

clearly contemplate an order asking for the deposit of a substantial sum out of the decretal amount. Indeed the ruling of Martineau, J., has been doubted by a Division Bench of the Madras High Court in *P. C. Thirumalai Goundar v. Town Bank, Ltd., Pollachi* (1), Where it was held that the lower Court has jurisdiction to make a condition that the stay would be granted on deposit of the decretal amount. The same view has been held by the Patna High Court in *Beni Singh v. Ram Saran Singh* (2), and by the Madras High Court in *Rukmani Ammal v. Subramania Sastrigal and another* (3), In 1911, a Division Bench of Woodroffe and Carnduff, JJ., of the Calcutta High Court, in *Ram Nath Singh v. Raja Kamleshwar Prasad Singh* (4), held that "the Court can make it a condition of the order for stay of sale that the money decreed should be deposited in Court in cash."

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M/s. Gainda
Mal-Charanji
Lal and others
—
Shamsher
Bahadur, J.

There is a clear weight of authority in favour of the view which has been taken by the executing Court, whose order, therefore, must be upheld. This appeal fails and is dismissed. I would, however, make no order as to costs.

B.R.T.

REVISIONAL CIVIL

Before Dulat and Mahajan, JJ.

RAJESHWAR PARSHAD,—Petitioner.

versus

BANSI LAL,—Respondent.

Civil Revision No. 139 of 1957.

*East Punjab Urban Rent Restriction Act (III of 1949)—
Whether competent piece of legislation to the extent it
operates in cantonment areas.*

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- (1) A.I.R. 1934 Madras 709
(2) A.I.R. 1936 Patna 443
(3) A.I.R. 1940 Madras 82
(4) 9 Indian Cases 323

Held, that Sub-section 2 of Section 1 of the East Punjab Urban Rent Restriction Act, 1949 says that it will extend to all urban areas, 'but nothing herein contained shall be deemed to affect the regulation of house accommodation in any cantonment area.' What is precisely meant by the regulation of house accommodation in cantonments is the provision of house accommodation for military officers in cantonments as is clear from the preamble of the Cantonment (Accommodation) Act, 1923. There is no power vesting in the Union to control the rent for premises in general in Cantonment areas or to legislate about the relations between landlords and tenants in cantonment areas. The East Punjab Act III of 1949 is a perfectly competent piece of legislation to the extent that it operates in cantonment areas but does not apply to the regulation of house-accommodation for military personnel and the fixation of rent for such house accommodation, for which provision has been made in the Cantonments (House-Accommodation) Act, 1923.

Case referred by the Hon'ble Mr. Justice S. S. Dulat, on 17th December, 1958 to a larger Bench for decision of an important question concerning the interpretation of the Constitution involved in the case and finally decided by the Division Bench consisting of Hon'ble Mr. Justice Dulat and Hon'ble Mr. Justice Mahajan on 8th September, 1959.

Petition under Section 15 Clause 5 of Act III of 1949, for revision of the order of Shri Hans Raj Khanna, District Judge, Ambala, dated 21st November, 1956 affirming that of Shri Bahal Singh Rent Controller, Ambala Cantt., dated 2nd July, 1956 fixing the rent of the shop in dispute at Rs. 4/2/- per month from the date of the application.

H. L. SIBAL & D. S. TEWATIA, for Petitioner.

H. R. SODHI & P. R. JAIN, for Respondent.

JUDGMENT

Dulat, J.

DULAT, J.—These three petitions (Civil Revisions Nos. 139, 140 and 141 of 1957), turn on a single question of law and that question is whether the East Punjab Urban Rent Restriction Act, 1949 (III of

1949), is a competent piece of legislation to the extent that it operates in cantonment areas.

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The petitioner in each of these cases owns certain shops within the limits of the Ambala Cantonment, and the Rent Controller has in each of these cases, acting under East Punjab Act III of 1949, fixed the fair rent for these shops. Mr. Sibal for the petitioners agrees that as the Act is framed, it does authorise the Rent Controller to fix the rent for such shops, but his contention is that to the extent that the Act does authorise this it is invalid because, according to learned counsel, this particular subject, namely, the fixing of rent for buildings situated in any cantonment area, is a subject contained in the Union List, and the State Legislature or the provincial Legislature as it was when East Punjab Act III of 1949 was enacted, could not have legislated about it. What we have to consider, therefore, is whether this Act (East Punjab Act III of 1949) is in fact legislation about any subject reserved for the Union or the Central Government. Mr. Sibal has referred to item 3 of the Union List as it occurs in our Constitution. This runs—

“Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities, and their regulation of house accommodation (including the control of rents) in such areas.”

Learned counsel's contention is that the East Punjab Urban Rent Restriction Act purports to regulate house accommodation and in particular to control rents in cantonment areas, and is to that extent incompetent.

