The Indian Law Reports

Punjab Series

LETTERS PATENT APPEAL

Before Mehar Singh and Daya Krishan Mahajan, JJ.

SADHU SINGH,—*Appellant.*

versus

DISTRICT BOARD, GURDASPUR AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 27 of 1958

1961

August, 9th

East Punjab Urban Rent Restriction Act (III of 1949)—Section 3—Whether ultra vires *the Constitution—Power to exempt buildings—Whether amounts to legislation—Nature of such legislation—Whether delegated or excessive and hence void—Construction and reconstruction of building—Respective meaning of—Section 13(1)—Jurisdiction of Civil Courts—Whether barred.*

Held, that the East Punjab Urban Rent Restriction Act, 1949, is an exception to the general law of the landlord and tenant. Whenever the power of exemption under section 3 is exercised, the building or class of buildings exempted cease to be governed by the Act and would be governed by the general law. Thus the power of exemption conferred by section 3 is merely to restore the applicability of the general law by taking away the exception to it created by the special provision. In this view of the matter, it can hardly be said that section 3 confers any legislative power.

Held, that power of exemption is inherent in the power given to the Government to apply a statute to a particular place or to a particular set of people as and when it deems fit. The exemption power is there by necessary implication, for the Government can by not applying the statute to any territory within its jurisdiction is necessarily

exempting the territory to which it refuses to apply the statute under that power.

Held, that legislation clearly implies doing something positive, i.e., making the law, repealing the law or amending or adding to the law. That result does not follow when the power is given to the State Government in certain cases to suspend the operation of the law. By suspending the operation of the law, under an exemption clause, the suspended statute is neither altered, modified or added to or repealed. It remains on the statute book and in tact. The exemption merely stops its operation during the period of exemption. The moment the exemption comes to an end, the statute operates wtih full vigour.

Held, that repeal implies obliteration of the statute while exemption merely implies suspension of the statute for the time being.

Held, that the East Punjab Rent Restriction Act, read as a whole does lay down the policy and furnishes a guide to the State Government, for the exercise of the power of the exemption under section 3. If the entire scheme of the Act is examined, it will be seen that the purpose of exemption clause is apparent and it furnishes sufficient guide for the exercise of the exemption power.

Held, that Government buildings have been exempted altogether. It cannot be said that the Government in a welfare State is out to charge exhorbitant rent from the citizens. As a matter of fact, the Act was designed to prevent private landlords from charging exhorbitant rent. The Act was not designed to cover Government buildings. It is for variety of these reasons that it was necessary to have the exemption clause, such as section 3. Thus on a fair reading of the statute it must be held that section 3 does not suffer from the vice of excessive delegation of legislative power.

Held, that it cannot be disputed that section 3 is so wide that the power conferred by it can be abused. But that cannot by itself be a ground to strike down section 3 when in fact the power has not been abused. If in a given case it is so abused, the Courts will undoubtedly strike it down. But merely that a power is capable of

abuse, for that way all powers can be abused, would be no ground to strike down the provision conferring the power as unconstitutional.

Held, that every reconstruction is construction wherever any part of a building is erected afresh, it would fall within the phrase 'construction'.

Held, that the definition of 'building' in the Rent Restriction Act covers a part of a building which is let to a tenant. Therefore, the unit is the building in possession of the tenant though it is only a part of the building. This is a special definition enacted for the purposes of the Rent Restriction Act, the object of the Act being to prevent eviction of tenants and to restrict the charging of excessive rent.

Held, that construction and reconstruction are interchangeable terms and the only difference is that the phrase 'construction' will be used where a new building is put up where none existed before, but reconstruction will apply to a building which is rebuilt in place of an existing building, but in both these cases there would be construction.

Held, that once a part of the building as defined in the Act is taken as a building for the purposes of the Act, any partial construction in such part would not be a construction of a building, but where the entire part is pulled down and rebuilt it would certainly be construction. Where the foundation has to be reconstructed and the walls have to be thrown down and rebuilt, the nature of the work must be called re-building.

Held, that section 13(1) of the East Punjab Urban Rent Restriction Act does not affect the jurisdiction of the Court to pass a decree for ejectment. It merely provides a procedure for the eviction of a tenant. It is fundamental principle of law that the exclusion of jurisdiction of the Civil Courts is not to be readily inferred but that such exclusion must either be explicitly expressed or clearly implied.

Appeal under Clause 10 of the Letters Patent, from the decree of the Hon'ble Mr. Justice A. N. Grover, dated the 10th day of April, 1958, in R.S.A. No. 1135 of 1954, affirming that of Shri Guru Datta Sikka, District Judge, Gurdaspur,

dated the 31st August, 1954, whereby the decree of Shri A. N. Bhanot, Sub-Judge, Ist Class, Gurdaspur, dated the 19th November, 1953, passed with costs in favour of the plaintiff, was affirmed and the defendant-appellant was directed to pay the costs of lower appellate Court, to the plaintiff-respondent. The Hon'ble Single Judge, also directed the defendant-appellant to remove within three months from the date of order, i.e., 10th April, 1958, the structures, etc., and to restore the premises in dispute in the condition, it was leased, out to the lessor.

H. R. AGGARWAL, AND S. L. AHLUWALIA, ADVOCATES, for the Appellant.

M. R. CHHIBBER, N. L. SALOOJA AND S. D. BAHRI, ADVOCATES, for the Respondent.

JUDGMENT

Mahajan, J. MAHAJAN, J.—By this order we propose to dispose of three matters, which arise out of different proceedings, but are being dealt with because common questions of law arise. The facts of each matter will be set out separately so far as necessary for the purposes of the disposal of those matters.

Letters Patent Appeal No. 276 of 1958.

This appeal is directed against the decision of Grover, J., dismissing the appellant's regular second appeal. The property in dispute is a District Board *sarai* situate in Pathankot. This property is government property vesting in the District Board. It was leased out by the District Board in the year 1945 for one year and later on this lease was renewed on yearly basis up to the year 1947. There is no lease after 1947 and the appellant has continued in possession. The District Board issued a notice to the appellant to vacate the premises and on his failure to do so filed the present suit for his ejectment. In defence a number of pleas were raised by the appellant but it is not necessary to notice all of them excepting those

which were ultimately agitated before the learned Single Judge. These pleas were—

(1) that section 3 of the East Punjab Urban Rent Restriction Act (III of 1949)—hereinafter referred to as the Act—under which exemption has been given from the provisions of the Act to Government premises, is *ultra vires* the Constitution of India;

(2) that the notification exempting all government buildings under section 3 of the Act is outside the scope of section 3 and, therefore, the applicability of the Act cannot be ruled out ;

(3) that the appellant is a permanent tenant; and

(4) that the appellant had incurred huge expenses in improving the premises on the belief that he was to continue as a lessee for a considerable period and, therefore, he could not be evicted without compensation being paid to him for the improvements effected by him.

The trial Court decreed the suit on the 19th of November, 1953, and on appeal by the present appellant the trial Court's decree was affirmed on the 31st of August, 1954. A second appeal was preferred to this Court and that appeal was rejected, as already stated, by Grover, J., on the 10th of April, 1958. In second Appeal, the appellant set up the plea that the matter had been compromised with the Government, but it was ruled that there was no compromise in the matter, and, therefore, the appeal was decided on the merits. Before us also, an application had been made that talks to compromise the matter are going on with the Government. The learned counsel for the State has vehemently denied that there is any talk of compromise with the Government with the result that by a separate order we have rejected the petition of the appellant requesting for an adjournment for the completion of the compromise.

