

CIVIL MISCELLANEOUS

*Before Bal Raj Tuli, J.*NANAK CHAND,—*Petitioner**versus*THE ESTATE OFFICER-CUM-EXECUTIVE ENGINEER, MADHOPUR
CENTRAL DIVISION, C.P.W.D., MADHOPUR AND ANOTHER,—*Respondents***Civil Reference No. 2 of 1968**

October 30, 1968.

Public Premises (Eviction of Unauthorised Occupants) Act (XXXII of 1958)—Section 5—Whether ultra vires Article 14 of the Constitution of India—Public Premises (Eviction of Unauthorised Occupants) Amendment Ordinance (V of 1968)—Insertion of section 10-E in the Act—Whether makes the provisions of section 5 intra vires.

Held, that section 5 of Public Premises (Eviction of Unauthorised Occupants) Act, 1958, was void prior to June, 17, 1968, when section 10-E was inserted in it by Ordinance V of 1968, as it violated the equality guaranteed under Article 14 of the Constitution of India. Any proceedings taken under section 5 of the Act prior to that date are null and void and cannot be proceeded further. The insertion of section 10-E by the Ordinance makes the provisions of section 5 of the Act *intra vires* as the jurisdiction has only been left with the Estate Officer under the section and the jurisdiction of the Civil Courts has been barred. As this section has no retrospective effect, it has validated the provisions of section 5 of the Act with effect from June 17, 1968, when it came into force. The proceedings taken prior to that date under section 5 of the Act are not valid. Proceeding under the section can, however, be taken after that date.

(Paras 3 and 4)

Reference under section 113 of the Civil Procedure Code made by Shri Dev Raj Saini, Additional District Judge, Gurdaspur,— vide his No. 96/Ahmad, dated the 15th May, 1968, for determination of the question as to whether section 5 of the Public Premises (Eviction and Unauthorised Occupants) Act, 1968, is void or not being violative of Article 14 of the Constitution.

H. R. AGGARWAL, ADVOCATE, for the Petitioner.

H. L. SONI, ADVOCATE for ADVOCATE-GENERAL, PUNJAB, for the Respondents.

JUDGMENT

TULI, J.—The Additional District Judge, Gurdaspur, acting as an Appellate Officer under section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 (hereinafter called the Act) has made this reference under section 113 of the Code of Civil

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Procedure for the determination of the question as to whether section 5 of the Act is void or not. Under section 9 of the Act the Appellate Officer is not a Court but is a *persona designata* as has been held in a Full Bench Judgment of this Court in *M/s. Pitman's Shorthand Academy v. M/s B. Lila Ram and Sons, etc.* (1) The reference under section 113 of the Code of Civil Procedure can only be made by a Court and, therefore, this reference by him is not competent.

(2) However, acting in exercise of the powers of this Court under Article 227 of the Constitution. I decide the constitutional point referred to this Court by the Additional District Judge. Section 5 of the Act is in the following terms:—

“(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the estate officer is satisfied that the public premises are in unauthorised occupation, the estate officer may, on a date to be fixed for the purpose, make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on outer door or some other conspicuous part of the public premises.

(2) If any person refuses or fails to comply with the order of eviction within thirty days of the date of its publication under sub-section (1) the estate officer or any other officer duly authorised by the estate officer in this behalf may evict that person from, and take possession of, the public premises and may, for that purpose, use such force as may be necessary.”

A similar provision in section 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959, came up for hearing before their Lordships of the Supreme Court in *Northern India Caterers (Private) Ltd., and others v. The State of Punjab and*

(1) I.L.R. 1949 Punjab 606.

others (2), and it was struck down as violative of Article 14 of the Constitution. Their Lordships held as under :—

“Assuming that such classification is valid, the complaint of the appellants is that s. 5 of the Act makes a discrimination amongst those in occupation of public properties and premises *inter se* and that such discrimination has no valid basis nor any reasonable nexus with the object of the Act. Under section 4 if the Collector is of opinion that any person is in unauthorised occupation of any public premises and that he should be evicted, he has to issue a notice calling upon such person to show cause why an order of eviction should not be made. Under section 5 if the Collector is satisfied that the public premises are in unauthorised occupation, he has the power to make an order of eviction giving reasons therefor. The contention is that the Government thus has two remedies open to it, one under the ordinary law and the other a drastic and more prejudicial remedy under the present Act. The words “the Collector may make an order of eviction” in section 5 show that the section confers discretion to adopt the procedure under sections 4 and 5 or not. Section 5 has left it to the discretion of the Collector to make such an order in the case of some of the tenants and not to make such an order against others. Section 5 thus enables the Collector to discriminate against some by exercising his power under section 5 and take proceedings by way of a suit against others, both the remedies being simultaneously available to the Government. There can be no doubt that if the Collector were to proceed under sections 4 and 5; the remedy is drastic for a mere opinion by him that a person is in unauthorised occupation authorises him to issue a show cause notice and his satisfaction under section 5 is sufficient for him to pass an order of eviction and then to recover under section 7 rent in arrears and damages which he may assess in respect of such premises as arrears of land revenue. Section 5 does not lay down any guiding principle or policy under which the Collector has to decide in which cases he should follow one or the other procedure and therefore, the choice is entirely

