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**(1993) 09 SC CK 0119**

**In the Supreme Court Of India**

**Case No : Civil Appeal No. 3005 Of 1984**

Benilal (Dead) by Lrs.

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

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**Date of Decision : 29-09-1993**

**Acts Referred:**

**Citation : (1995) 1 SCC 235 Supp**

**Hon'ble Judges : N. P. Singh, J;K. Ramaswamy, J**

**Bench : Division Bench**

**Final Decision : Dismissed**

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## **Judgement**

1. The appellant's tenancy was permitted to be terminated under clauses 13(2 and 13(3(ii) of the central Province and Berar Letting of House and Rent Control Order, 1949, for short "the Order" for ejection from the demised premises on the ground that he was a habitual defaulter. A decree for eviction ensued which had become final by dismissal of the Special Leave Petition in limine by this court. Objections raised in the execution at the instance of his sons were overruled. Thereafter, the appellant filed the W.P. No. 1370 of 1984 in the High court of Bombay challenging the constitutional validity of sub-clause (ii) of clause 13(3, which was dismissed in limine on 18/06/1984. Thus this appeal by special leave.

2. Section 2 of C.P. & Berar Regulation of Letting of Accommodation Act, 1946 reads thus:

"The Provincial government may, by general or special order which shall extend to such areas as the Provincial government may, by notification, direct, provide for regulating the letting and sub-letting of any accommodation or class of accommodation whether residential or non-residential, whether furnished or unfurnished, and whether with or without board, and in particular-

(A) for controlling the rents for such accommodation either generally or when let to specified persons or class of persons or in specified circumstances;

(B) for preventing the eviction of tenants or sub-tenants from such accommodation in specified circumstances, etc. etc." Clause 13(3(ii) of the Order provides that:

"A landlord who seeks to obtain permission under sub-clause (1 shall apply in writing to the Controller in this behalf that the tenant is habitually in arrears with the rent."

3. The Controller defined under clause 2(1 means an officer appointed to exercise the power of the Controller under this Order.

4. Shri G.L. Sanghi, learned Senior Counsel contends that a reading of these clauses do indicate that the Controller is a subordinate executive authority, who has been invested with judicial power to give permission to determine tenancy for ejection on the ground of habitually in arrears. The words "habitually in arrears" should have been defined but it was not done. Its construction is varied on subjective decision of the court and can vary from court to court. Therefore, the word "habitually in arrears" being vague and indefinite, and exercise of the power having been entrusted to an officer not judicially trained to construe the provision of the Act, it would lead to unbridled exercise of power without guidelines, offending Article 14 of the Constitution. We find no force in the contention. It is well settled that the legislative scheme may employ words of generality conveying its policy and intention to achieve the object set out therein. Every word need not be defined. It may be a matter of judicial construction of such words or phrases. Mere fact that a particular word or phrase has not been defined is not a ground to declare the provisions of the Act itself or the order as unconstitutional. The word "habitual" cannot be put in a straitjacket formula. It is a matter of judicial construction and always depends upon the given facts and circumstances in each case. As to when an inference that a tenant is habitually in arrears disentitling him to the protection of the Order could be drawn is a question of fact in each case. But on that ground or circumstance itself, the provision of the Act cannot be declared to be ultra vires. Further contention that sub-clause (i) of clause 13(3 gives a discretion to the Rent Controller, to permit the defaulting tenant to deposit the arrears for a period of three months within a specified time, while clause 13(3(ii) gives no discretion and that would render the latter clause arbitrary, is also without force. It is true that a right is given to the landlord to make an application under clause 13(3(i) for permission to determine the tenancy when the tenant was in arrears for a period of three months in which event the discretion has been given to the Rent Controller to fix a time and direct the tenant to deposit the arrears and on its non-compliance the application stands rejected. The Rent Controller is empowered only if the default is for a period of three months and not after its expiry. But in the case covered under clause 13(3(ii) if the Controller finds that the tenant is habitual defaulter in payment of the rent and kept the arrears exceeding three months without compliance thereof, on given facts and circumstances, the Controller may give permission for terminating the tenancy. If the finding is in the negative the

petition entails dismissal. It is not a case of subjective satisfaction as sought to be contended for but an objective consideration of the proved facts and circumstances by the parties. The Controller needs to decide whether the tenant factually is a habitual defaulter in payment of the rent and on his recording a finding that the tenant habitually commits default in the payment of the rent, then permission would be granted to determine the tenancy. Thereafter, regular proceedings would be taken in a suit for eviction of the tenant in the civil court. Thus considered, we find that the words "habitually in arrears" are not vague or indefinite. On the other hand, clause 13(3(i) appears to give the guidance or indicia in that behalf to clause 13(3(ii) of the Order.

5. Further contention of Shri Sanghi is that the officer is not judicially trained and when the matter is susceptible of interpretation, the non-entrustment thereof to a judicial authority even at the appellate stage would render the provision arbitrary. We find that this contention also is without force. It is a legislative policy as to which authority the power of adjudication of the dispute under a particular statute needs to be conferred. Equally for deciding the disputes arising under the local Acts like Tenancy Acts, or Land Ceiling Acts, the authorities constituted are primarily Revenue tribunals and hierarchy of appeal or revision have been provided thereunder to them alone. They would be decided by Revenue officials at various levels of hierarchy. The orders attain finality subject to judicial review under Articles 226 and 227 of the Constitution. It being the legislative policy, the conferment of the power on the tribunal clothed with quasi-judicial power to decide the disputes placed before them, on application of judicial mind and objective consideration of the facts and circumstances cannot be faulted. Though they are quasi-judicial bodies, yet they act as a court or tribunal for the purpose of control and supervision by the High court under Articles 226 or 227 of the Constitution and tribunals, subordinate to the High court for exercise of judicial review. From this perspective, we are of the considered view that clause 13(3(ii) is neither arbitrary nor vague offending Article 14.

6. It is next contended that the appellant has been in possession for well over a long period. He has a fairly large family and to make out their livelihood running the business is the only source. Deprivation thereof offends Article 21. We find no substance in the contention. When the Act confers right, it also imposes a duty to abide by the conditions subject to which the right is to be enjoyed. For its contravention the landlord has been given remedy to recover possession. But it is not a ground to declare the provision ultra vires of Article 21. The order is a social measure to regulate the right of the landlord in letting out his building and is a clog on his general rights to eject the tenant under T.P. Act. It is a restraint on the unbridled right of the landlord and a safeguard to the tenant. On proof that the tenant is habitually in arrears, the permission to terminate the tenancy is required to be granted.

7. He further requests that the appellant may be permitted to occupy half of the

demised premises on payment of the market rent. The landlord has refused to accede to the suggestion made. Under these circumstances, we cannot give any direction in that behalf. It is also further contended that the Act itself provides for partial eviction and the court is empowered, suitably to direct the landlord to occupy a portion of the demised premises and thereby partial eviction could be ordered. It is to be noted that the proceedings are not under the Order. Therefore, we cannot undertake such an exercise while exercising the power under Articles 226 or 136 in this court. Appeal is accordingly dismissed, but in the circumstances parties are directed to bear their own costs.