

by majority of Panches. He simply relied upon the information given to him by the Excise Inspector, Dadri. Evidently, he could not abdicate his function of satisfying himself in this respect to the Excise Inspector. In the written statement Excise and Taxation Commissioner has contended that four Panches, namely, Mir Singh, Nand Lal, Balbira and Daryao Singh had informed the Excise Inspector in writing that they had not signed the resolution. This writing has not been produced. The resolution (Annexure P.1) shows that Mir Singh and Nand Lal had not even attended the meeting in which it was passed. Balbira and Daryao Singh had attended the meeting and had signed the resolution. Their affidavits have been filed on the record in this respect. It is, therefore, abundantly clear that simply on the information of the Excise Inspector, Dadri, that the resolution had not been passed by majority of Panches, without satisfying himself, the Excise and Taxation Commissioner could not reject the resolution.

6. For the reasons mentioned above, the resolution (Annexure P.1) is binding on the respondents and they cannot auction any liquor vend within the limits of the petitioner-Panchayat for the year 1985-86.. Resultantly, this writ petition is allowed with costs and the respondents are directed not to open any liquor vend in the local limits of the petitioner—Gram Panchayat during the year 1985-86. The costs are quantified at Rs. 300.

N. K. S.

FULL BENCH

Before; P. C. Jain, C.J., S. P. Goyal and I. S. Tiwana, JJ.

RAM GOPAL BANARSI DASS,—*Petitioner.*

versus

SATISH KUMAR,—*Respondent.*

Civil Revision No. 790 of 1984

September 5, 1985.

Code of Civil Procedure (V of 1908)—Order 39 Rules 1 and 2—Specific Relief Act (XLVII of 1963)—Section 41(g) and (i)—Capital of Punjab (Development Regulation) Act (XXVII of 1952)—Section

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22—Chandigarh (Sale of Sites) Rules 1952—Rules 8 and 9—Lease of premises for running a shop—Tenant using demised premises for purposes some of which prohibited by law—Suit by the landlord for perpetual injunction to restrain the tenant from using the premises for prohibited purposes—Ad interim injunction sought by the plaintiff—Defendant pleading acquiescence by the landlord from the inception of the tenancy—Bar of clauses (g) and (i) of section 41—Whether applicable in the matter of grant of ad interim injunction.

Held, that the plaintiff would not be entitled to an *ad interim* injunction restraining the defendant from doing business on the premises for which it was let out or was being carried on from the very inception of the tenancy and in which the plaintiff had acquiesced but the said rule of estoppel contained in clauses (g) and (i) of section 41 of the Specific Relief Act would not be applicable if the act constituting the breach and the business carried on the demised premises is prohibited by law. However, for invoking this principle certain findings have to be recorded first which would be possible only after trial and the mere allegation that the alleged acts constituting the breach are prohibited by law would not be sufficient to make the provisions of section 41 of the Act applicable. Thus, it must be held that the provisions of clauses (g) and (i) of section 41 of the Act would disentitle plaintiff to claim *ad interim* injunction restraining the defendant from committing a breach in which he has acquiesced.

(Paras 6 and 7)

Petition for revision of the order of Shri O. P. Gupta, Additional District Judge, Chandigarh, dated 16th January, 1984, affirming the interim order of the Court of Shri V. P. Aggarwal, Sub-Judge, 1st Class, Chandigarh, dated 17th July, 1982, who held that the plaintiff-applicant has fully proved that he has a *prima facie* case and balance of convenience was in his favour and he would suffer an irreparable loss if temporary injunction is not granted to him. The defendant-firm can be given two months time for winding up its business of Karyana, sale of crackers and milk dairy and restraining the defendant-respondents from doing this business on the ground floor in violation of the condition imposed by the Government under the Rules and the conveyance deed till decision of the suit.

J. K. Sharma, Advocate, for the Petitioner with Y. K. Sharma, Advocate.

Ashwani Kumar Chopra, Advocate, for the Respondent.

JUDGMENT

S. P. Goyal, J.:

(1) This judgment will dispose of three petitions, Civil Revision Nos. 970, 1259 and 1488 of 1984 as all of them involve an identical question of law. For the purpose of this judgment, the facts of Civil Revision No. 790 of 1984 have been noticed.

