

Sant Lal v. State of Haryana etc. (Tuli, J.)

(13) All these authorities are consistent with the view we have taken. In brief, we have held that the provisions of sub-section (2) of section 15 over-ride the provisions of sub-section (1) of section 15 of the Act, and if a sale falls within both the sub-sections, sub-section (2) must prevail notwithstanding anything contained in sub-section (1). Sub-section (2) of section 15 will apply if the property sold is inherited by the female through her father or her husband. The clear position that emerges is that sub-section (2) of section 15 is applicable to the property inherited by a female from her father and is available for pre-emption to her brothers and brother's sons, while the sale of the property inherited by a female from her husband or son is open to pre-emption, firstly, by her husband's son or daughter and, secondly, by her husband's brother or husband's brother's sons.

(14) For all these reasons, we find no merit in this appeal. We accordingly affirm the findings of the learned Single Judge and dismiss the appeal with costs.

GOPAL SINGH, J.—I agree.

B.S.G.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

SANT LAL,—Petitioner

versus

State of Haryana, etc.—Respondents.

Civil Writ No. 4574 of 1971

May 26, 1972

Punjab Agricultural Produce Markets Act (XXIII of 1961 as amended by the Punjab Agricultural Produce Markets (Haryana Amendment) Act (XXV of 1970)—Sections 12(2) (c) (iii) and 13—Punjab Agricultural Produce Markets (General) Rules (1962)—Rules 21(3) and 21(5)—Section 12(2) (c) (iii)—Nomination of a licensee as member of a Market Committee—Such licensee—Whether must have

a valid current licence in his favour on the date of the nomination—Renewal of a licence on an application made beyond the period allowed by rule 21(3)—Whether takes effect from the date following the original date of expiry of the licence—Such renewed licence—Whether constitutes a fresh licence granted under rule 21(5).

Held, that section 12(2)(c)(iii) of the Punjab Agricultural Produce Markets Act, 1961, as amended, clearly means that the persons to be nominated as members of the Market Committee should be from amongst those who are licensed under section 13, that is, on the date the nomination is made, there must be a valid licence current in their favour. A person whose licence has expired and who is not interested to keep himself licensed under section 13 by getting it renewed cannot be nominated simply because he may apply for the renewal with retrospective effect. It is only those persons who can be nominated as representatives of a Class who really belong to that class on the date of the nomination and not those who, after nomination, may be deemed to have belonged to that Class.

(Para 3)

Held, that where a person does not apply for the renewal of his licence within the period allowed by rule 21(3) of the Punjab Agricultural Produce Markets (General) Rules, 1962, the licence, when renewed, will not take effect from the date following that on which it had expired. The licence after such renewal will be considered to be a fresh licence granted under rule 21(5) of the Rules.

(Para 3)

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of Certiorari, or any other appropriate writ, order or direction be issued quashing the impugned items Nos. (ii) and (iii) of the impugned notification dated 17th September, 1971 (Annexure 'C') relating to the nomination of respondents 5 to 8 as members of the Market Committee, Pataudi and consequential result of election of Chairman and Vice-Chairman of the said Market Committee of Capt. Sis Ram and Mohinder Singh respondents Nos. 3 and 4 and further praying that respondent No. 1 be restrained from publishing the name of Sarvshri Capt. Sis Ram and Mohinder Singh respondents Nos. 3 and 4 as Chairman and Vice-Chairman, respectively, of the Market Committee, Pataudi in the official Gazette and further restraining the said respondents from functioning as Chairman and Vice-Chairman, during the pendency of the writ petition and also praying that the service of requisite notices of stay on the respondents be dispensed with.

Chandra Singh, Advocate, for the petitioner.

C. D. Dewan, Additional Advocate-General (Haryana), for respondent No. 1.

M. R. Agnihotri, Advocate, for respondents 2 to 5.

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JUDGMENT

TULI, J.—The Market Committee, Pataudi, consisting of 17 nominated members, was constituted by notification, dated September 17, 1971, under section 12 of the Punjab Agricultural Produce Markets Act, 1961, as amended by the Punjab Agriculture Produce Markets (Haryana Amendment) Act, 1970 (hereinafter referred to as the Act). This Market Committee, as constituted, consists of nine representatives of the producers, four representatives of the persons licensed under section 10 of the Act, two representatives of the persons licensed under section 13 of the Act and one representative of the Co-operative Societies in the area. The Block Development and Panchayat Officer has been nominated as the official member of this Committee. The petitioner is a member of the Market Committee representing the producers, respondent No. 5 is a nominated member representing persons licensed under section 13, while respondents 6 to 8 are nominated members representing persons licensed under section 10 of the Act. The petitioner has challenged the nomination of these four respondents. Separate written statements have been filed by respondents 1, 3 and 6 defending these nominations.

