

State of Haryana and others *v.* Kartar Singh and others.
(G. R. Majithia, J.)

(10) Now adverting to the facts of the case, which are distinguishable from *Sher Singh's case* (supra), the landowner died on 11th January, 1983 and it is thereafter that notice under Section 9(1) of the 1972 Act was issued directing the landowner to deliver possession and it is thereafter that on 28th March, 1983 the possession was taken in purported exercise of powers under Section 9(2) of the 1972 Act and allotment to the father of the petitioner before us was made thereafter on 30th March, 1983. Therefore, the surplus area declared was not utilised before the death of the landowner nor its possession was taken by the State Government. Even if possession had been taken by the State Government before the death of the landowner in whose hand the area was declared surplus by virtue of Section 8 of the 1972 Act, the land would have vested in the State Government free from all encumbrances from the date of taking of possession. Since even possession was not taken before the date of death, the taking of possession on 28th March as also the order of allotment dated 30th March, 1983 are without jurisdiction and were rightly set at naught by the learned Financial Commissioner.

(11) For the reasons recorded above, the writ petition is devoid of merit and is dismissed but with no order as to costs.

R.N.R.

Before : V. Ramaswami, CJ and G. R. Majithia, J.

STATE OF HARYANA AND OTHERS,—Appellants.

versus

KARTAR SINGH AND OTHERS,—Respondents.

Letters Patent Appeal No. 832 of 1986.

September 16, 1988.

Punjab Municipal Act (III of 1911)—Section 3(18) (b)—Haryana Municipal Act (XXIV of 1973)—Sections 203 to 210—Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act (XLI of 1963)—Section 4(1) (b)—Government notifying area within municipal limits as 'unbuilt area' under Section 3(18) (b)—Request for framing of Town Planning Scheme made

under Section 203 of the Haryana Act—Government thereafter notifying the same area as ‘controlled area’ under Section 4(1) (b) of the Scheduled Roads Act—Such notification—Whether debars framing of Town Planning Scheme and its implementation—Section 203—Whether consistent with the provisions of the Scheduled Roads Act—Haryana Act and the Scheduled Roads Act—Whether occupy different fields—Power of government to frame a Town Planning Scheme—Whether taken away by the Scheduled Roads Act.

Held, that a plain reading of Section 24 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 safeguards the development schemes for the development of the land comprised in the controlled area prepared under other Acts. Sub-Section (2) of Section 23 of the Scheduled Roads Act envisages that it shall not affect actions taken under any other Act except where the actions taken under the other Act are inconsistent with the provisions of the Scheduled Roads Act. The provisions of the Scheduled Roads Act operate in different fields. It is aimed at restricting unregulated development along the scheduled roads and further to ensure the Planned development of the controlled area. Under Section 4 of the Scheduled Roads Act, the State Government can by notification declare the whole or any part of any area adjacent to and within a distance of (a) eight kilometres on the outer sides of the boundary of any town, or (b) two kilometers on the outer sides of the boundary of any industrial or housing estate, public institution or ancient and historical monument, to be a controlled area. The domain of Section 4 operates outside the boundary of a town. Thus, the local areas which came within the description of ‘town’ and are governed by the Municipal Act, Section 4 of the Scheduled Roads Act would not operate. The ‘controlled area’ within the meaning of clause (a) sub-section (1) of Section 4 of the Scheduled Roads Act can only be the area which is outside the boundary of a town. Section 5 of the Scheduled Roads Act provides for preparation of plans showing the controlled area and specifying therein the restrictions and the conditions for the erection or re-erection of any building, allotment or reservation of land for roads etc. The provisions of Section 5 of the Scheduled Roads Act aim at achieving the same object in the controlled area which Section 203 of the Act seeks to achieve within the municipal limits of a town. Thus, the provisions of Section 203 of the Act are not inconsistent with the provisions of the Scheduled Roads Act. The provisions of Section 203 of the Act being consistent with the provisions of the Scheduled Roads Act, therefore, will remain operative. Hence, it has to be held that the provisions of the Scheduled Roads Act do not restrict the State Government from framing a town planning scheme and implementing the same. (Para 5).

