

excluded. The licences are to be granted only to actual rickshaw pullers and not to those who want to give the rickshaws on hire. So far as the total prohibition of rickshaw owners like the petitioners, who want to ply the same on hire, is concerned, it is justified in view of the decision of the Supreme Court in *Narendra Kumar and others v. Union of India and others*, and *M. H. Qureshi and others v. State of Bihar* (supra), relevant passages have been quoted while adverting to them. In *Narendra Kumar and others' case* (supra), the Supreme Court clearly held that though clause 3 of the Order results in elimination of the dealers from the trade yet is a reasonable restriction in the interest of general public. Similarly, in *M. H. Quareshi's case* (supra), total ban on cow slaughter was upheld as justified and constitutionally valid and it only struck down the total ban on the slaughter of such cattle which had ceased to be capable of yielding milk or of breeding or working. Therefore, on reading the scheme of the Act, the statement of objects and reasons and keeping in view the principles of law laid down by the Supreme Court in the aforesaid judgments, we are satisfied that the restriction placed on the grant of licences to such rickshaw owners who are prepared to ply the same and to exclude the middle-men is a reasonable restriction within the meaning of Article 19(6) of the Constitution as there is a proximate nexus and reasonable connection between the restriction imposed and the object which is sought to be achieved. Moreover, it is based on sound public policy.

16. For the reasons recorded above, we find no merit in this writ petition and the same is dismissed. However, we leave the parties to bear their own costs as constitutional validity was involved.

S. S. Sandhawalia, C.J.—I agree.

N.K.S.

Before P. C. Jain and S. S. Kang, JJ.

SURAT RAM and others,—Petitioners.

versus

STATE OF HARYANA and others,—Respondents.

Civil Writ No. 3744 of 1978.

April 16, 1979.

Punjab Town Improvement Act (IV of 1922) as amended by Haryana Act 17 of 1973—Sections 24, 28, 44 and 44A—Development

Surat Ram and others v. State of Haryana and others (P. C. Jain, J.)

Scheme sanctioned under section 42—Whether could be executed after five years—Extension of period for execution—Whether can be granted only before the expiry of five years.

Held, that a perusal of section 44A of the Punjab Town Improvement Act, 1922 leaves no manner of doubt that a scheme in respect of which a notification has been issued under section 42 of the Act, has to be executed by the Improvement Trust within a period of five years from the date of such notification failing which the scheme would become unexecutable. The only safeguard provided by the Legislature is in the shape of the proviso which gives power to the State Government to extend the period for the execution of the scheme in case it is satisfied that it is beyond the control of the Trust to execute the same. Thus, a scheme has to be executed by the Improvement Trust within five years of the date of notification issued under section 42 of the Act and that the time can be extended by the State Government for the execution of the scheme only before the expiry of the period of five years and not thereafter. (Paras 4 and 6).

Civil Writ Petition under Articles 226/227 of the Constitution of India, praying that :

- (i) *this Hon'ble Court may be pleased to call for the record pertaining to the case from the respondents and after their perusal may be pleased to issue a writ, order or direction in the nature of certiorari quashing the impugned scheme, notices, Annexures P-1, P-2 and P-4 and the entire proceedings undertaken alongwith order dated 5th October, 1978, Annexure R-6 by the respondents in the purported implementation of the scheme.*
- (ii) *the respondents be restrained from proceeding in the matter except under the provisions of the Act ;*
- (iii) *any other writ, order or direction which this Hon'ble Court may deem fit and proper may also be granted ;*
- (iv) *the stay of dispossession be granted to the petitioners from the property in dispute during the pendency of this writ petition ;*
- (v) *the service of notice of motion on the respondents be dispensed with ;*
- (vi) *the petitioners may be exempted from filing the certified copy of Annexure P-1; and*
- (vii) *the costs of the petition be also awarded to the petitioners.*

M. P. Maleri, Advocate, for the Petitioners.

A. S. Nehra, Additional Advocate-General, Haryana, for the respondents.

JUDGMENT

Prem Chand Jain, J. (1) The short question that requires determination in this case is whether a Development Scheme framed under sections 24/28 of the Punjab Town Improvement Act, 1928 (hereinafter referred to as Act) and finally sanctioned under section 42 of the Act, could legally be executed after the expiry of the period of five years?

