

on 2nd March, 1978 whereas the order Exhibit D4 was passed on 17th December, 1978. The plaintiffs could challenge this order within three years from the date of its passing. Thus the suit was *prima facie* barred by time as per Article 58 of the Limitation Act.

(11) Section 3 of the Limitation Act lays down that subject to the provisions contained in Sections 4 to 24, every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence. No doubt, the contesting defendants did not take up this plea of limitation nor there was any issue to that effect, but being a legal plea, could always be taken into consideration. Section 3 is mandatory and casts a duty upon the Court to dismiss the suit, if it is instituted after the period of limitation even if limitation has not been pleaded in defence. There was no waiver on the part of the present appellants and the legal plea of limitation is allowed to be taken in the second appeal as I find from the record that the appellants at no point of time abandoned the plea of limitation. Be that as it may, I have already held above under issue No. 3 that the appellants are the *bona fide* purchasers for value, therefore, they derive good title under the various sale deeds in question and they had become the fulfilled owners of the property, leaving no scope for the plaintiffs to seek a declaration or the relief of possession on the basis of the Will Exhibit P1 or on the basis of the natural succession, as allowed by the Courts below.

(12) Resultantly, this appeal is allowed, the judgments and decrees of the Courts below are set aside and the suit of the plaintiffs Smt. Bachni *alias* Bachan Kaur and Smt. Giano *alias* Ji to is hereby dismissed as prayed for. The parties are left to bear their own costs.

S.C.K.

*Before G. S. Singhvi & S. S. Sudhalkar, JJ.*

SINGH RAM,—*Petitioner.*

*versus*

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

C.W.P. No. 15953 of 94

24th May, 1996

*Haryana Panchayati Raj Act, 1994—Ss. 7 & 9—Constitution (73rd) Amendment Act, 1994—Arts. 243 to 243-0—The Census Act.*

1948—S. 17—Demarcation of Sabha area—S. 7(2) providing method of demarcation to be based on population ascertained in the last preceding decennial census—Sub Divisional Officer, Gurgaon, determining population figures not on the basis of decennial census but on the basis of current population of SCs/BCs—Reservation of seats cannot be based on any other material except the last decennial census, i.e. of 1991 in view of S. 7(2) read with the provisions of the 73rd Amendment to the Constitution and the 1948 Act.

*Held*, that for the purpose of undertaking census, the power has been conferred upon the Central Government under the Census Act, 1948. Section 3 of the 1948 Act empowers the Central Government to issue a notification in the official gazette declaring its intention of taking census in whole or part of the territories of India. Section 17 contains provision for grant of statistical abstracts from the census reports. It empowers the Census Commissioner or any Director of Census Operations or such other person as the State Government may authorise in this behalf to get the abstract of the census reports prepared on a request made by any local authority or person, which may not have been published in the report. Except the provisions of the 1948 Act, nothing has been brought to our notice, which empowers the Government of India or the State Government to undertake any survey or get a report to determine the population of an area. We are also of the opinion that even if any such provision exists the same would be irrelevant for the purpose of determination of the population in the context of the provisions contained in Article 243(f), 243(D) of the Constitution of India and Sections 2(xliv) and Sections 7 & 9 of the Act. In the face of clear and unambiguous definition of the word 'population' and absence of any other provision indicating that the Government or any other competent authority has power to take into consideration any other figure of population, it must be held that in view of the provision of S. 7(2) as well as Section 9(1) and 9(4), the figures published on the basis of last preceding decennial census can only be taken into consideration for the purpose of determination of the Sabha area as well as for the purpose of reservation of seats in the Gram Panchayat etc. and no other mode can be adopted by the Government for the purpose of reservation of seats.

(Para 11)

*Further held*, that firstly it is to be noted that as per the admission made by the official respondents, the population figures contained in census report of 1991 (duly published) have been taken into consideration for the purpose of reservation of seats in Panchayat Samitis and Zila Parishads in the entire State of Haryana. Having done so, it is not open to the respondent-State and its agencies to say that figures contained in the census report of the year 1991 are not realistic. Secondly, in the face of a clear provision in the Statute, it is not open to the Court to interpret the provision of law on the basis of considerations which are extraneous to the Statute.

