

The Indian Law Reports

PUNJAB SERIES
APPELLATE CRIMINAL

Before R. P. Khosla and P. D. Sharma, JJ.

MUNICIPAL COMMITTEE, SUNAM,—Appellant.

versus

MEERI MAL AND ANOTHER,—Respondents.

Criminal Appeal No. 1048 of 1960.

*Punjab Municipal Act (III of 1911)—Section 121—
Licence under—Whether required to be obtained by a
petroleum dealer who has obtained the licence under the
Petroleum Act (XXX of 1934).*

1961

November, 21st

Held, that sections 4 and 31 of the Petroleum Act, 1934 read and considered along with section 121 of the Punjab Municipal Act unmistakably indicate that the said provisions embrace the same subject-matter and field of activity. The conclusion, therefore, is irresistible that the operation of the Punjab Municipal Act, 1911 (including the provisions of section 121 thereof) are subordinated and limited in operation. If, therefore, a vendor of the petroleum, covered under item III of the Notification No. P. 104, dated 4th May, 1950, issued by the Government of India in exercise of the powers conferred by section 31 of the Petroleum Act, 1934, has obtained a licence from the Central Government under the Petroleum Act, he cannot be called upon once again to obtain a licence under section 121 of the Municipal Act.

Appeal from the order of Shri Mewa Singh, Magistrate, II Class, Sangrur, Camp at Sunam, dated 19th of March, 1960, acquitting the respondents.

J. V. GUPTA, ADVOCATE, for the Appellant.

D. S. NEHRA, ADVOCATE, for the Respondents.

JUDGMENT

R. P. Khosla, J. R. P. KOHSLA, J.—This appeal at the instance of Municipal Committee, Sunam, challenges the judgment of Magistrate Second Class, Sangrur at Sunam by which the respondents were acquitted.

The respondents carried on business of selling petroleum and for their not getting the license from the Municipality in that connection were put up for trial on a complaint by the Municipality under section 121 of the Punjab Municipal Act, 1911. Section 121 of the Municipal Act reads—

“121(1) No place within a Municipality shall be used for any of the following purposes:—
Regulation of
 Offensive and
 dangerous
 trade

* * * *

as a store-house for any explosive, or for petroleum or any inflammable oil or spirit ;

except under a licence from the committee which shall be renewable annually:

* * * *

It was contended that in spite of notice, dated 21st of February, 1959 in that behalf the respondents had not obtained the requisite licence for the premises where the petrol was stocked for sale. On the facts, there was no controversy. It was admitted that the respondents were carrying on the business of retailing petrol within the territorial limits of Municipal Committee, Sunam, but the plea raised in defence is that in view of their having obtained necessary licence from the Central Government under the Petroleum Act (XXX of 1934) it was not necessary to take a licence from the Municipality over again. Giving effect to the contentions of the respondents, the learned Magistrate non-suited the complainant Municipal Committee resulting in the acquittal which is now impugned.

It is thus for decision whether in spite of the licence obtained by the respondents under the Petroleum Act they had to take another licence as contemplated by the provisions of section 121 of the Municipal Act.

Municipal Com-
mittee, Sunam
v.
Meeri Mal
and another

R. P. Khosla, J.

The argument raised by the learned counsel appearing in support of the appeal was to somewhat following effect. It was maintained that section 121 of the Municipal Act was a self-contained provision and was not affected or controlled by any provisions in the Municipal Act or by the provisions of the Petroleum Act (XXX of 1934) and therefore, in the event of the premises used for selling petrol, being situated within the Municipal limits it was imperative to take out the requisite licence as contemplated by section 121 of the Municipal Act. Pursuant to section 31 of the Petroleum Act, Notification No. P-104, dated 4th May, 1950, (Government of India) was promulgated, the terms of which are as follows:—

“No. P. 104. In exercise of the powers conferred by section 31 of the Petroleum Act, 1934 (XXX of 1934) and in supersession of the Notification in the late Department of Labour No. M. 826, dated the 16th June, 1937, the Central Government is pleased to limit the operation of the enactments specified in the schedule hereto annexed in so far as the said enactments related to the storage or transport of petroleum other than petroleum which has its flashing point not below 200 °F. to the following quantities:—

1. In the case of dangerous petroleum the quantities of six gallons or less not intended for sale and kept in securely stoppered receptacles of glass, stone-ware or material not exceeding one quart in capacity in the case of receptacles of glass or stone-ware and not exceeding five gallons in capacity in the case of receptacles of Retail.

Municipal Com-
mittee, Sunam

v.

Meeri Mal
and another

R. P. Khosla, J.

II. In the case of non-dangerous petroleum having its flashing point below 150 °F. to quantities not exceeding five hundred gallons provided none of it is contained in a receptacle exceeding two hundred gallons in capacity.

III. In the case of non-dangerous petroleum having its flashing point not below 150 °F. but below 200 °F. to quantities not exceeding ten thousand gallons not stored in the same installation or storage shed as other petroleum and exempt from licence under the rules contained in Chapter V of the Petroleum Rules 1937.

THE SCHEDULE

The Punjab Municipal Act, 1911 (Punjab Act III of 1911).

The Punjab Small Towns Act, 1921 (Punjab Act, II of 1922)."

It was admitted that the sale of the petrol in the instant matter was covered by item III of the said Notification Reference to the notification and the Schedule makes it clear that the provisions of the Punjab Municipal Act, were controlled by the provisions of the Notification and the rules made under the Petroleum Act, namely, Petroleum Rules 1937. Section 121 of the Municipal Act, therefore, will have to be read subject to the provisions of the Petroleum Act, the Petroleum Rules and the Notification set out above.

Section 4 and 31 of the Petroleum Act which are worded as below:

"[His Lordship read sections 4 and 31 and continued:]

read and considered along with section 121 of the Municipal Act would unmistakably indicate that

the said provisions embrace the same subject matter and field of activity. The conclusion therefore, is irresistible that the operation of enactment, namely, the Punjab Municipal Act, 1911 (including therefore, the provisions of section 121 thereof) were subordinated and limited in operation. If, therefore, a vendor of the petroleum, covered as in the instant case under item III of the Notification, had obtained a license from the Central Government under the Petroleum Act, he could not be called upon once again to obtain a license under section 121 of the Municipal Act.

Municipal Committee, Sunam
v.
Meeri Mal
and another
R. P. Khosla, J.

In this view of the matter the acquittal of the respondents cannot be successfully assailed. This appeal must, therefore, fail, we would dismiss it.

P. D. SHARMA, J.—I agree.

Sharma, J.

B.R.T.

FULL BENCH

Before G. D. Khosla, C. J., S. S. Dulat and
Harbans Singh, JJ.

GURDARSHAN SINGH AND ANOTHER,—Appellants.

versus

BISHEN SINGH,—Respondent.

Regular First Appeal No. 44-P of 1953.

Contract Act (IX of 1872)—Sections 32, 56 and 65—
Doctrine of frustration—Whether applies to a contract of
lease of agricultural land—If applies, on whom should the
loss fall, i.e. on the lessor or the lessee.

1961
November, 24th

Held, (per G. D. Khosla, C. J. and Dulat, J.)—

(1) That the doctrine of frustration does apply to leases, but even if it does not in terms apply to a contract of lease of agricultural land, the broad principle of