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always insert in the sale deeds. The sequence of events also leaves no doubt in our minds that the above-said recital in the sale deed was merely a formal recital therein and did not represent the true state of affairs. Reference in this behalf can be made to the fact that the decree-holder had taken out execution proceedings on 18th August, 1970 even before the judgment-debtor had drawn the pre-emption money which was done a day after the filing of the execution application, that is, on 19th August, 1970. The possession outside the Court could have been delivered by the judgment-debtor only between 13th August, 1970 (the date on which the pre-emptor decree-holder sold the land) and 18th August, 1970 on which date decree-holder took out execution proceedings. The question of judgment-debtor having parted with the possession of the land outside the Court even before drawing the amount of pre-emption money, in our view, was very very unlikely. In view of the above the question of decree-holder trying to secure possession of the land twice over from the judgment-debtor does not arise.

(9) So far as the observations of Pandit, J., quoted above, are concerned, these appear to be obiter dicta and in any case not applicable to the facts of the present case.

(10) For the reasons stated above, we find no merit in these appeals and dismiss the same with costs.

MAN MOHAN SINGH GUJRAL, J.—I agree.

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K. S. K.

CIVIL MISCELLANEOUS

*Before Prem Chand Pandit and Bhopinder Singh Dhillon, JJ.*

FIRM HANUMAN DAL & GENERAL MILLS, BALSMAND  
 ROAD, HISSAR,—*Petitioner.*

*versus*

THE MARKET COMMITTEE, HISSAR, ETC.—*Respondents.*

Civil Writ No. 1183 of 1972.

May 17, 1973.

*Punjab Agricultural Produce Markets Act (XXIII of 1961)—  
 Sections 5 and 6—Section 6(4)—Whether presupposes the publica-  
 tion of notification under section 5 or 6—Words “notwithstanding*

*any omission to publish" in the sub-section—Meaning of—Plea of omission of a particular area from the notification—Whether has to be substantiated by compelling circumstances—Acceptance of the plea—Whether results in the inclusion of the area in the notification—Interpretation of statutes—Grammatical and ordinary sense of words in a statute—Whether can be avoided.*

*Held*, that in sub-section (4) of section 6 of the Punjab Agricultural Produce Markets Act, 1961 it is clearly mentioned that a notification published in the official gazette under section 5 or 6 of the Act shall have full force which means that this provision presupposes that a notification under section 5 or 6 of the Act, as the case may be, has already been issued and it is that issued notification in which omission, irregularity or defect has to be ignored. The words "notwithstanding any omission to publish" in this sub-section do not mean that the notification under section 5 or 6 of the Act, as the case may be, has not been published but what they mean is that notification as mentioned in opening sentence of sub-section 4 of section 6 of the Act has been issued and an omission in its publication or irregularity or defect in publication, has crept in, which has to be ignored. If these words are interpreted to mean even the non-publication of the notification itself, it would lead to absurdity because the earlier part of sub-section (4) of section 6 in that case, becomes redundant and no effect can be given to that part.

*Held*, that it depends upon the facts and circumstances of each case whether there has been an omission in the publication of a notification under section 5 of the Act regarding a particular area and if all the attending circumstances lead to one conclusion that there has been such an omission in that case alone the notification issued under section 6(1) of the Act will be valid and for all practical purposes the area concerned will be deemed to have been notified in the notification issued under section 5 of the Act because of the provisions of section 6(4) of the Act. The plea that there has been an omission in the publication of a particular area in a notification issued under section 5 of the Act, cannot be accepted as a matter of course. Party raising such a plea shall have to substantiate the plea from compelling circumstances that it was really an omission. If the Court is satisfied that it was an omission, the provision of sub-section (4) of section 6 shall have to be brought into play and the area which by omission was left out of the notification issued under section 5, will be deemed to be included in the said notification. Once it is so held, there will be complete compliance of sub-section (1) of section 6 of the Act.

*Held*, that the ordinary rule of grammar cannot be treated as an invariable rule which must always and in every case be accepted without regard to the context. If the context definitely suggests that the relevant rule of grammar is inapplicable, then the requirement

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of the context must prevail over the rule of grammar. Hence in order to evade absurdity or incongruity, even grammatical and ordinary sense of the words in a statute can in certain circumstances be avoided.

*Amended petition under Articles 226 and 227 of the Constitution of India praying that an appropriate writ, order or direction be issued declaring that the respondent No. 1 has no jurisdiction to levy and realise market fee from the petitioner firm in respect of transactions carried on in the area of Hissar (including Municipal Area) of Hadbast 146 and restraining the respondent No. 1 from levying or realising any market fee from the petitioner firm in respect of transactions carried on in the area of Hissar (including Municipal Area) Hadbast 146 and from taking any penal action against the petitioner firm for non-payment of each fee and restraining the respondent No. 1 Committee from taking any penal action against the petitioners for non-payment of such fee pending the decision of this writ petition.*

Anand Swaroop, Advocate, for the petitioner.

