

Des Raj Bansal (deceased) v. State of Haryana and another
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petitioners from service. They are entitled to reinstatement in service. The respondents shall pay the salary and give all other benefits to which the petitioners are entitled on treating them in service all along. The respondents shall also pay interest to them on the arrears of salary which have become due, at the rate of 12 per cent per annum. The respondents shall comply with this direction within two months. The petitioners in each of these petitions are entitled to its costs which are assessed Rs. 5,000.

(14) It is made clear that the respondent shall be within its rights to take disciplinary proceedings against the petitioners on the charges based on the allegations of misconduct as contained in the impugned order by following the procedure laid down under Regulations 8 to 12 of the Regulations.

R. N. R.

Before V. Ramaswami, C.J. and G. R. Majithia, J.

DES RAJ BANSAL (deceased),—Appellants.

versus

STATE OF HARYANA and another,—Respondents.

Letters Patent Appeal No. 179 of 1987.

September 1, 1988.

Punjab Pre-emption Act (I of 1913)—as amended by Punjab Act No. 1 of 1944—Ss. 8(2) and 21-A—Sale of house—Tenant's suit for pre-emption based on customary right—During pendency of suit tenant's right of pre-emption divested by notification under Section 8(2) with retrospective effect—Effect of notification on pre-emption suit—Whether causes loss of right to pre-empt—Suit whether liable to be dismissed—Retrospective operation—Whether permissible.

Held, that by addition of Section 21-A of the Punjab Pre-emption Act, 1913 the Legislature clearly intended not to recognise the voluntary improvement in the status of the vendee after institution of the suit save where such improvement has resulted from inheritance or succession. (Para 7).

Held, that the improvement referred to in Section 21-A of the Act is referable to the acts of the parties and not to statutory exercise of powers. This section specifically saves the improvement in the status of the vendee either by inheritance or succession but any improvement made in the status of the vendee by means of a voluntary acquisition of right in property made, after the institution of the suit will not effect the right of a pre-emptor in the suit.

(Para 8).

Held, section 8 of the Act contemplates the promulgation of notification in respect of sales that have already been completed. Once the power has been exercised, the resultant effect is that the suit for pre-emption cannot proceed with respect to which a notification has been issued under sub-section (2) of section 8 of the Act. The pre-emptors under the general law of pre-emption must continue to possess the superior right of pre-emption on the date of sale and must continue to possess the right till the date of the decree. If he loses that right before the passing of the decree, decree for possession by pre-emption cannot be granted even though he may have such a right on the date of the suit. Once the notification has been issued, the resultant effect is that the suit for pre-emption, even if filed, cannot be decreed because of operation of law. A notification with retrospective operation is not outside the purview of sub-section (2) of section 8 of the Act.

(Para 16).

Letter Patent Appeal under Clause X of the Letters Patent Appeal against the judgment dated 11th March, 1987 passed in Civil Writ Petition No. 3071 of 1980 by Hon'ble Mr. Justice Gokal Chand Mital.

Pardeep Gupta, Advocate, for the Appellants.

N. S. Pawar, Sr. D.A.G. (Hy.), for State.

V. K. Bali, Sr. Advocate (Shri Ranjeet Sharma, Advocate with him), for the Respondent 2.

JUDGMENT

G. R. Majithia, J.

(1) This appeal is directed against the order of learned Single Judge whereby he dismissed the writ petition filed by the appellant in which a challenge was made to a notification dated May 22, 1980 issued under sub-section (2) of Section 8 of Punjab Pre-emption Act, 1913 (for short, referred to as the "Act") by the State of

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Haryana to the effect that no right of pre-emption shall exist with respect to the sale of House No. A.M.C. 1385-86, Block Number 4, Duni Chand Road, Nai Basti, Ambala City, made by Sarvshri Kuldip Singh, Sewa Singh, Ajit Singh and Gurmukh Singh, joint owners of the aforesaid property by means of four sale deeds executed on the 14th June, 17th June and 22nd June, 1977, in favour of Dev Samaj College for Girls (Lahore), Ambala City, through Shri Prem Bal Khera, Principal of the said College, for the purposes of extension of the college building.

