from Sales-tax on the sale of bakery goods in view of the conditions and exemptions imposed in column 2 of item 63 of Schedule 'B'?"

(2) The facts are not in dispute. The assessee is a small baker using no power and sells bread and eggs. The Department seeks to take adventage of the expression, "dealing exclusively", appearing in item 63 of Schedule 'B' of the Punjab General Sales Tax Act, 1948, (hereinafter referred to as the Act) to tax him. Item 63 of Schedule 'B' of the Act reads as follows:—

"Bakery goods prepared without using power at any stage	When sold otherwise than in containers and packets by bakers dealing exclusively in such goods."

As regards eggs, item 18 in the same Schedule, reproduced below, may be noticed:

"Meat, fish and eggs.	Except when sold in tins, bottles or cartons."

(3) Both items Nos. 18 and 63 are exempt from Sales-tax. The mere fact that a dealer sells two exempted goods will not make the dealer selling goods under item No. 63, liable to Sales-tax merely because he is selling another tax-free goods, namely, eggs. If the interpretation sought to be placed is accepted, it would nullify both the exemptions and this result cannot be envisaged. In this view of the matter, the question referred to us must be answered in the affirmative, that is, in favour of the assessee and against the Department. There will be no order as to costs.

B.S.G.

Before P. C. Pandit and R. N. Mittal, JJ.

NAND SINGH (DECEASED) REPRESENTED BY HIS L.Rs.,—

Plaintiff-Appellant.

versus

NACHHATAR SINGH & OTHERS,—*Defendants-Respondents.*

L.P.A. No. 189 of 1970.

April 29, 1974.

Hindu Succession Act (No. XXX of 1956)—Section 14—Hindu Widow in possession of husband's property on the basis of a gift,

will or other instrument, giving her only life interest in the property before the enforcement of the Act—Such widow, either governed by Hindu Law or Customary Law, having right of maintenance in the property—Whether becomes full owner after the enforcement of the Act.

Held, that while determining whether a particular case is governed by sub-section (1) or sub-section (2) of section 14 of the Hindu Succession Act, 1956, the section has to be read as a whole and it will depend on the facts of each case whether the same is governed by sub-section (1) or (2). Sub-section (2) is in the nature of a proviso or an exception to sub-section (1). It comes into operation only if acquisition in any of the methods incorporated therein is made for the first time without there being any pre-existing right in the female Hindu who is in possession of the property. In other words, sub-section (2) will apply in a case where a female Hindu, who is in possession of a property, had no right previously in the property and it was for the first time that, by virtue of the gift, will or any other mode mentioned in that sub-section, the property was acquired by her. A Hindu widow, either governed by Hindu Law or Customary Law has a pre-existing right in the property of her husband as she has a right of maintenance therein. Such a right of maintenance is a right in and attached to the property of her deceased husband and is a charge on the whole and every part of her husband's estate which is enforceable against the heir in possession of the same. Hence where such a widow is in possession of the property of her husband on the basis of a gift, will or other instrument giving her life interest at the time the Act came into force, she becomes a full owner of the same by virtue of the provisions of section 14(1) of the Act.

Letter Patent Appeal under Clause X of the Letters Patent from the decree, dated the 26th May, 1967 passed by Hon'ble Mr. Justice Gurdev Singh in R.S.A. No. 500 of 1964 reversing that of Shri C. S. Tiwana, Additional District Judge, Ferozepore dated the 13th February, 1964, reversing with costs that of Shri Baldev Rai Guliani Sub Judge 1st Class, Muktsar, dated the 20th February, 1963 (and granting the plaintiff a decree declaring that the sale effected by defendant No. 1 in favour of defendants Nos. 2 to 6 would not effect the reversionary rights of the plaintiff after the death of defendant No. 1) and restoring that of the Sub-Judge, 1st Class, Muktsar, dated 20th February, 1963, and dismissing the plaintiff's suit with costs.