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Before us, the learned counsel for the appellant has raised the four points already mentioned above and they will be dealt with in the order in which they have been mentioned.

Regular Second Appeal No. 1816 of 1959.

This case came up for hearing before Pandit, J., who by his order dated the 20th of July, 1960, referred it for decision to a larger Bench and that is how this case has been placed before us. The facts are given in detail in the order of Pandit, J., and need not be recapitulated. In appeal, the appellant challenges the decision of the lower appellate Court on the ground that the lower appellate Court was in error in holding that the notification does not cover the reconstructed buildings but, on the other hand it is contended by the tenant—

(1) that section 3 of the Act is *ultra vires* the Constitution ; and

(2) that the notification issued under section 3 of the Act, which is in these terms :—

'In exercise of the power conferred by section 3 of the East Punjab Urban Rent Restriction Act, 1949 (Punjab Act No. III of 1949), the Governor of 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.'

does not cover the present building as it was reconstructed and not constructed in 1956.

(3) that the period of exemption having expired no decree should now be passed for it will be of no use in view of the provision of section 13(1) of the Act.

The real purport of all these contentions is that the Act applies to the premises in dispute and, therefore, no suit for ejectment under the general law is competent. It may be mentioned that the trial Court decided in favour of the landlord holding that the premises were constructed in 1956 and, therefore, were exempt from the provisions of the Act and on appeal the District Judge reversed the decision of the trial Court holding that the premises were not constructed in 1956 inasmuch as they were merely remodelled. These very points have been agitated before us and will be dealt with in the same order.

Regular Second Appeal No. 1558 *of* 1960.

This case came up for hearing before Gurdev Singh, J., and by his order dated the 21st of November, 1960, it has been directed to be heard along with Regular Second Appeal No. 1816 of 1959. In this case, the suit was filed by the landlord for the ejectment of a tenant from a shop situate in Chandni Chauk Bazar, Sirsa, and for recovery of Rs. 250 as rent for use and occupation. The premises were let out on the 11th of August, 1956, at a rental of Rs. 1,000 for a period of one year. The possession was given on the 22nd of August, 1956, and the period of one year was to end on the 21st of August, 1957. The shop was with the tenant previously, but it was got vacated in the year 1956 for reconstruction and thereafter it was reconstructed and was given on rent as already stated. The defence to the suit was that the Act applied to the premises and, therefore, the suit for ejectment was not competent. On the other hand the landlord relies on the same notification, as has been referred to in Regular Second Appeal No. 1816 of 1959. Both the Courts below have come to a concurrent decision that the premises were constructed in the year 1956 and, therefore, the notification applies and the provisions of the Act do not apply.

Before us only two points have been agitated :—

(1) that section 3 of the Act under which the notification has been issued is *ultra vires* the Constitution of India ; and

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(2) that on the admitted and proved facts reconstruction does not amount to construction within the meaning of the notification.

These points will also be dealt with in the order in which they have been stated.

It will be noticed that one point is common to all these matters, namely, that section 3 of the Act is *ultra vires* the Constitution. Therefore, this point will be dealt with first because if this prevails, then it will not be necessary to decide the remaining points, but as the other points have been fully argued, we will, however, pronounce our decision on them as well.

At the very outset it may be stated that the argument advanced before us has taken a different shape and form than what it had before the Courts below. Before the arguments now stated are examined, it will be proper to set out the relevant provisions of the Act :—

Preamble—"An Act to restrict the increase of rent of certain premises situated within the limits of urban areas, and the eviction of tenants therefrom.

"It is hereby enacted as follows :—

Section 1.—"(1) This Act may be called the East Punjab Urban Rent Restriction Act, 1949.

(2) It extends to all urban areas in Punjab, but nothing herein contained shall be deemed to affect the regulation of house accommodation in any Cantonment area.

(3) It shall come into force at once.

Section 3.—"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 any class of buildings or rented lands."

It is contended by the learned counsel for the tenants, in the first instance, that section 3 of the Act is not a valid piece of legislation as it suffers from excessive delegation of legislative functions. In other words, the contention raised is that section 3 of the Act delegates power to the Provincial Government to exempt certain buildings or certain class of buildings from the operation of the Act and this power is unfettered and uncanalised and as no guidance has been afforded for its exercise in the Act, it suffers from the vice of excessive delegation and, therefore, section 3 is void. On the other hand, it is contended by the counsel for the landlord that section 3 is a piece of conditional legislation and not delegated legislation and, therefore, a valid piece of legislation. It is further urged that even if it be held to be a piece of delegated legislation, it is a valid piece of legislation inasmuch as in the body of the Act, there is enough guidance for the exercise of the power under the impugned provision.

So far as the principles of law regarding delegated legislation are concerned, they have now been settled by a series of decisions of their Lordships of the Supreme Court and I need at this stage refer only to two of them, namely, *Hamdard Dawakhana and another* v. *The Union of India and others* (1), and *Vasanlal Maganbhai Sanjanwala* v. *The State of Bombay* (2), In *Hamdard Dawakhana's case*, Kapur, J., who delivered the principal judgment has observed at page 566 as under :—

"The distinction between conditional legislation and delegated legislation is this that in the former the delegate's power is that of determining when a legislative declared rule of conduct shall become

(1) A.I.R. 1960 S.C. 554.
(2) A.I.R. 1961 S.C. 4.

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effective ; *Hampton and Co.* v. *United States* (1), and the latter involves delegation of rule-making power which constitutionally may be exercised by the administrative agent. This means that the legislature having laid down the broad principles of its policy in the legislation can then leave the details to be supplied by the administrative authority. In other words by delegated legislation the delegate completes the legislation by supplying details within the limits prescribed by the statute and in the case of conditional legislation the power of legislation is exercised by the legislature conditionally leaving to the discretion of an external authority the time and manner of carrying its legislation into effect as also the determination of the area to which it is to extend ; *The Queen* v. *Burah* (2), *Charles Russell* v. *The Queen* (3), *Emperor* v. *Benoari Lal Sarma* (4), *Inder Singh* v. *State of Rajasthan* (5). Thus when the delegate is given the power of making rules and regulations in order to fill in the details to carry out and subserve the purposes of the legislation the manner in which the requirements of the statute are to be met and the rights therein created to be enjoyed it is an exercise of delegated legislation. But when the legislation is complete in itself and the legislature has itself made the law and the only function left to the delegate is to apply the law to an area or to determine the time and manner of carrying it into effect, it is conditional legislation. To put it in the language of another American case :—

'To assert that a law is less than a law because it is made to depend upon

(1) (1927) 276 V.S. 394.
(2) (1878) 3 A.C. 889.
(3) (1882) 7 A.C. 829 at page 835.
(4) 72 Ind. App. 57: A.I.R. 1945 P.C. 48.
(5) (1957) S.C.R. 605: A.I.R. 1957 S.C. 510.

a future event or act is to rob the legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or the things future and impossible to fully know.'

The proper distinction there pointed out was this :—

'The legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action depend. There are many things upon which wise and useful legislation must depend which cannot be known to the law making power, and, must therefore, be subject of enquiry and determination outside the hall of legislature.'

(In Locke's Appeal 72 Pa. 491 ; *Field and Co.* v. *Clark* (1).

But the discretion should not be so wide that it is impossible to discern its limits. There must instead be definite boundaries within which the powers of the administrative authority are exercisable. Delegation should not be so indefinite as to amount to an abdication of the legislative function. Schwartz—American Administrative Law, page 21.

