

(14) Adverting to the facts of this case, I find that publication of the substance in the concerned locality was made as late as on the 29th day after the publication in the official Gazette. That being so, the impugned notifications cannot legally be sustained. Accordingly, I allow this petition, quash the impugned notifications, Annexures P-1 and P-2, issued under sections 4 and 6 of the Act respectively.

(15) However, in the circumstances of the case, I make no order as to costs.

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BHOPINDER SINGH DHILLON JUDGE.—I agree.

A. S. BAINS.—I also agree.

N. K. S.

APPELLATE CIVIL

FULL BENCH

Before S. S. Sandhawalia, Prem Chand Jain and M. S. Gujral, JJ.

CHANAN SINGH,—Plaintiff—Appellant.

versus

SHRIMATI MAJO AND ANOTHER,—Defendants—Respondents.

Civil Regular Second Appeal No. 146 of 1969.

April 27, 1976.

*The Punjab Redemption of Mortgages Act (2 of 1913)—Sections 4, 5 to 11 and 12—Dismissal of an application for redemption of mortgage under sections 5 to 11—Whether extinguishes the right of redemption under the general law—Dismissal of such application as premature—Whether hit by section 12.*

*Held*, that a reference to the various sections of the Punjab Redemption of Mortgages Act, 1913 makes it manifest that the statute is a special Act providing for a quick and efficacious procedure for the redemption of certain mortgages of land in Punjab. Within its limited field it is a miniature code in itself. The language of section 12 of the Act is clear and unequivocal and lays down in terms that unless a suit is brought to set aside an order of the Collector (passed under sections 5 to 12 of the Act), which may be to the detriment of either party, the said order would become conclusive. The intention of the Legislature is clear that when parties have resorted to the special jurisdiction of the Act and an order has been duly passed

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therein, then the same would become final and binding on them unless either one of them avoids it by instituting a suit against that order within one year. The Legislature did not intend that a dispute which had been focused and decided under the special proceedings of the Act before the Collector, should nevertheless remain suspended and inchoate till either one of the parties exercises his substantive right of redemption which might well extend to another 60 years. It is a settled principle of construction that the words in a statute are designedly used and interpretation of a provision must be avoided which would render it either nugatory or a part thereof *otiose*. If the order of the Collector dismissing an application for redemption of mortgage is not held to be final then the provision of section 12 of the Act would virtually stand effaced from the statute book. Even otherwise it is settled law that a special procedure or a special statute would override the general one. On this general principle also section 12 would certainly affect and curtail the general right of redemption. 1974 P.L.R. 418; *Gurditta Singh v. Harbans Singh*, overruled.

(Paras 8, 9 and 10)

*Held*, that the dismissal of an application for redemption of mortgage on the ground of the same being premature is not hit by the stringent provisions of section 12 of the Act and is no bar to a suit being brought for redemption of the mortgage under the general law.

(Para 22)

H. L. Soni, Advocate, for the appellant.

D. S. Kang, Advocate, for the Respondents.

#### JUDGMENT

S S. Sandhawalia, J.—Doubts about the correctness of the *ratio decidendi* in the Division Bench judgment of this Court in *Gurditta Singh and others v. Harbans Singh and others* (1), have rightly necessitated this reference to the Full Bench.

(2) The legal issues, which fall for determination herein, arise from pleadings and facts which are not in serious dispute. The original owner of the land in the suit was one Gopal Singh, who mortgaged the same to Mst. Majo, respondent, for Rs. 260. The deed of mortgage was executed at Kasur (now in Pakistan) on June 25, 1942, the period of mortgage being

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(1) 1974 P.L.R. 418.

