

The Sohna Stone Crushing Production Industrial Cooperative Society Ltd.,
etc. *v.* The Secretary to Government of Haryana and another (Sodhi, J.)

the scheme. For applying the rule of preference given in this section, the nature of the relationship must be the same in every other respect, for example, it would not be applicable if an heir is preferred under any other provision of this Act.

(4) From what I have said above, I feel that no such distinction can be recognised as is being suggested by the learned counsel for the appellants. The brothers and sisters fall in entry No. II of Clause II of the Schedule and the nature of relationship of both must be taken to be the same, being the children of the father of the intestate. I am in full agreement with the observation of the learned Single Judge that looking at the scheme of the entire Act, no such distinction can be recognised and apparently all that is meant by saying that the 'nature of relationship should be the same' is that they should be equally related. In this view of the matter, I hold that Smt. Dhan Kaur and Smt. Ind Kaur would exclude not only Smt. Bishan Kaur but also Sarwan Singh appellant and Kishan Singh, they being sister and brothers of the half blood. Consequently there is no force in this appeal and the same is dismissed. However, there will be no order as to costs.

MEHAR SINGH, C.J.—I agree.

R.N.M.

CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

THE SOHNA STONE CRUSHING PRODUCTION INDUSTRIAL
COOPERATIVE SOCIETY LTD. AND OTHERS,—*Petitioners.*

versus

THE SECRETARY TO GOVERNMENT OF HARYANA
AND ANOTHER,—*Respondents.*

Civil Writ No. 743 of 1968

May 9, 1969.

Punjab Municipal Act (III of 1911)—Sections 5 and 62—Notification for extension of municipal limits for purposes of imposition of octroi duty—Procedure under section 62—Whether to be followed afresh—Existing rules and bye-laws of the Municipality—Whether come into operation in the added areas on the publication of the notification.

Held, that under the Punjab Municipal Act, the State Government can by notification declare its intention to include within a municipality any local area in the vicinity of the same and defined in the notification. Any inhabitant of a municipality or local area in respect of which a notification has been published under sub-section (1) of section 5 of the Act may, should he object to the alteration proposed, submit his objection in writing through the Deputy Commissioner to the State Government within six weeks from the publication of the notification. After the expiry of six weeks from the publication of the notification, and the State Government having considered the objections, if any, it may, by notification, include the local area in the municipality. Then all rules, bye-laws including those relating to octroi duty, orders, directions and powers made, or conferred under this Act and in force throughout the whole municipality at that time, apply at once to the newly added area. It is not necessary that the procedure as laid down in section 62 of the Act should be followed afresh before any octroi duty can be imposed. (Para 8)

Petition under Article 226 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the recovery proceedings.

U. D. GAUR, ADVOCATE, for the Petitioners.

SURINDER SARUP, ADVOCATE, FOR ADVOCATE-GENERAL (HARYANA) H. S. SAWHNEY, ADVOCATE AND LAXMI GROVER, ADVOCATE, for Respondents.

JUDGMENT

Sodhi, J.—This writ petition raises a question as to the validity of the notification of the erstwhile Punjab Government issued on 27th January, 1966, under sub-section (3) of section 5 of the Punjab Municipal Act, 1911 (Punjab Act III of 1911) (hereinafter called the Act), whereby the municipal limits of Sohna in Gurgaon District were extended so as to include certain new areas within its limits making the residents thereof liable for payment of octroi duty in respect of articles on which such duty was leviable.

(2) There are five petitioners who have made a joint petition under Articles 226 and 227 of the Constitution of India for quashing the aforesaid notification. The petitioners allege that they deal in business of stone-crushing and that their place of business, till the impugned notification was issued, was outside the municipal limits of Sohna. In para 4 of the writ petition, it is stated that the notification was issued without inviting objections as envisaged in section 5(2) of the Act, and giving opportunity to the petitioners and others who were likely to be affected by the notification to raise objections. It is also the case of the petitioners that no procedure

The Sohna Stone Crushing Production Industrial Cooperative Society Ltd.,
etc. v. The Secretary to Government of Haryana and another (Sodhi, J.)

has been adopted for extending the octroi limits of the Municipal Committee as required by sections 51 and 62 of the Act. In other words, even if the extension of municipal limits is held to be valid, the procedure for imposing the tax in the form of octroi duty should have been followed. The petitioners had been served notices of demand to pay octroi duty but they did not do so and came to this court in the writ petition.