In an Australian case relied upon by the learned Solicitor-General the prohibition by proclamation of goods under section 52 of the Customs Act, 1901, was held to be conditional legislation *Baxter* v. *Ah Way* (2), According to that case

(1) (1892) 143 U.S. 649.
(2) (1909) 8 C.L.R. 626 at pages 634, 637, 638.

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the legislature has to project its mind into the future and provide as far as possible for all contingencies likely to arise in the application of the law, but as it is not possible to provide for all contingencies specifically for all cases, the legislature resorts to conditional legislation leaving it to some specified authority to determine in what circumstances the law should be extended, or the particular class of persons or goods to which it should be applied: *Baxter's case* (1)."

In *Vasanlal Maganbhai's* case Gajendragadkar, J., who delivered the majority judgment, observed as under :—

"It is now well-established by the decisions of this Court that the power of delegation is a constituent element of the legislative power as a whole, and that in modern times when the Legislatures enact laws to meet the challenge of the complex socio-economic problems, they often find it convenient and necessary to subsidiary or ancillory powers to delegates of their choice for carrying out the policy laid down by their Acts. The extent to which such delegation is permissible is also now well-settled. The Legislature cannot delegate its essential legislative function in any case. It must lay down the legislative policy and principle and must afford guidance for carrying out the said policy before it delegates its subsidiary powers in that behalf. As has been observed by Mahajan, C.J., in *Harishankar Bagla* v. *State of Madhya Pradesh* (2),—

'the Legislature cannot delegate its function of laying down legislative policy in respect of a measure and

(1) (1909) 8 C.L.R. 626 at pages 637 and 638.
(2) (1955) 1 S.C.R. 380 at page 388: A.I.R. 1954 S.C. 465 a page 468.

its formulation as a rule of conduct. The legislature must declare the policy of the law and the legal principles which are to control any given cases, and must provide a standard to guide the officials or the body in power to execute the law.

In dealing with the challenge to the vires of any statute on the ground of excessive delegation it is, therefore, necessary to enquire whether the impugned delegation involves the delegation of an essential legislative function or power and whether the Legislature has enunciated its policy and principle and given guidance to the delegate or not. As the decision in *Bagla's case* (1), shows, in applying this test this Court has taken into account the statements in the preamble to the Act, and if the said statements afford a satisfactory basis for holding that the legislative policy and principle has been enunciated with sufficient accuracy and clarity the preamble itself has been held to satisfy the requirements of the relevant tests. In every case, it would be necessary to consider the relevant provisions of the Act in relation to the delegation made and the question as to whether the delegation is *intra vires* or not will have to be decided by the application of the relevant tests."

It will also be useful to set out two passages from the dissenting judgment of Subba Rao, J., in *Vasanlal's case* to complete the picture. The learned Judge has relied on the previous decisions of the Supreme Court and has, on the basis of the same, stated his conclusions. The relevant passages are at pages 10 and 11 of the report and are in these terms :—

"The leading decision on this subject is in *re Delhi Laws Act, 1912* (2), There the

(1) (1955) 1 S.C.R. 380: A.I.R. 1954 S.C 465.
(2) (1951) S.C.R. 747: A.I.R. 1951 S.C. 332.

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Central Legislature had empowered the executive authority under its legislative control to apply at its discretion the laws to an area which was also under the legislative sway of the Centre. The validity of the laws was questioned on the ground that the legislature had no power to delegate legislative powers to executive authorities. As many as seven Judges dealt with the question and wrote seven separate judgments considering elaborately the different aspects of the question raised. I am relieved of the duty to ascertain the core of the decision as that has been done by Bose, J., with clarity in *Rajnarain Singh* v. *Chairman, Patna Administration Committee, Patna,* (1), Bose, J., after pointing out the seven variations of the authority given to the executive in the *Delhi Laws Act case* (2), summarized the majority view on the relevant aspect of the question now raised at page 301 (of S.C.R,)—(at page 574 of A.I.R.) thus :

'In our opinion, the majority view was that an executive authority can be authorised to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enuniciated in general terms, and there was some divergence of view about this in the former case, but this much is clear from the opinion set out above: it cannot include a change of policy.'

Rajnarain Singh's case (1), dealt with section 3(1) of the Patna Administration Act, 1915 (Bihar and Orissa Act I of 1915) as amended by Patna Administration (Amendment) Act 1928 (Bihar

(1) (1955) 1 S.C.R. 290: A.I.R. 1954 S.C. 569.
(2) (1951) S.C.R. 747: A.I.R. 1951 S.C. 332.

and Orissa Act IV of 1928) and with a notification issued by the Governor of Bihar picking out section 104 out of the Bihar and Orissa Municipal Act of 1922, modifying it and extending it in its modified form to the Patna Administration and Patna Village areas. Bose, J., after pointing out the difference between *Rajnarain Singh' case* (1), and the *Delhi Laws Act* (2), observed at page 303 (of S.C.R.)—(at page 575 of A.I.R.), thus :

'But even as the modification of the whole canot be permitted to effect any essential change in the Act or an alteration in its policy, so also a modification of a part cannot be permitted to do that either.'

This Court again in *Harishankar Bagla* v. *State of Madhya Pradesh* (3), considered the scope of the *Delhi Laws Act case* (2), Mahajan, C.J., stated at page 388 (of S.C.R.)—(at page 468 of A.I.R.), thus :—

'It was settled by the majority judgment in the *Delhi Laws Act case* (2), that essential powers of legislation cannot be delegated. In other words, the legislature cannot delegate its function of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The Legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body in power to execute the law. The essential legislative function consists in the determination or

(1) (1955) 1 S.C.R. 290: A.I.R. 1954 S.C. 569,
(2) (1951) S.C.R. 747: A.I.R. 1951 S,C, 332,
(3) 1955 1 S.C.R. 380 at page 388. A.I.R. 1954 S,C, 365 at page 468,

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choice of the legislative policy and of formally enacting that policy into a binding rule of conduct."

In *Edward Mills Co., Ltd., Beawar and others* v. *State of Ajmer and another* (1), Mukherjea, J., as he then was, speaking for the Court stated the principle thus at page 749 (of S.C.R.)—(at page 32 of A.I.R.) :

'A Legislature cannot certainly strip itself of its essential functions and vest the same on an extraneous authority, The primary duty of law-making has to be discharged by the Legislature itself but delegation may be resorted to as a subsidiary or an ancillary measure.'

The latest decision on the point is that in *Hamdard Dawakhana* v. *Union of India* (2). One of the questions raised in that case was whether section 3(d) of Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, exceeded the permissible limits of delegated legislation. The principle has been restated by Kapur, J., at page 566 thus :—

'This means that the legislature having laid down the broad principles of its policy in the legislation can then leave the details to be supplied by the administrative authority. In other words, by delegated legislation the delegate completes the legislation by supplying details within the limits prescribed by the statute and in the case of conditional legislation the power of legislation is exercised by the legislature

(1) (1955) 1 S.C.R. 735: A.I.A. 1955 S.C. 25.
(2) A.I.R. 1960 S.C. 554.

conditionally leaving to the discretion of an external authority the time and manner of carrying its legislation into effect as also the determination of the area to which it is to extend.'

Applying the principle to the facts of that case, the learned Judge observed at page 568 thus :—

'In our view the words impugned are vague. Parliament has established no criteria, no standards and has not prescribed any principle on which a particular disease or condition is to be specified in the Schedule. It is not stated what facts or circumstances are to be taken into consideration to include a particular condition or disease. The power of specifying diseases and conditions as given in Section 3(d) must therefore be held to be going beyond permissible boundaries of valid delegation.'