P. S. Jain, and V. M. Jain, Advocates, for Respondent No. 1.

C. D. Dewan, Additional Advocate-General, (Haryana), for Respondent No. 2.

#### JUDGMENT

DHILLON, J.—This judgment will dispose of seven connected writ petitions Nos. 1183 to 1188 of 1972 and 194 of 1973 as the common questions of law and fact arise in all these petitions.

(2) Briefly stated the facts giving rise to these writ petitions are that the petitioners in all these petitions are carrying on the business of purchase, sale, storage and processing of agricultural produce within the municipal limits of Hissar Municipal Committee Hadbast No. 146, and are licencees under the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as the Act). Under section 5 of the Act, the State Government issued a notification dated 18th September, 1961, published on 22nd September, 1961, copy of which is Annexure 'A' with writ petition No. 1183 of 1972, whereby declaring its intention of exercising control on the purchase, sale, storage and processing of agricultural produce as specified in the schedule to the said Act in the revenue estates of

the villages mentioned in the said notification. It may be mentioned that the said notification contains the names of 149 villages which also includes Bir Hissar Hadbast No. 145 and the area which now falls within the limits of Municipal Committee Hissar is Hadbast No. 146 and the said Hadbast is not mentioned in the said notification. On 5th June, 1962, the State Government issued notification under section 6(1) of the Act declaring the area specified in the schedule attached to the notification to be the notified market area of the Market Committee, Hissar. The copy of the said notification is Annexure 'B' with writ petition No. 1183 of 1972. It may be pointed out that notification under section 5 of the Act, Annexure 'A', which includes Hadbast No. 145, Bir Hissar contains the names and Hadbast numbers of 149 villages which were intended to be included in the market area of the Market Committee, Hissar, whereas in the notification issued under section 6(1) of the Act, which includes Hadbast No. 146, Hissar also, the total numbers of the villages included in the market area is 169. On 30th October, 1962, the Punjab Government issued notification under sections 11 and 12 of the Act for establishing a Market Committee at Hissar, which notification was published in the Punjab Government Gazette dated 9th November, 1972. The copy of the said notification is Annexure 'C' with the same writ petition. On 3rd April, 1964, another notification under section 5 of the Act declaring the intention of the State Government of exercising control over the purchase, sale, storage and processing of the agricultural produce in the area Hissar (including municipal area) Hadbast No. 146, was published in the Punjab Government Gazette, apparently to cover the omission. The copy of the said notification is Annexure 'D' with writ petition No. 1183 of 1972. On 28th August, 1964, another notification under section 6(1) of the Act in reference to notification Annexure 'D' was published by the Punjab Government in the official gazette declaring area Hissar (including municipal area) Hadbast No. 146 in Tehsil and District Hissar as part of the notified market area for Market Committee, Hissar. The copy of the said notification is Annexure 'E' with writ petition No. 1183 of 1972.

(3) It is admitted by the writ petitioners that all of them took licences from the Market Committee, Hissar under the Act for dealing in the purchase, sale, storage and processing the agricultural produce and consequently keeping in view the provisions of the Act and the Rules made thereunder, they had been paying the market fee to the Market Committee, Hissar, throughout. It is now

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claimed in the present writ petitions for the first time that since the name of the Hissar municipal area Hadbast No. 146 was not published in the notification issued under section 5 of the Act in the year 1961 Annexure 'A' with C.W. No. 1183 of 1972, therefore, the said area could not be included in the notification issued under section 6 of the Act, Annexure 'B', and since it could not be done, the establishment of the Market Committee under sections 11 and 12 of the Act, for the area known as the municipal area Hissar Hadbast No. 146 is illegal, and, therefore, the municipal area Hissar Hadbast No. 146 should be taken not to be in the market area of the Market Committee, Hissar and the dealers pursuing their business within the municipal limits of Hissar Hadbast No. 146 are not liable to take any licences from the Market Committee and as such are not liable to pay the market fee, because the Market Committee, Hissar has no jurisdiction over the persons dealing in sale, purchase, storage and processing of agricultural produce within Hadbast No. 146, municipal area, Hissar as the same is not included in the market area of Market Committee, Hissar. It is, therefore, prayed in these writ petitions that an appropriate writ, order or direction be issued declaring that the respondent Market Committee has no jurisdiction to levy and realise the market fee from the petitioners in respect of the business carried on in the municipal area, Hissar Hadbast No. 146 and that the Market Committee be restrained from taking any penal action against the petitioners for the non-payment of the said market fee and also the Market Committee be asked to pay back the market fee already paid by the petitioners to the Market Committee under a mistaken belief.