20 years. Subsequently, Gopal Singh, executed another mortgage deed in favour of Chanan Singh, plaintiff-appellant, on the 13th of October, 1959, whereby he vested him with the right to get the land in dispute redeemed from the first mortgagee, Shrimati Mejo. Apparently during the subsisting period of (the original mortgage, i.e., on the 13th of June, 1962, Chanan Singh, plaintiff-appellant filed an application for redemption of the land in dispute in the Court of the Sub-Divisional Officer (Civil), Patti, under section 4 of the Redemption of Mortgages Act, 1913. This application was resisted on behalf of Smt. Mejo, on the specific ground that the period of the mortgage was yet subsisting on the date when the application for redemption was made and consequently the plaintiff led no evidence in support of his case and the application was ultimately dismissed on the 19th of November, 1962.

(3) Chanan Singh, plaintiff-appellant then brought the suit, from which these proceedings arise, on 27th of January, 1965. He claimed redemption on the facts afore-mentioned and particularly averred in paragraph 5 of his plaint that since the period of the original mortgage of Shrimati Mejo had now expired by the efflux of time, he was entitled to claim the redemption of the suit land. In resisting the suit, Shrimati Mejo defendant-respondent raised a preliminary objection that since the application of the plaintiff for redemption of the land in dispute was dismissed by the Collector on the 19th of November, 1962, and no suit had been brought by him for getting that order set aside within the prescribed limit of one year, the order of the Collector had become conclusive under section 12 of the Redemption of Mortgages Act, 1913 (hereinafter called 'the Act'), and was, therefore, beyond challenge.

(4) On the pleadings of the parties, the trial Court first framed the following preliminary issue:—

(5) "Whether the suit is time barred?"

(6) Relying basically on the Division Bench judgment in A. I. R. 1938-Lahore-638, the trial Court concluded that the plaintiff-appellant was bound in law to institute a suit to set aside the order of the Collector dismissing his application, under section 12 of the Act, within the prescribed period of limitation. Consequently it held that the suit of the plaintiff was plainly barred by time and dismissed the same. On appeal the learned Additional District Judge, Amritsar,

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affirmed the findings of the trial Court. The present Regular Second Appeal, first came up before my learned brother Jain, J., and in his lucid order he noticed the apparent conflict of *Gurditta Singh's* case (supra) with the previous Full Bench judgment in *Tulsi Dass Vs. Diala Ram*, A.I.R. 1943-Lahore-176 and, therefore, referred the matter to a larger bench.

(7) On behalf of the appellant Mr. H. L. Soni, inevitably placed reliance on *Gurditta Singh's case* (supra) to contend that a substantive right of redemption inheres in the plaintiff appellant and the mere dismissal of his application by the Collector under the Act is hardly relevant to the issue and cannot affect his right to bring a suit for redemption.

(14) Undoubtedly the observations in *Gurditta Singh's case* (supra) lend firm support to the aforesaid contention. In the said case Tuli J., speaking for the Bench, has taken a view that the remedy provided by the Act of 1913 was a summary one, which was merely in addition to the substantive remedy of redemption and was not in any way in substitution thereof. Upon that premises it has been further opined that the dismissal of an application under sections 6 to 11 of the said Act cannot have the effect of extinguishing the right of the mortgagor to redeem the property and the only result thereof would be that no second application can be filed under the same jurisdiction in view of section 13 of the Act. It has been further held that the remedy by way of a regular suit for redemption would remain wholly unaffected by the dismissal of an application by the Collector, unless the latter in categorical terms holds that the mortgage does not subsist and that the mortgagor has no right to redeem.

(8) With the greatest respect I find myself unable to concur with the aforementioned enunciation of law. The matter has necessarily to be examined first in the light of the statutory provisions. A reference to the seventeen sections of the Redemption of Mortgages Act, 1913 would make it manifest that the statute is a special Act providing for a quick and efficacious procedure for the redemption of certain mortgages of land in Punjab. Specifically it applies to a mortgage of land in cases where the mortgage money does not exceed Rs. 5,000 and further where the area of mortgaged land does not exceed 50 acres. Within its limited field it is a miniature code in itself. Section 4 of the Act provides for the presentation of a petition for redemption to the Collector by the mortgagor. Sections 5

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to 11 then lay down the procedure for the disposal of the said petition in the different situations visualised by the statute. The material provision for our purpose is section 12, the relevant part whereof is in the following terms:—

“12. Any party aggrieved by an order made under sections 6, 7, 8, 9, 10 or 11 of this Act may institute a suit to establish his rights in respect of the mortgage but, subject to the result of such suit, if any, the order shall be conclusive.”