It is not necessary to multiply decisions; nor is it necessary to point out the subtle distinction between delegated legislation and conditional legislation. The law on the subject may be briefly stated thus : The Constitution confers a power and imposes a duty on the legislature to make laws. The essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its functions in favour of another. But in view of the multifarious activities of a welfare State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily delegate the working out of details to

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the executive or any other agency. But there is a danger inherent in such a process of delegation. An overburdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may not lay down any policy at all ; it may declare its policy in vague and general terms ; it may not set down any standard for the guidance of the executive ; it may confer an arbitrary power on the executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation. This self-effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation. It is for a Court to hold on a fair, generous and liberal construction of an impugned statute whether the legislature exceeded such limits. But the said liberal construction should not be carried by the Courts to the extent of always trying to discover a dormant or latent legislative policy to sustain an arbitrary power on executive authorities. It is the duty of this Court to strike down without any hesitation any blanket power conferred on the executive by the legislature."

As already observed, the principles as to when a piece of legislation can be said to be delegated legislation are well settled and admit of no dispute, but the real difficulty that lies is in their application to the facts of a given case. It is here that judicial decisions have widely differed.

In considering the respective contentions of the parties the first question that requires determination is whether the exercise of the power of exemption under section 3 amounts to legislation. It is only if it is held that it is legislation that the question that it is delegated legislation will arise

Before examining this question, it may be mentioned that the East Punjab Urban Rent Restriction Act is an exception to the general law of the landlord and tenant. Whenever the power of exemption under section 3 is exercised, the building or class of buildings exempted cease to be governed by the Act and would be governed by the general law. Thus the power of exemption conferred by section 3 is merely to restore the applicability of the general law by taking away the exception to it created by the special provision. In this view of the matter, it can hardly be said that section 3 confers any legislative power.

However, the question whether such type of legislation is legislation at all is not *res integra.* A somewhat similar provision in the Central Province and Berar Prohibition Act (VII of 1938) came up for consideration before a Full Bench of the Nagpur High Court in *Sheoshankar* v. *State Government of Madhya Pradesh and others* (1), and it was held that the delegated power under that Statute was not a legislative power. The exemption provision in the aforesaid statute was in these terms :—

> "The Provincial Government may, by notification, either wholly or partially and subject to such conditions as it may think fit to impose exempt any person or class of persons from all or any of the provisions of this Act, or, of all or any of the rules made under this Act, either throughout the province or in any specified area, or for any specified period or occasion."

While dealing with this provision, Mangalmurti and Mudholkar, JJ., at page 89 of the report observed as under :—

> "Another contention of the learned counsel is that section 29(2) and clause (a) of section 32 amount to delegation of legislative power. We do not think that the

(1) A.I.R. 1951, Nagpur 58.

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power delegated by these provisions is a legislative power. This is merely a power to determine the circumstances in which the law shall be applied or to what areas its operation shall be extended or the particular class of persons to whom it shall be applied. This is what has been held by the Privy Council in a long line of cases right from *The Queen* v. *Burah* (1), to *Emperor* v. *Banorilal* (2). These cases and *Baxter* v. *Ah Way* (3), to which we have already referred, directly support our view. In the last mentioned case, the power conferred upon the Governor-General in Council to declare by proclamation what goods shall be prohibited from import was challenged on the ground that it amounted to delegation of legislative power. The quotation we have already given from the judgment of O' Connor, J., contains the reason upon which the delegation so made was held not to be that of a legislative power at all and so valid."

This decision was followed by the Madhya Pardesh High Court in *L. M. Wakhare* v. *The State* (4). We are in respectful agreement with these observations, particularly when the impugned provision and the provision in the aforesaid cases are almost identical.

It is not disputed and indeed it could not be in view of any number of decisions of the Privy Council and the Supreme Court, for instance, *The Empress* v. *Burah and another* (5), *Hamdard Dawakhana and another* v. *The Union of India and others* (6), and *Vasanlal Maganbhai Sanjanwala* v. *The State of Bombay* (7), that delegation

(1) 5 I.A. 178.
(2) A.I.R 1945 P.C. 48.
(3) (1909) 8 C.L.R. 626.
(4) A.I.R. 1959 M.P. 208.
(5) I.L.R. 4 Cal. 172.
(6) A.I.R. 1960 S.C. 554.
(7) A.I.R. 1961 S.C. 4.

of power to the Government to determine the time as to when the statute should apply, the person or persons to whom it is to apply and the place or places to which it would apply has never been held to be void because it has always been treated as conditional legislation, and not delegated legislation. In principle, we do not see any difference between the grant of this type of power and the power under the impugned section 3. The power of exemption is inherent in the first type of cases, the power given to the Government to apply a statute to a particular place or to a particular set of people as and when it deems fit. The exemption power is there by necessary implication, for the Government can by not applying the statute to any territory within its jurisdiction is necessarily exempting the territory to which it refuses to apply the statute under that power. On the other hand, we see no difference in principle when in the second type of case, the exercise of power of exemption is postponed after the statute has come into operation. In both cases, the discretion is left to the Government to apply or to exempt any appropriate cases, persons and things from the applicability of the statute. The reason in both the cases would be the same, i.e., that certain circumstances exist which would not justify the applicability of the statute or which would justify the grant of exemption. Therefore, if in the first class of cases the exemption is conditional, as has repeatedly been held it must be so held in the cases of the second class.

There is another way of looking at the matter. Legislation clearly implies doing something positive, i.e., making the law, repealing the law or amending or adding to the law. Would that result follow when the power is given to the State Government in certain cases to suspend the operation of the law? By suspending the operation of the law, under an exemption clause, the suspended statute is neither altered, modified or added to or repealed. It remains on the statute books and in tact. The exemption merely stops its operation during the period of exemption. The moment the

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exemption comes to an end, the statute operates with full vigour.

At one stage, Mr. Avasthy learned counsel for the tenant in Regular Second Appeal No. 1816 of 1959, sought to urge that the exercise of power of exemption really amounts to the exercise of the power of repeal. In our opinion, that would not be so. Repeal implies obliteration of the statute while exemption merely implies suspension of the statute for the time being. As already stated, the statute remains on the statute book, a result which is unknown to repeal except for things suffered or done thereunder. Mr. Avasthy, however, realised the fallacy of his argument and did not seriously press the same. Therefore, both on authority and on principe we are of the view that the impugned provision cannot be said to be a legislation and, if at all it is legislation, it is merely a piece of conditional legislation.