(4) It may be pointed out that the State of Haryana has also placed reliance on Haryana Act No. 12 of 1972 which according to the State Government has been passed by the Haryana State Legislature in order to validate the levy and collection of the market fee. It has been pleaded that even if for argument's sake, it be admitted that there is some procedural defect in the publication of the notifications and some legal lacuna has crept in, even then, the levy and collection of the market fee, according to the validation Act No. 12 of 1972, are valid and the petitioners' claim for refund of the market fee already paid is likely to be defeated on that ground. On merits, it has been claimed by the Market Committee, Hissar, whose office and the principal market yard are situate in the municipal area of Hadbast No. 146 that it is a legally constituted Market Committee

for the area in dispute and the area of the Municipal Committee, Hissar Hadbast No. 146 itself lies within the market area of the Market Committee, Hissar, and it is in view of this that all the petitioners took licences from the Market Committee, Hissar and had been paying the market fee since many years. Therefore, it is pleaded that there is no merit in these petitions. It has further been claimed that a minor omission in the notification under section 5 of the Act, if any, has to be ignored keeping in view the provisions of sub-section (4) of section 6 of the Act and the omission, if any, is of technical and procedural nature, which has to be condoned in view of the above mentioned provisions.

(5) In order to appreciate the contentions of the learned counsel for the parties, the relevant provisions of the Act may be set forth. Sections 5, 6(1), 6(4), 11 and 12 of the Act, are reproduced below:—

“5. The State Government, may by notification, declare its intention of exercising control over the purchase, sale, storage and processing of such agricultural produce and in such area as may be specified in the notification. Such notification shall state that any objections or suggestions which may be received by the State Government within a period of not less than thirty days to be specified in the notification, will be considered.”

“6(1) After the expiry of the period specified in the notification under section 5 and after considering such objections and suggestions as may be received before the expiry of such period, the State Government may, by notification and in any other manner that may be prescribed, declare the area notified under section 5 or any portion thereof to be a notified market area for the purposes of this Act in respect of the agricultural produce notified under section 5 or any part thereof.

(2) \* \* \* \* \*

(3) \* \* \* \* \*

(4) For the removal of doubts, it is hereby declared that a notification published in the official gazette under this section or section 5 shall have full force and effect notwithstanding any omission to publish, or any irregularity

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or defect in the publication of, a notification under this section or under section 5, as the case may be.”

11. The State Government shall by notification establish a market committee for every notified market area and shall specify its headquarters.”

“12. (1) A committee shall consist of nine or sixteen members as the State Government may in each case determine, out of whom one shall be an official appointed by the State Government.

Provided that where in a notified market area there is in existence a Co-operative Society, the Committee shall consist of ten or seventeen members as the case may be.

(2) The remaining members shall be nominated by the State Government by notification as follows:

(a) If the Committee is to consist of nine members, there shall be nominated—

(i) five members from amongst the producers of the notified market area;

(ii) two members from amongst the persons licensed under section 10; and

(iii) one member from amongst the persons licensed under section 13;

(b) if the Committee is to consist of ten members, there shall be nominated in addition to the members specified in sub-clauses (i), (ii) and (iii) of clause (a), one member representing the Co-operative Societies;

(c) if the Committee is to consist of sixteen members, there shall be nominated—

(i) nine members from amongst the producers of the notified market area;

(ii) four members from amongst the persons licensed under section 10; and

(iii) two members from amongst the persons licensed under section 13;

(d) if the Committee is to consist of seventeen members, there shall be nominated in addition to the members specified in sub-clauses (i), (ii) and (iii) of clause (c), one member representing the Co-operative Societies:

Provided that where, in the case of sub-clause (iii) of clause (a) or sub-clause (iii) of clause (c), there are no persons licensed under section 13 or the number of such persons is less than those required to be nominated the deficiency shall be made up by nominating from amongst the persons licensed under section 10.

(3) No act done, or proceedings taken, under this Act by the Committee, shall be invalid merely on the ground—

(a) of any vacancy or defect in the constitution of the Committee; or

(b) of any defect or irregularity in nomination of a person acting as a member thereof; or

(c) of any defect or irregularity in such act or proceeding not affecting the merits of the case.

(4) Subject to rules made under this Act, the disqualifications specified in sub-section (5) of section 3 shall also apply for purposes of becoming a member of a Committee.

(5) On and from the 11th day of May, 1970—

(a) all members, including the Chairman and the Vice-Chairman whether elected or otherwise, of every Committee, functioning immediately before such commencement shall cease to hold office as such members; and

(b) the State Government shall constitute Committees in accordance with the provisions of this section :

Provided that the State Government may, until such Committees are constituted and their Chairmen and Vice-Chairmen are elected in accordance with the provisions of the Act, appoint such person or persons, as may be considered suitable in this behalf to exercise the powers and perform the functions of such Committees.