(2) Shop-cum-Flat No. 70, Grain Market, Sector 26, Chandigarh, is on lease with the petitioner. The respondent, owner of 1/2 share of the said shop, brought a suit for permanent injunction restraining the tenant from using any portion of the demised premises for running karyana business, sale of dairy products and crackers alleging that such a use was against the provisions of the Capital of Punjab (Development/Regulation) Act, 1952 (hereinafter called the Punjab Act) and that because of the said misuse, Chandigarh Administration had issued a notice to show cause as to why the said premises, be not resumed. Along with the suit, he also filed an application under Order 39, Rules 1 and 2 read with section 151, Civil Procedure Code, for an *ad interim* injunction to the same effect. The trial Court holding that the shop in dispute could be used only for carrying on business of sale or purchase of grains granted *ad interim* injunction restraining the petitioner from carrying on karyana business and the sale of crackers and dairy products. The tenant went in appeal against the order of the trial Court but having failed has come up in this revision.

(3) The main ground urged by the learned counsel for the petitioner was that in view of the provisions of section 41, clauses (g) and (i) of the Specific Relief Act (for short, the Act) no *ad interim* injunction could be granted to prevent the continuing breach in which the plaintiff has acquiesced or when the conduct of the plaintiff or his agent has been such as to disentitle him to the assistance of the court. The basis for this argument was that the demised premises from the very inception of the tenancy were being used apart from the sale and purchase of grains, for karyana business and the sale of crackers and dairy products with the knowledge and consent of the landlord who has thus acquiesced in the present use of the demised premises for more than a decade.

(4) This matter came up before me sitting singly in *Mrs. Amarjit Kaur Sandhu and others v. Malabar Cane Furniture, Sector 22-B*,

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Chandigarh (1) and I took the view that a temporary injunction restraining the defendant from using the demised premises for the purpose prohibited by the provisions of the Capital of Punjab (Development Regulation) Act, 1952 can be granted in a suit filed by the landlord in spite of the fact that the latter had consented to any such use of the premises by the tenant. A similar view was taken by M. R. Sharma, J. in *Sohan Lal v. Smt. Harbans Kaur* (2) and J. V. Gupta, J. in *Messrs Tata Oil Mills Company Ltd. v. Shri Manmohan Verma* (3). However, in Civil Revision No. 2869 of 1981, I referred the matter to a Division Bench for an authoritative pronouncement because the correctness of the above view was challenged relying on section 41(g) and (i) of the Act. The Division Bench, in turn, referred the matter to a Full Bench but no decision was rendered on the said question as the Revision Petition was dismissed having become infructuous. Thereafter, the same question came up for consideration before a Division Bench in *M. Holkar and another v. A. P. Srihan* (4), and the Bench expressed its opinion on the provisions of the said section 41 in the following terms :—

“There is no dispute with the proposition that the trial Court in the matter of granting of injunction and the entertaining of the injunction suit has to keep in fore front the provisions of section 41 of the Act. So far as the bar of jurisdiction at the threshold in view of the relevant provisions of section 41 is concerned, that would arise only where on admitted facts the matter being such that it would attract the relevant provisions of section 41 prohibiting the grant of injunction. Where such is not the case and one party has raised the plea and the other has denied then the trial Court shall have to give a finding first and then would consider as to whether the relevant provisions of section 41 prohibiting the grant of injunction is attracted or not. But then with the given finding the necessity of grant of interim injunction would not arise as the case would stand finally decided. Hence we are of the view that provisions of section 41 of the Act can be attracted at the threshold to cases where there is no

(1) 1979(2) Rent Control Reporter 596.

(2) C.R. 1956/81, decided on 15th September, 1981.

(3) 1982(1) R.L.R. 413.

(4) 1984 R.L.R. 289.

dispute in regard to the facts which would attract the application of relevant provisions of section 41 barring the jurisdiction of the Court in regard to the granting of injunction and by implication prohibiting the entertaining of injunction suit in question."

It appears that the said decision was not brought to the notice of J. V. Gupta, J. and this revision was admitted to Full Bench in view of the earlier reference in Civil Revision No. 2869 of 1981.