The matrix of this case is as under :—

House No. 1385-86, Block No. 4, Duni Chand Road, Nai Basti, Ambala City, was owned by four brothers and a separate portion of it was occupied by Budh Ram, Des Raj and Bindrabhan as tenants. The owners through four sale deeds sold the entire house to Dev Samaj College for Girls (Lahore), Ambala City in June, 1977. Budh Ram and Des Raj filed separate suits to pre-empt the sale on the ground that there was a custom of pre-emption prevalent in the City of Ambala and particularly in the locality/Sub Division where the house was situate under which a tenant had a right to pre-empt in regard to the property sold or part thereof. The suits were contested by the College. During the pendency of the suits, a notification dated 22nd May, 1980, was issued by the Government of Haryana in exercise of powers under Section 8(2) of the Act declaring that no right of pre-emption shall exist in respect of the sale of the house.

(2) Des Raj filed C.W.P. No. 3071 of 1980 in this Court, to challenge the notification which was dismissed in *limine* on September 3, 1980. On appeal to the Supreme Court, by an order dated April 5, 1983 of the apex Court, the order of this Court was set aside and it was ordered that the writ petition be disposed of on merits.

(3) Budh Ram tenant directly moved the Supreme Court under Article 32 of the Constitution of India but he was directed to move the High Court. He approached this Court through C.W.P. No. 995 of 1983 which was dismissed in *limine* on March 31, 1987 in view of the earlier order passed in C.W.P. No. 3071 of 1980. He challenged that order in the Supreme Court and by an order of August 8, 1983, the case was remitted to this Court for decision on merits. Both these civil writ petitions were disposed of by one judgment.

(4) Before the learned Single Judge, the petitioner assailed the notification on the ground that it suffered from legal *mala fide*. The notification could not be given retrospective operation as it runs counter to the directive principles of the State Policy contained in Articles 38 and 39 of the Constitution of India. The learned Single Judge found that the notification did not suffer from any legal *mala fide*, and that Section 8 of the Act envisages that the notification can be issued in respect of a sale that had already taken place. The contention regarding violation of Directive Principles contained in Articles 38 and 39 of the Constitution was negatived. Aggrieved against this decision, the appellants have come up in appeal.

(5) The learned counsel for the appellant, not only reiterated the submission before the Single Judge but also urged that by virtue of Section 21-A of the Act, any improvement made in the status of the vendee after the institution of the suit for pre-emption will not effect the right of the pre-emptor in a suit for pre-emption. He urged that after the filing of the suit, notification under subsection (2) of Section 8 of the Act, was issued whereby it was declared that no right of pre-emption shall exist in respect of sales. This amounts to an improvement in the status of the vendee and was hit by Section 21-A of the Act.

(6) The last submission being purely a question of law, although not taken up before the learned Single Judge, we permitted the counsel to make submissions on the applicability of Section 21-A of the Act in the instant case. Section 21-A reads thus :—

“Any improvement, otherwise than through inheritance or succession, made in the status of a vendee defendant after the institution of a suit for pre-emption shall not affect the right of pre-emption of plaintiff in such suit.”

It is not disputed that in order to interpret a particular provision and to infer the intention of the Legislature, objects and reasons stated in the Bill, when it is presented to the Legislature could be used. It gives an insight into the background why the section was introduced.

(7) By addition of Section 21-A of the Act the Legislature clearly intended not to recognise the voluntary improvement in the status of the vendee, after institution of the suit save where such improvement has resulted from inheritance or succession.

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(8) The improvement referred to in Section 21-A of the Act is referable to the acts of parties and not to statutory exercise of powers. This section specifically saves the improvement in the status of the vendee either by inheritance or succession but any improvement made in the status of the vendee by means of a voluntary acquisition of right in property made, after the institution of the suit, will not affect the right of a pre-emptor in the suit. Punjab Act No. 1 of 1944 amended the Punjab pre-emption Act, 1913. The material words mentioned in the statement of Objects and Reasons, read thus :—

“21-A is being added to the Punjab Pre-emption Act to restore the *status quo* in the case of pre-emption suits wherein the vendee seeks to improve his position by means of a voluntary acquisition of right of property made, after the institution of the suit.”

