(d) if he is convicted of any offence involving dishonesty or moral turpitude; or

(e) if he fails to carry out the obligations imposed under these bye-laws.

Any expelled member may appeal to the Registrar, Co-operative Societies, within one month from the date of receipt of such communication against the decision of the Board of Directors."

No such proceedings as are envisaged by bye-law (4)(1) have taken place so far. Respondents Nos. 3 to 5 have also averred in their written statement that they have no intention to take any action against the petitioner otherwise than according to the rules and they have no intention to expel the petitioner. Mr. Bhagirath Dass conceded at the bar that no such action is intended to be taken against the petitioner.

No other point was argued before me in this case.

In the above circumstances this writ petition is allowed. The impugned resolution of the general body of the Society, dated September 3, 1966 (resolution No. 7), purporting to amend the bye-laws of the Society, is quashed and set aside and it is directed that election of the Chairman of the Society shall be held between the petitioner and respondent No. 4 alone, as directed in the previous case in accordance with the provisions of the Act, the 1963 rules and the bye-laws of the Society. No direction is necessary regarding item No. 8 in the agenda for the meeting of the Board of Directors which was fixed for September 24, 1966, in view of the assurance given by the respondents. The petitioner would be entitled to have his costs from the respondents.

K.S.K.

CIVIL MISCELLANEOUS

Before S. B. Capoor and Gurdev Singh, JJ.

HARJIT SINGH AND ANOTHER,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 197 of 1966

November 23, 1966

Pepsu Tenancy and Agricultural Lands Act (VIII of 1955)—S. 32-FF and Pepsu Tenancy and Agricultural Lands Rules (1958)—Rule 23-A—Whether

violative of Article 14 *of the Constitution of India—Interpretation of Statutes—Constitutionality of an Act—Whether to be presumed—Matters that may be taken into consideration for determining the same.*

Held, that section 32-FF of the Pepsu Tenancy and Agricultural Lands Act, 1955 and Rule 23-A of the Pepsu Tenancy or Agricultural Lands Rules, 1958 are valid and are not violative of Article 14 of the Constitution. The legislature was anxious to plug holes that had been noticed in the existing provisions relating to ceiling of land and prevent fraudulent alienations made by the land owners owning land in excess of the permissible limit to defeat the purposes of the legislation by which ceiling had been imposed upon individual holdings. The legislature in its wisdom, however, did not consider just or expedient to exclude from consideration all such dispositions or alienations made between 21st August, 1956 and 30th July, 1958 but only those made in favour of certain near relations that *prima facie* appeared to have been made to get out of the provisions of the Act relating to ceiling. It thus cannot be said that when the legislature left it to the rule-making authority to prescribe the relations the transfers in whose favour are not to be excluded, it had not furnished any guidance or indicated any principle thus giving unbridled and arbitrary powers to the Executive to discriminate between relations of the land owner. Rule 23-A gives the list of prescribed relations referred to in section 32-FF of the Pepsu Tenancy and Agricultural Lands Act. This list is confined to the near relations, mostly blood relations which indicates that the rule-making authority was fully conscious of the policy behind the legislation and the object of the legislature. To make the provisions with regard to ceiling effective it took cognizance of the fact that fraudulent alienations or dispositions, which are intended to defeat a particular provision of law, are generally made in favour of near or blood relations,. The classification made in the case is founded on an intelligible *differentia* which has a rational relation to the object sought to be achieved by the Statute. It cannot be said that there is no nexus between the basis of classification and the object of the Act under consideration.

Held, that there is always a presumption in favour of the constitutionality of an enactment that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of the legislation.

Petition under Articles 226 *and* 227 *of the Constitution of India praying that a writ in the nature of* certiorari *or any other appropriate writ, order or direction be issued quashing the orders of respondents* 2, 3 *and* 4 *appended as A, B and C, and rule* 23-*A of the Rules and part of section* 32-FF *of the Act dealing with*

allowing the Government to fix the list of the relatives, and Schedule 'A' of the Pepsu Tenancy and Agricultural Land Rules, 1958, relating to the Patiala District.

PREM CHAND JAIN AND T. S. MANGAT, ADVOCATES, for the Petitioners.

TIRATH SINGH, ADVOCATE, FOR THE ADVOCATE-GENERAL, for the Respondent.

ORDER

GURDEV SINGH, J.—In this petition under Articles 226 and 227 of the Constitution Harjit Singh and Surjit Singh, residents of Ajnali, district Patiala, assail the validity of the order passed by the Special Collector on 30th December, 1964, regarding the assessment of the surplus area of the petitioners' uncle Col. Gurdial Singh (respondent No. 6). They pray that this order, as well as the orders passed by the Financial Commissioner, Punjab, and Commissioner, Patiala (respondents 2 and 3), confirming it, be quashed by issuing appropriate writ, as section 32-FF of the Pepsu Tenancy and Agricultural Lands Act, 1955 hereinafter referred to as the Act) and rule 23-A of the Pepsu Tenancy and Agricultural Lands Rules, 1958, upon which they are based are *ultra vires* the Constitution of India being violative of Article 14.

