S. KULDIP SINGH,—*Petitioner*

versus

THE PUNJAB STATE, (2) COURT OF WARDS, PUNJAB,—*Respondents.*

Civil Writ No. 338 of 1952

1954

June, 1st

Punjab Court of Wards Act (II of 1903)—Section 5—Whether ultra vires *the Constitution—Fundamental principle of law regarding property, stated—Constitution of India—Article 226—Petition under, for a writ of mandamus, etc—High Court, whether competent to examine evidence to come to the conclusion that conditions in Section 5(2) of the Act have been complied with.*

Held, that section 5 of the Punjab Court of Wards Act, 1903, is not *ultra vires* the Constitution of India. The restrictions imposed by the Act are neither arbitrary nor capricious. In so far as they are designed to secure that well-to-do land-holders should not be allowed to dissipate their property by entering upon a course of wasteful extravagance, the restrictions must be deemed to be in the public interest. If the property is likely to be disssipated because the land-holder has taken to gambling or because he has taken to drink or because he indulges in the other vices, it is obviously open to the State to impose restrictions upon his enjoyment of property, for it is the duty of the State to make laws to preserve and protect the public morals. If the property is likely to be dissipated because the land-holder is incapable of managing his own affairs. even then it is the duty of the State as the supreme guardian of the incompetent to take his property under control. If the property is likely to be dissipated for any other reason and the State considers that it should not be split up even then it is open to the State to

impose reasonable restrictions on the right of the land-holder to acquire, hold and dispose of his property. The means selected by the Legislature have a real and substantial relation to the object sought to be achieved.

Held, that the Punjab Court of Wards, Act, 1903, is not repugnant to the provisions of Article 31 of the Constitution of India. In the first place, Government do not "acquire" the property of a ward whose estate is taken under the superintendence of the Court of Wards; they merely manage the property for and on behalf of the ward. Secondly, it is obvious that although the restrictions which are imposed on the right of a spend-thrift to acquire, hold and dispose of property cause a certain amount of inconvenience to him, these restrictions are imposed for the benefit of the public and the land-holder must be deemed to have compensation in participating in the general advantage.

Held, that it is a fundamental principle of law that the right of a person to acquire, hold and dispose of property carries with it a corresponding obligation to hold it subject to such restrictions as the Legislature may think necessary and expedient. It follows as a consequence that it is open to the legislative authority of a country to subject both person and property to restraint in order to secure the general comfort, health, welfare and prosperity of the people of the State. If these restraints are reasonable and are imposed in the public interest, the validity of the law by which they are imposed cannot be called into question.

Held, that in a petition for issuance of a writ under Article 226 of the Constitution of India it is not within the competence of the High Court to examine the evidence on the basis of which the State Government came to the conclusion that the conditions set out in subsection (2) of Section 5 have been complied with. The High Court cannot constitute itself into a court of appeal in cases of this kind and cannot express an opinion on the adequacy or otherwise of the material on which the conclusion of a Deputy Commissioner is based.

Petition under Article 226 of the Constitution of India praying that a writ of mandamus, certiorari *or a writ of prohibition or any other direction in the nature of a writ be issued against the respondents by which the order of the Punjab Government, dated the 3rd October, 1952, be quashed and notification No 5185-D-52/6267, dated 21st October 1952,*

published in the Punjab Government Gazette, *on 31st of October, 1952, be cancelled as being illegal,* mala fide, *without jurisdiction and void. That any other direction which may be deemed fit and appropriate be issued to the respondents.*

MELA RAM, for Petitioner.

S. M. SIKRI, Advocate-General, for Respondents.

ORDER.

BHANDARI, C. J. Two points arise for decision in the present case, viz., (1) whether section 5 of the Punjab Court of Wards Act is *ultra vires* the Constitution; and (2) whether the Financial Commissioner's notification, dated the 21st October, 1952, placing the estate of the petitioner under the superintendence of the Court of Wards is *malafide* or in excess of the powers conferred by law. Bhandari, C. J.

On the 3rd October 1952 the Punjab Government made an order under section 5(2) (d) of the Punjab Court of Wards Act, 1903, directing that the property of S. Kuldip Singh, petitioner, a well-to-do *zamindar* of the Jullundur District, be placed under the superintendence of the Court of Wards and on the 21st October, 1952, the Financial Commissioner issued a notification under section 9 of the said Act that the Court of Wards had assumed superintendence of the property with effect from the 3rd October, 1952. The petitioner has submitted a petition under Article 226 of the constitution and principal point which has been agitated before us is that subsection (2) of section 5 of the Act of 1903 constitutes an unwarranted abridgment of the petitioner's right to acquire, possess and dispose of property.

