

(21) I am not impressed with this submission of the learned counsel. The Governing Body of the plaintiff asked the defendant to execute the bond. There is no bar under the general law to get such a bond by an employer from its employee. Even under the Civil Service Rules, the bond could be obtained by the appellant from respondent No. 1 under Rule 1.3 of the Punjab Civil Services Rules, Volume I, Part I. It is provided in the said rule that when in the opinion of the competent authority, a special provision inconsistent with the Rules is required with respect to any conditions of service, the authority may enter into an agreement in that regard with the employee. In view of the aforesaid rule, in my view, the Governing Body could ask respondent No. 1 to execute a bond in favour of the plaintiff. In the above view, I find support from *Shri Surjit Singh v. Shri Som Dutt etc.*, (10), wherein the said rule was interpreted and it was held that a competent authority, keeping in view the exigencies of service, can enter into an agreement which can be even inconsistent with the rules. Consequently, I reject the submission of the learned counsel.

(22) In the result, I do not find any merit in the appeal but for different reasons. Consequently, I dismiss the same with no order as to costs.

H.S.B.

*Before R. N. Mittal, J.*

ANIL KUMAR,—Appellant

*versus*

AMRA RAM AND OTHERS,—Respondents.

*Regular Second Appeal No. 1572 of 1975*

September 12, 1983.

*Punjab Pre-emption Act (I of 1913)—Section 2(3)—Tosham in the State of Haryana—Whether a town—Town—Meaning of—Sale of immovable property in Tosham—Whether pre-emptible.*

*Held.* that the word 'town' according to sub-section (3) of section (2) of the Punjab Pre-emption Act, 1913 means a place, if so declared

(10) 1973(1) S.L.R. 452.

Anil Kumar v. Amra Ram and others (R. N. Mittal, J.)

by the State Government for the purposes of the Act by a notification in the Official Gazette, or if so found by Courts. Tosham has not been declared as a town by the State Government but it was a Notified Area at the time of the sale and continues to be so. There is a market committee, two schools — one for boys and the other for girls, a hospital, a telephone exchange, a pucca bus stand, police station, P.W.D. Rest House, offices of Public Health, market committee and Block Development Office etc. There are about thirty shops including those of books, medicines, general merchandise, cloth and commission agents. A Mandi is also under construction there. The streets are pucca and the road leading to the Mandi is also pucca. The population of the place is more than seven thousand persons. Most of the inhabitants are dependent on agriculture but a sizeable number is carrying on business or is in service. Thus, it is inhabited by a heterogeneous population. According to Shorter Oxford English Dictionary, the word 'town' has been defined as 'now commonly designating an assemblage of buildings, public and private, larger than a village, and having more complete and independent local government' and the word 'village' as 'a collection of dwelling-houses and other buildings, larger than a hamlet and smaller than a town'. The features of Tosham fall within the definition of 'town' and not that of 'village'. Sale of immovable property in Tosham is, therefore, not pre-emptible.

(Paras 5 and 6).

S. C. Kapur, Advocate, for the Appellant.

H. L. Sarin, Sr. Advocate with M. L. Sarin, Advocate, for Respondent No. 1.

### JUDGMENT

*Rajendra Nath Mittal, J. (Oral)*

(1) This second appeal has been filed by Anil Kumar, defendant against the judgment and decree of the District Judge, Bhiwani, dated 9th September, 1975, decreeing the suit of the plaintiff for possession by pre-emption.

(2) Briefly, the facts are that Bhagwan Das defendant No. 2 was the owner of one-half share in the plot in dispute situated in Tosham, District Bhiwani. He sold his share to Anil Kumar defendant No. 1 for a consideration of Rs. 1,000,—*vide* sale-deed dated 13th September, 1971. It is alleged by the plaintiff that the plot was a village immovable property. He instituted a suit for possession by pre-emption of one-half share on the ground that he was the brother of the vendor and co-sharer in the plot.

(3) The suit was contested by defendant No. 1 who *inter alia* pleaded that Tosham was not a village but a town and, therefore, the plaintiff was not entitled to pre-empt the sale. Some other pleas were also taken but they do not survive in the appeal.

(4) The trial Court held that Tosham was a town and therefore the plot was an urban immovable property. Consequently, it dismissed the suit. On appeal, the District Judge reversed that finding and held that Tosham was a village and, therefore, the property was a village immovable property. In view of the said finding, he accepted the appeal and decreed the suit of the plaintiff. Defendant No. 1 has come up in second appeal to this Court.

(5) The only question that requires determination is whether Tosham is a town or a village. It is evident from the evidence that Tosham was a Notified Area at the time of the sale and continues to be so. There is a market committee, two schools—one for boys and the other for girls, a hospital, a telephone exchange, a pucca bus stand, police station, P.W.D. Rest House, offices of Public Health, market committee and Block Development Office, etc. There are about thirty shops, including those of books, medicines, general merchandise, cloth and commission agents. A Mandi is also under construction there. The streets are pucca and the road leading to the Mandi is also pucca. The population of the place is more than seven thousand persons. Most of the inhabitants are dependent on agriculture but a sizeable number is carrying on business or is in service. Thus, it is inhabited by a heterogeneous population.”