D. S. Nehra, Advocate, *for the appellant.*

H. S. Sibal, Advocate with R. C. Setia, Advocate, *for the respondents.*

JUDGMENT

Pandit, J.—The facts giving rise to this letters patent appeal are these. Ishar Singh, a Sidhu Jat of village Kaoni, Tehsil Muktsar,

District Ferozepur, was the last male-holder of the property in dispute. He died on 12th April, 1942, leaving behind a widow Shrimati Har Kaur and her step-son Nand Singh. The mutation of the estate of the deceased, including the land in dispute, measuring 155 Kanals 15 Marlas, was got effected by Har Kaur in her own favour. At that time, she never mentioned to the Revenue Authorities even about the existence of Nand Singh. In 1944, Nand Singh brought a suit against Har Kaur for possession of the entire land left by his father on the ground that he, being his son, was entitled to the same. During the pendency of that suit, a compromise was effected between the parties on 19th June, 1945, by which Har Kaur gave up possession of 1/3rd of the property left by Isher Singh and with regard to the remaining 2/3rd, it was settled that she would remain in its possession during her lifetime, but would not alienate the same without consideration and legal necessity. After her death, even this 2/3rd share would go to Nand Singh. This compromise was incorporated in the order of the Court, which is marked as Exhibit P. 7. In 1956, the Hindu Succession Act, 1956, hereinafter called the Act, came into force and thereafter on 15th December, 1961, taking advantage of the provisions of the Act, Har Kaur sold the land in dispute, which was in her possession at that time, to Nachhattar Singh and others for Rs. 35,000. This sale was then challenged by Nand Singh by bringing a suit in January, 1962 against Har Kaur and her vendees for a declaration that the said alienation, being without consideration and legal necessity, was void and ineffective against his reversionary interests. The property, according to the plaintiff, was ancestral and the parties were governed by custom in matters of succession and alienation. Har Kaur was not competent to alienate the said property without necessity and she could only have its usufruct during her lifetime.

(2) The suit was resisted by the vendees alone and Har Kaur did not file any written statement. They pleaded that the sale in their favour was for consideration and necessity. Har Kaur had, by virtue of the provisions of the Act, become the full owner of the property on the date of sale, as she had inherited the same on the death of her husband. It was also said that Nand Singh was not the son of Ishar Singh.

(3) The trial Judge did not decide whether the land in dispute was ancestral and the parties were governed by custom or not. It

was found that the plaintiff was the son of Isher Singh and the sale in question had been made without legal necessity. The suit was, however, dismissed on the finding that as a result of the enforcement of the Act, Har Kaur had become the absolute owner of the land in question, which was indisputably in her possession.

(4) When the matter went in appeal before the learned Additional District Judge, he came to the conclusion that Har Kaur had not become the full owner of the property, as she had acquired the same under the decree of a civil Court, which was based on a compromise with her son and in view of the provisions of section 14(2) of the Act, she held the property as a limited owner under the terms of that compromise. On that finding, the appeal was accepted and the plaintiff's suit decreed. It might be stated that the other findings of the trial Court were, however, confirmed by the learned Judge.

(5) Against that decision, the vendees came in second appeal to this Court, which was accepted by a learned Single Judge. He found that by the compromise, Exhibit P. 7, the right to the land in dispute was not conferred on Har Kaur, for the first time, because she was the widow of the last male-holder and at least entitled to maintenance. Even if it be held that Nand Singh was her stepson, it could not be disputed that on the death of her husband, she, as his widow, had to be maintained out of the estate of her husband. The fact that under the compromise, she was given 2/3rd of the property without any right to alienate it except for legal necessity, and enjoy its user for her lifetime clearly indicates that her right to be maintained as a widow out of the estate of her deceased husband was recognised. That being so, the provisions of section 14(2) of the Act would not be attracted and the case would be covered by sub-section (1) of section 14, under which she must be held to have become the full owner of the property in question and she could, therefore, pass a valid title to the vendees. The learned Judge relied on a Bench decision of this Court in *Ude Chand and others* v. *Mst. Rajo*, (1), where it was held :

> "That the word "acquired" as used in sub-section (2) of section 14 of the Hindu Succession Act has to be given a restricted meaning and would cover those cases only where

(1) 1966, P.L.R. 382.

proviso (b) to rule 1 of Chapter 3-B of Volume V of the Rules and Orders of this Court. The costs of the present proceedings shall abide the result of the writ-petition.