(2) The learned counsel for the petitioner has stated that under section 12 of the Act, two members from amongst the persons licensed under section 13, have to be nominated. Respondent No. 5, Shri Dola, held a licence under section 13 which expired on March 31, 1969, and the licence was not renewed thereafter till after his nomination. Therefore, on September 17, 1971, when respondent No. 5 was nominated as a member of the Market Committee, he was not a person licensed under section 13 of the Act. The learned counsel for the respondents have relied on rule 21 of the Punjab Agricultural Produce Markets (General) Rules, 1962, which reads as under:—

“Renewal of licence and issue of duplicate thereof:—

- (1) A licence granted under section 10 or 13 of the Act shall be valid for the period for which it is issued and shall, subject to any order passed under section 10(2) of the Act or rule 19(5) be renewable by the authority granting it, on payment of the annual fee prescribed for the issue of such licence. Renewal application shall be made in Form F for licences under section 10 and in Form G for those under section 13.

- (2) If any area is excluded from any notified market area and included in another, the licences issued under sections 10 and 13 for the area so excluded shall be deemed to have been issued by the Committee of the notified market area in which the area is included and shall be renewable by the Committee of that area.
- (3) An application for the renewal of licence shall be made at least thirty days before the date on which the licence is due to expire:
- Provided that the authority competent to renew a licence may, on the applicant's paying a penalty of ten rupees in the case of licence for a dealer of a godown-keeper or a penalty equal to the amount of annual licence fee in the case of other licences, grant an application for renewal made within thirty days after the date of expiry of the licence. The authority competent to renew a licence may remit the penalty in whole or in part if it is satisfied that the delay was for the reasons beyond the control of the applicant.
- (4) Every renewal of a licence granted under this rule shall be deemed to take effect from the date following that on which the licence expired.
- (5) Except as provided in sub-rule (3), every application for renewal of a licence made after the date of expiry thereof shall be treated as an application for the grant of a fresh licence.
- (6) If a licence granted under section 10 or 13 of the Act, or renewed under sub-rule (1) above is lost, a duplicate may be issued by the authority which issued the original, on payment by the licensee of a fee of one rupee.
- (7) The fee payable for the renewal of a licence under section 10 or section 13 for its duplicate shall be paid to the Committee concerned."

(3) It has been submitted that according to rule 21(4) when the licence was renewed sometime after September 17, 1971, it took effect from the date following that on which it had expired, implying

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thereby that respondent No. 5 should be deemed to have been holding the licence under section 13 with effect from April 1, 1969. I regret I cannot accept this interpretation. Section 12(2)(c)(iii) of the Act clearly means that the persons should be nominated from amongst those, who are licensed under section 13, that is, on the date the nomination is made, there must be a valid licence current in their favour. It cannot be imagined that the Legislature intended that a person, who is not interested to keep himself licensed under section 13 may be nominated and thereafter he may apply for renewal of his licence with retrospective effect. Such an interpretation would defeat the very purpose of the Act, because it is only those persons, who can be nominated as representatives of a Class who really belong to that class on the date of the nomination and not those who, after nomination, may be deemed to have belonged to that class. It may also be noted that respondent No. 5 did not apply for the renewal of his licence within the period allowed by rule 21(3), that is, either 30 days before its expiry or thirty days of its expiry and so, the licence, when renewed, could not take effect from April 1, 1969. The licence, after renewal, had to be considered as a fresh licence granted under rule 21(5). Looked at from any point of view Respondent No. 5, Dola, was not entitled to be nominated as a member representing the persons licensed under section 13 of the Act on September 17, 1971. His nomination, as a member of the Market Committee is, therefore, liable to be set aside.

(4) Respondents 6 to 8 are dealers of Haily Mandi and are licensed under section 10 of the Act. It is contended on behalf of the petitioner that Haily Mandi is not within the area of Pataudi Market Committee and, therefore, respondents 6 to 8 had no right to be nominated members of the Market Committee, Pataudi, as representing persons licensed under section 10, in spite of the fact that the Market Committee had issued licences under section 10 in their favour. By notification, dated May 30, 1962, the area of the Market Committee, Pataudi, was declared as under:—

“Revenue estates of all the villages falling in N.E.S. Block, Pataudi, Tahsil Rewari, district Gurgaon.”