It is a settled rule of construction that when the language of Statute is plain and unambiguous, the Court must give full meaning to the language of the Statute and should not resort to the methodology of finding some ambiguity and then apply to rule of hardship, inconvenience and absurdity. We are also of the opinion that the plea of hardship or inconvenience is not open to be raised in this case because total number of reserved seats is not going to be changed by giving effect to the plain language employed in the Statute. That figure would remain the same. The only difference would be that instead of village 'A', Village 'E' or village 'C' may be declared as a reserved seat on the basis of population figures determined as per the Census of 1991.

(Para 12)

C. B. Goel, Advocate, for the Petitioner.

R. N. Raina, DAG, Haryana, for Respondent Nos. 1 to 4.

#### JUDGMENT

G. S. Singhvi, J.

(1) These petitions involve determination of a short but important question relating to the interpretation of the provisions contained in Sections 7 and 9 of the Haryana Panchayati Raj Act, 1994 (for short, the Act of 1994).

(2) C.W.P. No. 15953 of 1994 has been filed by Shri Singh Ram who is a resident and voter of village Basai, Tehsil and District Gurgaon. His grievance is that although as per the provisions of Section 7(2) of the Act, the demarcation of Sabha area is required to be done by taking into consideration the population ascertained on the basis of last preceding decennial census and reservation of the seats for the Gram Panchayat is also required to be done keeping in view the total population of the area, the respondent-Government of Haryana has taken into consideration the population figures arbitrarily determined by it on the basis of figures available in the year 1994. The petitioner has questioned the legality of Annexure P5 issued by the Sub Divisional Officer (Civil), Gurgaon, declaring reserved seats of Sarpanch and Panches in the Gram Panchayat. The petitioner has made a statement that as per the population figures published on the basis of census of 1991, the total population of Sabha area of Basai is 3387 out of which 901 are Scheduled Castes and 700 are Backward Classes but the respondent-Sub Divisional Officer has issued Annexure P5 on the basis of total population of 3549 with 1066 Scheduled Castes and 397 Backward Classes. It has

been stated in the writ petition that for the purposes of elections to Panchayat Samiti and Zila Parishad population figures as per census of the year 1991 have been taken into consideration whereas for the purposes of election to Gram Panchayat, population figures determined in the year 1994 have been taken into consideration.

(3) The writ petition has been contested by the respondents. In a joint reply filed on behalf of respondents 1 to 5, it has been stated that the population of village Basai has increased during last two to three years and there has been similar increase in the population of surrounding villages of District Gurgaon and, therefore, survey of 1994 has been treated as the basis of population. The respondents have admitted that this method was adopted only for Gram Panchayats and not for Panchayat Samiti and Zila Parishad. The respondents have also pleaded that demarcation of Sabha area was not done on the basis of population of last decennial census but on the basis of present survey of 1994.

(4) C.W.P. No. 15882 of 1994 has been filed by Mrs. Madhu Bakshi to quash Annexure P6 whereby reservation of seats of Sarpanches was declared. Petitioner-Madhu Bakshi has stated that she was desirous of contesting election of Sarpanch, Gram Panchayat of village Duliani, Tehsil and District Ambala, as a candidate of general category, but, by order Annexure P6 dated 29th September, 1994 the Additional Deputy Commissioner, Ambala, has treated village Duliani as reserved for the purpose of election to the office of Sarpanch. This, according to the petitioner, has been done on the basis of some survey report submitted by Fishery Development Officer under the direction of respondent No. 2. The petitioner has alleged that in the original list declared,—*vide* Annexure P3 village Duliani was not amongst the reserved village but on the basis of arbitrary survey undertaken by the officials, order Annexure P6 has been passed declaring Duliani as a reserved seat. It has also been alleged that in the year 1991, Duliani had a total population of 1384 out of which 697 were Scheduled Castes and 24 other villages were having population of Scheduled Castes more than of Duliani and, therefore, it was not included in the list of villages where the seat of Sarpanch was reserved. The petitioner has questioned the determination of reservation on the basis of survey carried out by the Fishery Development Officer on the ground that there is no provision in the Act or the Rules framed thereunder to take into consideration any report regarding population other than the census report.