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*Explanation.*—For the purpose of the proviso to clause (b) of sub-section (5), any person or persons appointed by the State Government before the such commencement under section 36 to carry out the functions of a Committee shall be deemed to be person or persons appointed by the State Government to exercise the powers and perform the functions of those Committees for which they were appointed.”

(6) From the reading of these provisions, it is clear that the procedure set out for declaring the market area, for the establishment of the Market Committee to exercise control over the purchase, sale, storage and processing of the agricultural produce in the market area is that the State Government has to declare its intention by issuing a notification under section 5 of the Act specifying the area over which it intends exercising the control over the purchase, sale, storage and processing of agricultural produce and so also to notify the agricultural produce regarding which the purchase, sale, storage, and processing is to be regularised, with a view to invite objections or suggestions within a period of not less than 30 days as specified in the notification. After a notification under section 5 of the Act are received and after considering such objections and suggestions as may be received by the State Government, the State Government may by a notification or in any other manner, that may be prescribed, declare the area notified under section 5 or any portion thereof to be a notified market area for the purposes of this Act in respect of agricultural produce notified under section 5 or any portion thereof. It is, therefore, obvious that if a particular area or a particular agricultural produce *has not been* notified under section 5, the said area or the produce cannot be included in a notification under section 6(1) of the Act. The mandate given in sub-section (1) of section 6 of the Act, is that the Government may declare the area notified under section 5 of the Act or any portion thereof to be a notified market area, in respect of the agricultural produce notified under section 5 or portion thereof, thus having no power to include an area or agricultural produce which area or agricultural produce, as the case may be, was not notified under section 5 of the Act.

(7) Sub-section (4) of section 6 of the Act is the provisions on which main reliance is being placed by Mr. P. S. Jain, the learned counsel for the Market Committee. His contention is that if there

is any omission or any irregularity or defect in the publication of a notification under section 5 or 6 of the Act, the said omission, irregularity or defect shall have to be ignored. It is contended that the not mentioning of the area Hissar Hadbast No. 146 in the notification issued under section 5 of the Act, Annexure 'A' with writ petition No. 1183 of 1972, is in fact an omission, which in view of the provisions of sub-section (4) of section 6 of the Act has to be ignored. In this respect the first question which has to be resolved is as to what is the correct interpretation of sub-section (4) of section 6 of the Act especially of the words "notwithstanding any omission to publish". It is to be noted that in the earlier part of sub-section (4) of section 6 of the Act, it is clearly mentioned that a notification published in the official gazette under section 5 or 6 of the Act shall have full force which means that this provision presupposes that a notification under section 5 or 6 of the Act, as the case may be, has already been issued and it is that issued notification in which omission, irregularity or defect has to be ignored. If the words "notwithstanding any omission to publish" are interpreted to mean that even if the notification is not published that would lead to absurdity because the earlier part of sub-section (4) of section 6 will, in that case, become redundant and no effect can be given to that part of the said sub-section. In this situation, the ordinary meaning of the words "notwithstanding any omission to publish" cannot be given and the wholesome interpretation would be that the words "notwithstanding any omission to publish" may be read as "notwithstanding any omission to publish" may in". It is well settled that the ordinary rule of grammar on which the construction is based, cannot be treated as an invariable rule which must always and in every case be accepted without regard to the context. If the context definitely suggests that the relevant rule of grammar is inapplicable, then the requirement of the context must prevail over the rule of grammar. It was so held by their Lordships of the Supreme Court in *The Regional Provident Fund Commissioner, Bombay v. Shree Krishna Metal Manufacturing Co., Bhandara* (1). Similarly it is the settled rule of law that to avoid absurdity or incongruity even grammatical and ordinary sense of the words can in certain circumstances be avoided. This view was taken by a Division Bench of this Court in *State v. Sat Ram Dass* (2). It is, therefore, apparent while taking into consideration the

(1) A.I.R. 1962 S.C. 1536.

(2) A.I.R. 1959 Pb. 497.

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wording of sub-section (4) of section 6 of the Act that the words "notwithstanding any omission to publish" would not mean that the notification under section 5 or 6 of the Act, as the case may be, has not been published, but it would mean that the notification as mentioned in the opening sentence of sub-section (4) of section 6 of the Act has been issued and an omission in its publication or irregularity or defect in publication, has crept in, which has to be ignored.