Kartar Singh v. State of Haryana and others, 1987 (II) I.L.R. (Punjab and Haryana series) 165 (affirmed)

State of Haryana and others *v.* Kartar Singh and others.
(G. R. Majithia, J.)

Letters Patent Appeal under Clause X of the Letter Patent against the order dated 10th July, 1986 passed by Hon'ble Mr. Justice D. V. Sehgal, in C.W.P. No. 3779 of 1985.

It is, therefore, prayed that the appeal be accepted, the judgment passed by the learned Single Judge be set aside and the writ petition be dismissed with costs throughout.

N. S. Pawar, Sr. D.A.G., Haryana, *for the Appellants.*

V. K. Bali, Sr. Advocate (Anil Khetar Pal, Advocate with him), *for the respondents Nos. 1 to 15.*

Rajesh Chaudhry, Advocate, *for the Respondent No. 16.*

ORDER

G. R. Majithia, J.

(1) This judgment will dispose of Letters Patent Appeals Nos. 832 and 833 of 1986.

(2) Thanesar Municipality by a special order No. 104 declared some area as unbuilt area within the limits of the Municipality. The Government of Haryana in exercise of powers conferred by Clause (b) of sub-section (18) of Section 3 of the Punjab Municipal Act, 1911, confirmed the special order No. 104,—*vide* order dated January 28, 1969. The Haryana Municipal Act, 1973 (for short, referred to as 'the Act') was published in Haryana Government Gazette (Extraordinary) of July 2, 1973. It repealed the Punjab Municipal Act, 1911. The schemes prepared under the Punjab Municipal Act, 1911, before the enactment of the Act, were to remain in force in so far as these were not inconsistent with the provisions of the Act. Section 203 of the Act enjoined upon the Thanesar Municipality to frame a Town Planning Scheme for the unbuilt area, but no step was taken in this behalf. No building activity could be taken up by the land owners whose lands were covered by the special order, since the land had been declared unbuilt area and the building activity was to be regulated by the town planning scheme. The land-owners applied for the preparation of the Town Planning Scheme. The Thanesar Municipality submitted the survey plan and the ownership statement of the District Town Planner, Kurukshetra, for preparing the town planning scheme. Before any final decision could be taken, the State of Haryana,—*vide* notification dated September 26, 1980 under section 4(1) (b) of the Punjab

Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (hereinafter called 'the Scheduled Roads Act') declared the area as 'controlled area'. As a result of the notification under the Scheduled Roads Act, the finalisation of the town planning scheme was stopped. A dispute arose whether the area is to be regulated by section 203 of the Act or by the Scheduled Roads Act. The State Government did not take any step in this behalf. The land-owners whose land was declared as unbuilt area under clause (b) of sub-section (18) of Section 3 of the Punjab Municipal Act, 1911, moved this Court for issuance of a writ of *certiorari* for quashing declaration of the State Government declaring the area as 'controlled areas' and also for quashing the notification dated January 28, 1969 issued in exercise of powers under clause (b) of sub-section (18) of Section 3 of the Punjab Municipal Act, 1911 and in the alternative for a writ of *mandamus* to the respondent State to frame a town planning scheme.

(3) The writ petition was allowed by the learned Single Judge and he issued a writ of *mandamus* directing the State to prepare a town planning scheme under section 203 of the Act for the unbuilt area declared,—*vide* notification dated January 28, 1969. This order of the learned Single Judge has been challenged in appeal by the State of Haryana and its officers.

(4) On behalf of the appellant it was submitted that once the area has been declared as controlled area under the Scheduled Roads Act, a town planning scheme under the Act cannot be prepared. It was pointed out that a plan in conformity with the provisions of Section 5 of the Scheduled Roads Act has been published by the State Government and the writ petitioners if they wanted to carry out building activities should apply for permission from the Directorate of Town and Country Planning, Haryana.

