KESHO RAM & CO. & ORS. ETC.

v.

UNION OF INDIA & ORS.

MAY 2, 1989

[K.N. SINGH, M.H. KANIA AND L.M. SHARMA, JJ.]

Constitution of India, 1950: Article 141—Court's decision—Binding effect of—Does not depend on whether a particular argument was considered or not.

East Punjab Urban Rent Restriction Act, 1949: Sections 3, 13 and Notification dated September 24, 1974—Constitutional validity of—Exemption granted to new buildings in urban area of Chandigarh for five years—Jurisdiction of Civil Court to pass eviction decree.

The appellants/petitioners are tenants of buildings situate within the Urban Territory of Chandigarh. The buildings occupied by them as tenants were exempted from the operation of section 13 of the East Punjab Urban Rent Restriction Act 1949 for a period of five years under the notification dated September 24, 1974 issued under Section 3 of the Act. The landlords of these buildings had filed in the Civil Court suits for eviction against the tenants. During the pendency of those suits, the five years period expired. Thereupon the tenants raised objections on the ground that (a) the suits could not be decreed in view of the provisions of section 13 of the Act, which had placed an embargo on the landlord's right to get his tenant evicted or to obtain possession of the building except in accordance with the provisions of section 13, and (b) the civil court had no jurisdiction to pass a decree of eviction or to execute the same against a tenant.

The validity of section 3 of the Act as well as the validity of the notification dated 24th September, 1974 were assailed before this Court earlier on two occasions. In *Amarnath Basheshar Dass* v. *Tek Chand*, [1972] 3 SCR 922 this Court had upheld the notification granting exemption and had further held that if the suit was instituted within the period of exemption, decree could be passed even after the expiry of the period of five years, and the same could be executed. In *Punjab Tin Supply Company Chandigarh* v. *Central Government & Ors.*, [1984] 1 SCR 428 this Court had held that the notification granting exemption advanced the scheme, object and purposes of the Act, and it did not violate any of the provisions of the Act and was not discriminatory,

A arbitrary or unreasonable.

In the instant cases, another attempt has been made to challenge the validity of section 3 and the notification on some additional grounds. The submissions made by the counsel are: (i) Section 3 is unconstitutional as it delegates essential legislative function to the Central Government without laying down any guidelines for exercise of the power of exemption; (ii) the notification enlarges the period of exemption for an indefinite period, tends to amend section 13 of the Act, and is contrary to the object and purpose of the Act; rather it defeats the protection granted to a tenant by the Act; (iii) the notification is discriminatory as it creates two class of tenants; tenants of old buildings which never enjoyed the exemption from the provisions of the Act, and the tenants of the newly constructed buildings which are denied the protection of the Act.

Dismissing the appeals and the writ petitions, this Court,

HELD: (1) Some of the tenants in the instant cases were parties before this Court in *Punjab Tin Supply Company,* case. The petitions by such tenants are not maintainable as the same are barred by principles of res-judicata. Finality in litigation and public policy both require that a litigant should not be permitted to challenge the validity of the provisions of the Act or Notification at different times on different grounds. Once petitioners' challenge to section 3 and the notification had been considered by the Court and the validity of the same upheld, it must be presumed that all grounds which could validly have been raised were raised and considered by the Court. [1015G-H; 1016A]

(2) The binding effect of a decision of this Court does not depend upon whether a particular argument was considered or not, provided the point with reference to which the argument is advanced subsequently was actually decided in the earlier decision. [1016C]

Smt. Somavanti & Ors. v. *State of Punjab,* [1963] 2 SCR 774; *T. Govindaraja Mudaliar* v. *State of Tamil Nadu,* [1973] 1 SCC 336 and *Anil Kumar Neotia* v. *Union of India,* [1988] 2 SCC 587, referred to.

(3) On the principles of res-judicata, and also in view of Article 141 of the Constitution, the law declared by this Court in *Punjab Tin Supply Company* case is binding on the petitioners. [1016E]

(4) Section 3 of the Act does not suffer from any vice of constitu-

tional infirmity and it is a valid provision. [1017B]

P.J. Irani v. *State of Madras,* [1962] 2 SCR 169; *Sadhu Singh* v. *The District Board Gurdaspur,* C.A. No. 2594/66 decided on 29.10.1968 and *State of Madhya Pradesh* v. *Kanhaiyalal,* [1970] 15 MPLJ 973, referred to.

