlord for eviction are restricted or a special machinery for enforcing them is provided in a Rent Restriction Act does not absolve a landlord from the obligation of serving the requisite notice and does not take away from the tenant a perfect defence of his not being liable to ejectment without the service of such a notice. The requirement of service of at least fifteen days' notice contained in section 106 of the Act, is based on principles of justice equity and good conscience. A notice of termination of the contractual monthly tenancy, therefore, is necessary in the Punjab, even though the provisions of section 106 of the Transfer of Property Act are not applicable there. However, technical rule of procedure contained in the second