(5) In the reply of respondents 1 and 2, it has been admitted that as per the survey report of the Fishery Development Officer, population of the Scheduled Castes was found 826 out of 1642 and, therefore, Duliani has been declared as a reserved seat. In the additional affidavit filed by the Additional Deputy Commissioner, Ambala, it has been stated that total population of Scheduled Castes is 826 in village Duliani as per the figures supplied by the Fisheries Department and it is 812 as per Ward Bandi Register and Anganwari record prepared on 25th September, 1994 and on the basis of overall per centage of Scheduled Castes population, reservation has been made.

(6) In her reply, Pali Devi, Sarpanch of Gram Panchayat Duliani, has pleaded that reservation of the seat has been made strictly in accordance with the provisions of law and the petitioner who belongs to general category has no right to challenge the decision of the respondents.

(7) Shri Munni Lal who is ex-Sarpanch of Gram Panchayat Duliani and who was added as a respondent to the writ petition, has filed a separate reply and has pleaded that as per the latest survey conducted by the Fishery Development Officer Scheduled Castes population comes to 816 which is 50.13 per cent of the total population and, therefore, the reservation made by the official respondents cannot be termed as arbitrary or unreasonable.

(8) By the Constitution Seventy-third Amendment Act, Part-IX has been added to the Constitution. This part consists of Articles 243 to 243-O. Article 243 contains definitions of various terms and expressions. The word 'Panchayat' has been defined in Article 243(d) as an institution of self-government constituted under Article 243-B, for the rural areas. The expression 'Panchayat area' has been defined in clause (e) to mean the territorial area of a Panchayat. The word 'population' has been defined in clause (f) of Article 243. It means the population as ascertained at the last preceding census of which the relevant figures have been published. Article 243-B imposes a duty on a State to constitute Panchayats at the village, intermediate and district levels. Article 243-C deals with the composition of Panchayats. Article 243-D relates to reservation of seats. Article 243(f) and Article 243-D (1 to 4) are relevant for the purpose of this decision and, therefore, the same are quoted below :—

"243(f) 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published.

243-D. *Reservation of seats.*—(1) Seats shall be reserved for—

- (a) the Scheduled Castes ; and
- (b) the Scheduled Tribes,

in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

- (2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.
- (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.
- (4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, Provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of Scheduled Tribes in the State bears to the total population of the State :

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women :

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.”

(9) The Act of 1994 has been enacted with a view to give effect to the mandate contained in Part-LX of the Constitution. Section 2 (xliv) thereof contains the definition of the word 'population' which is a virtual reproduction of clause (1) of Article 243 of the Constitution. Section 2(xliii) defines 'Panchayat area' as a territorial area of the Gram Panchayat. As per Section 2(xliii), a 'Panchayat Samiti' means a Panchayat Samiti constituted under the Act having jurisdiction over the block area..... Section 2(lxxii) defines 'Zila Parishad' as a Zila Parishad constituted at the District level under the Act. Chapter-III of the Act deals with Sabha area, establishment and constitution of Gram Sabha and Gram Panchayats. Section 8 empowers the Government to establish and constitute Gram Panchayat by notification. Section 9 deals with reservation of seats. Section 7(2) and Section 9(1 to 4) and (7) of the Act have direct bearing on the issue raised in these petitions and, therefore, they are also reproduced below :--

"7(2) The population shall be ascertained on basis of last preceding decennial census of which the relevant figures have been published.

9(1) Seats shall be reserved for the Scheduled Castes in every Gram Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by election in that Panchayat as the population of the Scheduled Castes in the Panchayat area bears to the total population of that area and such seats may be allotted to such wards having maximum population of persons belonging to Scheduled Castes.

(2) Not less than one-third of the total number of seats reserved under sub-section (1) shall be reserved for women belonging to the Scheduled Castes and such seats may be allotted by rotation and by lots to different wards reserved under sub-section (1).

