

## **Shri Kishan & Krishan Kumar vs Manoj Kumar Etc. Etc on 12 February, 1998**

**Equivalent citations: AIR 1998 SUPREME COURT 999, 1998 (2) SCC 710, 1998 AIR SCW 769, (1998) 1 PUN LR 593, 1998 SCFBRC 127, 1998 (1) SCALE 582, 1998 (2) ADSC 162, 1998 BOMRC 347, (1998) 1 SCR 830 (SC), 1998 ( ) HRR 109, 1998 (1) REVLR 286, 1998 REVLR 1 286, (1998) 2 CTC 37 (SC), 1998 ADSC 2 162, (1998) 1 JT 633 (SC), 1998 ( ) ALL CJ 661, 1998 (118) PUN LR 593, 1998 (1) JT 633, (1998) 1 CURCC 188, (1998) 1 CURLJ(CCR) 589, (1998) 1 MAD LW 521, (1998) 1 RENCRC 283, (1998) 1 RENTLR 152, (1998) 2 LANDLR 358, (1998) 2 SUPREME 478, (1998) 1 SCALE 582, (1998) 1 ALL RENTCAS 415**

**Bench: K.T. Thomas, M. Srinivasan**

PETITIONER:

SHRI KISHAN & KRISHAN KUMAR

Vs.

RESPONDENT:

MANOJ KUMAR ETC. ETC.

DATE OF JUDGMENT: 12/02/1998

BENCH:

K.T. THOMAS, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

**J U D G M E N T SRINIVASAN, J.**

The only question to be considered in these two appeals is whether the Court below were barred by the provisions of the Haryana Urban (Control) of Rent & Eviction) Act 1973 from passing decrees directing the appellants to deliver possession of the properties scheduled in the suits to the respondents.

2. The facts in both the cases are almost the same with some difference in dates. The appellant in Civil Appeal N. 356 of 1991 was inducted as a tenant in one shop on 1.11.1977. The building was constructed a few months before the commencement of the tenancy. The tenancy was terminated by a notice issued on August 10, 1983 by the respondent. The suit for possession was filed on 26.9.83. The appellant in Civil Appeal NO. 357 of 1991 became a tenant of another shop on 1.8.1977. The construction of the shop had been completed only a short time before the commencement of the tenancy. The tenancy was terminated by the respondent in that appeal by notice dated 3.11.1981. The suit for possession was filed on 24.9.83.

3. Both suits were tried along with other suits against tenants of other shops on similar facts by the Senior Sub Judge, Sonapat. In all the suits, the defendants/tenants raised several contentions including challenge to the title of the plaintiffs and the quantum of rent. All the issues were answered in favour of the plaintiffs and decrees were passed on 8.12.88. Appeals in the Court of Additional District Judge suffered dismissal on 26.10.89. Second appeals were dismissed in limine by the High Court with 'one word orders'. It is only these two appellants who have come to this Court. An attempt had been made to canvass all the findings of Courts below but as they are factual and supported by evidence on record we have no difficulty in rejecting the same.

4. The only question which has been argued at length and survives for our consideration is the one set out in the beginning. The Haryana Urban (Control of Rent & Eviction) Act, hereinafter referred to as 'The Act' came into force on April 25, 1973. It is an Act to control the increase of rent of certain buildings and rented land situated within the limits of urban areas, and the eviction of tenants therefrom. Section 1 (3) of the Act reads thus:

1(3) "Nothing in this Act shall apply to any building the construction of which is completed on or after the commencement of this Act for a period of ten years from the date of its completion." There is no doubt that when the suits in the cases were filed by the respondents, the Act was not applicable in view of the said section. But before the trial concluded, the moratorium period of ten years came to an end and the decrees were passed only thereafter. The appellants contend that the Court lost its jurisdiction on the expiry of the ten-years period and the decree passed of thereafter is a nullity. For raising this contention the appellants invoke in their aid the provisions of Section 13(1) of the Act which is in the following terms :

13 (1) "A tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of this Section."