The substantial contention of Mr. Avasthy was that the impugned provision is a piece of legislation and as power has been delegated to the Government to exempt from the statute any particular building or class of buildings and as no guiding principle or policy can be gathered from the statute for the exercise of that power, section 3 suffers from the vice of excessive delegation and is, therefore, void piece of legislation. For this contention, the learned counsel strongly relies on *Hamdard Dawakhana's case*. We have already dealt with one part of this argument, namely, whether it is legislation at all. The other part of the argument proceeds on the basis that section 3 confers power on the Government to legislate and as neither the policy nor the guiding principles for such delegated legislation are to be found within the four corners of the Act, Section 3 must be struck down as unconstitutional. The learned counsel further maintained that the criteria for judging the validity of the legislation like section 3, when it suffers from the vice or excessive delegation or when it offends Article 14 of the Constitution are the same. Here again the matter is not

bare of authority. The Madras High Court in *Globe Theatres, Ltd.* v. *State of Madras* (1), considered a similar provision as the one impugned. This was section 13 of the Madras Buildings (Lease and Rent Control) Act (25 of 1949). It may be stated that the scheme of the Madras Act and that of the Punjab Act is similar. There is only a slight difference in the preambles and the duration of the statutes. The Punjab measure is a permanent measure whereas the Madras measure is a temporary one. Besides this, no other distinction was brought to our notice by the learned counsel. While dealing with section 13 of the Madras Act, which is in these terms:—

> "13. Notwithstanding anything contained in this Act, the Provincial Government may, by notification in the Fort St. George Gazette exempt any building or class of buildings from all or any of the provisions of this Act;"

While holding that section 13 was not *ultra vires*, Rajamannar, C.J., made the following pertinent observations:—

> "Mr. Venkatasubramania Aiyar did not contend, nor could be contend successfully, that the Legislature cannot exempt a class of persons or any specified subject-matter from the operation of an Act passed by it, which would but for the exemption have applied to such persons or subject-matter, if such an exemption can be justified on some principle which is germane to the purpose of the Act, that is, the object with which the particular enactment was passed.
>
> The well known example is the provision for exemptions in a taxing statute. As Stone, J., observed in *'Carmichale* v. *Southern Coal and Coke Co.* (2). "It is

(1) A.I.R. 1954 Mad. 690.
(2) (1936) 81 Law Ed. 1245.

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inherent in the exercise of the power to tax that a State be free to select the subjects of taxation and to grant exemptions * * *. Inequalities which result from a singling out of one particular class for taxation or exemption infringe no constitutional limitation * * *. Like considerations govern exemptions from the operation of a tax imposed on the members of a class. A legislature is not bound to tax every member of a class or none. It may make distinctions of degree having a rational basis, and when subjected to judicial scrutiny they must be presumed to rest on the basis if there is any conceivable state of facts which would support it."

These last observations succinctly bring out the two important features about exemption provisions contained in any Act of the Legislature. The propriety of the exemption from stand-point of the basis underlying such exemption is open to judicial review. There may be exemptions which would be struck down by the Court as unconstitutional because they are not based on any reasonable ground intimately connected with the objects of the legislation.

'The Legislation is free to make classifications in the application of a statute which are relevant to the legislative purpose. The ultimate test of validity is not whether the classes differ but whether the differences between them are pertinent to the subject with respect to which the classification is made. *Vide 'Asbury Hospital* v. *Cass County'*, (1).

It was held in that case that equal protection of the laws is not denied in excepting from the operation of a statute requiring corporations owning farm lands

(1) (1945) 90 Law Ed. 6 at age 13.

to dispose of them within ten years from the time of its enactment, lands owned by corporations whose business is dealing in farm lands, and lands belonging to co-operative corporations 75 per cent of whose members are farmers residing on farms or depending principally on farming for their livelihood.

In '*Gossert* v. *Cleary*' (1), a Michigan statute forbidding women being licensed as bartenders and at the same time making an exception in favour of the wives and daughters of the owners of liquor establishments was held by a majority of the Court not to violate the equal protection clause of the Fourteenth Amendment.

Likewise, a city regulation which prohibited advertising vehicles in city streets, but permitted the putting of business notices upon business delivery vehicles, so long as they were used merely or mainly for advertising was held not to violate the due process and equal protection clause of the Fourteenth Amendment, in '*Railway Express Agency* v. *New York*' (2). The exception was upheld because the classification had relation to the purpose for which it was made, and Douglass, J., remarked that it was by practical considerations based on experience rather than by theoretical exigencies that the question of equal protection should be answered.

On the other hand, the Supreme Court of the United States had struck down several exemption provisions because the classification was arbitrary or illusory and did not rest on any ground having a fair and substantial relation

(1) (1948) 93 Law Ed. 163.
(2) (1948) 93 Law Ed. 533.

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to the object of the legislation,—*vide* '*Royester Guano Co.* v. *Virginia*' (1), '*Frost* v. *Corporation Commission* (2), '*Hartford Steam Boiler Inspection and Insurance Co.* v. *Harrison*' (3) and '*Wheeling Steel Corporation* v. *Glander*' (4) (page 692 of the report) * * *.

I am much impressed by the considerations set out in—(1903) 48 Law. Ed. 1018 and in (1926) 71 Law. Ed. 1228 in examining the validity of a power of exemption like that contained in section 13 of the Madras Buildings (Lease and Rent Control) Act. There are bound to be cases in which an inflexible application of the provisions of the Act may result in unnecessary hardship not contemplated by the Legislature. I would even go further and say that the enforcement of the provisions of the Act may amount to an unreasonable restriction on the exercise of the right conferred by Article 19 of the Constitution. It is eminently desirable that there should be some authority vested with the power to make exceptions to the general application of the Act and its provisions in proper cases. If so, there could be no better body than the State Government, on whom such power could be conferred.

The Special Courts decisions of the Supreme Court have one feature which should not be over-looked. All these decisions proceed on the conclusion that the special procedure prescribed for the trial of offences by the special Courts deprived the accused persons of certain valuable privileges and advantages to which they were entitled under

(1) (1919) 64 Law Ed. 989.
(2) (1928) 73 Law Ed. 483.
(3) (1936) 81 Law Ed. 1223.
(4) (1948) 93 Law Ed. 1544.

> the general criminal procedural law. The question was whether the Government could deprive an accused of such privileges and advantages in an arbitrary manner. There is nothing like that in the Madras Buildings (Lease and Rent Control) Act. It is rather the other way about. The landlords were entitled to certain rights under the general law. The Madras Buildings (Lease and Rent Control) Act deprived them of some of these rights. The result of an exemption in any particular case was that the landlord was allowed to enjoy his rights without the restrictions imposed by the Madras Buildings (Lease and Rent Control) Act." (page 696 of the report).

It may be mentioned that the matter in this case was considered principally with reference to Article 14 of the Constitution. But the learned Chief Justice was not oblivious to the matter which has now been debated before us, i.e., that the legislation suffered from the vice of excessive delegation. This decision of the Madras High Court has now been approved by the Supreme Court in *P. J. Irani* v. *State of Madras* (Civil Appeal No. 671 of 1957), decided on the 21st of April, 1961. No suggestion was even made before the Supreme Court that such a provision is bad as it suffers from excessive delegation of legislative power. The provision has stood for ten years now after the coming into force of the Constitution and it is for the first time that it has been attacked on the ground that it suffers from excessive delegation of legislative functions.

We are further of the view that the East Punjab Urban Rent Restriction Act read as a whole does lay down the policy and furnishes a guide to the State Government for the exercise of the power of the exemption under section 3.

The Act is described as the East Punjab Urban Rent Restriction Act. It provides for the control

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of the rent and the control of evictions. The preamble of the Act runs thus:—

"An Act to restrict the increase of rent of certain premises situated within the limits of urban areas, and the eviction of tenants therefrom."