(5) The notification does not enlarge the period of exemption nor it destroys the protection granted to tenants under the Act. Instead, it safeguards the rights of the parties which crystallise on the date of institution of the suit. [1019B]

(6) 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, and the civil court will have jurisdiction to pass decree even after the expiry of the period of exemption and to execute the same notwithstanding the provisions of section 13 of the Act in view of the Notification dated September 24, 1974. [1018H; 1019A; 1022F]

Vineet Kumar v. *Mangal Sain Wadhera,* [1984] 3 SCC 352; *Shiv Kumar* v. *Jawahar Lal Verma,* [1988] 4 SCC 763; *Om Prakash Gupta* v. *Dig Vijendrapal Gupta,* [1982] 3 SCR 491; *Nand Kishore Marwah* v. *Smt. Samundri Devi,* [1987] 4 SCC 382 and *Atma Ram Mittal* v. *Ishwar Singh Punja,* [1988] 4 SCC 284, referred to.

(7) While considering the interpretation and validity of the provisions granting exemption, either by statutory provision made in the Act or by notification issued under the Act, it is necessary to bear in mind the object and purpose of exemption. The paramount object and purpose of exemption is to provide incentive for construction of new buildings, to meet the shortage of accommodation which would ultimately result in benefitting the tenants. The notification granting exemption is, therefore, not contrary to the object and purpose of the Act. [1018A-B]

(8) The shackles of the rent control legislation had chilling effect on the landlords and they were reluctant to invest their capital in making new constructions. By granting holiday from the restrictions of regulations of rent control laws, impetus was given to the landlords to construct new buildings so that after the expiry of period of exemption the building so constructed are available for needy tenants controlled by the Act. [1019E-F]

A **(9) Section 3 which provides for granting exemption from the provisions of the Act is by way of an exception to section 13 and therefore the two provisions need not be consistent in their effect. The object of having a proviso or exemption is to neutralise the effect of the main provision. If that is not so, it would not be necessary to have an exemption. Public purpose as well as larger interest of tenants require** B **availability of more and more accommodation in the shape of new buildings, and for that purpose exemption is necessary to be provided. In ultimate analysis provisions of section 3 and 13 both seem to achieve the same result. [1019B-D]**

(10) It is a settled rule of harmonious construction of statutes that C **a construction which would advance the object and purpose of the legislation should be followed and a construction which would result in reducing a provision of the Act to a dead letter or to defeat the object and purpose of the statute should be avoided without doing any violence to the language. [1020F-G]**

D **(11) Classification of buildings with reference to the date of completion for the purpose of regulating the rent and eviction of tenants from such buildings has a rational basis and has a clear nexus with the object to be achieved. Classification is founded on intelligible differntia which has a rational nexus with the object of the Act. [1022C]**

E *Mohinder Kumar* **v.** *State of Haryana,* **[1985] 4 SCC 221, followed.**

CIVIL APPELLATE AND ORIGINAL JURISDICTIONS: Civil Appeal Nos. 3421, 264-65, 4540 of 1984.

F From the Judgment and Order dated 21.8.84, 4.1.84 and 17.10.84 of the Punjab and Haryana High Court in Civil Writ Petition Nos. 3672, 31 and 4723 of 1984 respectively.

WITH

G Writ Petition Nos. 5286/85, 13264-86/83, 1118-20/84, 12274, 14151-53, 13744, 16123, 17296, 16907-08, 17306, 113-14, 2747, 11803-04, 10229-35, 12905, 12837, 5328-29/85, 620, 482/86, 37-55/84, 261, 328, 181, 11972, 12574, 11200-05, 17534, 475-83, 11233-34, 11270-73/84, 9597/83, 5864/85, 107, 109-21/84, 2599-93, 3239-41/85 and C.M.P. Nos. 17551/87, W.P. Nos. 1276/87, 2584/85, 1490/86, SLP (C) Nos. H 7794/83 and CMP No. 10886/88 in (W.P. No. 1490/86), W.P. No.

937/88, with W.P. No. 388 of 87, 1212/87 and 1487/87.) A

(Under Article 32 of the Constitution of India.)

R.P. Bhat, V.M. Tarkunde, S.D. Sharma, A.K. Ganguli, Kapil Sibbal, K.G. Bhagat, Ms. Sudha Sharma, Ms. Asha Rani Madan, Mahabir Singh, M.P. Jha, S.K. Jain, A.K. Goel, Nandini Gore, H.K. Puri, Manoj Swarup, Sushil K. Jain, Rishi Kesh, Dvender N. Verma, P.C. Kapur, B.B. Swhney, N.A. Siddiqui, K.K. Gupta, Parveen Kumar, Arvind Minocha, Harjinder Singh, S.M. Ashri, C.M. Nayar, R.K. Talwar, S. Markandeya, M.C. Dhingra, E.M.S. Anam, Vishal Malik, B.B. Tawakley, M.M. Kashyap, Jitender Kumar Sharma, Randhir Jain, A.D. Sikri, Jitender Sharma, D.D. Gupta, P.N. Puri, R.K. Kapur, R.P. Jugga, R.C. Setia, Mrs. M. Karanjawala, N.S. Das Behal, Prem Malhotra, Mrs. Urmila Kapur, N.D. Garg, B.S. Shant, J.D. Jain, H. Wahi, S.K. Jain, D.M. Nargolka, Mrs. Kawaljit Kochar, Prem Malhotra, R.K. Handa, K.K. Lahiri, Pankaj Kalra, A.K. Sanghi, Mahabir Singh, Mrs. H. Wahi, K.K. Mohan and P.N. Puri for the appearing parties. B C D