JUDGMENT

NARULA, J.—(10) My order, dated September 1, 1971, whereby I directed that the papers of this case may be laid before the learned Chief Justice for constituting a Division Bench for the hearing and disposal of this writ petition, may be read as a part of this judgment. I had asked for the assistance of another learned Judge of this Court to decide the writ petition because I was *prima facie* not in agreement with the view taken by the learned Single Judge of the Pepsu High Court (Mehar Singh, J., as he then was) in *Sadhu Singh Sunder Singh and others* v. *Mangalgir, Mohatmim Dera and others* (2), and I was more inclined to agree with the view taken by the High Courts of Allahabad, Rajasthan, Madras, Kerala and Andhra Pradesh, on the question whether the written consent given by the Advocate-General of a State under section 92 of the Code of Civil Procedure to file a suit covered by that section can or cannot be quashed by a writ in the nature of *certiorari*. It is the common case of both sides that the impugned order of the Advocate-General would be amenable to such a writ only if it can be considered to be a judicial or quasi-judicial order. No question of quashing the order by a writ in the nature of *certiorari* can arise if the consent given by the Advocate-General in writing under section 92 of the Code amounts to a mere administrative order.

(11) As early as in 1910, the question whether such an order is only an executive or administrative one came up for consideration before the Chief Court of Punjab in *Dhian Das* v. *Jagat Ram* (9). While rejecting a petition for revision of an order passed by the Collector of a district granting permission under section 539 of the Code of Civil Procedure, 1882 (corresponding to section 92 of the 1908 Code), to institute a suit for the removal of a Mahant, it was observed by Reid, C.J., that the order of the Collector was only an executive or an administrative order and was, therefore, no 'case' of which the record could be called for and dealt with in a petition for revision under section 70(1)(a) of the Punjab Courts Act

(9) 1910 Punjab Record 104=8 Indian cases 1160.

(8) It has been held by the Supreme Court that while determining whether a particular case is governed by sub-section (1) or sub-section (2) of section 14, the section has to be read as a whole and it will depend on the facts of each case whether the same is governed by sub-section (1) or (2). The word "possessed" in sub-section (1) has been used in its widest connotation and it may be either actual or constructive or in any form recognised by law. In the context in which it has been used in section 14, it means the state of owning or having in one's hand or power. The word "acquired" in sub-section (1) has also to be given the widest possible meaning. This will be so, because of the language of the explanation, which makes sub-section (1) applicable to acquisition of property, in manners mentioned therein. Sub-section (2) is more in the nature of a proviso or an exception to sub-section (1). It comes into operation only if acquisition in any of the methods incorporated therein is made for the first time without there being any pre-existing right in the female Hindu, who is in possession of the property. (See in this connection *Badri Pershad* v. *Smt. Kanso Devi*), (2) It is, therefore, clear that sub-section (2) will apply in a case where a female Hindu, who is in possession of the property had no right previously in the property and it was for the first time that by virtue of the gift, will or any other mode mentioned in that sub-section, the said property was acquired by her. It was conceded that the property in question was in possession of Har Kaur at the time of the sale and it belonged to her deceased husband. It was further conceded that she was entitled to maintenance out of the estate of her husband. What was seriously disputed by the learned cornsel for the appellant was that although Har Kaur was entitled to maintenance out of the property left by her husband, that did not *ipso facto* create a right in the property of the deceased in her favour and the alleged right was not *attached*, to use the words of the learned counsel, to his property. That being so, she had no right in the property. That could be done only by creating a charge on the said property in her favour. Otherwise, her remedy was to file a suit for the recovery of her maintenance against the legal heir, who was in possession of the property, and get a decree. If he refused to pay the said maintenance, then she could recover the same from the estate of her husband by executing the said

(2) A.I.R. 1970 S.C. 1963.

decree. The right in the property in the instant case, according to the learned counsel, was created in favour of Har Kaur only by the compromise, Exhibit P. 7. Reliance for this submission was placed on sections 27 and 28 of the Hindu Adoptions and Maintenance Act, 1956, and para 569 of Mulla's Hindu Lal, where it was stated that the claim, even of a widow, for maintenance was not a charge upon the estate of her deceased husband whether joint or separate, until it was fixed or charged upon the estate. That may be done by a decree of a Court. In *Lakhmi Chand and others* v. *Smt. Sukhdevi and others*, (3), it was held that a widow's right to receive maintenance was one of an indefinite character which, unless made a charge upon the property, was enforceable only like any other liability in respect of which no charge existed. But where maintenance had been made a charge upon the property, and the property was subsequently sold, the purchaser must hold it subject to the charge. A widow had a right of maintenance in all joint family properties but she had no title of any sort in those properties, till a specific property or a portion thereof was allotted to her for her maintenance. Learned counsel also referred to a Bench decision of the Mysore High Court in *Anandibai* v. *Sonabai Mahadev Rajadhyaksha and another*, (4) and a Single Bench decision of the Madras High Court in *Thatha Gurunadham Chatti* v. *Smt. Thatha Naveenthamma (died)* and *another* (5), in this very question.