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In the State List, which corresponds to the provincial List in the Government of India Act 1935, there is item 18 which runs thus—

“Land, that is to say, rights in or over land,
land tenures including the relation of
landlord and tenant, and the collection
of rents ; * * * * *
* * * * *

Mr. Sibal concedes that to the extent the East Punjab Act III of 1949 purports to restrict the increase of rent of urban premises, it is a piece of legislation authorised under item 18 of the State List because it is legislation about land and the relation of landlord and tenant, and the collection of rents. He maintains, however, that this item in the State List does not authorise the State Legislature to enact any law that may restrict the increase of rent or govern the relation of landlord and tenant in a ‘cantonment area’. The real question, therefore, is this, whether item 3 of the Union List refers to the same subject, when located within a cantonment area, as item 18 of the State List refers to. The words used in item 3 of the Union List are “regulation of house accommodation (including the control of rents)”, while item 18 of the State List uses entirely different language, and on the face of it, therefore, it is difficult to agree that the framers of the Constitution, and similarly the framers of the previous Constitution Act (the Government of India Act, 1935), were in this connection thinking of the same subject. When the provisions of East Punjab Act III of 1949 are considered, the matter becomes clearer. That Act is, according to its preamble, intended, “to restrict the increase of rent of certain premises situated within the limits of urban areas, and the eviction of tenants therefrom”, and sub-section (2) of section

1 of that Act expressly says that it will extend to all urban areas, "but nothing herein contained shall be deemed to affect the regulation of house accommodation in any cantonment area". It is, therefore, clear that the Legislature never intended to impinge on the power of the Union to legislate for the regulation of house accommodation in cantonment areas. Nor is there any provision in East Punjab Act III of 1949 which has the effect of regulating house accommodation in any cantonment area. What is precisely meant by the regulation of house accommodation in cantonments is illustrated by a Central Act called the Cantonments (House-Accommodation) Act, 1923, which was in existence before the Government of India Act, 1935, was enacted. The preamble of that Act runs thus—

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"Whereas it is expedient further to amend and to consolidate the law relating to the provision of house-accommodation for military officers in cantonments ; It is hereby enacted as follows :—

* * * * *

It was obviously this kind of regulation of house accommodation which was intended to be reserved for legislation by the Central Government in the Constitution Act of 1935, and later by the Union Government by our Constitution, and it was, in my opinion, never intended that the Central or the Union Government will otherwise deal with the subject of land or the relations between landlords and tenants, or the collection of rents. Viewed in this light, there can, in my opinion, be no doubt that the two subjects, that is, the one mentioned in the Union List, and that occurring in the State List under item 18, are entirely different,

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and as far as East Punjab Act III of 1949, is concerned it has nothing to do with the regulation of house accommodation in cantonment areas. Mr. Sibal pointedly referred to the words "(including the control of rents)", occurring in the Constitution. These words did not figure in the previous Constitution Act of 1935, but Mr. Sibal submits that they were always meant to be there by implication. Assuming for a moment that this is so, it is still beyond doubt that the words in the Constitution "(including the control of rents)" have pointed reference to what precedes them, namely, "the regulation of house accommodation" or in other words, the subject reserved to the Union or the Central Government is the regulation of house accommodation and the control of rent for such houses. In concrete terms, it means that the Union Government can provide for the regulation of house accommodation in cantonment areas and also, of course, provide for rent for such house accommodation. There is, however, no power vesting in the Union to control the rent for premises in general in cantonment areas, or to legislate about the relation between landlords and tenants in cantonment areas. This was in substance the view adopted by the Bombay High Court in *A.C. Patel v. Vishwa Nath Chada* (1), where a Division Bench of that court dealing with a Rent Control Act enacted by the Bombay Legislature, observed:—

"The pith and substance of Bombay Act 57 of 1947 is to regulate the relation between landlord and the tenant by controlling rents which the tenant has got to pay to the landlord and by controlling the right of the landlord to evict his tenant. It cannot be said that when the Provincial Legislature was dealing with

(1) A.I.R. 1954 Bom. 204

these relations between landlord and tenant, it was regulating house accommodation in cantonment area."

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I find myself in respectful agreement with that view, and as I have already said a consideration of the provisions of East Punjab Act III of 1949 leaves no doubt about this matter. I am, therefore, unable to accept the petitioner's contention that the East Punjab Legislature could not have provided for the restriction of rent for shops within a cantonment area.

No other question is raised in support of these petitions. In the result, therefore, I decline to interfere and dismiss these petitions but, in all the circumstances, leave the parties to their own costs in this court.

MAHAJAN, J.—I agree.

Mohajan, J.

B. R. T.

SUPREME COURT

Before Syed Jafer Imam and K. Subba Rao, JJ.

JETHANAND BETAB,—Appellant.

versus

THE STATE OF DELHI (NOW DELHI ADMINISTRATION),—
Respondent.

Criminal Appeal No. 185 of 1957.

Repealing and Amending Act (XLVIII of 1952)—Object of—Section 4—Effect of—The Indian Wireless Telegraphy Act (XVII of 1935) as amended by Act XXXI of 1949—Section 6 (I-A) added—Amendment Act XXXI of 1949 repealed by Act XLVIII of 1952—Section 6 (I-A)—Whether repealed thereby—General Clauses Act (X of 1897)—Section 6-A—Effect of—"text"—Meaning of—Indian Telegraph Act

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