(8) On the other hand it is contended by Mr. Anand Swaroop, the learned counsel for the petitioners that the words "omission to publish" in sub-section (4) of section 6 of the Act should be construed to mean the omission to publish the notification in any other manner as prescribed in Rule 7 of the Punjab Agricultural Produce Markets (General) Rules, 1962, wherein it has been provided that copies of notification issued under section 6 shall be published, under the orders and at the discretion of the Chairman of the Board in one or more of the modes specified in that Rule in addition to the notification in the official Gazette. However, it is not disputed by him that a notification, according to the opening sentence of sub-section (4) of section 6 of the Act, must necessarily have been issued, but he contends that if there is an omission to publish the intention of the State Government under sections 5 and 6 of the Act in the other manner prescribed in rule 7 of the Punjab Agricultural Produce Markets (General) Rules, 1962, in that case that omission to publish has to be ignored under the provisions of sub-section (4) of section 6 of the Act. On this argument having been made the learned counsel was confronted with the situation that if this interpretation is given, then in the provisions of section 5 of the Act or under any rule framed under the Act, there is no other mode of publication of notification prescribed except the notification published in the official gazette and in that case the mention of section 5 in sub-section (4) of section 6 of the Act, will become redundant as no case can be visualised where a notification in the official gazette has been issued under section 5 of the Act and still there may be any omission to publish because no other mode of publication has been provided under section 5 of the Act or any of the Rules made thereunder because rule 7 referred to earlier only applies to the action of the State Government in notifying its final intention under section 6 above. It was pointed out to the learned counsel that even if this interpretation is given, full effect cannot be given to the provisions of sub-section (4) of section 6 of the Act and in that case

as regards the omission to publish mentioned regarding section 5 in this sub-section, will completely become redundant and meaningless. On these observations having been made, the learned counsel contended that there is a defect in the drafting of sub-section (4) of section 6 of the Act and the mention of section 5 in sub-section (4) is in fact a defect in the draft as no mention of section 5 should have been made in this sub-section. As has been observed earlier, if the interpretation, as put by the learned counsel for the petitioners, is adopted a portion of the said sub-section becomes completely redundant and while interpreting the provisions it should be the endeavour of the Court to give some meaning to the provisions of the section rather than adopting the interpretation which will make a major portion of the section as redundant.

(9) It was next contended by the learned counsel for the petitioners that if the words "any omission to publish" are taken to mean that if a particular area by omission is not mentioned in the notification issued under section 5 of the Act and the same can be included in a notification issued under section 6(1) of the Act validly because of the provisions of sub-section (4) of section 6, that would negate the very provisions of sub-section (1) of section 6 of the Act as in a notification issued under this sub-section, the area which was included in the notification issued under section 5, can only be included and no area, which has not been included in the notification issued under section 5, can in no case be included in the notification issued under section 6. This argument of the learned counsel at the face of it appears to be quite attractive because a particular area which was not included in a notification issued under section 5 of the Act, is taken to be an omission in the publication of that notification and the same is held to be rightly included in the notification issued under section 6(1) of the Act; in that case there will be some area, which though not included in the notification issued under section 5 of the Act, will be deemed to be correctly included in the notification issued under section 6(1) of the Act, but if the significance of the omission to publish is correctly appreciated, in that case this argument loses force. It may be observed that it would depend upon the facts and circumstances of each case whether there has been an omission in the publication of a notification under section 5 of the Act regarding a particular area and if all the attending circumstances lead to one conclusion that there has been an omission in the publication of a notification under section 5 of the Act regarding a particular area, in that case

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alone the notification issued under section 6(1) of the Act will be valid and for all practical purposes the area concerned will be deemed to have been notified in the notification issued under section 5 of the Act because of the provisions of section 6(4) of the Act, which provides that full force be given to a notification and effect be given to the notification under section 5 or 6 as the case may be notwithstanding any omission to publish in or any irregularity or defect in the publication of the notification.

(10) Thus it will be clear that it will be in very rare cases where such a situation will arise as has arisen in the present case regarding which I will be mentioning a number of circumstances which clearly point out to one conclusion that the non-mentioning of Hissar Hadbast No. 146 in the notification issued under section 5 of the Act, is clearly an omission in the publication of that notification, which omission has to be ignored. The plea that there has been an omission in the publication of a particular area in a notification issued under section 5 of the Act, cannot be accepted as a matter of course. Party raising such a plea shall have to substantiate the plea from compelling circumstances that it was really an omission, and if the Court is satisfied that it was an omission, then the provision of sub-section (4) of section 6 shall have to be brought into play and the area which by omission was left out of the notification issued under section 5, will be deemed to be included in the said notification. Once it is so held, there will be complete compliance of sub-section (1) of section 6 when the said area is also included in a notification issued under section 6 of the Act.

(11) The contention of the learned counsel for the petitioners that in the notification issued under section 6(1) of the Act, Annexure 'B' with this writ petition, and also in the subsequent notifications, Annexures 'D' and 'E' with this writ petition, issued under sections 5 and 6(1) of the Act, respectively, regarding Hissar Hadbast No. 146, it was not mentioned by the State Government that there was an omission in this regard in the notification under section 5 of the Act, Annexure 'A', and it should be presumed that there was no omission, is again without any merit. It was not so sacrosanct that merely because the State Government has mentioned in the subsequent notification that there was an omission in the earlier notification, that it should be taken as a gospel truth that the omission did take place and similarly if there are some circumstances to show that there was an omission, that would not debar the Court

from coming to that conclusion even if the State Government failed to mention the same in a subsequent notification. Therefore, this argument of the learned counsel is without any merit.