(9) Section 21-A of the Act came up for consideration before a Full Bench of this Court in *Garib Singh v. Harnam Singh and others* (1), and it arose in the following circumstances :—

“Four sons of one Kishna, namely, Garib Singh, Harnam Singh, Partap Singh and Kartar Singh, jointly held 225 Kanals 9 Marlas of agricultural Land. Kartar Singh having died, his son Harchand Singh sold his 1/4th share in the joint land to his uncle Garib Singh and his wife Gurnam Kaur by a registered sale deed dated March 15, 1966. On March 15, 1967, Harnam Singh, a brother of vendee Garib Singh, brought a suit for pre-emption on the plea that he was a co-sharer and also a near collateral of the vender Harchand Singh. During the pendency of the suit, on June 10, 1968, Gurnam Kaur made a gift of her share of the land which she had jointly purchased with her husband to her co-vendee Garib Singh. Taking advantage of this gift in his favour Garib Singh resisted the suit for pre-emption *inter alia* on the ground that as a result of the gift in his favour, his wife (who was a stranger) had ceased to have any interest in the property and his own right being equal to that of the pre-emptor, the suit must fail.”

(1) 1972 P.L.R. 186.

(10) The following question was formulated and referred to the full Bench :—

“Whether a vendee who has joined with him a stranger in purchasing agricultural land or immovable property can by acquiring the interest of the stranger co-vendee by gift or sale successfully resist a suit for pre-emption in view of the provisions of section 21-A of the Punjab Pre-emption Act, 1913 ?”

(11) Gurdev Singh, J., speaking for the Bench observed as under :—

“In fact, the construction put by them on Section 21-A of the Punjab Pre-emption Act is in consonance with the object with which this provision was introduced by the Amending Act No. 1 of 1944. By this amendment, as has also been observed earlier, the Legislature clearly intended to recognise no voluntary improvement in the status of a vendee after the institution of the suit, but only those resulting from inheritance or succession.”

(12) In second appeal, the Hon'ble Judge of this Court held that acquisition by Garib Singh of the share of his wife under the gift amounted to improvement of status and in view of the provisions of Section 21-A of the Punjab Pre-emption Act, Garib Singh could not benefit by the same.

(13) Thus, the submission of the learned counsel is meritless and deserves to be rejected.

(14) The learned counsel next submitted that the notification suffers from legal *mala fide* and he drew our attention to a note appended to the petition as Annexure P.10 in which the Revenue Minister differed from the proposal of the department. The department suggested that the sale should be exempted under sub-section (2) of Section 8 of the Act but the Minister recorded a discordant note. We summoned the original file and the learned Senior Deputy Advocate General Haryana, who appeared before us on behalf of the State produced the original file. After the noting of the Revenue Minister, the matter was again examined in the department. On re-examination, the department recommended that in the light of the circumstances of the case, the exemption be granted under sub-section (2) of Section 8 of the Act. The Minister

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agreed with the recommendation made by the department. On November 17, 1979 the matter was discussed with the Chief Minister and he directed that exemption under sub-section (2) of Section 8 of the Act be granted. The Revenue Minister discussed the case with the Chief Minister on November 21, 1979 and thereafter final decision was taken for exempting the sale. After the final decision, a notification dated May 22, 1980 was issued. The note of the Minister cannot be read in isolation of the subsequent notings on the life. This note of the Minister is of no assistance to the learned counsel. Final decision was taken by the Chief Minister with which the Revenue Minister, Mr. Sher Singh agreed who had on an earlier occasion taken a different view. It appears that the Revenue Minister changed his mind when the entire material was placed before him.