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes) of the total number of seats to be filled by direct election in every Panchayat, shall be reserved for women and such seats may be allotted by rotation and by lots to different wards in a Panchayat except those falling under sub-sections (1) and (2).

(4) The office of the Sarpanches in the Gram Panchayat in a block shall be reserved for the Scheduled Castes and women :

Provided that the number of offices of Sarpanches reserved for the Scheduled Castes in the Block shall bear, as may be, the same proportion to the total number of such offices in the Block as the population of the Scheduled Castes in the State bears to the total population of the State :

Provided further that not less than one-third of the total number of offices of Sarpanches in the Block shall be reserved for women including one-third offices of women Sarpanches from Scheduled Castes :

Provided further that the number of offices of Sarpanches reserved under this sub-section shall be rotated to different Gram Panchayats first having the largest maximum population of Scheduled Castes and secondly having the second largest maximum population of such classes and so on.

(5) and (6)    xx                    xx                    xx

(7) Reservation of seats as mentioned in aforesaid sub-sections shall be reviewed after every decennial census."

(10) Chapter-VII of the Act relates to Panchayat Samiti's. Section 55 empowers the Government to divide a district in Blocks. Section 56 imposes a duty on the Government to constitute a Panchayat Samiti having jurisdiction in a Block. Section 57 relates to composition of Panchayat Samiti. Section 58 specifies the number of members to be elected to the Panchayat Samiti. Section 59 deals with the reservation of seats. Clauses (1) and (4) of Section 59 refer to the population of that area and of the State. Chapter-XIII relates to Zila Parishad. Section 117 deals with the constitution of Zila Parishads while Section 118 relates to the composition of Zila Parishads. Section 120 provides for reservation of seats. In terms of clause (1) of Section 120, the population of the district has to be kept in mind while making reservation for Scheduled Castes.

(11) From the above survey of various provisions of the Constitution of India as well as of the Act, it becomes evident that the



Parliament has made it mandatory for every State to constitute Panchayats at various levels and at the same time, provisions are required to be made for reservation of seats in favour of Scheduled Castes, Scheduled Tribes and women. For the purpose of determination of Sabha area as well as for the purpose of reservation, one of the important factors, which has to be kept in mind is population by incorporating definition of word 'population' in the Constitution, the Parliament has made its intention very clear namely, that the population should be taken into consideration as per the preceding census of which the relevant figures have been published. By adopting the same definition of the word 'population' in the Act, the Legislature of the State of Haryana has also made it known that for various purposes like the demarcation of Sabha area and reservation of seats in Gram Panchayats, Panchayat Samitis and Zila Parishads, the population of that area of the State as defined in the Act has to be taken into consideration. For the purpose of undertaking census, the power has been conferred upon the Central Government under The Census Act, 1948. Section 3 of the 1948 Act empowers the Central Government to issue a notification in the official gazette declaring its intention of taking census in whole or part of the territories of India. Section 17 contains provision for grant of statistical abstracts from the census reports. It empowers the Census Commissioner or any Director of Census Operations or such other person as the State Government may authorise in this behalf, to get the abstract of the census reports prepared on a request made by any local authority or person, which may not have been published in the report. Except the provisions of the 1948 Act, nothing has been brought to our notice, which empowers the Government of India or the State Government to undertake any survey or get a report to determine the population of an area. We are also of the opinion that even if any such provision exists the same would be irrelevant for the purpose of determination of the population in the context of the provisions contained in Article 243(f), 243-D of the Constitution of India and Sections 2(xliv) and Sections 7 and 9 of the Act. In the face of clear and unambiguous definition of the word 'population' and absence of any other provision indicating that the Government or any other competent authority has power to take into consideration any other figure of population, it must be held that in view of the provision of Section 7(2) as well as Section 9(1) and 9(4), the figures published on the basis of last preceding decennial census can only be taken into consideration for the purpose of determination of the Sabha area as well as for the purpose of reservation of seats in the Gram Panchayat etc. and no other mode can be adopted by the Government for the purpose of reservation of seats.