The Judgment of the Court was delivered by

SINGH, J. In this batch of Civil Appeals, Special Leave Petitions and Writ Petitions, under Article 32 of the Constitution, Validity of Section 3 of the East Punjab Urban Rent Restriction Act 1949 and the Notification No. 3205-LD74/3614 dated September 24, 1974 issued thereunder by the Chief Commissioner, Union Territory of Chandigarh, granting exemption from Section 13 of the Act to buildings constructed in the urban area of Chandigarh for a period of five years have been challenged. E F

The appellants in the appeals as well as the petitioners in the Special Leave Petitions and Petitions under Article 32 of the Constitution, are tenants of buildings situate within the Urban Territory of Chandigarh. The buildings occupied by the appellants/petitioners as tenants were exempted from the operation of the East Punjab Urban Rent Restriction Act 1949 (hereinafter referred to as the Act) for a period of five years under the impugned Notification dated 24.9.1974. The landlords of these buildings filed suits for eviction in the Civil Court, against the tenants. During the pendency of suits five years period expired, thereupon, the tenants raised objection that the suits could not be decreed in view of the provisions of Section 13 of the Act. Some of the tenants filed writ petitions under Article 226 of the Con- G H

A stitution before the High Court challenging the jurisdiction of the civil court to proceed with the suits or to pass decree of eviction against them on the ground that on expiry of five years period of exemption Section 13 of the Act became applicable and the civil court ceased to have jurisdiction. The High Court repelled the tenants' contentions and dismissed their petitions. The tenants filed Civil Appeals, Special B Leave Petitions in this Court challenging the correctness of the order of the High Court. Some of the tenants against whom suit is pending before the trial court approached this Court by means of petitions under Article 32 of the Constitution challenging the validity of the proceedings taken by the landlords for their eviction. Since all these cases involve common questions the same are being disposed of by a C common order.

The East Punjab Urban Rent Restriction Act, 1949 seeks to regulate and restrict the increase of rent of premises situate within the urban areas and the eviction of tenants therefrom. No landlord of a building situate in an urban area to which the provisions of the Act D apply is free to charge rent from the tenants according to his sweet will, or to evict a tenant by filing suit by terminating tenancy, in view of the provisions of the Act placing restrictions on the landlord's rights. The provisions of the Act were applied and extended to the urban area of the Union Territory of Chandigarh by the East Punjab Urban Rent Restriction (Extension to Chandigarh) Act 1974. On such E extension all buildings situate in the urban area of Chandigarh, became subject to the provisions of the said Act, with the result landlords' right to charge rent or to evict tenants at their sweet will are curtailed and regulated in accordance with the provisions of the Act. The object of the East Punjab Urban Rent Restriction Act, 1949 is to provide safeguards to tenants against exploitation by landlords who F seek to take undue advantage of the pressing need for accommodation. The provisions of the Act provide for fixation of fair rent and prevention of unreasonable eviction of tenants. Sections 4 to 9 provide for fixation of rent, its recovery, enhancement and other allied matters relating to rent. Section 10 enjoins the landlords not to interfere with the amenities enjoyed by the tenants. Section 11 prohibits conversion G of a residential building into a non-residential building except with the written permission of the Controller appointed under the Act. Section 12 mandates a landlord to make necessary repairs in the building let out to a tenant, and on his failure, it is open to the tenant to carry out repairs with the permission of the Controller and the cost thereof may be deducted from the rent payable to the landlord. Section 13 places H an embargo on the landlord's right to get his tenant evicted or to

obtain possession of the building. No decree for eviction against a tenant can be executed except in accordance with the provisions of the Section. A landlord seeking to evict a tenant is required to apply to the Controller appointed under the Act, and if the Controller after giving opportunity to the tenant is satisfied that the grounds set out in Section 13(2) and (3) are made out, he may make order directing the tenant to put the landlord in possession of the building. The remaining provisions of the Act deal with appeals, revisions, and State Government's powers to appoint Appellate Authority and other allied matters. Under the scheme of the Act a tenant of a building in urban area to which the Act applies, cannot be evicted from the rented building or land except in accordance with the provisions of Section 13 of the Act and the civil court has no jurisdiction to pass a decree of eviction or to execute the same against a tenant.

Section 3 of the Act as amended by the Extension Act 1974 reads as under:

> "3. The Central 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."