This subsection is in the following terms:—

"(2) When it appears to the State Government that any land-holder is—

(*a*) by reason of being a female; or

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(b) owing to any physical or mental defect or infirmity; or

(c) owing to his having been convicted of a non-bailable offence and to his vicious habits or bad character; or

(d) owing to his having entered upon a course of wasteful extravagance likely to dissipate his property ; is in capable of managing or unfitted to manage his affairs, the State Government may make an order directing that the property of such land-holder be placed under the superintendance of the Court of Wards :

Provided that such an order shall not be made on the ground stated in clause (c) or on the ground stated in clause (d) unless such land holder belongs to a family of political or social importance and the State Government is satisfied that it is desirable, on grounds of public policy or general interest, to make such order."

The provisions of this subsection make it quite clear that the Court of Wards can assume superintendence of the property of a spendthrift if all the following conditions concur, viz..—

(a) that it appears to the State Government that the landholder, owing to his having entered upon a course of wasteful extravagance likely to dissipate his property, is incapable of managing or unfitted to manage his affairs;

(b) that the land-holder belongs to a family of political or social importance; and

(c) that the State Government is satisfied that it is desirable, on grounds of public policy or general interest, to make such order.

Mr. Mela Ram has directed a two-pronged attack on the validity of this subsection. He contends in the first place, that this section places unreasonable restrictions on the right of his client to acquire, hold and dispose of property and must, therefore, be deemed to be repugnant to the provisions of Article 19(1)(f) of the Constitution: and secondly, that in so far as it seeks to take possession of property without either fixing the amount of compensation or specifying the principles on which and the manner in which compensation is to be determined and given, it is repugnant to the provisions of Article 31 of the Constitution.

A recent decision of the Supreme Court reported as *Thakur Raghbir Singh* v. *The Court of Wards, Ajmer,* (1) has been cited in support of the proposition that the provisions of the impugned Act are repugnant to the provisions of Article 19 of the Constitution. The facts of this case were briefly as follows:—

On the 18th September 1952 the Deputy Commissioner of Ajmer, who is the Court of Wards constituted under the Ajmer Government Wards Regulation, 1888, assumed superintendence of an *istimrari* estate belonging to the petitioner under section 112 of the Ajmer Tenancy and Land Records Act, 1950, which is in the following terms:—

"If a landlord habitually infringes the rights of a tenant under this Act, he shall, notwithstanding anything in section 7 of

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the Ajmer Government Wards Regulation, 1 of 1888, be deemed to be a landlord who is disqualified to manage his own property within the meaning of section 6 of the said Regulation and his property shall be liable to be taken under the superintendence of the Court of Wards".

The petitioner challenged the validity of the order, dated the 18th September, 1952, on the ground that the statutory provisions under which it had been made had divested him of the right guaranteed by Article 19(1) (f) of the Constitution. The Supreme Court held—

(a) that the combined operation of section 112 of the Ajmer Tenancy and Land Records Act, 1950, and of the Ajmer Government Wards Regulation of 1888 is that the Court of Wards can, in its own discretion and on its own subjective determination, assume the superintendence of the property of a landlord who habitually infringes the rights of his tenants;

(b) that the exercise of any discretion conferred upon the Court of Wards cannot be called into question in any Court;

(c) that the Act of 1950 has provided no machinery for deciding whether a certain landlord habitually infringes the rights of his tenants; and

(d) that the provisions of the Act of 1950 are penal in nature and are intended to punish a landlord who habitually infringes the rights of his tenants.

Mahajan, J., who recorded the judgment of the Court, made following pertinent observations:—

> "When a law deprives a person of possession of his property for an indefinite period of time merely on the subjective determination of an executive officer, such a law can on no construction of the word 'reasonable' be described as coming within that expression, because it completely negatives the fundamental right by making its enjoyment depend on the mere pleasure and discretion of the executive, the citizen affected having no right to have recourse for establishing the contrary in a civil Court. Section 112 of Act 42 of 1950, cannot, therefore, be held valid as coming within the scope of Article 19(5) of the Constitution."

It is a fundamental principle of law that the right of a person to acquire, hold and dispose of property carries with it a corresponding obligation to hold it subject to such restrictions as the Legislature may think necessary and expedient. It follows as a consequence that it is open to the legislative authority of a country to subject both persons and property to restraint in order to secure the general comfort, health, welfare and prosperity of the people of the State. If these restraints are reasonable and are imposed in the public interest, the validity of the law by which they are imposed cannot be called into question.