(6) The word ‘town’ according to sub-section (3) of section 2 of the Punjab Pre-emption Act, means a place, if so declared by the State Government for the purposes of the Act by a notification in the Official Gazette, or if so found by Courts. Tosham has not been declared as a town by the State Government under the sub-section. It is, therefore, to be seen whether taking into consideration the facts of the case, it can be held to be so. In the Shorter Oxford English Dictionary (Third Edition), “the word ‘town’ has been defined as “now commonly designating an assemblage of buildings, public and private, larger than a village, and having more complete and independent local government” and the word ‘village’ as “a collection of dwelling-houses and other buildings, larger than a hamlet and smaller than a town’.” I am of the view that the features of Tosham as given above fall within the definition of ‘town’ and not that of ‘village’.

Anil Kumar v. Amra Ram and others (R. N. Mittal, J.)

---

(7) Now, I advert to judicial pronouncements. In *Hariallu Mal v. Nathu Ram* (1), Una was held to be a town after taking into consideration the fact that it had a municipality, a population of 4,000 to 5,000 inhabitants, one main street of shops mostly built of masonry, a fine flight of stone steps leading down to a stream etc. It was also pointed out that at one time it was the emporium for the hills of all articles of commerce, but on account of increase of shops in the hills, trade had diminished in volume.

(8) In *Diwan Chand v. Nizam Din etc.* (2), the matter was examined by a Division Bench. In that case, three-fourth of the estate called Pira Ghiab was included within the Machine Mohalla which was a suburb of Jhelum town. The Mohalla was within the municipality of Jhelum and was occupied by the persons who were mainly engaged in commercial pursuits. It was held that that part of the estate was a town.

(9) Again in *Mt. Kapuri v. Kanshi Ram and another*, (3), the question arose whether Abdullapur (now known as Yamunanagar) was a village or a town. It was observed that there are a large number of shops of all kinds, cloth merchants, confectioners, fruit vendors, there was a mosque, a temple, a gurdwara, a serai, a primary school and a rest-house as well as a combined post and telegraph office, it was connected with Jagadhri town by a light railway and had a big emporium of the timber trade, it had a population of 3,500 men. Taking the aforesaid features into consideration, it was held to be a town.

(10) The matter was also examined yet by another Division Bench in *Ranjit Singh and others v. Chaudhri Nawab Khan and others*, (14), and it was held that Sohna (now in Haryana) was a town. The criteria for coming to that conclusion *inter alia* was that its population varied roughly between five thousand and seven thousand and that it had a civil hospital, veterinary hospital, a school, pucca shops etc.

(11) In the present case, the features, as enumerated above, are those of a town and not a village. It may be mentioned that

---

(1) 51 P.R. 1907.

(2) AIR 1924 Lahore 662(1).

(3) AIR 1927 Lahore 799 (2).

(4) AIR 1939 Lahore 548.

Tosham has been constituted as a notified area under section 241 of the Punjab Municipal Act, which provides that no area shall be made a notified area unless it contains a town or a bazar and is not a purely agricultural village. From the said section also it is evident that the Government, while constituting it as a notified area, came to the conclusion that it was not a purely agricultural village but a town. After taking into consideration all the aforesaid facts, I am of the opinion that Tosham is a town and not a village.

(12) Faced with that situation, the learned counsel for the respondents sought to urge that the finding as to whether a place is a town or a village is a finding of fact and cannot be interfered with in second appeal. He places reliance on *Diwan Chand v. Nizamdin and others* (5). On the other hand, the learned counsel for the appellant has urged that the finding arrived at by the lower appellate Court is based on misreading of evidence. He submits that even if it is a finding of fact, it can be gone into in second appeal on this ground.

(13) I have given due consideration to the arguments of the learned counsel. However, I agree with the submission of the learned counsel for the appellant. He has not challenged the observations in *Diwan Chand's* case (*supra*) where it was held that the question whether a certain place is a town for the purposes of the Punjab Pre-emption Act is a question of fact and cannot be raised in second appeal. He, however, attacked the finding on the ground that the conclusion is based on misreading of evidence. The learned District Judge, while dealing with the matter, observed that Tosham was declared a notified area after the date of sale which is not correct. It was declared as such much before that date. That was one of the major factors which weighed with the District Judge in holding that Tosham was not a town. In my view, his finding is based on misreading of the evidence and stands vitiated. In such circumstances, this Court can interfere with the finding of fact reached by the first appellate Court.

(14) For the aforesaid reasons, I accept the appeal with costs, set aside the judgment and decree of the first appellate Court and dismiss the suit.

S.C.K.

(5) AIR 1923 Lahore 443.