(3) The State, in its return, has admitted that the limits had been extended by the impugned notification, a copy whereof is filed by the petitioners as Annexure 'A' and by the respondents as Annexure 'R-1'. It is, however, denied that the objections were not invited and the procedure as given in section 5(2) of the Act was not followed. It is rather stated that a period of six weeks as provided in section 5(2) was given in the notification No. MCII (XIII) 16-65/44537, dated October 16, 1965; copy whereof is Annexure R-2', within which the petitioners could file their objections if so advised. It is specifically stated in Annexure 'R-2' that any inhabitant of the municipality or of the local area in respect of which this notification is published who objects to the proposed inclusion of the said area should submit his objection in writing through the Deputy Commissioner to the State Government within six weeks of the date of publication. As regards the procedure laid down in section 62, the averment of the respondents is that Punjab Government notification No. 10560-C-4CII-57/108290, dated 12th December, 1957, approved of the bye-laws according to which the limits for the purpose of collecting octroi on articles imported into the Municipality of Sohna shall be the limits of the Municipality as notified from time to time.

(4) The petitioners have been challenging the rates of octroi and surcharge but the State Government ultimately accepted their representations and reduced the rates. There is no controversy about the rates before me. The petitioners preferred an appeal before the Deputy Commissioner, Gurgaon, against the inclusion of their place of business within the municipal limits and also against the octroi duty and the surcharge demanded from them. This appeal was dismissed on 7th February, 1968, and a copy of the orders of the Deputy Commissioner has been placed on the record by the respondents as Annexure 'R-7'. The petitioners made a quiet and passing reference to the fact of having filed an appeal and its being dismissed but did not choose to file a copy of the order which went against

them. They have also, beyond any doubt, falsely stated in the writ petition that no objections under section 5(2) were invited before the final impugned notification was issued.

(5) Mr. U. D. Gaur, learned counsel for the petitioners, had, of course, to concede the averment regarding the failure of the Government to invite objections under section 5(2) was not correct and had been wrongly made. The petitioners have also suppressed details in the matter of their appeal to the Deputy Commissioner and the reasons for its dismissal. The writ petition is liable to be dismissed on this short ground alone that the petitioners have been guilty of wilfully making false statements and suppressing material facts. The learned counsel relying on a judgment of their Lordships of the Supreme Court in *Bagalkot City Municipality v. Bagalkot Cement Co.*, (1), contended that the municipal limits could not be extended so as to impose liability to pay tax on the residents of the newly added areas unless fresh bye-laws in regard to octroi duty are passed.

(6) It is a common ground between the parties that in the matter of imposition of octroi in the extended limits the procedure of section 62 was not followed. But Mr. Laxmi Grover, learned counsel for the Municipal Committee, who mainly argued the case on behalf of the respondents, contended that there was no such requirement of law which enjoined such a procedure to be followed over again. The contention of the learned counsel for the respondents is that if the limits of a municipality are validly extended; the bye-laws relating to the octroi duty automatically come into operation as these bye-laws having been made under the Act are a part of the same and apply to the new areas. In *Bagalkot City Municipality's case*; (1), certain fresh areas were brought within the municipal limits of Bagalkot Municipal District in exercise of the powers given to the State Government under section 4 of the Bombay District Municipal Act (3 of 1901). The Municipal Committee had under section 59 of that Act imposed octroi duty on certain goods and section 48 of that Act gives the municipality powers to frame bye-laws for various purposes including that of fixing octroi limits. The bye-law made by the Municipal Committee, before the limits were extended and new areas included, was in the following terms :—

“The octroi limits of the Municipal district shall be the same as the municipal District.”

(1) A.I.R. 1963 S.C. 771.

The Sohna Stone Crushing Production Industrial Cooperative Society Ltd.,
etc. v. The Secretary to Government of Haryana and another (Sodhi, J.)

(7) The whole dispute before the Supreme Court was as to whether octroi duty could be levied in the newly added areas by virtue of the above bye-law, and what the meanings were to be given to the 'Municipal district.' It was not disputed there that the respondents had all along been bringing into their factory a variety of goods without paying octroi duty so long as their factory was outside the municipal limits. It was contended that 'Municipal district' as referred to in the bye-law should mean the municipal district of the municipality for the time being and not the Municipal district as it existed when the bye-laws were framed. By a majority judgment their Lordships did not accept this contention. The main reason for rejecting the contention was that the expressions used in the bye-law were such as to mean that it was the Municipal district as it existed on the date of making the bye-law that was intended to be covered by that bye-law for the purposes of octroi duty. No bye-law can be made whether under the Punjab Act or under any Municipal Act unless there are previous and subsequent publications. There was no evidence in that case that the publication before making the bye-laws had been so made as to enable the respondents, whose factory was now being included in the municipal limits to pay octroi duty to raise objections. In other words, their Lordships were of the opinion that the people to whom the bye-laws were to effect should have been provided with an opportunity to make a representation against the proposed bye-laws before they are to have the force of law.