(12) Having interpreted sub-section (4) of section 6 of the Act in this manner, the only other question which needs to be determined is whether the omission in not mentioning Hissar Hadbast No. 146 in the notification, Annexure 'A' with this writ petition, published under section 5 of the Act, is an omission of the type which can be condoned under sub-section (4) of section 6 of the Act. In my opinion, keeping in view the facts and circumstances of this case, the non-mentioning of Hissar Hadbast No. 146 in the notification Annexure 'A' published under section 5 of the Act, is clearly an omission which can be ignored under section 6(4) of the Act, because there are a number of circumstances which lead to that conclusion. The first and foremost circumstance is that admittedly the area where the petitioners are dealing in the sale, purchase, storage and processing of agricultural produce, that is, Hissar Municipal limits Hadbast No. 146, was and is the seat of the Market Committee, Hissar. As is apparent from the notification Annexure 'R-I' attached with the return filed on behalf of the Market Committee, under Act No. V of 1939, which stands repealed by the enactment of Act No. 23 of 1961, the market Committee Hissar did include the municipal area Hissar Hadbast No. 146 within its market area and the seat of the Market Committee, Hissar was situate in that area. Similar is the situation after the enforcement of Act No. 23 of 1961. The market area regarding which the notifications, Annexures 'A' and 'B' have been issued, is named as Market Committee Hissar and the seat of the said Market Committee is admittedly situate in that area as is apparent from the notification Annexure 'R-2'. It is also admitted and proved on the file that the principal market yard of the Hissar Market Committee, as declared under the Act, is within this area. It could not be the intention of the State Government while issuing notification under section 5 of the Act that Hissar municipal area Hadbast No. 146 which had been and which was being declared as the seat of the Market Committee, Hissar, should not be included in the market area itself. It cannot be held that though the principal market yard has been established in this area still the Government intention be not to have control over the sale, purchase, storage and processing of the agricultural produce in this area.

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(13) Secondly, it is apparent from the scheme of the Act that the Market Development Fund, as constituted under section 25 of the Act, has to be utilised for the purpose mentioned in section 26 of the Act which includes the providing of facilities for better marketing of the agricultural produce and other various facilities such as Pacca flooring and provision of drains in the market area and other amenities. It is proved that the principal market yard is situate in the municipal area Hissar Hadbast No. 146 and a number of amenities which have been mentioned in para 9(e) of the return filed on behalf of the Market Committee, have been provided. It could not be the intention of the Market Committee to spend the market funds on an area which was not to be included in the market area itself and where, according to the provisions of the Act, the purchase, sale, storage and processing of the agricultural produce could not be regulated.

(14) Thirdly, it is to be noticed that in the notification, Annexure 'B' with this writ petition, issued under section 6(1) of the Act about 8 months after the issuance of the notification under section 5 of the Act, Hissar Hadbast No. 146 has been included. If this non-inclusion of the market area in the notification issued under section 5 was not an omission, there is no reason as to why this area should have been included in the notification issued under section 6(1) of the Act within a short period of 8 months after the issuance of the notification under section 5. It is also apparent that the notification under sections 11 and 12 of the Act, Annexure 'C', was issued with reference to the notification issued under section 6(1), which notification admittedly included Hissar Hadbast No. 146 within the market area and no objection at all till the year 1972 when these writ petitions had been filed, was taken to the notifications issued either under sections 6(1) or 11 and 12 of the Act, which notifications were issued in the year 1962. It is also the admitted case between the parties that the petitioners as well as all the other licencees whose business premises are situate within the municipal area Hissar Hadbast No. 146 have been throughout complying with the provisions of the Act and the Rules and have been paying the market fee to the Market Committee. All the licencees including the petitioners were the registered voters to elect their representatives under section 12 of the Act from amongst the dealers-licencees before this section was amended by Act No. 25 of 1970 wherein

instead of election of members, nomination has been provided. It is also clear from the return filed by the Market Committee that after the amendment of section 12 of the original Act by Haryana Amendment Act No. 25 of 1970, four members from amongst the licensees under section 10 of the Act, who are all residing in Hadbast 146, Hissar, have been nominated to the Market Committee under section 12 of the Act.