(9) It is unnecessary to discuss this contention of the learned counsel for the appellant, because even accepting his argument that the right of maintenance of a widow was not a charge on the property of her deceased husband and the same had to be created by the instrument, in the instant case, under the law widow's maintenance was a charge on the whole and every part of the husband's estate and was enforceable against the heir in possession of the property of her husband. In this connection reference may be made to paras 16 and 17 of the Rattigan's Customary Law. They are as under :—

> "16. In the presence of a male descendant of the deceased his widow is ordinarily only entitled to suitable maintenance, whether such descendant is the issue of the surviving widow or of another wife.

(3) A.I.R. 1970 Rajasthan 285.
(4) A.I.R. 1974 Mysore 1.
(5) A.I.R. 1967 Madras 429.

17. Such maintenance is a charge against the whole and every part of the husband's estate and subject to the two succeeding paragraphs, is enforceable against the heir in possession, or those claiming under him."

(10) In the present case, the last male-holder, as already mentioned above, was a Sidhu Jat of Tehsil Muktsar in Ferozepur District. It is undisputed that the initial presumption in the case of a dominant agricultural tribe such as Jats, is that they are governed by custom. (See in this connection a Full Bench decision of this Court in *Piara Lal and another* v. *Atma Singh and others* (6). Ishar Singh had died in April, 1942 and the compromise, in the instant case, was effected on 19th June, 1945 long before the Hindu Succession Act, 1956, and the Hindu Adoptions and Maintenance Act, 1956, came into force and at that time the parties were governed by Customary Law and it was only by virtue of section 4(1) (a) of both these Acts that any text rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of these Acts ceased to have effect with respect to any matter, for which a provision was made in the said Acts. When the last male-holder died and the compromise was effected, the parties were governed by the Customary Law, under which a widow had a right of maintenance and the same was a charge on the whole and every part of her husband's estate. Har Kaur had, therefore, a pre-existing right in the property of her husband, because she had admittedly a right of maintenance therein. She was, therefore, in possession of the property in dispute in lieu of maintenance when the Act came into force and as such by virtue of the provisions of section 14(1) of the same, she had become a full owner of the said property. Reference may also be made to para 559 of Mulla's Hindu Law, where it is stated :

"(1) A widow, who does not succeed to the estate of her husband as his heir, is entitled to maintenance—

(i) out of her husband's separate property ; also

(ii) out of property in which he was a coparcener at the time of his death.

(6) 1951 P.L.R. 335.

(2) A widow does not lose her right of maintenance out of the estate of her husband even though she may have lived apart from him in his lifetime without any justifying cause and was living separate from him at the time of his death."

(11) According to this paragraph, the widow's right of maintenance is a right in and attached to the property of her deceased husband. This right of Har Kaur existed independently of the compromise Exhibit P. 7, and it was *not* for the first time that by virtue of that compromise, the property in dispute was acquired by her.

(12) No other point was argued before us.

(13) In view of what I have said above, this appeal fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs throughout.

Mittal, J.—I agree.

B.S.G.

Before M. R. Sharma, J.

GURDIT SINGH & OTHERS,—*Petitioner.*

versus

THE PUNJAB STATE, THROUGH THE SECRETARY, LOCAL GOVERNMENT, PUNJAB & OTHERS,—*Respondents.*

Civil Writ No. 1149 of 1970.

May 3, 1974.

Punjab Town Improvement Act (IV of 1922)—Sections 36 and 42—Land Acquisition Act (I of 1894 as amended by Act XXIII of 1967)—Section 6—Notification under section 42, issued three years after a notification under section 36 and two years after coming into force of Land Acquisition (Amendment and Validation) Ordinance, 1967—Whether valid—Property covered by such notification—Whether deemed to be acquired—Persons claiming enhanced compensation for the acquired property—Whether estopped from challenging the notification under section 42.