(8) The facts of the instant case are quite different. The bye-law which fixed geographical limits for the purpose of collecting octroi duty by the Municipality of Sohna respondent clearly stated that the limits for octroi purposes shall be the limits of the municipality as notified from time to time. It is in the following terms:—

“The limits for the purpose of collecting octroi (without refunds) on articles imported into the Municipality of Sohna shall be the limits of the Municipality as notified from time to time.”

The words “as notified from time to time” were missing in the bye-law referred to in **Bagalkot City Municipality's case** (1). Under the Punjab Municipal Act, the State Government can by

notification declare its intention to include within a municipality any local area in the vicinity of the same and defined in the notification. Any inhabitant of a municipality of a local area in respect of which a notification has been published under sub-section (1) of section 5 may, should he object to the alteration proposed, submit his objection in writing through the Deputy Commissioner to the State Government within six weeks from the publication of the notification. After the expiry of six weeks from the publication of the notification, and the State Government having considered the objections, if any, it may, by notification, include the local area in the municipality. Then all rules, bye-laws, orders, directions and powers made, issued, or conferred under this Act and in force throughout the whole municipality at the time, shall apply at once to the newly added area. It is sub-section (4) of section 5 of the Act which is relevant on this point, and is in the following terms :—

“5. (4) When any local area has been included in a municipality under sub-section (3) of this section, this Act, and, except as the State Government may otherwise by notification direct, all rules, bye-laws, orders, directions and powers made, issued, or conferred under this Act and in force throughout the whole municipality at the time, shall apply to such area.”

(9) In view of the clear statutory provision in section 5(4), it cannot reasonably be contended by the learned counsel, for the petitioners that octroi duty cannot be levied in respect of goods imported from outside in the added areas in terms of the bye-laws already existing.

(10) The argument that the procedure as laid down in section 62 of the Act should be followed afresh before any octroi duty can be imposed is, therefore, without substance. By mere extension of the area of a municipality, all rules and bye-laws come into operation and if there are bye-laws existing relating to the octroi duty, they will also operate. In the circumstances of the present case, there is no question of the bye-law not having been published to the inhabitants of the area now being included in the Municipality of Sohna. It is clearly provided in the bye-law that the geographical limits for collecting octroi duty would be the limits of the municipality as notified from time to time. The petitioners had an opportunity to raise objections when the draft bye-law was published. Since it is stated therein that the bye-law would apply within the

Financial Commissioner, Haryana, etc. *v.* Kela Devi and another
(Mehar Singh, C.J.)

limits as may be extended from time to time, the petitioners could also raise objections when the same were invited under section 6(2) of the Act, as the municipal limits could extend to their area which adjoined the area already declared to be municipality.

(11) For the foregoing reasons, there is no merit in the writ petition which fails and is dismissed, with no order as to costs.

K.S.K.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J. and Prem Chand Jain, J.

FINANCIAL COMMISSIONER, HARYANA AND OTHERS,—Appellants.

versus

KELA DEVI AND ANOTHER,—Respondents.

Letters Patent Appeal No. 8 of 1969

May 12, 1969.

Punjab Security of Land Tenures Act (X of 1953)—Sections 10-A and 10-B—Punjab Security of Land Tenures Rules (1956)—Rules 20-A and 20-D—Allotment of surplus area to tenants—Whether amounts to utilization of such areas—Delivery of possession to the tenants—Whether essential to complete the utilization.

Held, that after an area of land with a land-owner is declared surplus and a tenant is selected for allotment of the same as a measure of resettlement, various steps have to be completed for the utilization of the land culminating in the delivery of possession of the land to the tenant resettled. Not until possession of the land in surplus area of a landowner is delivered to a tenant to be resettled on it, after allotment of the land to him, is the land utilized within the meaning and scope of sections 10-A and 10-B of Punjab Security of Land Tenures Act. If the tenant does not take possession of the land, his allotment is liable to be cancelled under rule 20-D of Punjab Security of Land Tenures Rules and the land is then to be utilized for resettlement of another tenant. Hence until the resettlement is complete by the delivery of possession of the land to a tenant, the utilization of the land cannot be said to be complete. (Para 5)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment, dated 29th October, 1968 passed by the Hon'ble Mr. Justice Bal Raj Tuli, in Civil Writ No. 2782 of 1968.