The Act does not apply to all types of buildings. It applies to certain buildings and those buildings are defined in section 2 of the Act; and it applies to urban areas, but even there a room in a hotel, hostel, or boarding-house is exempted from the operation of the Act. Similarly, section 1(2) excludes the regulation of house accommodation in any Cantonment area from the provisions of the Act. Section 3 in the impugned section. Section 4 provides for determination of fair rent. Section 5 provides for the increase in fair rent where some addition, improvement or alteration has been carried out at the landlord's expense. Section 6 debars the landlord from claiming any rent in excess of fair rent. Section 7 is the penal section whereunder no premium can be charged for renewal of the tenancy. Section 8 deals with the recovery of rent, which should not have been paid. Section 9 deals with the increase of rent on account of payment of rates, etc., to local authorities. Section 10 prevents the landlord from interfering with the amenities enjoyed by the tenant. Section 11 prohibits the conversion of a residential building into a non-residential building. Section 12 authorises a tenant to effect repairs, on the failure of the landlord to do so. Section 13 provides grounds for the eviction of tenants and section 18 provides for particulars to be furnished to the Controller by the landlord and the tenant. The framework of the Act, therefore, is to restrict the rent and evictions, and the exemption under section 3 is in relation to this. If the provisions of the Act are read as a whole along with the prevailing circumstances when the Act was brought into being, namely, the shortage of house accommodation during the war and its continuance thereafter, it would be apparent that it

had principally reference to the then existing buildings and was not a measure to retard the further construction of buildings. Of course, further buildings would be covered by the Act if those buildings fell within the definition clause and were constructed in an urban area. As a matter of fact, power of exemption is also to be found in section 2(j)—the definition of the 'urban area'—for the Government could, by reducing the limits of a municipal committee under the Municipal Act or by increasing its limits, or by notifying an area as an urban area or by withdrawing that notification, bring about an exemption as to the building in that area. It was not contended that the exercise of this power would, in any way, be unconstitutional. If the entire scheme of the Act is examined, it will be seen that the purpose of exemption clause is apparent and it furnishes sufficient guide for the exercise of the exemption power. In the present case, exemption has only been granted with regard to buildings, which were constructed in a particular year and that too for a period of five years. Government buildings have been exempted altogether. It cannot be said that Government in a welfare State is out to charge exhorbitant rent from the citizens. As a matter of fact, the Act was designed to prevent private landlords from charging exhorbitant rent. The Act was not designed to cover government buildings. It is for variety of these reasons that it was necessary to have the exemption clause such as section 3. Thus on a fair reading of the statute it must be held that section 3 does not suffer from the vice of excessive delegation of legislative power.

This brings us to the next contention on the *vires* of section 3, with reference to article 14 of the Constitution, namely, that the power thereunder can be abused and the door is left wide open for discrimination. Therefore, it is argued that the provision should be struck down under Article 14 of the Constitution. It cannot be disputed that section 3 is so wide that the power conferred by it can be abused. But then would that by itself be

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a ground to strike down section 3 when in fact the power has not been abused. If in a given case it is so abused, the Courts will undoubtedly strike it down. But merely that a power is capable of abuse, for that way all power, can be abused, would be no ground to strike down the provision conferring the power as unconstitutional. In this connection, reference may be made to the decision of the Madras High Court in *Globe Theatres case* at page 696, where the learned Chief Justice observed as under:—

> "In that connection, I quoted a passage from Willis' Constitutional Law in which the learned author expressed his opinion that the best view to take was that due process and equality were not violated by the mere conference of unguided power but only by its arbitrary exercise by those upon whom conferred."

The following further statement of the learned author appealed to me then and appeals to me now:

> 'If a statute declares a definite policy, there is a sufficiently definite standard for the rule against the delegation of legislative power, and also for equality, if the standard is reasonable. If no standard is set up to avoid the violation of equality, those exercising the power must act as though they were administering a valid standard. For this reason, there is need for a judicial review to see whether or not the power delegated has been exercised arbitrarily.'
>
> My learned brother, Venkatarama Aiyar, J., also took a similar view. In a later case relating to the working of the same order, we held that a particular classification made by the Textile Commissioner in exercising the power conferred on him by clause 30 of the Order

was neither discriminatory nor in contravention of the principles underlying Article 14 of the Constitution,—*vide*—'*Lotus Industrials Kallai* v. *Development Department, Madras*' (1).

It was not contended that the notification works any discrimination nor it could be so contended. All that was urged was that the power conferred is uncontrolled, unguided and capable of being abused. Before parting from this part of the argument, we may refer to the decision of the Supreme Court in *Ram Krishna Dalmia and others* v. *Shri Justice S. R. Tendolkar and others* (2), wherein Das, C.J., laid down the following six propositions :—

"(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself ;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles ;

(c) that it must be presumed that the legisture understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds ;

(d) that the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest ;

(1) A.I.R. 1952 Mad. 715.
(2) A.I.R. 1958 S.C. 538.

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(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation ; and

(f) that while good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

In this view of the matter we are of the view that section 3 of the Act cannot be struck down as offending Article 14 of the Constitution. Mr. Justice Dua in *Dalip Singh-Arjan Sing* v. *Rakha Ram-L. Munshi Ram* (1), has dealt with the question whether the notification under section 3 is *ultra vires* Article 14 of the Constitution and has held that this notification does not offend Article 14. We are in respectful agreement with this decision.

Mr. Avasthy strongly relied on the decision of this Court in *The Associated Traders and Engineers* v. *The State of Punjab* (2), and the decisions in *Hamdard Dawakhana's case, M/s Dawarka Parshad Lakshmi Narain* v. *State of Utter Pradesh* (3), *Pandit Banarsi Dass Bhanot* v. *State of Madhya Pradesh* (4), *Surat Chandra Ghatak* v. *Corporation of Calcutta* (5), and *Parashram Damodhar Vaidya* v. *State of Bombay* (6). So far

(1) A.I.R. 1960 Pb. 176.
(2) 57 P.L.R. 304.
(3) A.I.R. 1954 S.C. 224.
(4) A.I.R. 1958 S.C. 909.
(5) A.I.R. 1959 Cal. 36.
(6) A.I.R. 1957 Bom. 252.

as the last mentioned Bombay decision is concerned, it was over-ruled by the Supreme Court in *Shri Ram-Ram Narain Medhi* v. *The State of Bombay* (1) All these cases proceed on the peculiar facts in each of them and can have no application to the facts of the present case. We have already said that the principles are well settled and it is in their application that different results follow.

The next point that now requires determination and is common to both the second appeals is whether the reconstruction of the building in dispute in these two cases amounts to construction within the meaning of the word 'construction' in the notification, exempting buildings constructed in the years 1956, 1957 and 1958, from the operation of the Act for a period of five years from the date of construction. It may be stated at the very inception that no inflexible rules can be laid down to determine when a reconstructed building can be said to be constructed building within the meaning of the notificaton. In fact, every reconstruction is construction. The suffix 're-' means 'again', but that would not take away reconstructed building from the ambit and scope of the notification because the notification deals with buildings constructed during certain specified years and gives exemption to them from the operation of the Act. The question whether a building has been constructed so as to attract the exemption from the provisions of the Act by virtue of the notification would depend on the facts and circumstances of each case. What then is construction ? 'Construction' according to Webster's New World Disctionary means :—

"(1) the act or process of constructing ;

(2) the way in which something is constructed ; manner or method of building ;

(3) something constructed ; structure ; building ;

(1) A.I.R. 1959 S.C. 459.

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Whereas the word 'construct' in the same dictionary means:

> "to pile up, build, to put together systematically, build, frame, or devise.
>
> (1) something built or put together systematically."

Therefore, it will be apparent that wherever any part of a building is erected afresh, it would fall within the phrase 'construction', but in the notification, exemption is to a building constructed and not to a part of a building constructed. Building has been defined in the Rent Restriction Act in the following terms :—

> " 'building' means any building or part of a building let for any purpose whether being actually used for that purpose or not, including any land, godowns, outhouses, or furniture let therewith, but does not include a room in a hotel, hostel, or boarding-hous;"

In the Punjab Municipal Act, section 3(2) defines building in these terms :—

> " 'building' means any shop, house, hut, outhouse, shed or stable, whether used for the purpose of human habitation or otherwise and whether of masonry, bricks, wood, mud, thatch, metal or any other material whatever ; and includes a wall and a well."