The Chief Commissioner of Union Territory of Chandigarh exercising powers of the Central Government published a Notification dated January 31, 1973 exempting buildings referred to therein from the operation of the Act. It reads as under:

> "No. 352-LD-73/602 dated January 31, 1973.—In exercise of the powers conferred by Section 3 of the East Punjab Urban Rent Restriction Act, 1949 (Punjab Act No. III of 1949), as applicable to the Union Territory of Chandigarh, the Chief Commissioner, Chandigarh, is pleased to direct that the provisions of the said Act shall not apply to buildings, constructed in the urban area of Chandigarh, for a period of five years with effect from the date of sewerage connection is granted in respect of such buildings by the competent authority under rule 112 of the Punjab Capital (Development and Regulation) Building Rules, 1952."

The aforesaid Notification was followed by another Notification dated September 24, 1973 issued by the Chief Commissioner, Chandigarh, setting out the manner and method for computing period

of five years of exemption, granted to the buildings constructed in the urban areas of Chandigarh. On September 24, 1974, the Chief Commissioner, issued another Notification, which reads as under:

> "No. 3205-LD-74/3614.
>
> In exercise of the powers conferred by Section 3 of the East Punjab Urban Rent Restrication Act, 1949 as applicable to the Union Territory of Chandigarh, the Chief Commissioner, Chandigarh, is pleased to direct that the provisions of Section 13 of the said Act shall not apply to buildings, exempted from the provisions of the Act for a period of five years vide Chandigarh Administration Notification No. 352-LD-73/602 dated the 31st January, 1973 in respect of decrees passed by Civil Courts in suits for ejectment of tenants in possession of these buildings instituted by the landlords against such tenants during the period of exemption whether such decrees were or are passed during the period of exemption or at anytime thereafter."

The effect of the Notification dated January 31, 1973 was that all newly constructed buildings in the urban area of Chandigarh were granted exemption from the provisions of the Act for a period of five years. The Notification also set out the method of computing the period of five years. But the Notification dated 24th September, 1974 directed that the provisions of Section 13 of the Act shall not apply to buildings situate in the urban area of Chandigarh for a period of five years, in respect of decrees passed by civil courts in suits for ejectment of tenants, instituted during the period of exemption notwithstanding the fact that such decrees are passed during the period of exemption or at any time thereafter. The effect of the Notification is that protection granted to tenants against eviction under Section 13 of the Act is not available to them for a period of five years and if the landlord institutes a suit for eviction against the tenant within the aforesaid period of five years, the restrictions contained in Section 13 of the Act shall not apply to such suits and the civil court has jurisdiction to pass decree of eviction and to execute the same, even though five years period of exemption expired during the pendency of the suit. The tenants have assailed validity of Section 3 of the Act and the Notification dated 24.9.1974.

This is the third round of litigation initiated by tenants in challenging Section 3 of the East Punjab Urban Rent Restriction Act 1949

and Notifications issued thereunder for the purpose of granting exemption to the newly constructed buildings in the urban areas for a period of five years from the operation of the provisions of the Act. In *Amarnath Basheshar Dass* v. *Tek Chand,* [1972] 3 SCR 922 this Court considered the validity of Notification dated 30.7.1965 issued in exercise of the power conferred under Section 3 of the Act granting exemption to buildings constructed during the years 1959, 1960, 1961, 1962 and 1963 from all the provisions of the Act for a period of five years, and the provisions of Section 13 of the Act were not to apply in respect of decrees for ejectment of tenants in possession of buildings provided the suit was instituted in civil court by the landlord against the tenant during the period of exemption. This Court upheld the Notification granting exemption and it further held that if the suit was instituted within the period of exemption, decree could be passed even after the expiry of the period of five years, and the same could be executed. The second round of litigation came up to this Court in *Punjab Tin Supply Company Chandigarh etc.* v. *Central Government & Ors.,* [1984] 1 SCR 428 where the validity of Section 3 of the Act as well as the validity of the impugned Notification date 24th September 1974 were assailed on a number of grounds. On an elaborate discussion this Court upheld the validity of Section 3 of the Act and the impugned Notification. The Court held that the Notification granting exemption advanced the scheme, object and purposes of the Act and it did not violate any of the provisions of the Act and it was not discriminatory, arbitrary or unreasonable. In the instant cases, another attempt has been made to challenge the validity of Section 3 and the Notification dated 24.9.1974. Most of the arguments advanced by learned counsel for the appellants and petitioners are the same which have already been considered and rejected by this Court in the aforesaid cases but learned counsel made attempts to raise some additional submissions in assailing the validity of the Notification to which we shall refer at the appropriate stage.