It is argued that a special forum has been created and a specific procedure has been prescribed in the Act without resort to which a tenant cannot be evicted from the demised premises.

5. It is argued that the Act is intended to be beneficial to the tenants and special protection is afforded to them. According to the learned counsel for the purpose of the Act the expression 'tenant' includes a tenant continuing in possession after the termination of his tenancy and at the expiry of period of ten years set out in Section 1 (3) of the Act, the 'building' comes within the fold of the Act

and the tenant in occupation will automatically have the protection afforded by the Act. Emphasis is laid on the wording of Section 13 (1) which prevents eviction of a tenant in possession except in accordance with the provisions of the Section. According to the learned counsel the moment, the Act becomes applicable to the building in question, the suit in relation thereto has to abate and the remedy of the landlord is to approach the Controller with an application for eviction on any of the grounds set out in the Section. According to him even if a decree is passed by the civil court it will not be enforceable and the tenant cannot be evicted from the building pursuant to the decree as the bar in Section 13 (1) is absolute. In support of this contention, learned counsel has placed reliance on some of the rulings of this Court which will be adverted to a little later.

6. On the other hand, learned counsel for the respondents has placed before us the following proposition:

a) On the date when the suit was instituted it was to enforce a legal right which had already accrued to the plaintiff and stood crystallized under the law applicable to the building at that time. In the absence of any specific provision in the Act to deprive the Court of its jurisdiction to determine the issue pertaining to that right, it cannot be contended that by efflux of ten year period mentioned in Section 1 (3) the Court would lose its jurisdiction.

b) The maxim *ubi jus ubi remedium* can be excluded only by a substantive legislation expressly extinguishing the said right. The Act does not contain any such provision to bring to an end the right of the plaintiff which had already accrued and put in issue in the suit. A judicial vacuum cannot be created by preventing the Court from deciding an issue which has arisen before it unless the right which had accrued in favour of one party is taken away by the Legislation.

c) The principle of *maxim actus curiae neminem gravabit* would apply and because the Court had taken a long time to dispose of the matter before is, the party which had approached it cannot be made to suffer.

d) The provisions of Section 1 (3) and Section 13(1) should be so construed as to advance the legislative intention and if the contention of the appellants is accepted it would defeat the purpose of the moratorium and make it futile.

In support of the above contentions learned counsel has referred to several rulings of this Court and submitted that the consistent View taken by this Court is in his favour.

7. Before referring to the decisions cited before us it is necessary to advert to the provisions of the Act. We have already quoted Section 1 (3) and 13(1). Apart from the legislative exemption contained in Section 3 of the Act enabling the State Government to exclude any building or any class of buildings from the purview of the Act. Section 4 to 8 deal with fair rent, deposit of rent etc. Section 9 to 10 refer to the amenities to be provided to the tenant. Section 11 prevents conversion of a residential building into a non-residential building except with the permission in writing of the

Controller. Section 12 deals with the situation where a landlord fails to make the necessary repairs. Section 13 sets out the grounds on which eviction can be sought by a landlord. Section 13A prescribes special procedure for disposal of the application special procedure for disposal of the application by a landlord in certain cases such as members of the Armed Forces, Government employees etc. Section 14 prevents re-opening of decisions which have become final. Section 15 prescribes appellate and the revisional authorities. Section 16 provides that an authority exercising powers under the Act shall have the same powers of summoning and enforcing the attendance of witnesses and compelling the production of evidence as are vested in a Court under the Civil Procedure Code. Section 17 to 23 deal with orders as to costs, execution, power to transfer proceedings, penalties etc. Section 24 repeals the East Punjab Urban Rent Restriction Act 1949 (East Punjab Act No.3 of 1949).