(5) The grant of temporary injunction during the pendency of the suit is governed primarily by the provisions of Order 39, rules 1 and 2, Civil Procedure Code. Rule 1 provides that where in any suit it is proved by facts or otherwise that any property in dispute is in the danger of being wasted, damaged or alienated or that the defendant has threatened or intends to remove or dispose of his property with a view to defraud the creditors or that the defendant has threatened to dispossess the plaintiff or otherwise cause injury to him in relation to the property in dispute, the Court may by order grant temporary injunction restraining such act. Rule 2 provides that in any suit for a permanent injunction the plaintiff may apply to the court for a temporary injunction to restrain the defendant from committing a breach of contract or injury complained of arising out of a contract or relating to any property or right. A bare perusal of these two rules would show that no limitation as envisaged in the various clauses of section 41 of the Act has been placed on the discretion of the court in the matter of grant of temporary injunction. However, it was not disputed by the learned counsel of the either side that if the grant of perpetual injunction as claimed in the suit is barred by the provisions of said section 41 then it would not be permissible to grant even an *ad interim* injunction by way of temporary relief pending disposal of the suit. The short question which needs determination, therefore, is as to whether the provisions of clause (g) or (i) of section 41 of the Act would debar the plaintiff from claiming an *ad interim* injunction restraining the defendant from using the premises in the manner in which the plaintiff has acquiesced or because he or his agent has let out the demised premises for the very same purpose for which it is being used.

(6) The learned counsel for the respondent did not dispute that the plaintiff would not be entitled to an *ad interim* injunction restraining the defendant from committing a breach in which he has

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acquiesced or from doing business on the premises for which it was let out or was being carried on from the very inception of the tenancy but urged that the said rule of estoppel contained in clauses (g) and (i) of section 41 of the Act would not be applicable if the act constituting the breach or the business being carried on the demised premises is prohibited by law. There can be no dispute with the proposition of law canvassed by the learned counsel. However, as would be evident from the discussion following that for invoking this principle certain findings have to be recorded first which would be possible only after trial and the mere allegation that the alleged acts constituting the breach are prohibited by law would not be sufficient to make the provisions of clauses (g) and (i) of section 41 of the Act inapplicable.

(7) The State Government in exercise of its powers under section 22 of the Punjab Act has framed rules called the Chandigarh (Sale of Sites) Rules, 1952. Rule 8 requires the transferee to execute a deed of conveyance in the form prescribed in Schedule 'B' and under clause 9 of the said proforma, the Estate Officer prescribes the purpose for which alone the site or the building constructed thereon can be used. Rule 9 prohibits the transferee from using the site for the purpose other than that for which it has been sold to him. On the basis of the entry in clause 9 and the provisions of the said Rules, it was contended that a *prima facie* case is established which provides sufficient basis for the grant of an *ad interim* injunction. On the face of it this argument appears to be plausible but fails to stand the test of scrutiny for various reasons. Firstly, it is highly doubtful that the provisions of the said rules could be said to have been violated simply because along with the carrying on of a trade for which the site is meant, the tenant starts selling some other goods as well. Secondly, the purpose for which the site is sold is not prescribed by any statute or the rules framed thereunder. Entry under the concerned clause 9 is made by the Estate Officer in the conveyance deed which is more or less contractual in nature because the Estate Officer is not debarred from substituting a different kind of trade than the one already entered for valid reasons on request by the transferee. If the Estate Officer allows the transferee or the tenant under him to use the site or the building for purposes other than specified in the conveyance deed for sufficient large number of years it may be open to the tenant or the transferee, as the case may be, to plead and prove that the former had impliedly consented to the change of the use other than

the prescribed one. It is a thing of common knowledge that the front portions of hundreds of buildings abutting on the main roads in various sectors are being used for business or commercial purposes which is being done with the tacit consent of the Estate Officer. Had that been not so, the Estate Officer would have to take action against all such transferees because it would not be open to him to pick and choose and operate the provisions of the law and the rules in such a manner that it results in a discriminatory treatment to the hundreds of transferees similarly situated. We would, therefore, hold that the provisions of clauses (g) and (i) of section 41 of the Act would disentitle the plaintiff to claim *ad interim* injunction restraining the defendant from committing a breach in which he has acquiesced or from doing business on the premises for which it was let out or was being carried on from the very inception of the transaction. Accordingly these revisions are allowed, the orders of the learned Additional District Judge set aside and those of the trial Court restored. No costs.

N. K. S.

FULL BENCH

Before; P. C. Jain, C.J., D. S. Tewatia & I. S. Tiwana, JJ.

DEVI DASS GOPAL KISHAN PVT. LTD.,—Petitioner

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ No. 4883 of 1984.

September 26, 1985.

Punjab General Sales Tax Act (XI of 1948)—Sections 2(d), (ff) and (h), 4-B, 5(2)(a)(vi) and schedule 'c'—Registered dealer purchasing goods specified in schedule 'c' from a commission agent who is also a registered dealer—Consideration comprising price of goods and commission thereon paid to the commission agent—Sales tax form XXII also furnished—Acquisition of goods by the registered dealer—Whether could be said to be under a contract of sale—Such acquisition—Whether amounts to a 'purchase'.