(9) I am of the view that the plain language of this provision is clear and unequivocal. It lays down in terms that unless a suit is brought to set aside any order of the Collector (passed under sections 5 to 11 of the Act), which may be to the detriment of either party, the said order would become conclusive. The intention of the legislature appears to be clear that when parties have resorted to the special jurisdiction of the Act and an order has been duly passed therein, then the same would become final and binding on them, unless either one of them avoids it by instituting a suit against that order. One cannot imagine that the legislature would have possibly intended that a dispute which had been focussed and decided under the special proceedings of the Act, before the Collector, should nevertheless remain suspended and inchoate till either one of the parties exercises his substantive right of redemption which might well extend to another 60 years. It is a settled principle of construction that the words in a statute are designedly used, and an interpretation of a provision must be avoided which would render it either nugatory or a part thereof, *otiose*. If the view expressed by Tuli J., were to be adopted, in regard to the dismissal of a redemption application under sections 6 to 11 of the Act, then the provisions of section 12 aforementioned would virtually stand effaced from the statute book. This is a result which has necessarily to be avoided. I am, therefore, of the view that the plain categorical language of section 12 negates the construction which has been sought to be placed upon it by the Division Bench in *Gurditta Singh's case* (supra).

(10) Assuming for a moment that the Redemption of Mortgages Act provides for a summary jurisdiction in the context of mortgages of land, it does not flow therefrom that the provisions thereof would cease to have any effect on the substantive rights of the mortgagor who voluntarily resorts thereto. There can hardly be any doubt that the Act is a special statute operating in a narrow and limited

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field. It is settled law that a special procedure or a special statute would over-ride a general one. On this general principle also the particular provisions of section 12 would certainly affect and curtail the general right of redemption. If authority were needed for this plain proposition in the particular context of this Act, then reference may be made to a Division Bench judgment of Shadi Lal, C.J. and Le Rossignol J., in *Kaura and another v. Ram Chand and another* (2), wherein it was observed:—

“Many authorities have been cited to us at the Bar to establish the proposition that when an order passed under a special Act is declared by that Act to be conclusive, it cannot be ignored and no relief is open to the aggrieved party unless that order be set aside. On that point we require no authority, for the Act itself is quite clear on the subject.”

(11) Again it appears plain to me on principle that if a party seeks the benefit of a special jurisdiction, than necessarily he must equally accept the burden thereof. It would hardly lie in the mouth of a mortgagor that he may take advantage of Sections 6 to 11 of the Redemption of Mortgages Act for securing a quick and efficient remedy for the redemption of land, but in case he is adversely affected thereby, he would not be bound by the restrictive provisions of Section 12 of the same statute. This would apply equally to a mortgagee as well. The Salutary rule that the benefit and the burden of a provision must go together cannot be deviated from in the present context either.

(12) On a closer analysis of the judgment in *Gurditta Singh's case* (supra), one cannot help remarking that apparently the issue was not adequately debated before the learned Judges constituting the Bench, both on principle and authority. There does not appear to be any discussion in depth of the legal principles involved. Equally, the learned counsel for the parties were sorely remiss in not bringing to the notice of the Bench a string of earlier decisions which directly covered the point. It was in the context of this unawareness of the earlier authorities that Tuli, J. had expressed a view (with which Dhillon J. concurred) which runs counter to prior binding precedent without even adverting thereto.