A publication entitled ‘Blockwise Names of Notified Gram Sabha Areas in the State (corrected up to 31st May, 1962),’ has been produced wherein the Gram Sabhas, included in the said block, have been named, along with the village(s) and Tika(s) included in those Gram

Sabhas. Gram Sabha Jatauli and village Jatauli are included in Pataudi N.E.S. Block. According to section 4 of the Punjab Gram Panchayat Act, 1952, neither the whole nor any part of a Municipality of any class can be included in the Sabha area. It is thus evident from this publication that Haily Mandi, which is a municipality and at one time formed part of village Jatauli cannot be said to be included in the N.E.S. Block, Pataudi, merely because village Jatauli and Gram Sabha Jatauli have been included in that Block. The Gram Sabha Jatauli could be constituted only for village Jatauli after excluding the municipal area of Haily Mandi. However, on September 10, 1971, the Haryana Government, issued a notification declaring the whole village Jatauli *had bast* No. 7, as being included in the notified market area of Pataudi Market Committee. It is submitted on the basis of this notification that Haily Mandi is situate in *had bast* No. 7, and, therefore, by this notification it has been included within the market area of Pataudi Market Committee. There is no dispute that it is open to the Government to include a municipal area within the notified Market Committee. A copy of notification has been produced whereby municipal limits of Ballabgarh and Pataudi were included within the notified area of the respective Market Committee of that name. It has been stated on behalf of the learned counsel for respondents 2 to 5 that Kalyan Dass, respondent No. 6, and some other dealers of Haily Mandi, have filed suits in the Court of Subordinate Judge, 1st Class, Rewari, wherein one of the issues for determination is whether Haily Mandi forms part of the notified market area of Pataudi Market Committee or not and this matter may be left to be determined in that suit. The learned counsel for the petitioner has relied on the judgment of a learned Single Judge of this Court in Criminal Revision No. 24 of 1967, decided on May 2, 1968, holding that:

“No doubt, Haily Mandi is situated within the area of village Jatauli, but it being a Municipal Committee cannot fall within the N.E.S. Block Pataudi. It, therefore, cannot be held to be a revenue estate of Pataudi. Thus, Haily Mandi, where the shop of the accused-applicant is situated, is not a notified area of the Market Committee, Pataudi and, as such the accused-applicant was not required to submit the return under rule 31 of the rules.”

(5) With reference to this judgment, it is submitted on behalf of the respondents that it was based on the areas mentioned in the

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Yamuna Nagar etc. (Tuli, J.)

N.E.S. Block, Pataudi, in the publication referred to above, but thereafter notification, dated September 10, 1971, has been issued by the State Government by which the Municipal area of Haily Mandi has been included within the notified area of the Market Committee, Pataudi. For the purpose of this writ petition, I hold that by virtue of the notification, dated September 10, 1971, the municipal area of Haily Mandi has been included within the notified area of Market Committee, Pataudi, and the nominations of respondents 6 to 8 were in order. The matter can be more satisfactorily decided in the civil suits which have already been filed in the Court of Subordinate Judge 1st Class, Rewari, District Gurgaon, wherein the evidence will be recorded. The petitioner may apply to that Court for being impleaded as a defendant to those suits, as being interested in the decision thereof. Nothing said in this judgment should be taken to have decided that matter finally.

(6) For the reasons given above, I hold that the nomination of respondent No. 5 was contrary to law and is, therefore, set aside, but the nominations of respondents 6 to 8 are upheld.

(7) Since, in the election of Chairman and Vice-Chairman, respondent No. 5 took part, that election has to be set aside. Consequently, the election of respondents 3 and 4 as Chairman and Vice-Chairman of the Market Committee, Pataudi, is set aside. The election to these offices may be held after filling in the vacancy resulting from the quashing of the nomination of respondent No. 5. The writ petition is decided accordingly and in view of partial success, the parties are left to bear their own costs.

B. S. G.

REVISIONAL CIVIL

Before Bal Raj Tuli, J.

HARWANT KAUR ETC.,—Petitioners.

versus.

HARINAM SANKIRTAN MANDAL (REGISTERED) YAMUNA
NAGAR ETC.,—Respondents.

Civil Revision No. 931 of 1971.

May 26, 1972.

East Punjab Urban Rent Restriction Act (III of 1949)—Section
13(3)(a)(1)—Juristic person like an Association or Trust—Whether