Sh. Tarkunde and other counsel appearing for the tenants in the instant cases made several submissions in challenging the validity of Section 3 of the Act and Notification dated 24th September, 1974. When the earlier decision of this Court in *Punjab Tin Supply Company's* case (supra) was brought to their notice where the impugned Notification itself had been held valid, the learned counsel made an effort to challenge the validity of the Notification on additional grounds. These submissions are directed against the second part of the impugned Notification which states; whether such decrees were or are passed during the period of exemption or *"at any time thereafter"*

(emphasis supplied). They urged that the Notification granted exemption to newly constructed buildings from the operation of Section 13 of the Act for a period of five years but the second part of the Notification as extracted, and particularly the expression "at any time thereafter" enlarged the exemption for an indefinite period and it tends to amend Section 13 of the Act not permissible under the law. The submissions made by the counsels are: (i) Section 3 is unconstitutional as it delegates essential legislative function to the Central Government without laying down any guidelines for exercise of the power of exemption; (ii) the impugned Notification enlarges the period of exemption for an indefinite period and it tends to amend Section 13 of the Act, and it is contrary to the object and purpose of the Act rather it defeats the protection granted to a tenant by the Act, (iii) the Notification is discriminatory as it creates two class of tenants; tenants of old buildings which never enjoyed the exemption from the provisions of the Act and the tenants of the newly constructed buildings which are denied the protection of the Act.

Some of the learned counsels appearing for the tenants submitted that we should refer these cases to a Constitution Bench in view of the observations made by a three-Judges Bench of this Court in *Narendra Kumar Sharma's* case (*Narendra Kumar Sharma* v. *Smt. Kailashwati,* C.A. No. 3994 of 1982). While granting leave a Bench of three-Judges passed the following order on November 9, 1983:

> "After hearing the counsel for both the parties at some length, it seems to us that the correctness of the decisions in *Firms Amar Nath Bashesh Das* v. *Tek Chand,* [1972] 3 SCR 922, is open to doubt. It appears that the interpretation placed by the Court as to the scope and effect of the exemption in Section 3 of the East Punjab Urban Rent Restriction Act, 1949, which is pari-materia with Section 3 of the East Punjab Urban Rent Restiction Act, 1949, (as extended to the Union Territory of Chandigarh) with which we are concerned in this appeal, requires reconsideration. We do feel that the second part of the impugned notification issued by the Chief Commissioner, Chandigarh dated September 24, 1974, under Section 3 of the Act, in effect, permits the Civil Courts to pass decrees in suits for ejectment of tenants instituted by the landlords even after the expiry of the period of exemption, contrary to the statutory bar contained in Section 13 of the Act and therefore it could not be upheld.

Let the papers be laid before Hon'ble the Chief Justice of India for placing the matter before a larger Bench." A

On 23rd April, 1986, Bhagwati, C.J. (as he then was) presiding over a three-Judges Bench held that reference to a larger Bench was only in respect of suits for ejectment of tenants instituted by the landlords after the expiry of period of exemption and it did not cover cases B where suits were instituted by the landlords prior to the expiry of the period of exemption although decrees were passed subsequent to the period of exemption. In this view *Narendra Kumar Sharma's* case wherein suit had been instituted during the period of exemption was not referred to a Constitution Bench. Another Bench consisting of Hon'ble Khalid and Hon'ble Dutt, JJ. took the same view and directed C that the case of Narender Kumar Sharma is not covered by the order of reference.

Ultimately, *Narendra Kumar Sharma's* case was heard by a Bench of two Judges consisting of Hon'ble Mukharji and Hon'ble K.J. Shetty, JJ. and it was dismissed on merits on September 24, 1987. It D appears that during the pendency of *Narendra Kumar Sharma's* case the tenants encouraged by the observations made in the order dated 9.11.1983 approached this Court again to challenge the validity of the Notification by means of the present batch of petitions. In our view, observations made in *Narendra Kumar Sharma's* case by a Bench of three-Judges do not pertain to suits filed by the landlords during the E period of exemption although decree may have been passed after the expiry of exemption. In the instant cases none of the cases fall into that category, there is therefore no justification for referring these cases to a larger Bench.

Before we consider the submissions made on behalf of the tenants F we would like to point out that some of the tenants who were unsucessful before this court in *Punjab Tin Supply Company's* case, have again filed petitions challenging the validity of Section 3 and the impugned Notification on additional grounds. In our opinion the petitions by such tenants are not maintainable as the same are barred by principles of res-judicata. Once the petitioners challenged the validity of the G impugned Notification dated 24.9.1974 in earlier proceedings they ought to have raised all the grounds which could have been raised in impugning the validity of Section 3 and the Notification, if they failed to raise a ground in earlier petition they cannot raise that ground now in the present proceedings. Finality in litigation and public policy both require that a litigant should not be permitted to challenge validity of H