(13) Primary reliance of Tuli, J. in arriving at the conclusion which he has in *Gurditta Singh's case* (supra) was on the judgment

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(2) A.I.R. 1925, Lahore 385.

reported as *Raghunath Singh and others v. Mt. Hansraj Kunwar and others* (3). An examination of that judgment would show that what deserves significant notice is the fact that not the least hint of any issue arising under the Redemption of Mortgages (Punjab) Act, 1913, arose in that case. This was obviously so because the case before their Lordships of the Privy Council came from the jurisdiction of the Allahabad High Court where no such enactment was in force. Lord Russell in framing the judgment himself noticed that the two principal points for decision on the facts of that case were whether any and what amount of mortgage money was due and whether a second redemption suit was maintainable. The first point obviously has no relevance because no point of law arose therefrom. On the second point, their Lordships noticed the three contentions raised on behalf of the appellant (the respondents were not represented before them) and on the particular facts of the case held that the second suit for redemption was in no way barred in view of the fact that the questions in the earlier suit were wholly different from those in the second suit and consequently no question of *res judicata* arose. It was also held on the facts of the case that the failure to make payment in compliance with the earlier decree did not bar a second suit and the mortgagor's right to redeem would not be extinguished under section 69 of the Transfer of Property Act, 1882.

(14) It appears plain to me that the observations in that case were in the context of the peculiar facts and circumstances thereof and did not lay down any general proposition that the right of redemption is so inviolable as not to be cut down by the express terms of a statute. As already noticed, the provisions of the Punjab Redemption of Mortgages Act did not at all fall for consideration before their Lordships. It is platitudinous to remark that in the face of a mass of authority on the specific provisions of the aforementioned Act, a resort to more general principles flowing from an observation here and there from *Raghunath Singh's case* can hardly be justifiable. In the present case, where the primary and indeed the whole argument is directed to the specific provisions of sections 6 to 11 of the Redemption of Mortgages Act and in particular to the effect of the unequivocal language of section 12 thereof, the observations in *Raghunath Singh's case* can hardly be of any aid. In my view, the reliance on this judgment in *Gurditta Singh's case* does not appear to be justifiable and it is indeed wholly wide of the mark.

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(3) A.I.R. 1934 P.C. 205.

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(15) Once the Privy Council judgment is out of the way, the rather brief rationale of the judgment in *Gurditta Singh's case* does not bear the test of a close scrutiny. Principle apart, the view that the Redemption of Mortgages Act provides for a summary remedy only and is in addition to and not in substitution of the general right of redemption is contrary to a string of precedents from which it is not now possible to differ and to which, as already noticed, Tuli, J. did not even advert. As early as 1925, the Division Bench of Chief Justice Shadi Lal and Le Rossignol J. had held in *Kaura and another's case* (supra) that the provisions of the Redemption of Mortgages Act, 1913, were as much substantive law as any other. After discussion, they had held as under:—

“Our conclusion then is that the real nature of the suit contemplated by the Legislature in section 12 of Act 11 of 1913 is a suit to set aside the Collector's order. That order unless it be set aside is conclusive and as in the case before us that order was not set aside within the period of limitation provided, the present suit to redeem the mortgage is out of time.”

To the same effect appears to be the view of the Full Bench in *Gangu and others v. Mahanraj Chand and others* (4), in which the aforementioned judgment was referred to with approval. Reference in this context can also usefully be made to another Division Bench judgment in *Prabhu Mal v. Chandan and another* (5). But the most prominent case on the point is the very elaborate judgment recorded by the three learned Judges of the Full Bench in *Tulsi Das alias Nirmal Das and others v. DIALA RAM* (6), which has the added merit of having been noticed with approval by their Lordships in *Sheolal and others v. Sultan and others* (7). In the same judgment, their Lordships also endorsed the view of a Division Bench of this Court in *Dewan Chand v. Raghbir Singh and others* (8). It appears to me that the observations of their Lordships of the Supreme Court in *Shiv Lal and others v. Chet Ram and others* (9), also tend to negate the view expressed in *Gurditta Singh's case*.