(15) The fourth factor, which also leads to the same conclusion, is that when it came to the notice of the Government that there was an omission in not including the name of Hissar Hadbast No. 146 in the notification issued under section 5 of the Act, Annexure 'A' with this writ petition, another notification dated 11th March, 1964, Annexure 'D' was issued under section 5 of the Act wherein the Government notified its intention to include Hissar Hadbast No. 146 in the market area, Hissar and on 20th August, 1964, none having objected to the proposal of the Government, a notification under section 6(1) of the Act Annexure 'E', was issued whereby Hissar Hadbast No. 146 was included in the market area, Hissar. The contention of Mr. Anand Swaroop, the learned counsel for the petitioners, that in the notification, Annexure 'A', only 149 villages were notified and in the notification, Annexure 'B', issued under section 6(1) of the Act, 169 villages have been notified including Hissar Hadbast No. 146, therefore, it should not be taken to be an omission, is without any merit. In the present petitions, we are only concerned whether the non-inclusion of Hissar Hadbast No. 146 in the notification issued under section 5 of the Act, Annexure 'A', is an omission or not. It would depend on the facts of each case as to whether a particular alleged omission is an omission and is condoned by the provisions of sub-section (4) of section 6 of the Act or not, or, in other words, whether keeping in view the facts and circumstances of a particular case, can non-mentioning of a particular Hadbast in the notification issued under section 5 of the Act, be termed an omission or not. We are not concerned with the decision regarding the market area of the other villages from Serial Nos. 150 to 169 of the notification. Annexure 'B', in the present writ petitions. The short question before us in these writ petitions is whether the non-mentioning of Hissar Hadbast No. 146, even though Hissar Beer Hadbast No. 145 having been mentioned in the notification under section 5 of the Act, is an omission or not. All the factors, which I have already enumerated, go to point out that it is



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difficult to hold that the State Government, while issuing notification Annexure 'B', under section 5 of the Act, had no intention to include Hissar Hadbast No. 146 within the market area of the Market Committee, Hissar. It is also clear that the notifications Annexures 'D' and 'E', which were issued in the year 1964 under sections 5 and (6) (1) of the Act, respectively, included Hissar Hadbast No. 146 in the market area. The other villages except one mentioned from serial Nos. 150 to 169 in Annexure 'D' were not included. Therefore, the above referred to factors, which are available in the case of Hissar Hadbast No. 146, may not be available in those cases and that matter can be appropriately gone into as and when such questions would arise, but for the purposes of the disposal of the present writ petitions, it appears that the non-mentioning of Hissar Hadbast No. 146 in the notification, Annexure 'A', issued under section 5 of the Act, was in fact an omission and it cannot be held that the State Government had no intention to include this area in the market area under the Market Committee, Hissar which is the principal market yard and the seat of the Market Committee, Hissar.

(16) The matter can be viewed from another angle also. The only objection which has been taken regarding the jurisdiction of the Market Committee, Hissar, in view of the notifications Annexure 'D' and 'E', issued under sections 5 and 6(1) of the Act, subsequently, is that under sections 11 and 12 of the Act a notification establishing a Market Committee for the market area was not issued subsequent to the issuance of notifications Annexures 'D' and 'E', by the State Government. It may be pointed out that in the notification issued under sections 11 and 12, Annexure 'C', a reference has been made to a notification issued under section 6(1) of the Act, Annexure 'B', which notification definitely included Hissar Hadbast No. 146 in the market area of the Market Committee, Hissar. By issuing notifications under sections 5 and 6(1), Annexure 'D' and 'E', respectively, even if technical compliance is necessary, the State Government did include Hissar Hadbast No. 146 in the market area of the Market Committee, Hissar and the notification Annexure 'C' issued under sections 11 and 12 of the Act, which refers to the notification, Annexure 'B', under section 6(1) of the Act, also included Hissar Hadbast No. 146 in the market area. Therefore, in my opinion from whatsoever angle the matter may be viewed, it is difficult to hold that Hissar Hadbast No. 146 is not within the market area of

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the Market Committee, Hissar, as it now stands constituted under sections 11 and 12 of the Act.

(17) The contention of learned counsel for the petitioners that there is no legally constituted Market Committee for Hissar Hadbast No. 146, would be too technical a construction of the provisions of the Act which will practically frustrate the very purpose for which the Agricultural Produce Market Act, 1961, has been enacted. It is for meeting such an exigency that the provisions of sub-section (4) of section 6 of the Act have been enacted by the Legislature to overlook certain omissions, irregularities or defects in the publication of the notifications under sections 5 and 6(1) of the Act. Therefore, the writ petitions cannot be allowed on the ground that there is no legally constituted Market Committee for the area Hissar Hadbast No. 146 and as such there is no merit in the contention that the Market Committee cannot levy the market fee and the petitioners are not liable to pay the same.

