

the right of pre-emption is claimed in respect of property which a female has sold and to which she has succeeded through her husband. There is, thus, no force in this appeal which fails and is dismissed. In the circumstances, however, I would leave the parties to bear their own costs.

Debi Ram  
and another  
v.  
Chambeli and  
another  
Shamsher  
Bahadur, J.

B.R.T.

CIVIL MISCELLANEOUS

Before D. Falshaw, C.J.

HABIB-UL-HAQ,—Petitioner.

versus

THANKAR DASS AND ANOTHER,—Respondents.

Civil Writ No 624-D of 1962.

*Slum Areas (Improvement and Clearance) Act (LXXXXVI of 1956)—S. 19—Competent Authority passing a conditional order—Authority to determine whether the conditions have been complied with or not—Whether Competent Authority or executing Court.*

1963  
March, 15th.

Held, that all that is provided in sub-section (3) of section 19 of the Slum Areas (Improvement and Clearance) Act, 1956, is that when the landlord applies for permission to execute a decree for ejection and the Competent Authority has heard the parties and made such enquiry into the circumstances of the case as it thinks fit, it shall be an order in writing either granting such a permission

Authority under the Act refusing the landlord permission to execute his decree on the condition of the tenant's surrendering possession of part of the premises in dispute by a certain date, and granting the landlord the permission if the condition is not fulfilled in time, it should be as an interim order to be followed, after the expiry of the period prescribed for carrying out the condition, by a final order either granting or refusing permission to the landlord. The executing Court can only proceed to execute

the decree when an order definitely granting the landlord permission has been passed by the Competent Authority and it cannot decide whether permission should be given or not. The executing Court, therefore, cannot decide whether the tenant has fulfilled the condition imposed on him by the Competent Authority. The determination of this fact has to be made by the Competent Authority before the final order granting or refusing to grant permission to execute the decree is passed by it.

*Petition under Articles 226/227 of the Constitution of India praying that the writ of certiorari be issued calling for the record culminating in the order dated 19th July, 1962 passed by the respondent No. 1 and the same be quashed and such other appropriate writ, direction or order as be deemed just, and proper in the circumstances of the case be issued.*

D. K. KAPOOR, ADVOCATE, for the Petitioner.

T.C.B.M. LAL AND P. C. MITTAL, ADVOCATES, for the Respondent.

#### ORDER

Falshaw, C.J.

FALSHAW, C.J.—The facts giving rise to this petition under Article 226 of the Constitution by Habib-ul-Haq are as follows:—

Haji Mohd. Siddiq, the contesting respondent, is the owner of a house situated in Gali Hissam-ud-Din Haider in the part of Delhi called Ballimaran which is a “slum area” notified under the Slum Areas (Improvement and Clearance) Act, 96 of 1956. He instituted a suit against his tenant, the present petitioner, in 1957 for ejection on the ground of *bona fide* personal requirement. His suit was dismissed, but decreed in appeal and the decree was confirmed by this Court in revision on the 10th of November, 1960.

However, since the property was situated in a slum area it was necessary for the landlord under

section 19 of the Act to obtain the permission of the Competent Authority under the Act before he could execute his decree. The landlord duly applied and on the 17 of January, 1961, the Competent Authority passed what must be described as a conditional order, from which it appears that the landlord was living on the ground-floor of the building while the tenant occupied the first floor and the roof on which there was a *barasati*. It was ordered that if the tenant surrendered possession of the roof and *barsati* to the landlord on or before the 15th of February, 1961, the application of the landlord for permission to execute his decree would stand dismissed, but if the tenant failed to fulfil the condition the landlord was permitted to execute his decree.

Section 20 of the Act permits an appeal to the Administrator in case the Competent Authority refuses the landlord permission to execute his decree under section 19. It seems that in the present case no compliance had been made by the tenant with the terms of the order of the Competent Authority up to the 14th of February, 1961 and the period of limitation for an appeal under section 20 is thirty days. In these circumstances the landlord filed an appeal before the Administrator on the 14th of February as if the order had been one refusing permission. The Administrator while holding that the appeal was in the circumstances misconceived, at the same time held that the order of the competent Authority was not a proper one and that what he ought to have done was, after specifying the condition to fix an interim date, and then to pass an order either granting or refusing the landlord permission to execute the decree according to whether the tenant had complied with the condition or not. In the circumstances the Administrator remanded the case to

Habib-ul-Haq  
v.  
Thankar Dass  
and another  

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Falshaw, C.J.

Habib-ul-Haq  
v.  
Thankar Dass  
and another  

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Falshaw, C.J.

the Competent Authority to decide whether the condition specified in the order of the 17th of January, 1961, had been carried out or not, and to pass a final order on the landlord's application accordingly. The Competent Authority by a lengthy and detailed order, dated the 19th of July, 1962, came to the conclusion that the tenant had not carried out the condition specified in his predecessor's order and therefore granted the landlord permission to execute his decree, but at the same time he postponed the execution until after the 31st of October, 1962. The present petition was filed in this Court challenging these orders before the end of September, 1962.