(4) A.I.R. 1934 Lahore 384.

(5) A.I.R. 1938 Lahore 638.

(6) A.I.R. 1943 Lahore 176.

(7) A.I.R. 1971 S.C. 93.

(8) 1965 P.L.R. 969.

(9) 1970 P.L.J. 770 (S.C.).

(16) Before parting with the authorities on the point, it is instructive to advert to the considered judgment of the Division Bench (Hardayal Hardy and T.V.R. Tatachari, JJ., as their Lordships then were) of the Delhi High Court reported as *Mir Chand v. Devia* (10). After an elaborate discussion of the principle and authorities on the point, their Lordships concluded in the following terms :—

“Our opinion, therefore, is that whenever the Collector makes an order which comes within the ambit of sections 6 to 11 of the Act, regard being had to the substance of the order and not merely to its form, the order is one contemplated under section 12 of the Act and if that order adversely affects the rights of the parties in respect of the mortgage, the only remedy of the aggrieved party is to establish his or her rights by filing a suit for which the time limit prescribed under Article 14 of the Limitation Act is one year from the date of the order. \* \* \* \* \*

The party aggrieved by the order cannot sit quiet and wake up after the expiry of the period of one year and assert his rights under the mortgage contending that he is seeking his remedy under the general law and has, therefore, no need to have the Collector's order set aside and can ignore it.”

(17) In the wake of such massive precedent, it suffices to say that the view of the Division Bench in *Gurditta Singh's case* runs counter to the aforementioned string of binding decisions and also does not appear to be supportable on principle. It does not lay down correct law and with respect I would, therefore, overrule the same.

(18) The second string to the bow of the appellant, however, appears to be an effective one. Deprived of his reliance on *Gurditta Singh's case*, Mr. Soni, learned counsel for the appellant, fell back to contend that the order of dismissal passed by the Collector on November 19, 1962, was primarily on the ground that the application for redemption was premature as the period of the mortgage had not fully elapsed. The counsel submitted that such a dismissal was not one under sections 6 to 11 of the Act and, therefore, was not hit by the provisions of section 12 thereof. In substance, the submission was that the dismissal of a premature application for redemption cannot in any event bar the institution of a regular suit later.

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(19) In order to appraise the above-said contention, it is necessary to first clear some cobwebs regarding the facts of the case even at the cost of a slight repetition. In para 1 of the plaint, the plaintiff had categorically averred that the mortgage deed was executed on June 25, 1942 and the specific period of the mortgage was for 20 years. It was pointed out that the mortgage deed having been executed at Kasur, which is now in Pakistan, it was not possible to produce a certified copy thereof. The aforementioned averments were not denied by the defendants in the corresponding parts of para 1 of their written statement. Indeed, it was submitted on their behalf that the original deed had been misplaced. In particular, it was pleaded in para 4 of the plaint that the plaintiff had moved an application for redemption before the Collector, Patti, which was resisted on the specific ground that the period of the mortgage had not yet elapsed and consequently the application was dismissed on this summary ground. Significantly, these averments were again not controverted on behalf of the defendants and it was merely stated that the application had been dismissed and the said order had not been got set aside within the period of limitation and had, therefore, become final. In para 5 of the plaint, the plaintiff had again averred that since the period of the mortgage had now elapsed, a right of redemption accrued to him and these pleadings were answered in routine by stating that the plaintiff had no right of redemption.

(20) From the above noticed state of pleadings and the uncontroverted facts, it is evident that under the deed, the mortgage was to subsist till June 25, 1962. Admittedly, the application before the Collector was brought before the expiry of the period of mortgage on June 13, 1962, and was thus hardly competent. The plaintiff asserted in no uncertain terms that the defendants had resisted the aforesaid application primarily on the ground that the application was not competent during the period of the mortgage and this resulted in its summary dismissal. These facts were not denied even in the pleadings of the defendants and in this background the two line cryptic order of dismissal was passed by the Collector on November 19, 1962. On the present facts, therefore, there is no manner of doubt that the earlier dismissal of the application of the plaintiff was a summary one, patently on the ground of the same being premature.