(2) The facts on which there is no dispute are that the Jagadhri Improvement Trust,, Jagadhri, framed a Development Scheme under sections 24/28 of the Act for an area measuring one acre situated in Suthran street, Jagadhri, that the said scheme after complying with all the formalities, was sanctioned by the State Government under section 42 of the Act on 15th of February, 1972 and notification in that respect was published in the Gazette on 27th of February, 1972, that no action was taken under the sanctioned scheme, and that the State Government,—vide notification No. 14/102/78-3CI, dated 5th of October, 1978, extended the period for the execution of the scheme by another two years in exercise of its power under section 44-A of the Act. The petitioners have challenged this action of the State Government through this writ petition as being without jurisdiction.

(3) It was contended by Mr Maleri, learned Counsel for the petitioners, that the impugned scheme which was finally sanctioned by the State Government on 15th of February, 1972, could be executed within a period of five years from the date of its sanction, that extension for the execution of the Scheme could be given by the State Government during the period of the five years and not thereafter, only if the State Government was satisfied that it was beyond the control of the Trust to execute the Scheme, and that no extension of time could be given by the State Government after the expiry of five years.

(4) After hearing the learned counsel for the parties we find considerable force in the contention of the learned counsel for the petitioners, Section 44-A of the Act provides time limit for the execution of the scheme. The said section reads thus :

“Any scheme in respect of which a notification has been published under section 42, shall be executed by the trust

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within a period of five years from the date of such notification :

Provided that the State Government may, if it is satisfied that it is beyond the control of the trust to execute the scheme within the said period, extend the same as it may deem fit.”

The bare perusal of the aforesaid provision leaves no manner of doubt that a scheme in respect of which a notification has been issued under section 42 of the Act, has to be executed by the Trust within a period of five years from the date of such notification failing which the scheme would become unexecutable. The only safeguard provided by the Legislature is in the shape of the proviso which gives power to the State Government to extend the period for the execution of the scheme in case it is satisfied that it is beyond the control of the Trust to execute the same. Section 44-A was added by the State Legislature of Haryana through the Punjab Town Improvement (Haryana Amendment) Act, 1973—Haryana Act 17 of 1973. Prior to the insertion of section 44-A, there was no time limit provided in the statute for the execution of the Scheme.

(5) To us it appears that by the insertion of the aforesaid provision, a big lacuna is sought to be removed, i.e., that now the improvement Trust cannot allow the schemes to linger on for indefinite period and would have to execute and accomplish the scheme before the expiry of five years. There is no gain-saving that in case of delay, the purpose of the scheme generally gets frustrated and the land-owners or other persons who are affected by the Scheme, are put to great inconvenience. We do not agree with Mr. Nehra, learned Additional Advocate-General that the proviso comes into play only after the expiry of the period of five years. The language of the section is unambiguous and does not permit any other interpretation than the one which we have put.

(6) In this view of the matter, we hold that a scheme is to be executed by the Improvement Trust within five years of the date of notification issued under section 42 of the act and that the time can be extended by the State Government for the execution of the Scheme only before the expiry of the period of five years and not thereafter.

(7) In the instance case, there is no dispute that the scheme was not executed within five years of the issuance of the notification under section 42 of the Act and that it was only,—*vide* notification No. 14/102/78-3CI, dated 5th October, 1978, that the period of five years was extended by another period of two years in exercise of the powers under section 44-A of the Act.

In view of our findings above, we allow this petition with costs, quash the scheme published on 27th of February, 1972 and the subsequent proceedings taken in the matter.

S.C.K.

Before R. N. Mittal and J. V. Gupta, JJ.

BANSO DEVI,—*Appellant.*

versus

ASSISTANT DIRECTOR, ENFORCEMENT DIRECTORATE,—
Respondent.

Second Appeal From Order No. 17 of 1978.

April 17, 1979.

Foreign Exchange Regulation Act (46 of 1973)—Sections 2(h) and 9(1) (b) & (d)—Payments made in India on behalf of a person resident outside India—Whether fall within the scope of Section 9—Involvement of 'foreign exchange' in a transaction—Whether necessary to attract the provisions of the Act.

Held, that the first part of the preamble of the Foreign Exchange Regulation Act, 1973 clearly shows that the object of the enactment was to regulate certain payments also and it cannot be said that Section 9 is beyond the scope of the preamble. Section 9 of the Act puts restrictions on certain payments. It *inter alia* provides that no person in India shall make any payment to any person resident outside India nor any person shall receive payment from any person resident outside India, otherwise than through authorised dealer unless something to the contrary is provided by any general or special exemption granted conditionally or unconditionally by the Reserve Bank. The Explanation appearing under clause (b) of section 9(1) of the Act makes it clear