It may at this point be mentioned that in addition to the filing of his appeal before the Administrator the landlord also started taking out proceedings for the execution of his decree in the Court, alleging there that the condition specified in the Order of the Competent Authority had not been carried out and that therefore he had been granted permission to execute his decree. These proceedings were hotly - contested until after the decision of the Administrator was given on the 21st of November, 1961. This was quickly followed by the filing of an application, dated the 11th of December, 1961, of which a copy is annexure J/1 to the written statement of the respondent, in the executing Court. In this application it was pointed out that the landlord had appealed to the Administrator under section 20 of the Act and that the order of the Competent Authority had now been held to be only an interim order, the matter still being open to decision by the Competent Authority. It was therefore submitted that the proceedings in the executing Court, both the execution petition filed by the landlord and the objection

petitions filed by the tenant, were without jurisdiction. On the 26th of January, 1962, counsel for both parties made statements in the executing court to the effect that the proceedings going on there were ineffective, and that the execution application of the decree-holder should be consigned to the record room as unsatisfied and the judgment-debtor's objections also dismissed, the right being reserved by either party to take further proceedings in the executing Court after the passing of the order of the Competent Authority under the Act.

The main question raised in the Writ petition is whether, when an order is passed by the Competent Authority under the Act, as in the present case, refusing the landlord permission to execute his decree on the condition of the tenant's surrendering possession of part of the premises in dispute by a certain date, and granting the landlord the permission if the condition is not fulfilled in time, it is the competent Authority under the Act or the executing Court which should decide whether or not the condition had been fulfilled.

All that is provided in the Act in sub-section (3) of section 19 is that when the landlord applies for permission to execute a decree for ejectment and the Competent Authority has heard the parties and made such enquiry into the circumstances of the case as it thinks fit, it, shall be an order in writing either granting such a permission or refusing it. I do not, however, think that either party in the present case would contend that a conditional order could not be passed, and indeed it is obviously desirable in many cases in which hardship is involved to both parties that the surrender of a portion of the disputed property should be imposed as a condition of refusing the landlord permission to execute his decree as a whole.

Habib-ul-Haq  
v.  
Thankar Dass  
and another  
Falshaw, C.J.

Habib-ul-Haq  
v.  
Thankar Dass  
and another  

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Falshaw, C.J.

The learned Counsel for the present petitioner has argued that the order of the Administrator in the landlord's appeal is without jurisdiction since there was no proper appeal before him, but I cannot agree that there was no appeal on which he could pass an order, and at worst the appeal which the landlord filed, and which had to be filed within 30 days' was premature. There is also no doubt that at first sight his order appears to be correct, and that in the cases where an order of this kind is passed by the Competent Authority it should be as an interim order to be followed, after the expiry of the period prescribed for carrying out the condition, by a final order either granting or refusing permission to the landlord.

It is, however, argued on behalf of the petitioner that the original order of the Competent Authority in this case was correct and that it should be left to the executing Court and not to the Competent Authority to decide whether the condition prescribed in the order had been fulfilled or not. The only argument on which this contention is based was that if the matter was decided by the executing Court the parties would have a right of appeal, and also a second appeal to this Court if the original proceedings were under the Act of 1958, or a revision if they were under the Act of 1952.

To my mind this is no more than an argument of convenience and not at all helpful in the interpretation of the provisions of the Slum Areas (Improvement and Clearance) Act. As I have already said section 19 does not contemplate any more than a grant or refusal of permission by the Competent Authority to the landlord, but this does not, in my opinion, preclude a refusal conditional on the surrender of part of the premises to the landlord by the tenant and it would not be in the

interest of either landlords or tenants as a whole to interfere with the passing of such orders which I am given to understand is quite common. The fact remains, however, that the final order of the Competent Authority must be one granting or refusing permission, and in these circumstances I am of the opinion that the view of the Administrator was correct that when such an order is passed it must, in the first place, be an interim order allowing the tenant time to carry out a certain condition and then after the expiry of the period fixed, the final order must be passed granting or refusing permission when it is ascertained whether the tenant has fulfilled the condition imposed on him. In my opinion the executing Court can only proceed to execute the decree when an order definitely granting the landlord permission has been passed by the Competent Authority and it cannot decide whether permission should be given or not. I accordingly dismiss the writ petition, but leave the parties to bear their own costs.

Habib-ul-Haq  
v.  
Thankar Dass  
and another  
Falshaw, C.J.

B.R.T.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

DAULAT RAM AND OTHERS,—Appellants.

versus

BHAGWANTI AND OTHERS,—Respondents

Execution Second Appeal No. 989 of 1962.

*East Punjab Urban Rent Restriction Act (III of 1949)—S. 2(i)—Tenant—Heirs of the deceased tenant—Whether become tenants—Decree for ejectment obtained against the tenant—Whether can be executed against his heirs in possession of the premises.*

1963  
March, 20th