A the provisions of the Act or Notification at different times on different grounds. Once petitioners challenge to Section 3 and the impugned Notification was considered by the Court and the validity of the same was upheld it must be presumed that all grounds which could validly be raised were raised and considered by the Court. Learned counsel for the petitioners urged that the questions which are being raised in the B present proceedings were neither raised nor considered by this Court in *Punjab Tin Supply Company's* case, therefore it is open to them to question the validity of Section 3 and the Notification dated 24.9.1974. This submission is contrary to the principles of res judicata and it further ignores the binding effect of a decision of this Court under Article 141 of the Constitution. The binding effect of a decision of this C Court does not depend upon whether a particular argument was considered or not, provided the point with reference to which the argument is advanced subsequently was actually decided in the earlier decision, See *Smt. Somavanti and Ors.* v. *State of Punjab & Ors.*, [1963] 2 SCR 774; *T. Govindaraja Mudaliar etc.* v. *State of Tamil Nadu & Ors.*, [1973] 1 SCC 336 and *Anil Kumar Neotia and Ors.* v. *Union of India &* D *Others*, [1988] 2 SCC 587. It is therefore no longer open to the petitioner-tenants to challenge the validity of Section 3 of the Act and the impugned Notification dated 24.9.1974 on the ground that some points had not been urged or considered in *Punjab Tin Supply Company's* case. On the principles of res judicata, and also in view of Article 141 of the Constitution, the law declared by this Court in E *Punjab Tin Supply Company's* case is binding on the petitioners. But even otherwise the submissions made on their behalf in impugning the validity of Section 3 and the Notification dated 24.9.1974 are devoid of any merit as we shall presently discuss the same.

The challenge to the validity of Section 3 of the Act on the F ground that it suffers from the vice of excessive delegation of legislative power need not detain us long in view of a number of decisions of this Court. Similar provision contained in Section 13 of the Madras Buildings (Lease and Rent Control) Act 1949 was upheld by a Constitution Bench of this Court in *P.J. Irani* v. *The State of Madras*, [1962] 2 SCR 169. In *Sadhu Singh* v. *The District Board, Gurdaspur & Anr.*, G C.A. 2594/66 (decided on 29th October, 1968) this Court held that Section 3 of the East Punjab Urban Rent Restriction Act 1949 does not suffer from the vice of excessive delegation of legislative power nor it violates Article 14 of the Constitution. Section 3(2) of the Madhya Pradesh Accommodation Control Act 1961 conferring power on the Government to exempt certain accommodations from all or any of the H provisions of the Act was upheld in the *State of Madhya Pradesh* v.

Kanhaiyalal, [1978] (15) MPLJ 973. In fact validity of Section 3 of the Act was again upheld by this Court, holding that it does not suffer from the vice of excessive delegation of legislative power in *M/s Punjab Tin Supply Company's* case (supra). We find no good reason to take a different view, we therefore hold that Section 3 of the Act does not suffer from vice of constitutional infirmity and it is a valid provision.

As regards the validity of the impugned Notification dated 24.9.1974 is concerned, it is necessary to examine the object and purpose of the exemption granted by the Notification. The paramount object of the Act, like and other rent control legislations is to safeguard the interest of tenants against their exploitation by landlords. After the Second World War there has been movement of population from rural areas to urban areas as a result of which the problem of accommodation became acute in cities. Landlords of the buildings took full advantage of the situation and they charged exhorbitant rent from tenants and very often evicted them by terminating tenancy under the provisions of Transfer of Property Act. The tenants were helpless as the suits once filed by the landlord after terminating the tenancy were bound to succeed. The Legislature of different States took cognizance of the situation and enacted rent control legislations providing safeguards for tenants by making provision for fixation of reasonable rent and also placing restrictions on the landlords' right to evict tenants. Generally the rent control legislation of various States exclude the jurisdiction of civil courts to entertain a suit or pass a decree of eviction against a tenant; instead the jurisdiction to evict a tenant is conferred on Rent Controller or some designated authority and the statutory grounds for eviction of a tenant have been laid down. The multiple restrictions placed on the landlords' right to charge rent from tenants or to evict them from buildings resulted into shortage of accommodation because those who had money and capacity to build new houses were discouraged from investing money in constructing buildings on account of the restrictions placed by rent control legislations. The Legislature stepped in, to meet the situation, in making provision for granting exemption to newly constructed buildings for certain number of years from the operation of the restrictions of the rent control legislations. These steps were taken to meet the acute scarcity of accommodation and to encourage landlords to construct buildings which would ultimately ease the situation of shortage of accommodation to a large extent. Provisions for exempting the newly constructed buildings from the restrictions of the rent control legislations for a limited period have been enacted by the Punjab, Uttar

A Pradesh, Haryana and Madhya Pradesh legislature. While considering the interpretation and validity of the provisions granting exemption, either by statutory provision made in the Act or by a Notification issued under the Act, it is necessary to bear in mind the object and purpose of exemption to newly constructed buildings. The paramount object and purpose of exemption is to provide incentive for construc-
B tion of new buildings, to meet the shortage of accommodation which would ultimately result in benefitting the tenants.