(21) That being so, the core of the matter here is whether an order of dismissal by the Collector on an application under section 4 of the Act, on the ground that it is premature, is within the scope of section 12 of the Act.

(22) In seeking an answer to the aforementioned question, it is unnecessary to examine it in any detail or on principle because it is covered on all fours by the authoritative decision of the Full Bench in *Tulsi Dass's case* (supra). In that case owing to an earlier conflict of authority, two questions were referred to the Full Bench which were formulated in the following terms:—

- “1. Whether an application made under section 4 of the Act for redemption of a mortgage cannot be treated as an application under the Act, if it is rejected or dismissed by the Collector on the ground that it is premature ?
2. Whether the orders contemplated under section 12 of the Act are confined to those orders only which are made on the merits of the case or cover all orders irrespective of the fact whether they dispose of any question on the merits or not?”

As is manifest, question No. 1 above is identical with the issue arising in the present appeal. On this point, all the three learned Judges of the Full Bench were unanimous in their view that the dismissal of such an application on the ground of the same being premature was not hit by the stringent provisions of section 12 of the Act and there was thus no bar to a suit being brought for redemption of the mortgage under the the general law. I am entirely in agreement with this view and indeed the Full Bench judgment is binding on us or in any case is of great persuasive force.

(23) In passing, it may be noticed that on the second question, which was before the Full Bench in *Tulsi Dass's case*, the learned Judges were at variance with each other and an examination of the judgment would show that no clear or concise conclusion on the said question appears to be deducible. This was indeed noticed by the Bench. This is evident from the final order where it was mentioned that the appeal was being dismissed but on different grounds. I am of the view that in the present case, no issue of the nature of the second question before the Full Bench arises and it would, therefore, be academic to examine or pronounce on the same.

(24) In view of my aforesaid conclusion on the legal issue, it is held that the suit in the present was not barred by time and the preliminary issue is decided in favour of the plaintiff. The appeal is

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hereby allowed and the judgments of the two Courts below are set aside. The case would now go back to the trial Court for an expeditious disposal. The parties will bear their own costs.

*Prem Chand Jain, Judge.*—I agree.

*Man Mohan Singh Gujral, Judge.*—I agree.

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N. K. S.

FULL BENCH

CIVIL MISCELLANEOUS

*Before A. D. Koshal, Acting Chief Justice, P. S. Pattar and  
Surinder Singh, JJ.*

RAM NATH,—*Petitioner.*

*versus*

THE STATE OF PUNJAB AND ANOTHER,—*Respondent.*

Civil Writ No. 6576 of 1976.

April 30, 1976.

*The Punjab Municipal Act (III of 1911)—Section 45(1)—One month's notice before discharge—Municipal Committee—Whether can pay salary in lieu of such notice—Salary in lieu of notice—Whether to be tendered simultaneously with the notice of discharge.*

*Held*, that a Municipal Committee can pay to an employee one month's salary in lieu of notice before discharging him under section 45(1) of The Punjab Municipal Act, 1911.

(Paras 5, 6 and 7)

*Held*, that the issue of one month's notice or tender of one month's salary in lieu of notice is a pre-requisite to the discharge of an employee under section 45(1) of the Act. Thus for termination of service to be valid, one month's salary in lieu of notice has to be tendered simultaneously with the letter of discharge.

*Note.*—Rule 5 of the Central Civil Services (Temporary Service) Rules 1965 which was interpreted in Senior Superintendent R. M. S., Cochin v. K. V. Gopinath, AIR 1972 S.C. 1487, has since been amended, as noticed by the Supreme Court in Raj Kumar v. Union of India, A.I.R. 1975 S.C. 1116.

—Editor.