8. There is no provision in the Act taking away the jurisdiction of a civil court to dispose of a suit validly instituted. There is also no provision preventing the execution of a decree passed in such a suit. Section 13 (1) does not expressly refer to execution of a decree for possession. On a reading of all the provisions of the Act, it is evident that it has not prevented a civil court from adjudicating the rights accrued and the liabilities incurred prior to the date on which the Act became applicable to the building in question. If the Legislature had intended to take away the jurisdiction of the civil court to decide a suit which had been validly instituted, it would have been worded differently. The purpose for which the exemption is granted statutorily under Section 1 (3) is to encourage construction of new buildings. That purpose would be defeated if the owner of the building is deprived of his right to get possession of the building unless he gets a decree within a period of ten years from the date of its completion. In fact the logical consequence of the argument of the appellants if accepted would be that even if a decree is obtained by the landlord within ten years from its completion it cannot be executed after the expiry of the said period of ten years as such execution would not be in accordance with the provisions of the Act. It is common knowledge that a proceeding in a civil court for recovery of immovable property could be dragged on by the defendant easily for a period of ten years or more and thereby and tenant whose tenancy had been terminated validly before the suit would successfully make the proceeding infructuous by prolonging the litigation. The argument of the appellants cannot be accepted as otherwise the purpose of exemption would get defeated.

9. The earliest case brought to our notice is *Firms Amar Nath Basheshar Dass Versus Tek Chand* 1972 (3) S.C.R. 922. The construction of the building in that case was completed in March 1960 and a suit for ejectment was filed on 14.1.63. The decree was passed on 14.8.69. The executing court dismissed the petition for execution on the ground that the conditions prescribed in the Notification of the Government of Punjab under Section 13 of Punjab Urban Rent Restriction Act 1949 dated 30.7.65 exempting such decrees from Section 13 of the Act were not complied with. An appeal against the judgment was unsuccessful but on second appeal the High Court held that the decree was exempted under the Notification and it was executable. This Court confirmed the decision of the High Court. The Court took note of the fact that it became necessary for each of the State Governments not only to undertake building schemes itself but also to encourage persons who had means to build by exempting newly constructed buildings which were let out to tenants from rent control restrictions for a particular period. In that case the State Government in exercise of the

power conferred on it by Section 3 of the Act referred to above was notifying exemption from time to time during a period of twenty years. The relevant Notification dated 30.7.65 imposed two conditions in respect of decrees for ejectment of tenants for being outside the provisions of Section 13 of the Act. The first condition was that buildings should have been constructed during the years 12959, 1960, 1961, 1962 and 1963 and they are exempted for five years from the date of completion. The second condition was that suits for ejectment of tenants in possession should be instituted in civil courts during the aforesaid period of exemption and decrees of ejectment were passed. On a construction of the Notification this Court held that under the second condition a suit must end in a decree though that decree may be passed subsequent to the expiry of five years during which exemption from the application of the Section had been granted.

10. In *Shri RamSaroop Rai Versus Smt. Lilavati* (1980) 3 S.C.C. 452 while dealing with a case under the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act 1972, Justice Krishna Iyer referred to the object of exemption from the applicability of the Act in the following words:

"...Chronic scarcity of accommodation in almost every part of the country had made 'eviction' litigation explosively considerable, and the strict

protection against ejectment, save upon restricted grounds, had become the policy of the State. Rent control legislation to give effect to this policy exists everywhere, and we are concerned with one such in the State of U.P (U.P Act 13 of 1972). The legislature found that rent control law has a chilling effect on new building constructions, and so, to encourage more building operations, amended the statute to release from the shackles of legislative restriction, 'new construction' for a period of ten years. So much so, a landlord who had let out his new building could recover possession without impediment if he instituted such proceeding within ten years of completion"

The aforesaid observations would apply in the present case too.

11. In *Vineet Kumar Versus Mangal Sain Wadhera* (1984) 3 S.C.C. 353 on which strong reliance is placed by the period of exemption granted to new buildings under Section 2 (2) of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act 1972. During the pendency of the suit the period of exemption came to an end and the defendant resisted the same on the ground that he was entitled to get the benefits of the Act. That plea of the defendant was upheld by a Bench of Two Judges of this Court. The Bench relied upon the judgment in *Pasupuleti Venkateswarulu Versus Mmotors and General Traders* (1975) 1 S.C.C. 770 wherein it was held that events and developments subsequent to the institution of proceedings must be taken into consideration in appropriate cases to promote substantial justice. On that premise the Court opined that the subsequent event of the Act becoming applicable to the building on the expiry of the period of exemption could be taken advantage of by the tenant.