(15) Sections 5 and 9 of the Act specifically save certain pre-parties from pre-emption. Section 8 has to be read in the light of the scheme of the Act. This power is independent of the exemption which is statutorily prescribed by Section 9 of the Act. Exercise of the powers under sub-section (2) of Section 8 of the Act is apparently not restricted to transactions of the nature specified in Section 9. These are statutory exemptions. Transactions of sale can be exempted from pre-emption under sub-section (2) of Section 8 of the Act. Malice in law may be deemed to exist when an order is made contrary to the object and purpose of the statute under which the order is made. Sub-section (2) of Section 8 of the Act enables the State Government to declare by a notification that no right of pre-emption will exist with respect to any sale or any class of sales. What has been reiterated before us, was available on the Government record and we find that the same was submitted before the Government by way of representation by the appellants and the Government on receipt of the representations got the matter examined and called for a report from the Deputy Commissioner and the latter recommended the grant of exemption. The Government after thorough examination of the entire material decided to exercise its power under sub-section (2) of Section 8 of the Act. The power has not been exercised contrary to the objective and purpose of the statute. Thus, it is wholly incorrect to say that the notification is vitiated being suffering from legal *mala fide*. Apart from this, we find that before the learned Single Judge what was submitted was that the College for which the land was purchased was owned by Shri Prem Bal Khera and the institution was not maintained by the Dev Samaj. The learned Single Judge

after careful consideration of the case gave a firm finding that the College is owned and managed by Dev Samaj Institution and not owned by an individual, we agree with the same.

(16) Section 8 of the Act contemplates the promulgation of a notification in respect of sales that have already been completed. Once the power has been exercised, the resultant effect is that suit for pre-emption cannot proceed with respect to which a notification has been issued under sub-section (2) of Section 8 of the Act. The pre-emptors under the general law of pre-emption must continue to possess the superior right of pre-emption on the date of sale and must continue to possess that right till the date of decree. If he loses that right before the passing of the decree, decree for possession by pre-emption cannot be granted even though he may have such a right on the date of the suit. Once the notification has been issued, the resultant effect is that the suit for pre-emption, even if filed, cannot be decreed because of operation of law. A notification with a retrospective operation is not outside the purview of sub-section (2) of Section 8 of the Act. It will be useful to refer to *Sardarni Chanan Kaur and others v. Mohan Lal Goela and others*, (2) wherein it was held as under :—

“The section in very clear terms empowers the Local Government to declare with respect to any sale that no right of pre-emption or only a limited right such as may be specified by it shall exist. The Local Government has been given the power to make such a declaration not only in respect of any class of sales but also with respect to a particular sale and it is obvious that where the declaration is made in respect of a particular sale the sale must have preceded the promulgation of the notification. The section, therefore, clearly contemplates the promulgation of a notification in respect of sales that have already been completed and it cannot, accordingly, be urged that a notification with a retrospective operation is outside the scope of the section.”

(17) Articles 38 and 39 of the Constitution of India come in Part-IV under the heading “Directive Principles of State Policy”. Directive Principles are aimed at securing social and economic freedom by appropriate State actions. It has got hardly any relevance in the instant case. The apex Court has held more than once that

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right of pre-emption is a piratical right. The appellants are seeking to enforce a right of pre-emption based on custom. In the wider interest of Institution, the Government exercised its power under sub-section (2) of Section 8 of the Act. The appellants will continue in possession till they are evicted in due process of law.

(18) The College was being run in Lahore and after partition of the country, it was opened in Ambala City. It is in the heart of the town and there is no scope for extension except by purchasing land adjoining the College. It could not be disputed that there was a *bona fide* need to extend this Institution. There is some criticism that some shops had been built on the land belonging to this Institution. It may have been done to overcome the financial stringencies. The College is a premier Institution and its results show that quite a large number of students secured high positions and came in the merit list. The College, to supplement its income for running the Institution, may have built shops on the road side. It is just possible that if it was not so done, the Municipal Committee or the Improvement Trust may have acquired that land for establishing a commercial complex. Probably keeping that in mind, the Institution built shops and rented out the same to augment the income and to save it from acquisition by the Municipal Committee or other authorities for establishing a commercial complex. The object of running such an Institution to impart education to the girls is laudable and we do not think any interference is called for. The appeal is dismissed. However, we leave the parties to bear their own costs.

R.N.R.

Before D. V. Sehgal, J.

KRISHNA RAM (deceased),—Petitioners.

versus

KRISHNA CHARITABLE TRUST and another,—Respondents.

Civil Revision No. 725 of 1987.

October 3, 1988.

Code of Civil Procedure (V of 1908)—S. 115—Vendors leasing the property and subsequently selling it to other party—Pre-emption suit decreed against the vendors—Whether the transaction of lease is real or facade which cannot be given effect.