The definition of 'building' in the Rent Restriction Act covers a part of a building which is let to a tenant. Therefore, the unit is the building in possession of the tenant though it is only a part of the building. This is a special definition enacted for the purposes of the Rent Restriction Act, the object of the Act being to prevent eviction of tenants and to restrict the charging of excessive rent. At one time, the learned counsel sought to make a distinction between reconstruction and

construction, but later on they realised the futility of the argument and were agreed that construction and reconstruction are interchangable terms and the only difference is that the phrase 'construction' will be used where a new building is put up where none existed before, but reconstruction will apply to a building which is rebuilt in place of an existing building, but in both these cases there would be construction, and the notification will apply. At this stage, we may also refer to the provisions of section 5, which permit increase in fair rent in cases where some addition, improvement or alteration has been carried out to or in a building. Though these additions, improvements or alterations may amount to construction, yet it cannot be said with any reasonableness that they would amount to construction of a building. This further supports the view that once a part of the building as defined in the Act is taken as a building for the purposes of the Act, any partial construction in such part would not be a construction of a building, but where the entire part is pulled down and rebuilt it would certainly be construction and would fall within the ambit of the notification. To this last analysis, both the counsel for the contending parties were agreed. They ultimately also agreed and rightly so that in each case it is a question of degree when reconstruction, for here we are concerned with a case of reconstruction, would amount to construction within the ambit of the notification.

Before dealing with the individual cases before us, it will be in the fitness of things to refer to the decided cases which throw some light on the matter. In *Sharma Electric Engineering Works* v. *Rada Devi* (1), it was sought to be argued that when the accommodation remains the same and the entity of the premises is not substantially changed, there is no rebuilding. This argument was not accepted by the Bench of the Calcutta High Court, and Das Gupta, J., observed :—

> "In my judgment, there is no substance in this contention. While there may be

(1) A.I.R. 1957 Cal. 227.

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many operations in the house which may be properly called repairs there are other operations in connection with a structure which clearly do not fall within the scope of repairs but are included in the word 're-building'. Thus, when some window-panes are to be replaced or the walls or a ceiling or windows are to be re-painted or the floors of a room are to be polished, nobody would call such word 're-building'. It is equally clear, however, that when the roof of a structure is taken down and a new roof constructed or entire walls or substantial portions of the walls are taken down and re-constructed, these are so much like new building operations, though not tantamount to fresh building, that they are readily understood to amount to re-building. Our attention has been drawn to the definition of re-building which has been attempted to be given by P. B. Mukharji, J., in *Ramesh Chandra Bhattacharjee* v. *Nagendra N. Mullick* (1). Atfer discussion of a number of English cases, P. B. Mukharji, J., observed :—

"The interpretation of the words 'building' and 're-building' should, in my view, be such in this case as is consistent with the purpose and context of the Rent Acts of 1948 and 1950. In the light of the scheme and purpose of the Rent legislation one test by which to define 'building' and 're-building' is this that it should be of such a nature that will require displacement of the tenant. In other words, the 'purpose' or 'building' or 're-building' within the meaning of the Rent legislation must be of such a nature as cannot be carried out if the tenant remains

(1) 85 Cal. L.F. 324 A.I.R. 1951 Cal. 435.

in occupation of the premises under consideration. This, in my judgment, provides a sufficient standard and working test by which the words 'building' or re-building' are to be understood under the Rent Act of 1948 or 1950. If, therefore, repairs so extensive and fundamental in character as, for instance, in this case where the very foundation on which the ground floor rests have to be reconstructed, where the very walls which have become cracked and moist have to be thrown down and rebuilt that they cannot be carried out if the tenant remains in possession, then it becomes a case, in my opinion, of 'building' or 're-building' within the meaning of the Statutes.'

I have no hesitation to hold that where, as in the case before P. B. Mukharji, J., the foundation has to be reconstructed and the walls have to be thrown down and rebuilt, the nature of the work must be called re-building. As regards the standard suggested by P. B. Mukharji, J., I can think of cases where only replastering and re-painting of walls are necessary which cannot be conveniently done unless the tenant gives up occupation, but those cases may not properly be considered to be cases of re-building. There can be no doubt, however, that where the nature of the construction is such that, while partaking of the nature of a new building operation, it does not amount to new building but amounts to re-construction of certain parts of the old building either by taking down the roof or by changing the foundation or by tak-

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ing down the walls or re-constructing them or otherwise, the work done is 're-building' work."

In *Joel* v. *Swaddle and another* (1), where the ground on which landlord could oppose the application for a new tenancy after the coming to end of the old one was as under :—

> "The grounds on which a landlord may oppose an application for a new tenancy are . . . . . .(f) that on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding."

While dealing with the question as to what would be reconstruction, Lord Evershed, M.R., at page 328 made the following observations :—

> "In cases of this kind it is apt to be dangerous to take each individual item entirely in isolation, and then to say that each item so taken cannot itself be a work of reconstruction or a substantial work of reconstruction. One must look at the whole work which is proposed and then say in regard to it : Does it amount to a substantial work of reconstruction ? When one views in that way what is here proposed it does, I think, amount, within the meaning of the paragraph, to a work of reconstruction of a substantial part of the premises. I lay considerable emphasis on that part of the work which consists of the substitution of the transverse walls by the proposed girders resting on pillars ; I

(1) (1957) 3 A.E.R. 325.

also think, with respect to the learned county court judge, that he gave some what too little emphasis to the floor; because "what is proposed is not merely the making of a new floor, but the sinking of the floor, not a great deal, but by a distance of some eight inches, which produces an appreciable increase in the total space of what was, and is at present, the tenant's holding."

Lord Justice Romer, who delivered his separate opinion, observed as under :—

"I agree, and I have only a word or two to add on this. It seems to me that the proper way of ascertaining whether what is proposed to be done will be word of 'construction' of premises is to look at the position as a whole and compare the results on the premises of carrying out the proposed work with the condition and state of the premises before work was done; in other words, you want to regard the whole position as one total or entire picture.

One of the criticisms which has been levelled against the learned county court judge is that he did not make that approach to the matter, but that he really took each item of work which was involved in the proposed alterations and said : 'This is not reconstruction; that is not reconstruction; this is mere improvement', and so on; and in so doing, as Lord Evershed, M. R. pointed out, he does appear to have overlooked, or at all events under-emphasised the importance of, the substituted means of support which was going to be introduced by the demolition of the walls and the introduction in their place of the girders. If that criticism be justified, as in my view it is, it means that

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the learned county court judge has really gone wrong in law in this matter, because he has not construed section 30(1)(f) of the Landlord and Tenant Act, 1954, in the way in which it should be construed. When one looks, as I think one should look. at the position as it will be when all the proposed work has been done, I for my part am satisfied that it will result in the reconstruction of the tenant's premises within the meaning of the language of Ormerod, L.J., in *Percy E. Cadle and Company Limited* v. *Jacmarch Properties, Limited* (1), which Lord Evershed, M.R., has cited. Indeed, it is difficult to imagine any way in which the premises could be reconstructed if the proposed works fall short of that expression. I am clear that in fact every single feature of the premises is going to be radically altered, and the result on the whole will be the provision of entirely new premises differing in every material respect from those which the tenant now occupies. Accordingly I agree with Lord Evershed, M.R., that this appeal should be allowed."