Learned counsel urged that the impugned Notification enlarged the period of exemption for an indefinite period and it tends to amend Section 13 of the Act and it is contrary to the object and purpose of the
C Act. Developing the argument it was submitted that the Notification granted exemption to newly constructed buildings in the urban area of Chandigarh for a period of five years only from the operation of Section 13 of the Act, therefore, no exemption could be available to newly constructed buildings after the expiry of five years. A suit if instituted during the period of exemption could not be decreed, nor
D such decree could be executed after the expiry of five years period but the last portion of the Notification which states that Section 13 of the Act shall not apply to decree of civil courts whether such decree was passed during the period of exemption or "at any time thereafter" enlarged the period of exemption for an indefinite period of time, and it seeks to amend Section 13 of the Act. We do not find merit in the
E submission. As noticed earlier Section 13(1) imposes a complete ban against the eviction of a tenant in execution of a decree passed by a civil court before or after the commencement of the Act and it further lays down that a tenant in possession of a building or rented land shall not be evicted except in accordance with the provisions of Section 13 or an order made in pursuance of the provisions of the Act. Sub-
F Section (2) of Section 13 sets out statutory grounds on which the Controller, an authority constituted under the Act has power to pass order of eviction against a tenant. Section 13 takes away the jurisdiction of civil court to pass a decree of eviction or execution thereof against a tenant in respect of a building which is subject to the provisions of the Act. The impugned Notification grants immunity to newly constructed
G buildings from the shackles of Section 13 of the Act for a period of five years. While doing so, the Notification has taken care to make the exemption effective by providing that the exemption shall be available to the building even if the decree is passed after the expiry of the period of five years provided the suit is instituted during the period of exemption. The emphasis is on the institution of the suit within the
H 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 which crystallise on the date of institution of the suit.

Section 3 which provides for granting exemption from the provisions of the Act is by way of an exception to Section 13 and therefore the two provisions need not be consistent in their effect. The object of having a proviso or exemption is to neutralise the effect of the main provision. If that is not so it would not be necessary to have an exemption since public purpose as well as larger interest of tenants require availability of more and more accommodation in the shape of new buildings, and for that purpose exemption is necessary to be provided. In ultimate analysis provisions of Sections 3 and 13 both seem to achieve the same result. The submission that the Notification granting exemption to newly constructed buildings is contrary to the object and purpose of the Act ignores the resultant effect of exemption. The object and policy of the Act is to mitigate hardship of tenants. This can be done in several ways and one of them being to provide incentive to persons having resources to invest money in the construction of new buildings. As discussed, the shackles of the rent control legislation had chilling effect on the landlords and they were reluctant to invest their capital in making new constructions. By granting holiday from the restrictions of regulations of rent control laws, impetus was given to the landlords to construct new buildings so that after the expiry of period of exemption the building so constructed are available for needy tenants controlled by the Act. In *Punjab Tin Supply Company's* case (supra) similar argument raised on behalf of the tenants was repelled and the Court held that the Notification granting exemption was not contrary to the object and purpose of the Act instead it advanced the ultimate purpose of the Act to provide accommodation to tenants. Similarly in *Mohinder Kumar etc.* v. *State of Haryana & Anr.*, [1985] 4 SCC 221 provisions of the Haryana Act granting exemption to newly constructed buildings for a period of ten years was held to advance the purpose of rent control legislation. In our opinion the impugned Notification granting exemption is not contrary to the object and purpose of the Act nor it destroys protection granted to tenants under the Act. The exemption is for a limited period and after the expiry of the period of exemption the building would fall within the purview of the Act and it would be regulated by the provisions contained therein, subject to the impugned notification.

In *Amar Nath's* case (supra) the Notification granting exemption did not direct that the decree passed after the expiry of period of exemption would also be exempted from the operation of Section 13 of the Act. In that case similar argument was raised that not only the suit should be filed during the period of exemption but the decree of eviction must also be obtained within the period of five years. This Court rejected the submission saying that the contention on the very face of it, if accepted would lead to incongruity and shall nullify the purpose for which exemption was granted. The Court held that while considering the purpose of exemption of building from operation of Section 13, the Notification granting exemption must be interpreted in the light of the object and purpose of exemption and if the contention that both the suit and the decree should be passed within the period of exemption is accepted that would defeat and nullify the purpose of exemption. It is a matter of common knowledge that final disposal of suits before the civil court are time consuming in view of the heavy work load of cases and dilatory tactics adopted by the interested party. Having regard to time normally consumed for adjudication of a suit by the civil court, it is too much to expect that a suit filed within the period of exemption of five years can be disposed of finally within the period of exemption. The exemption contemplated by the Notification permits the institution of a suit within the period of exemption taking into account the delay caused in disposal of the suit, it further protects the jurisdiction of the civil court in passing decree of eviction with a view to make the exemption effective and meaningful. In this view if the submission made on behalf of the tenants is accepted it would render the exemption illusory, as in reality, it will be impossible for a landlord to get the suit decreed within the period of exemption even if he instituted the suit within the period of exemption. Interpretation of the Act and the impugned notification as suggested on behalf of the tenants if accepted would defeat the purpose of the beneficial social legislation. It is a settled rule of harmonious construction of statute that a construction which would advance the object and purpose of the legislation should be followed and a construction which would result in reducing a provision of the Act to a dead letter or to defeat the object and purpose of the statute should be avoided without doing any violence to the language. We therefore reject the submission made on behalf of tenants.