On 21st August, 1956, the petitioners' uncle, Col. Gurdial Singh, who belongs to village Ajnali, tehsil Sirhind, district Patiala, owned and was found in possession of 79—75 S.A. of agricultural land. Out of this he transferred 410 bighas 10 biswas (52.28 S.A.) half to the petitioners and the other half to their mother Shrimati Balbir Kaur, wife of his brother Major Hardial Singh, for Rs. 25,000. In view of the ceiling placed on individual holdings, the special Collector, Punjab (respondent No. 4), took proceedings for assessment of the surplus area of the said Col. Gurdial Singh, in accordance with the provisions contained in Chapter IV-A of the Act. One of these provisions on the basis of which the Collector's order proceeds, and which alone is relevant for our purposes is that contained in section 32-FF of the Act. It runs thus:—

> "32-FF. Save in the case of land acquired by the State Government under any law for the time being in force or by an heir by inheritance or up to 30th July, 1956 by a landless person,

or a small landowner, not being a relation as prescribed, of the person making the transfer or disposition of land for consideration up to an area which, with or without the area owned or held by him, does not in the aggregate exceed the permissible limits, no transfer or other disposition of land effected after the 21st August, 1956 shall affect the right of the State Government under this Act to the surplus area to which it would be entitled but for such transfer or disposition :

Provided that any person, who has received any advantage under such transfer or disposition of land shall be bound to restore it, or to make compensation for it, to the person from whom he received it".

Under this section, which was inserted in the Act by Punjab Act III of 1959, transfers and dispositions of land made between 21st August, 1956 and 30th July, 1958, other than those which are saved under this section, were declared to have no effect on the rights of the Government and under the Act to the surplus area to which it would be entitled, but for such transfers or dispositions. Under this provision, transfers or dispositions made in favour of certain relations are not recognised. Those relations are, however, not specified in this section, but the legislature left it to the rule-making authority to specify them. Accordingly, by the Punjab Government notification No. 2169-ARI(II)59/1659, dated 20th April, 1959, rule 23-A was added in the Pepsu Tenancy and Agricultural Lands Rules, 1958, defining the "prescribed relations" for the purpose of section 32-FF of the Act. It reads thus:

"23-A. Prescribed relations for the purpose of section 32-FF of the Act. For the purposes of section 32-FF of the Act, the prescribed relations shall be the wife or husband, male or female descendants and the descendants of such female, father, mother, father's or mother's sister, brother and his descendants, mother's brother and his descendants, wife's brother and sister's husband."

Relying upon the affidavit of the petitioners' mother Shrimati Balbir Kaur that she was a small landholder, the Collector excluded from consideration an area of 26—14 S.A. that she had acquired for consideration from Col. Gurdial Singh, as she was a small landholder and was not one of the prescribed relations mentioned in rule 23-A.

He, however, refused to exclude the other half portion of the land covered by the sale deed, dated 20th December, 1957, which had been transferred to the petitioners, Harjit Singh and Gurjit Singh, by their uncle, Col. Gurdial Singh, on the ground that the transfer in their favour was hit by the provisions of section 32-FF, they being the sons of the transferee's brother. After holding that 4—12 S.A. of Col. Gurdial Singh's land situate in village Barnala was with his tenants, the Collector by his order, dated 30th December, 1964 declared that an area 19.49 S.A. of land situate at village Ajnali was surplus in the hands of Col. Gurdial Singh. An apeal against this order was rejected by the Commissioner on 22nd September, 1956, and that order was later upheld by the Financial Commissioner on 24th October, 1965.

Mr. P. C. Jain, appearing for the petitioners, has not disputed that if the surplus area in the hands of Col. Gurdial Singh is to be assessed in accordance with the provisions of section 32-FF read with rule 23-A referred to above, the impugned order of the Collector cannot be assailed. He has, however, contended:—

(1) that rule 23-A and that part of section 32-FF which authorizes the Government to select certain relatives of a landowner to frame a list of prescribed relations for the purposes of section 32-FF of the Act are unconstitutional, invalid and *ultra vires* on the ground of excessive delegation of legislative powers; and

(2) that the Collector's order determining the surplus area in the hands of Col. Gurdial Singh is vitiated by the fact that the valuation of the land has been made on the basis of Schedule A (valuation statement) framed under rule 5 of the Pepsu Tenancy and Agricultural Lands Rules, 1958, which so far as it relates to Patiala District is liable to be struck down as it does not provide for valuation of *rousli* land, and category in which a good bit of the land in dispute fell.