The learned counsel for the tenants contended that the operations which the landlords undertook were operations in the nature of repairs and not rebuilding operations. It is no doubt true that if the operations done to the disputed buildings amount to repairs, the notification will not apply for then it will not amount to construction of a building. While dealing with the question as to what is repair as distinct from renewal or replacement a Division Bench of the Madras High Court in *Commissioner of Income-tax, Exess Profits Tax, Madras* v. *Rama Sugar Mills, Ltd., Bobbili* (2), made the following observations :—

"A renewal may be a repair or a reconstruction. Renewal is a repair if it is only

(1) (1957) 1 All. E.R. 148.
(2) A.I.R. 1952 Mad. 689.

> restoration by renewal or replacement, of subsidiary parts of a whole. If, on the other hand, it amounts to a reconstruction of the entirety or of substantially the whole of the subject-matter it is not a repair but a reconstruction. The test, therefore, which decides the question wether a thing is a 'repair' or not is to see whether the act actually done is one which in substance is a replacement of defective parts or a replacement of the entirety or a substantial part of the subject-matter."

Therefore, as already observed, in each case it is a question of degree as to when any construction and substantial repairs would amount to construction of a building within the meaning of the notification.

This brings us to the consideration of the individual cases before us.

Letters Patent Appeal No. 276 of 1958

So far as the first contention in this appeal is concerned, that has already been dealt with. Section 3 of the Act is not *ultra vires* the Constitution and governs the case.

On the second contention, no serious arguments were addressed. Moreover, we fail to see how the notification is outside the scope of section 3 of the Act. In our view, the reasons given by the learned Single Judge upholding the validity of the notification are sound and we are in respectful agreement with the same.

As regards the third contention, the matter stands concluded by the concurrent findings of the Courts below. On the facts found, both the Courts below came to a concurrent decision that the appellant was not a permanent tenant; neither such tenancy could be created. It is not disputed that the property in dispute is *nazool* pro-

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perty. According to rule 2, part II of the District Board Rules, 1926, which is in these terms :—

> "A District Board may lease *nazool* properties in its charge for a term not exceeding one year, provided that the previous sanction of the Deputy Commissioner shall be obtained when the lease money is more than Rs. 250 and not more than Rs. 500 ; and of the Commissioner of the Division when the lease money is more than Rs. 500 and not more than Rs. 1,000. In the case of a lease which is for a term exceeding one year or when the lease money exceeds Rs. 1,000, the previous sanction of the State Government shall be obtained ;"

No lease for the *nazool* property can be granted for a period exceeding one year. Therefore, there can be no question of a permanent lease being granted. The Government is the owner of the property and the Government alone could create a permanent lease. No such claim has been made against the Government for Government was not even made a party to the suit and no relief has been claimed against the Government.

The last contention is that the plaintiff-tenant should have been allowed compensation for the improvements carried out by him in the building. There can be no question of improvements because the lease was granted on year to year basis and there was no agreement with the District Board authorising the lessee to effect improvements. The claim for improvements is now sought to be supported on the ground of estoppel. In our view, there can be no question of estoppel, particularly when there is a clear prohibition under rules 4(2) and 4(3), Part VII of the Rules which are in these terms :—

> "4(2) No District Board to whom any property of Government has been transferred for management shall cause any repairs or alterations to such property to

be carried out in a style differing from that of the original work without the consent of the Punjab Government in the Public Works Department.

4(3) No District Board in whom any land of Government vests or to whom any land of Government has been transferred for management shall cause or suffer any buildings of a permanent nature to be constructed on such land, or shall cause or suffer such land to be diverted permanently from its existing use, without the consent of the Punjab Government."

No act on the part of the District Board has been proved which has made the lessee to alter his position on the basis of any representation by the District Board. In any case, if he has made any improvements he has fully reaped the benefit thereof for he has continued to be in possession of the premises now nearly for 14 years and in our view there was no question of allowing any compensation for the alleged improvements to the appellant. We would accordingly dismiss this appeal with costs.

Regular Second Appeal No. 1816 of 1959.

The first point has already been dealt with. So far as the second point is concerned it may be stated at the very outset that the learned District Judge held the construction not to fall within the ambit of the notification on the ground that the construction could not be said to be a new construction. The notification does not use the word 'new' before 'construction'. It merely uses the the phrase 'building constructed'. As already pointed out there is no difference between construction and reconstruction because every reconstruction involves construction. Therefore, the view on which the learned District Judge proceeded cannot be sustained. However, on the findings arrived at by him we are of the view

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that the construction in the present case does not amount to construction of a building. The building in possession of the tenant was partly modified and partly allowed to stand as it was without any alteration. No doubt part of the roof was changed, but in all material respects, the construction was such as would not amount to construction of a building, and, therefore, on the facts found by the learned District Judge, it must be held that the construction in this case cannot be said to be construction of the building within the meaning of the notification; and, therefore, it is not exempt from the ambit of the Act.

Mr. Avasthy then contended that there is no point in now decreeing the suit for ejectment because the period of exemption has expired and in view of section 13(1) of the Act the decree cannot be executed. It may be pointed out that section 13(1) does not affect the jurisdiction of the Court to pass a decree for ejectment. It merely provides a procedure for the eviction of a tenant. It is fundamental principle of law that the exclusion of jurisdiction of the civil Courts is not to be readily inferred but that such exclusion must either be explicity expressed or clearly implied. See in this connection *Debi Pershad* v. *Messrs Choudhari Brothers, Ltd., Narwana and others* (1), and *Suraj Narain Parsad* v. *Jamil Ahmad and another* (2). Therefore, there is no impediment in our way in passing a decree; whether that decree can or cannot be executed is another matter and that question the excecuting Court will determine. If on the day, the execution is sought, the provisions of the Act apply we have no doubt the executing Court will refuse to execute the decree, but we are not here calld upon to pronounce on this matter and it must necessarily be left for determination to the executing Court as and when that contingency arises.

We have dealt with all the matters raised in this second appeal and for the reasons recorded

(1) A.I.R. 1949 E.P. 357.
(2) A.I.R. 1946 Pat. 385.

above, this appeal fails and is dismissed, but in the circumstances of the case, the parties are left to bear their own costs throughout.

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Regular Second Appeal No. 1558 of 1960.

So far as the argument as to the *vires* of section 3 of the Act is concerned, we have already dealt with the same. With regard to the remaining question in this appeal, namely, that the biulding has not been constructed within the meaning of the notification, it may be stated that both the Courts below have found that the building was constructed within the meaning of the notification, and, therefore, have decreed the landlord's suit. It is not disputed that the entire building has been rebuilt barring two walls. These walls the landlord could not pull down, they being party-walls. Therefore, on the admitted and proved facts of the case, it must be held that the entire building was constructed as claimed by the landlord. Therefore, the decision of the Court below must be upheld and the tenant's appeal must fail and it is accordingly dismissed, but in the circumstances of the case there will be no order as to costs.

The result is that all the three appeals are dismissed.

MEHAR SINGH, J.—I agree.

Mehar Singh, J.

R.S.

APPELLATE CIVIL

Before Harbans Singh, J.

MUNICIPAL COMMITTEE, RUPAR,—*Appellant.*

versus

CHAMAN LAL,—*Respondent.*

Regular Second Appeal No. 1024 of 1956

1961

August, 23rd

Punjab Municipal Act (III of 1911)—Section 61(1)(b)—Notification for imposition of professional tax—Schedule of trades, professions, callings and employments—"Superior