Learned counsel for the tenants placed reliance on the decisions of this Court in *Vineet Kumar* v. *Mangal Sain Wadhera,* [1984] 3 SCC 352 and *Shiv Kumar* v. *Jawahar Lal Verma,* [1988] 4 SCC 763 in support of their submission that once five years period of exemption

expired during the pendency of the suit, the civil court ceased to have jurisdiction to pass decree of eviction or to execute the same. In these decisions Section 2(2) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972, granting immunity to newly constructed buildings for a period of 10 years from the operation of the Act was considered and interpreted. In both of these decisions a Bench of two Judges held that on the expiry of 10 years period of exemption during the pendency of the suit, the provisions of the Act would apply and the tenant is entitled to the protection of Section 39 of the Act and no decree of eviction could be passed against him. On behalf of the landlords it was urged that the view taken in the aforesaid two cases is incorrect and contrary to the observations made by a larger Bench of this Court in *Om Prakash Gupta* v. *Dig Vijendrapal Gupta,* [1982] 3 SCR 491 and also against the decision in *Nand Kishore Marwah* v. *Smt. Samundri Deyi,* [1987] 4 SCC 382. It was further urged that Section 39 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972 protects the tenant from eviction provided the suit was pending on the date of commencement of the Act and not to a suit instituted thereafter. In the aforesaid decisions it was held that a suit for eviction instituted within period of exemption of 10 years could be decreed by the civil court even if during the pendency of the litigation 10 years' period of exemption expired. The counsel for the landlords further placed reliance on the decision of this Court in *Atma Ram Mittal* v. *Ishwar Singh Punja,* [1988] 4 SCC 284 wherein Section 13 of the Haryana Urban (Control of Rent and Eviction) Act 1973 granting exemption to newly constructed building for a period of 10 years was considered. The Court held that a suit instituted within the period of exemption for eviction of the tenant, could legally be decreed even if the period of exemption expired during the pendency of the suit. These decisions no doubt support the view we are taking but we do not consider it necessary to consider these decisions in detail as the provisions of the Rent Control Legislation, which were considered in those decisions were quite different which did not expressly preserve the jurisdiction of the civil court to decree the suit after expiry of the period of exemption, while the impugned Notification in express terms, maintains the jurisdiction of the civil court to decree a suit for eviction, even if the period of exemption expires during the pendency of the suit. There is no provision under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972 or the Haryana Urban (Control of Rent and Eviction) Act 1973 containing similar provision as contained in the impugned Notification. We therefore do not consider it necessary to discuss the aforesaid decisions in detail or to express any final opinion about the correctness of the same.

A B C D E F G H

A It was then urged that the impugned Notification practiced discrimination between two class of tenants in the Union Territory of Chandigarh. The two class of tenants are: (i) the tenants of old buildings which were never exempted from the provisions of the act, the tenants of the buildings entitled to protection of the Act, and (ii) the tenants of newly constructed buildings exempted from the protection B of the Act, who are liable to be evicted at any time at the mercy of the landlord. In *Mohinder Kumar* v. *State of Haryana & Anr.*, (supra), this Court considering a similar challenge to the validity of Section 13 of the Haryana Urban (Control of Rent and Eviction) Act 1973 held that the classification of buildings with reference to the date of completion for the purposes of regulating the rent and eviction of tenants from C such buildings has a rational basis and has a clear nexus with the object to be achieved. Classification is founded on intelligible differentia which has a rational nexus with the object of the Act. It does not practice any invidious discrimination between two classes of tenants, the classification is reasonable and it does not violate Article 14 of the Constitution of India. It is not necessary to discuss the question further D as we are in full agreement with the view taken in *Mohinder Kumar's* case (supra). The object and purpose of the exemption as discussed earlier is to effectuate the purpose of the Act, to ensure availability of more and more accommodation to meet the need of tenants.

In view of the above discussion we hold that Section 3 as well as E the impugned Notification are valid and the same do not suffer from any constitutional or legal infirmity. We further hold that civil court has jurisdiction to pass decree even after the expiry of period of exemption, in suits instituted during the period of exemption, and to execute the same notwithstanding the provisions of Section 13 of the Act. In the result the civil appeals, special leave petitions, and the writ F petitions fails and are accordingly dismissed with costs and all interim orders stand discharged.

R.S.S. Petitions dismissed.