

in the judgment to the effect that by the mere putting in an application with earnest money a vested right had inhaled in the petitioner to a plot of two-kanals originally advertised by the scheme. With great deference it is not possible to accede to this as a proposition of law. A look at the provisions of that scheme seems hardly to leave any manner of doubt that an application for allotment of the plot was merely an offer to purchase a certain plot at a certain price by the applicant and the Administration would be within its right to accept or reject such an offer. Till such an offer was irrevocably accepted and an allotment made, in our view no vested legal right would arise in favour of the petitioner. This appears to us as plain on principle and is further buttressed by the Full Bench judgment of this court in *Surjit Singh and others v. State of Punjab and others* (Supra) referred to earlier, in which it has been held in categorical terms that by filing an application with earnest money, the applicant can at best get a right of the consideration of the application, but does not get a vested right for allotment of the plot. The view of the learned Single Judge on this point is thus obviously contrary to the later Full Bench.

20. Again as regards the observations of the learned Single Judge, in the said case on the point of promissory estoppel, these also run contrary to what has been held in the recent Division Bench Judgment in *Des Raj Juneja v. Union of India* (supra). For all these reasons, it appears that Sangat Singh's case has not laid down the law correctly and is hereby over-ruled.

21. For the aforesaid reasons, I am unable to find any merit in this set of Writ petitions which are hereby dismissed. The parties, however, are left to bear their own costs.

G. C. Mital, J.—I agree.

N.K.S.

Before Surinder Singh, J.
BALBIR SINGH,—Petitioner.

versus

STATE,—Respondent.

Criminal Revision No. 26 of 1978.

July 10, 1979.

Opium Act (1 of 1878)—Section 11—Confiscation of the conveyance used for carrying opium—Whether mandatory.

Balbir Singh v. State (Surinder Singh, J.)

Held, that it is apparent from a perusal of section 11 of the Opium Act, 1887 that the conveyance used for carrying opium "is liable to confiscation". The phraseology indicates that confiscation is not mandatory and a discretion is vested in the Court to assess if in a particular case it is appropriate to confiscate the conveying vehicle.

(Para 2).

Petition under section 401 Cr.P.C. for revision of the order of Shri R. P. Gaiind, Additional Sessions Judge, Jullundur, dated 13th July, 1976 affirming that of Shri Baldev Singh, Sub-Judge 1st Class, Jullundur-cum-Judicial Magistrate 1st Class, dated 14th June, 1976, ordering that the truck No. DHG-228 be confiscated.

S. S. Chopra, Advocate, for the Petitioner.

D. S. Brar, A.A.G. (Pb.), for the Respondent.

JUDGMENT

Surinder Singh, J.

(1) The short point which requires consideration in this Revision Petition is, as to whether the truck in which 120 bags of poppy husk were being carried and which was intercepted on July 28, 1973 in the area of village Paragpur, should have been confiscated to the State under the provisions of section 11 of the Opium Act, or not. There is no dispute that on the aforementioned date. Truck No. D.H.G. 228 driven by one Surjit Singh was intercepted by the Police Party and it was found carrying 120 bags (about 50 quintals and 40 kgs.) of poppy husk. Baldev Singh was found sitting by the side of Surjit Singh. Both these persons after being duly prosecuted and tried, were convicted and sentenced. While rendering the judgment in that case, the learned trial Magistrate also ordered that the truck should be confiscated to the State. An appeal against that part of the order was filed by Balbir Singh, one of the two partners of the truck for himself and as an attorney of his other partner Charan Singh, impugning the direction for the confiscation of the truck. The appeal was dismissed by the Additional Sessions Judge, Jullundur, and hence the present Revision Petition.

(2) As is apparent from perusal of section 11 of the Opium Act, 1878 the conveyance used for carrying the opium "is liable to confiscation". The phraseology indicates that confiscation is not mandatory

and a discretion is vested in the Court to assess if in a particular case it is appropriate to confiscate the conveying vehicle. In the case in hand, what was being illegally transported was poppy husk which falls within the definition of Opium only technically. There is also no dispute that the owners of the vehicle were not present at the time of the recovery and it were their employees who were using the truck for the illegal purpose. The learned Additional Sessions Judge while considering this aspect, observed that the owner is presumed to know about the movements of the vehicle from day to day and from place to place, but this presumption is not warranted, more so when there is no evidence to that effect, pointed out on behalf of the State. A truck costs quite a substantial amount and its confiscation, in the circumstances of the present case was not justifiable. The learned counsel for the petitioner has also submitted that in consequence of the order of confiscation passed by the trial Court, the vehicle has remained off the road upto now and this has already caused sufficient loss to the petitioner and his co-partner who were the owners of the vehicle.

(3) In view of what has been said above, the Revision Petition is accepted and the part of the order of the trial Court confiscating Truck No. DHG 228, as also the order of the lower appellate Court confirming that direction, are set aside. The truck shall be returned to the petitioner if he satisfies the trial Court about the ownership of the vehicle.

S.C.K.

FULL BENCH

Before S. S. Sandhawalia C.J., D. S. Tewatia and G. C. Mital, JJ.

COMMISSIONER OF INCOME-TAX—*Appellant.*

versus

RAM SINGH HARMOHAN SINGH—*Respondent.*

Income Tax Reference No. 64 of 1975.

September 24, 1979.

Income Tax Act (XLIII of 1961)—Sections 139, 148 and 271 (1) (c) (iii)—Voluntary return of income filed by an assessee for a particular assessment year—Another return for the same period