(5) Section 24 of the Scheduled Roads Act empowered the State Government to impose restrictions upon the use and development of land comprised in the controlled area. But if the State Government under any other law prepared a development scheme for the development of land in the controlled area, the scheme can still be implemented, provided it is not inconsistent with the provisions of the Scheduled Roads Act. Section 24 of the Scheduled Roads Act reads as under :—

“*Savings*—Nothing in this Act shall affect the power of the Government or any other authority to acquire land or to

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impose restrictions upon the use and development of land comprised in the controlled area under any other law for the time being in force, or to permit the settlement of a claim arising out of the exercise of powers under this Act by mutual agreement.”

A plain reading of this section safeguards the development schemes for the development of the land comprised in the controlled area prepared under other Acts. Sub-section (2) of Section 23 of the Scheduled Roads Act envisages that it shall not affect actions taken under any other Act except where the actions taken under the other Act are inconsistent with the provisions of the Scheduled Roads Act. The provisions of the Scheduled Roads Act operate in different fields. It is aimed at restricting unregulated development along the scheduled roads and further to ensure the planned development of the controlled area. Under section 4 of the Scheduled Roads Act, the State Government can by notification declare the whole or any part of any area adjacent to and within a distance of (a) eight kilometers on the outer sides of the boundary of any town, or (b) two kilometers on the outer sides of the boundary of any industrial or housing estate, public institution or ancient and historical monument, to be a controlled area. The domain of section 4 operates outside the boundary of a town. Town is not defined in the Scheduled Roads Act. In the absence of any special definition in the Act, we have to resort to the ordinary dictionary meaning. In Webster's New World Dictionary, 'town' means, "a more or less concentrated group of houses and private and public buildings, larger than a village but smaller than a city". Most of the local areas which constitute the towns are governed by the Act. Thus, the local areas which came within the description of 'town' and are governed by the Municipal Act, section 4 of the Scheduled Roads Act would not operate. The 'controlled area' within the meaning of clause (a) sub-section (1) of Section 4 of the Scheduled Roads Act can only be the area which is outside the boundary of a town. Section 5 of the Scheduled Roads Act provides for preparation of plans showing the controlled area and specifying therein the restrictions and the conditions for the erection or re-erection of any building, allotment or reservation of land for roads etc. The provisions of Section 5 of the Scheduled Roads Act aim at achieving the same object in the controlled area which section 203 of the Act seeks to achieve within the Municipal limit of a town. Thus, the provisions of section 203 of the Act are not inconsistent with the provisions of the Scheduled

Roads Act. The provisions of section 203 of the Act being consistent with the provisions of the Scheduled Roads Act, therefore, will remain operative.

(6) We do not find any infirmity in the conclusion arrived at by the learned Single Judge. We dismiss the appeals leaving the parties to bear their own costs.

R.N.R.

Before : N. C. Jain, J.

HARYANA STATE AGRICULTURAL MARKETING

BOARD,—*Petitioner.*

versus

TARA CHAND,—*Respondents.*

Civil Revision No. 2777 of 1987

September 21, 1988.

Arbitration Act (X of 1940)—Section 29—Arbitrator awarding interest till payment made—Award made rule of the Court—Court not awarding interest beyond the date of decree—Effect of award—Whether interest payable beyond decree.

Held, that the wording of Section 29 of the Arbitration Act, 1940 when interpreted leads one to the conclusion that the arbitrator is not empowered to award interest beyond the date of the decree. This power vests only in the Court. To put any other interpretation of Section 29 would amount to making additions in the language of the statute and would be rather doing violence to the very wording of Section 29 of the Act. Beyond the date of the decree if the interest has to be awarded it can be done only by the court in the decree. (Paras 5 and 9).

Petition Under Section 115 C.P.C. for revision of the order of the Court of Shri J. S. Khushdil P.C.S. Sub Judge First Class, Chandigarh dated 25th July, 1987 dismissing the petition, as the matter has since been decided by Smt. Raj Rahul Garg, Hence, the case cannot be re-opened. The whole award has been made as Rule of the Court. Hence, the objection of the objector is not sustainable that no interest has been awarded by the Court.

S. C. Kapoor, Advocate, for the Petitioner.

Munishwar Puri, Advocate with Ashwani Kumar Bansal and Suresh Goyal, Advocate, for the Respondents.