(12) Shri Raina, learned Deputy Advocate General, argued that the Government could not have ignored the increase in the number of Scheduled Castes, which must have taken place after 1991 Census of which figures had been published in the gazette and, therefore, the impugned action cannot be termed as illegal or arbitrary. He submitted that even though the word 'population' may have been defined in Article 243(f) or Section 2(xliv) of the Act, the real figures of Scheduled Castes population have been taken into consideration for the purpose of determination of reserved seats. In our opinion, this contention of Shri Raina cannot be accepted for two reasons. Firstly, it is to be noted that as per the admission made by the official respondents, the population figures contained in census report of 1991 (duly published) have been taken into consideration for the purpose of reservation of seats in Panchayat Samiti and Zila Parishad in the entire State of Haryana. Having done so, it is not open to the respondent-State and its agencies to say that figures contained in the census report of the year 1991 are not realistic. Secondly, in the face of a clear provision in the Statute, it is not open to the Court to interpret the provision of law on the basis of considerations which are extraneous to the Statute. It is a settled rule of construction on that when the language of a Statute is plain and unambiguous, the Court must give full meaning to the language of the Statute and should not resort to the methodology of finding some ambiguity and then apply the rule of hardship, inconvenience and absurdity. We are also of the opinion that the plea of hardship or inconvenience is not open to be raised in this case because total number of reserved seats is not going to be changed by giving effect to the plain language employed in the Statute. That figure would remain the same. The only difference would be that instead of village 'A', village 'B' or village 'C' may be declared as a reserved seat on the basis of population figures determined as per the Census of 1991.

(13) In view of the above discussion, we allow the writ petitions and quash the reservation of seats of Sarpanches of villages Basai, Tehsil and District Gurgaon and Duliani, Tehsil and District Ambala. Election of respondent No. 5 in CWP No. 15953 of 1994 (Ram Saran) and of respondent No. 3 in CWP No. 15882 of 1994 (Smt. Pali Devi) as Sarpanches of villages Basai and Duliani against reserved seats are declared illegal and quashed. The official respondents are directed to hold fresh elections to the office of Sarpanches of villages Basai and Duliani. This should be done within a period of two months of the submission of a certified copy of this order. Till then.

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the existing incumbents shall be allowed to continue in the office so that work of Gram Panchayats may not be adversely affected.

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R.N.R.

Before Ashok Bhan & N. K. Agrawal, JJ.

M/S ATMA TUBE PRODUCTS LIMITED,—Petitioner.

versus

UNION OF INDIA & OTHERS,—Respondents.

C.W.P. 4625 of 1995

19th August. 1996

*Constitution of India. 1950—Arts. 226/227—Income Tax Act, 1961—S. 226(3)—No notice sent to petitioner under section 226(3)(1) of the Act—Bank account of petitioner attached on account that it owned money to a defaulter assessee-company—Proceedings under section 226(3) of the Act are in the nature of garnishee proceedings—Issuance of notice in writing to person from whom money is due or may become due to assessee to pay the same to Assessing Officer is sine qua non for initiating the proceedings under section 226(3)—In the absence of notice to concerned person there is no valid initiation of garnishee proceedings—Petitioner condemned unheard without following procedure laid down by law.*

*Held*, that proceedings under section 226(3) of the Act are in the nature of garnishee proceedings i.e. attachment of a debt by means of which judgment—creditor is able to reach money due from the judgment—debtor which is in the hands of a third person. Issuance of a notice in writing to the person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee to pay the same to the Assessing Officer is a sine qua non for initiating the proceedings under Section 226(3) of the Act. In the absence of the notice to the concerned person, there is no valid initiation of garnishee proceedings. Under clause (vi) of Section 226(3) of the Act, a person to whom a notice under this sub-section is sent has a right to object to the notice by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee and, then, nothing contained in this sub-section would require such person to pay any money or part thereof, as the case may be. However, if the Assessing Officer or the Tax Recovery Officer discovers that such statement was false in any material particular, then the person concerned becomes personally liable to pay to the extent of his own liability to the assessee on the date of the notice.

(Para 10)