12. In *Mohinder Kumar and others Versus State of Haryana and another* (1985). 4 S.C.C. 221 a Bench of Three Judges considered a case arising under the Haryana Act, the same as in the present

case. The validity of the amending Act 16 of 1978 which introduced Section 1 (3) in the present form was upheld. The Court considered the object of the legislation and in particular the provision for exemption from the operation of the legislation. The Court said :

"...As in view of the rigours of Rent Control Legislation, persons with means may not be inclined to invest in construction of new houses, the Legislature to attract investment in construction of new houses may consider it reasonable to provide for adequate incentives so that new constructions may come up. It is an elementary law of economics that anybody who wants to invest his money in any venture will expect a fair return on the investment made. As acute scarcity of accommodation is to an extent responsible of the landlord and tenant problem, the measure adopted by the Legislature for seeking to meet the situation by encouraging the construction of new buildings for the purpose of mitigating the hardship of tenants must be considered to be a step in the right direction. The provision for exemption from the operation of the Rent Control Legislation by way of incentive to persons with means to construct new houses has been made in Section 1 (3) of the Act by the Legislature in the legitimate hope that construction of new buildings will ultimately result in mitigation of the hardship of the tenants. Such incentive has a clear nexus with the object to be achieved and cannot be considered to be unreasonable or arbitrary. Any such incentive offered for the purpose of construction of new buildings with the object of easing the situation of scarcity of accommodation for ameliorating the conditions in the tenants, cannot be said to be unreasonable, provided the nature and character of the incentive and the measure of exemption allowed are not otherwise unreasonable and arbitrary. The exemption to be allowed must be for a reasonable and definite period. An exemption for an indefinite period or a period which in the facts and circumstances of any particular case may be considered to be unduly long, may be held to be arbitrary. The exemption must necessarily be effective from a particular date and must be with the object of promoting new constructions. With the commencement of the Act, the provisions of the Rent Act with all the restrictions and rigours became effective. Buildings which have been constructed before the commencement of the Act were already there and the question of any kind of impetus or incentive to such buildings does not arise. The Legislature, therefore, very appropriately allowed the benefit of the exemption to the buildings, the construction of which commenced or was completed on or after the commencement of the Act. This exemption in respect of the buildings coming up or to come up on or after the date of commencement of the Act is likely to serve the purpose of encouraging new buildings to be constructed.

There is therefore nothing arbitrary or unreasonable in fixing the date of commencement of the Act from which the exemptions to be operative."

The Court also held that the period of ten years for exemption was quite reasonable.

13. In Nand Kishore Marwah & Ors, Versus Samundri Devi (1987) 4 S.C.C. 382 a case arising under the U.P. Act, a Bench of Two Judges dissented from the view expressed in Vineet Kumar Versus Mangal Sain Wadhera (supra). The Court held that the rights of the parties will be determined on the basis of the rights available to them on the date of suit and upheld the eviction decree passed in that case.

14. In Atma Ram Mittal Versus Ishwar Singh Punia (1988) 4 S.C.C. 284 a Bench of Two Judges held that Vineet Kumar (supra) was impliedly overruled. That was also a case arising under the present Act. The Bench pointed out that if the immunity from the operation of the Rent Act is made an depended upon the ultimate disposal of the case within the period of exemption of ten years which is in reality an impossibility, the community or exemption would become illusory and provide no incentive to the landlords to build new houses to solve problem of shortage of houses. The Court referred to the maxim *actus curiae neminem gravabit* and held that once rights are crystallised, the adjudication must be in accordance with law. The Court also relied upon the principle that purposive interpretation in a social ameliorative legislation is an imperative irrespective of anything else and while ascertaining the legislative intent the Court should look into the true meaning of the words that the legislature has used.