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left to his arbitrary will. Consequently, section 5 by conferring such unguided and absolute discretion manifestly violates the right of equality guaranteed by Article 14."

On the same reasoning and following that decision I hold section 5 of the Act to be void as it violated the equality guaranteed under Article 14 of the Constitution.

(3) It appears that the Central Government, in view of the above judgment of their Lordships of the Supreme Court above referred to, amended the Act by means of an Ordinance called the Public Premises (Eviction of Unauthorised Occupants) Amendment Ordinance 5 of 1968, which was promulgated on the 17th June, 1968. This Ordinance inserted a new section 10-E after section 10-D of the Act which reads as under:—

"Bar of jurisdiction.—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises or the recovery of the arrears of rent payable under sub-section (1) of section 7 or the damages payable under sub-section (2) of that section or costs awarded to the Central Government under sub-section (4-A) of section 9 or any portion of such rent, damages or costs."

The insertion of this new section 10-E makes the provisions of section 5 of the Act *intra vires* as the jurisdiction has only been left with the Estate Officer under section 5 and the jurisdiction of the Civil Courts has been barred. But this section has no retrospective effect. It has validated the provisions of section 5 of the Act with effect from June 17, 1968, when it came into force. The proceedings taken prior to that date under section 5 of the Act were not valid.

(4) For the reasons given above this reference is answered as under:—

That section 5 of the Act was void prior to June 17, 1968, when section 10-E was inserted by Ordinance 5 of 1968. Any proceedings taken under section 5 of the Act prior to that date were null and void and cannot be proceeded further. Proceedings under section 5 of the Act after June 17,

1968, can, however, be taken. There is no order as to costs of this reference. A copy of this order may be sent to the Additional District Judge, Gurdaspur, who has made the reference.

K.S.

FULL BENCH

Before D. K. Mahajan, P. C. Pandit and H. R. Sodhi, JJ.

HAZARI AND OTHERS,—*Appellants*

versus

ZILA SINGH AND OTHERS,—*Respondents*

E. S. A. 1131 of 1968

May 30, 1969.

Code of Civil Procedure (Act V of 1908)—Section 146 and Order 20 Rules 14 and 16—Decree of pre-emption passed—Decree-holder—Pre-emptor becoming owner by complying with Order 20, Rule 14—Decree transferred before obtaining possession of the pre-empted property—Transferee—Whether can execute such decree and obtain possession.

Law of pre-emption—Pre-emption and other suits—Distinction between—Stated.

Held (by majority, Pandit and Sodhi, JJ., Mahajan, J. Contra), that a pre-emption decree being a personal one is not transferable under law and not right in the decree can be created in favour of a transferee. Consequently he cannot claim to obtain possession of the pre-empted property in execution of that decree. To allow him such a right will mean that the Court considers the pre-emption decrees to be transferable or assignable. In other words, it will have to be held that the pre-emptor decree-holder is competent to create rights in respect of the decrees in favour of strangers and this will hit the law of pre-emption, according to which a pre-emption decree is not transferable. Section 146 of the Code of Civil Procedure being expressly made subject to other provisions of the Code, will apply to a case, only where Order 21, rule 16 of the Code is inapplicable. It applies to those cases in which the subject-matter of the suit, which ultimately results in the decree sought to be executed, as well as the decree itself are transferable. It does not apply where the subject-matter of the proceedings cannot be transferred. Hence the transferee of a pre-emption decree cannot obtain possession of the pre-empted property in execution of that decree.

(Paras 62 and 65)

Held (*per Pandit, J.*), that pre-emption suits are a class by themselves. In such a suit, the plaintiff-pre-emptor, before getting possession of the property, has first to establish his title to it and that he does only after obtaining a decree