Chapter IV-A bearing the heading 'Ceiling of land and Acquisition and Disposal of Surplus Area' was added to the Pepsu Tenancy and Agricultural Lands Act, 1955, by Pepsu Act No. 15 of 1956. Section 32-FF which occurs in this Chapter (as later amended by Punjab Act 3 of 1959) excludes from consideration certain transfers in calculating the surplus area. So far as transfers or dispositions of land for consideration are concerned, they are exempted from consideration only if they were made in favour of persons other than the relations prescribed under rule 23-A of the rules framed under the Act.

Shri P. C. Jain has argued that in enacting section 32-FF, the legislature had left it to the Government to specify the relations of the landowner in whose favour the transfers made between 21st August, 1956 and 30th July, 1958, are not protected, and since no guiding line, criterion or policy in selecting such relations has been laid down or indicated by the legislature, this provision enabling the Government to frame a list of prescribed relations in exercise of its rule-making power under section 52(1) of the Act is violative of Article 14 of the Constitution as it amounts to excessive delegation of legislative powers. In support of this argument, he has placed reliance on *Hamdard Dawakhana and another* v. *The Union of India and others* (1) in which a part of section 3 of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, was struck down. The relevant portion of that section gave power to the rule-making authority to specify certain diseases or conditions to which the prohibition against advertisement of certain drugs contained in that section was to apply. In holding this provision as unconstitutional, Kapur J., delivering the judgment of the Court, observed:—

> "Parliament has established no criteria, no standards and has not prescribed any principle on which a particular disease or condition is to be specified in the Schedule. It is not stated what facts or circumstances are to be taken into consideration to include a particular condition or disease. The power of specifying diseases and conditions as given in section 3(d) must, therefore, be held to be going beyond permissible boundaries of valid delegation.....
>
> We are of the opinion, therefore, that the words 'or any other disease or condition which may be specified in the rules made under this Act' confer uncanalised and uncontrolled power to the executive and are, therefore, *utra vires*."

Earlier in that case, on examination of the previous decisions of that Court, his Lordship indicated the matters that had to be taken into account in examining the constitutional validity of an enactment and laid down the following rules:—

> "When the constitutionality of an enactment is challenged on the ground of violation of any of the articles in Part III of the Constitution, the ascertainment of its true

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(1) A.I.R. 1960 S.C. 554.

> nature and character becomes necessary, i.e., its subject-matter, the area in which it is intended to operate, its purport and intent have to be determined. In order to do so it is legitimate to take into consideration all the factors such as history of the legislation, the purpose thereof, the surrounding circumstances and conditions, the mischief which it intended to suppress the remedy for the disease which the legislature resolved to cure and the true reason for the remedy."

His Lordships then proceeded to examine the history of the Drugs and Magic Remedies (Objectionable Advertisements) Act and referred to the "objects, purpose and true intention of that Act, and came to the conclusion that :—

> "It cannot be said that the object of the Act was merely to put a curb on advertisements which offend against decency or morality but the object truly and properly understood is to prevent self-medication or treatment by prohibiting instruments which may be used to advocate the same of which tend to spread the evil ....."

It is in the light of these observations that the decision to strike down clause (d) of section 3 of the Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954, has to be read.

The preamble to the Pepsu Tenancy and Agricultural Lands Act 13 of 1955 with which we are concerned, reads :—

> "An act to amend and consolidate the law, relating to tenancies of agricultural lands and to provide for certain measures of land reforms."

As has been observed earlier, Chapter IV-A relating to the "Ceiling on land and Acquisition and Disposal of Surplus Area" was inserted in this Act by Pepsu Act No. 15 of 1956. It was later on that section 32-FF, with which we are now concerned, was incorporated in the Act by Punjab Act 3 of 1959. In the statement of its objects and reasons, it was stated *inter alia* :—

> "It has come to the notice of Government that with a view to rendering the provisions of the Pepsu Tenancy and

Agricultural Lands (Second Amendment) Act, 1956, relating to ceiling and assessment of surplus area infructuous, landowners owning lands in excess of the permissible limit (ceiling) have been transferring lands recklessly by sale, gift or otherwise since the 21st August, 1956, i.e., the date on which Bill No. 22 of 1956 was originally introduced in the Vidhan Sabha of erstwhile Pepsu. This Bill was referred to Select Committee which *inter alia*, recommended the provisions for ceiling. These provisions were then incorporated in the Bill which was ultimately enforced on 30th October, 1956. It has been decided that save in the case of land acquired by Government or by their heir by inheritance, no transfer or other disposition of land effected after the 21st August, 1956, shall affect the right of Government in respect of the surplus area to which they would be entitled but for such transfer or disposition."