15. In Kesho Ram & Co & Ors. etc, Versus Union of India & Ors, 1989 2 S.C.R. 1005 the suits were filed during the period of exemption of five years under the Notification issued under East Punjab Urban Rent Restriction Act 1949. When the period of five years expired during the pendency of the suit, the tenants raised objections on the ground that the suit could not be decreed in view of Section 13 of the Act. The contention was rejected by the Bench of Three Judges. Referring to the provisions of the East Punjab Urban Rent Restriction Act and the Notification made thereunder the Court said:

"...The emphasis is on the institution of the suit within the period of exemption of five years. Once the landlord institutes a suit before the expiry of the period of exemption, the decree even if passed after the period of five years will not be subject to the provisions of Section 13 of the Act. This is the true meaning of the Notification. The Notification does not enlarge the period of exemption instead it safeguards the rights of the parties it safeguards the rights of the parties which crystallise on the date of institution of the suit."

The Court proceeded to trace the case law on the subject and rejected the submission made on behalf of the tenants on the ground that the acceptance thereof would result in reducing an Act to a dead letter or to defeat the object and purpose of the Statute.

16. In Suresh Chand Versus Gulam Chisti (1990) 1 S.C.C. 595 another Bench of Three Judges referred to the entire case law on the subject and held that the expiry of the period of exemption during the pendency of the suit cannot enable the tenant to claim the benefits of the Act. Following the ruling in Atma Ram Mittal's case (supra) the Court said that the interpretation pleaded by the tenant would encourage him to protract the litigation and if he succeeds in delaying the disposal of the suit till the expiry of the period, he would secure the benefits of the Act and therefore it was not possible to uphold that plea.

17. In *Ramesh Chandra Versus III Additional District Judge & Ors.* (1992) 1 S.C.C 751 yet another Bench of Three Judges dealt with a case under the U.P. Act and held that the law applicable on the date of the institution of the suit would govern the suit since on the date of institution of the suit, the building was exempted from the operation of the Act and the suit being one preceded by notice under Section 106 of the Transfer of Property Act was maintainable. The Court opined that the suit as instituted had to be disposed of without reference to the Act. The Court observed that *Vineet Kumar* (supra) stood overruled.

18. In *Bhola Nath Varshney Versus Mulk Raj Madan* (1994) 2 S.C.C. 127, the case was again under the U.P. Act. The Bench held that the law applicable on the date of the institution alone would govern the suit.

19. In *Parripati Chandrasekharrao & Sons Versus Alapati Jalaiah* (1995) 3 S.C.C. 709 a Division Bench pointed out the distinction between the rights of a landlord and the rights of a tenant. It was held that the theory of the vested rights which may validly be pleaded to support the landlord's case is not available to the tenant.

20. Thus it is seen that this Court has been consistently taking the view that a suit instituted during the period of exemption could be continued and a decree passed therein could be executed even though the period of exemption came to an end during the pendency of the suit. The only discordant note was struck in *Vineet Kumar Versus Mange Lal Wadhwa* (1984) 3 S.C.C. 353. We have noticed that several decisions subsequent thereto have held that *Vineet Kumar* is not good law. We have already construed the relevant provisions of the Act which prevents the civil court from continuing the suit and passing a decree which could be executed.

21. Learned counsel for the appellants attempted to make a distinction between the provisions of the Section 20 of the U.P. Act and Section 13 of the present Act. The wording in the former is as follows: "Save as provided in sub-section (2), no suit shall be instituted for the eviction of a tenant from a building, notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner' According to the learned counsel bar against the institution of a suit would stand on a different footing from bar against eviction as such which is contained in Section 13 of the Act. In our opinion the difference in language does not help the appellants in any manner. We have already pointed out that Section 13 of the Act does not make any reference to a decree passed in a civil suit. When a suit is validly instituted and the rights of parties which had crystallised on the date of the suit are determined by a decree in that suit the execution thereof cannot be stopped by the provisions of Section 13 of the Act. Hence, we are unable to accept any of the contentions of the appellants. In the result the appeals fail and are dismissed. There will be no order as to costs.