(18) The other contention raised by Mr. P. S. Jain, the learned counsel for the Market Committee is that the petitioners are estopped from challenging the validity and constitutionality of the Market Committee, Hissar, as the averments made in para 9 of the written statement filed on behalf of the Market Committee, have not been denied by the petitioners, which are to the effect that the petitioners did take the licences by making applications from the said Market Committee and that the Market Committee did spend sufficient amount on the development of the principal market yard and the sub-market yards of which the petitioners have been taking the benefit by having ready purchasers and sellers in the principal market yard and also other amenities provided by the Market Committee, Hissar, such as providing Pacca roads, Pacca flooring and drains, tubewell for water supply, sanitation arrangements, provision for drinking water including water cooler and cattle scarer etc. etc., and they have enjoyed all these benefits since the year 1962, are estopped from challenging the jurisdiction of the Market Committee over them. It is also contended that the petitioners and other licensees in a number of cases, according to the Rules, had been collecting the market fee which they paid to the Market Committee and since they have themselves been collecting the market fee under the Rules framed under the Act, therefore, they cannot now challenge the jurisdiction of the Market Committee. The learned counsel relies on *S. Nand Singh v. Rahmat Din and*

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others, (3) *Bapatla Venkata Subba Rao v. Sikharam Ramakrishna Rao and another* (4), *Mirza Nowsherwan Khan and another v. State of Andhra Pradesh and others* (5), *Asiz Rawther v. Kanji-rapally Panchayat* (6) and *The State v. Keshab Chandra Naskar*, (7) in support of this proposition. On the other hand, it is contended by Mr. Anand Swaroop the learned counsel for the petitioners, that there is no question of any estoppel against law if this Court comes to the conclusion that the Market Committee is not duly constituted and has no jurisdiction over the petitioners, the petitioners are entitled to receive back the market fee paid by them and are not liable to pay the market fee in future in accordance with the provisions of the Act. The learned counsel relies on *Ashoka Marketing Ltd. v. The State of Bihar and another* (8) for this proposition.

(19) In my opinion the authorities relied upon by the learned counsel for the Market Committee are not quite helpful to him. There cannot be any estoppel against law. If the petitioners succeed in showing that Hissar Hadbast No. 146 is not within the market area of Market Committee, Hissar, obviously the Market Committee, Hissar will have no jurisdiction over the petitioners. In that case no amount of consent on the part of petitioners can vest the Market Committee of the jurisdiction which is held to be wanting. Therefore, the petitioners cannot be thrown out on this preliminary objection and, therefore, the contentions on merits have been examined.

(20) The only other matter, which may be referred to in all fairness to the learned counsel for the parties, is that it was contended by the learned counsel for the petitioners that the Haryana Act No. 12 of 1972, which has been passed in order to validate the collection of the market fee by the Market Committee throughout the State of Haryana, wherever it may apply, is *ultra vires* of the Constitution in as much as the Act having not remedied the basic defect in the constitution of the Committee and thus the levy and collection of the market fee, would not be validated. On the other

- (3) A.I.R. 1946 Lah. 73.
- (4) A.I.R. 1958 A.P. 322.
- (5) A.I.R. 1959 A.P. 444.
- (6) A.I.R. 1961 Kerala, 289.
- (7) A.I.R. 1962 Cal. 338.
- (8) A.I.R. 1971 S.C. 946.

hand the said Act has been interpreted by Shri Chetan Dass Dewan, the learned Additional Advocate General, Haryana, saying that if any defect crept in the constitution of Market Committee the same has been removed under the Act, therefore, the validation of the levy and collection of the market fee is quite valid. This matter need not be gone into in view of my conclusion that there is no defect in the constitution of the Market Committee, Hissar. This Act would have only come into play if it was found that there was legal defect in the constitution of the Committee. It is, therefore, obvious that this Act is not applicable to the present case. The validity of the Act may be gone into in some appropriate case.

(21) No other point has been pressed before us.

(22) For the reasons recorded above, there is no merit in all these writ petitions and the same are hereby dismissed. However, keeping in view the facts and circumstances of the cases, there will be no order as to costs.

Pandit, J.—I agree that the writ petitions be dismissed, but with no order as to costs.

K.S.K.

**FULL BENCH**

*Before Bal Raj Tuli, Bhopinder Singh Dhillon and  
M. R. Sharma, JJ.*

**M/S. BHAGAT SINGH,—Petitioner.**

*versus*

**THE STATE OF PUNJAB, ETC.,—Respondents.**

Civil Writ No. 3069 of 1972.

March 24, 1975.

*Punjab Excise Act (1 of 1914)—Sections 36(c), 40 and 80—  
Constitution of India (1950)—Articles 14 and 19(1) (f) and (g)—  
Section 36(c) read with sections 40 and 80—Whether violative of  
Articles 14 and 19(1) (f) and (g) of the Constitution—Cancellation  
of a liquor licence under section 36(c)—Rules of natural justice—  
Whether require the giving of a notice of an oral hearing to the*