From this it is abundantly clear that the legislature was anxious to plug holes that had been noticed in the existing provisions relating to ceiling of land and prevent fraudulent alienations made by the landowners owning land in excess of the permissible limit to defeat the purposes of the legislation by which ceiling had been imposed upon individual holdings. The legislature in its wisdom, however, did not consider it just or expedient to exclude from consideration all such dispositions or alienations made between 21st August, 1956 and 30th July, 1958 but only those made in favour of certain near relations that *prima facie* appeared to have been made to get out of the provisions of the Act relating to ceiling.

It thus cannot be said that when the legislature left it to the rule-making authority to prescribe the relations, the transfers in whose favour are not to be excluded, it had not furnished any guidance or indicated any principle thus giving unbridled and arbitrary powers to the Executive to discriminate between various relations of the landowner.

Referring to rule 23-A which gives the list of prescribed relations referred to in section 32-FF of the Act, we find that this list is confined to the near relations, mostly blood relations. This indicates that the rule-making authority was fully conscious of the policy behind the legislation and the object of the legislature. To

make the provisions with regard to ceiling effective it took cognizance of the fact that fraudulent alienations or dispositions, which are intended to defeat a particular provision of law are generally made in favour of near or blood relations. Mr. P. C. Jain has argued that since brother's wife, who in the Indian Society is considered to be quite a close relation, has not been included in the prescribed list, it is obvious that the rule-making authority was guilty of discriminating among the near relations and thus rule 23-A was itself invalid. This argument, in my opinion, is not valid. Since section 32-FF was introduced to nullify certain transfers intended to defeat the provision relating to ceiling and surplus area, it was not considered necessary to bring transfers in favour of brother's wife within the ambit of that provision as usually no one would make a transfer in favour of a female, who is not related to him by blood or is a member of his family. It cannot thus be said that the prescribed list of relations does not proceed on a valid or rational basis. In *Shri Ram Krishna Dalmia and others* v. *Shri Justice S. R. Tandolkar and others* (2), it has been held that there is always a presumption in favour of the constitutionality of an enactment that the legislature is free to recognize degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest, and that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of the legislation.

The classification made in this case fully satisfies the two tests laid down by their Lordships of the Supreme Court in *Budhan Choudhry and others* v. *State of Bihar* (3), as it is founded on an intelligible differentia which has a rational relation to the object sought to be achieved by the statute. It cannot be said that there is no *nexus* between the basis of classification and the object of the Act under consideration.

For all these reasons, I find that section 32-FF and rule 23-A framed under the Act are perfectly valid.

I also do not find any substance in the second contention raised by Shri P. C. Jain, which relates to the valuation of the land. No such

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(2) A.I.R. 1958 S.C. 538.
(3) A.I.R. 1955 S.C. 191.

objection was raised before the Collector or even in appeal before the Commissioner, and for the first time it was urged before the Financial Commissioner. The complaint that no standard for evaluating *rousli* land is prescribed is denied by the State, and in para No. 7(xii) of its return it is asserted that the schedule does prescribe valuation for *rousli* land in Sirhind Tehsil where admittedly the land in dispute is situate. This statement appears to be correct, as on reference to schedule A we find that in the valuation statement for Sirhind Tehsil under the category Barani three types of land are listed and they are *dakar*, *rousli* and *bhud* and separate valuation for each of them is prescribed.

I thus find no merit in this petition and dismiss the same with costs.

S. B. CAPOOR, J.—I agree.

R.N.M.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

GRAM PANCHAYAT MAUZA NANGLAN, DISTRICT LUDHIANA,—*Appellant*

versus

NAGINA SINGH AND OTHERS,—*Respondents*

Second Appeal from Order No. 36 of 1966.

December 2, 1966.

Punjab Gram Panchayat Act, 1952 (*IV of* 1953)—*Ss.* 104(2) *and* 108—*Civil Suit against Panchayat—When barred—Suit against Gram Panchayat—Notice before institution—Whether necessary—Interpretation of statutes—Marginal heading—Whether provides key to the construction of section.*

Held, that under sub-section (2) of section 104 of the Punjab Gram Panchayat Act, a civil suit is only barred against a Panchayat if it relates to an act, which is performed in the discharge of its statutory duties. It has no application to the suit for a declaration that the land in suit was possessed by the plaintiff and for a perpetual injunction restraining the Gram Panchayat from taking possession thereof.

Held, that the persons against whom a suit cannot be instituted without the delivery of a notice are specified in sub-section 108 of the Punjab Gram Panchayat Act as an officer or a servant of a Gram Panchayat, or an Adalti