The Act of 1903 cannot be regarded as a new or novel experiment in the art of law-making. The State has always regarded itself as the supreme protector of minors and of persons who are unable

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to look after themselves and it has been the constant endeavour of legislative authorities throughout the centuries to enact measures with the object of safeguarding the interests of minors and insane and physically disabled persons. Indeed, statutes often authorise the appointment of a guardian for a spendthrift, prodigal or profligate if the need for such appointment is established to the satisfaction of the Court. A number of statutes have been enacted in India itself in order to protect the owners of big estates from the consequences of their own indiscretions. In *Bhagwan Baksh Singh* v. *Secretary of State for India* (1), a case under the United Provinces Court of Wards Act, their Lordships of the Privy Council observed as follows:—

> "The object of disqualification under section 8 is no doubt threefold—It will protect persons incapable of managing their own affairs, it will prevent the splitting up or as the Act itself says 'the dissipation of the property', and in either event it will enable land revenue to be more easily and more certainly collected. That the collection of land revenue is an important consideration is apparent both from the objects aimed at and from the fact that by section 4 of the Act the Board of Revenue is made the Court of Wards for the United Provinces. Indeed, in earlier schemes in respect of the disqualification of proprietors, the necessary provisions were contained in the Land Revenue Act themselves, and even in the present Act the definition of proprietor is only reached by reference to 'mahal' and its meaning in the Land Revenue Act from time to time in force."

(1) I.L.R. 1940 All. 432 at p. 439

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These observations were cited with approval by a Division Bench of this Court in *Raja Harmahendra Singh* v. *The Punjab State and another* (1), where it was held that when a State makes laws for the purposes of protection of the revenues of the State and for seeing that there is no discontentment amongst the tenants, it cannot be said that they are an unreasonable interference with the fundamental rights of citizens. I find myself in respectful agreement with this view. I am of the opinion that the restrictions imposed by the Act of 1903, are neither arbitrary nor capricious. In so far as they are designed to secure that well-to-do landholders should not be allowed to dissipate their property by entering upon a course of wasteful extravagance, the restrictions must be deemed to be in the public interest. If the property is likely to be dissipated because the land-holder has taken to gambling or because he has taken to drink or because he indulges in the other vices, it is obviously open to the State to impose restrictions upon his enjoyment of property, for it is the duty of the State to make laws to preserve and protect the public morals. If the property is likely to be dissipated because the land-holder is incapable of managing his own affairs, even then it seems to me that it is the duty of the State as the supreme guardian of the incompetent to take his property under control. If the property is likely to be dissipated for any other reason and the State considers that it should not be split up, even then it seems to me that it is open to the State to impose reasonable restrictions on the right of the landholder to acquire, hold and dispose of his property. The means selected by the Legislature have a real and substantial relation to the object sought to be achieved.

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Nor can there be any substance in the objection that the Act of 1903 is repugnant to the provisions of Article 31 inasmuch as it seeks to acquire the property of land-holders without awarding compensation for the same. In the first place, Government do not "acquire" the property of a ward whose estate is taken under the superintendence of the Court of Wards. They merely manage the property for and on behalf of the ward. Secondly, it is obvious that although the restrictions which are imposed on the right of a spendthrift to acquire, hold and dispose of property cause a certain amount of inconvenience to him, these restrictions are imposed for the benefit of the public and the land-holder must be deemed to have compensation in participating in the general advantage.

But it is possible to contend, as was contended before the Supreme Court in the case referred to above that the Act of 1903, is void and of no effect as it empowers Government to assume superintendence of the property of a land-holder in its own discretion and on its own subjective determination. This contention cannot bear a moment's scrutiny. The Act of 1903 has provided an adequate machinery for ascertaining whether the requirements of section 5(2) have or have not been complied with. Section 11 imposes an obligation on the Deputy Commissioner to enquire into the circumstances of the land-holder whose estate is to be taken under control and for the purpose of making such enquiries the Deputy Commissioner is at liberty to exercise all or any of the powers of civil Court under the Code of Civil Procedure. If a Deputy Commissioner makes the appropriate enquiry and if Government make an order on the basis of this enquiry, it cannot be said that the Court of Wards has assumed superintendence of

the estate of land-holder in its own discretion and on its own subjective determination.

Nor can it be said that the provisions of the Act of 1903 are of a penal nature. It is true that after a guardian has been duly appointed for a spendthrift, all the property belonging to him vests in the Court of Wards and he is not competent to transfer or create any charge on such property or to enter into any contract which may involve him in pecuniary liability. But these restrictions cannot be regarded as penal. They are inherent in the relationship of guardian and ward. It is a matter of common knowledge that when estates are released from the superintendence of Court of Wards they are often vastly more valuable than when the Court of Wards assumed control over them.

The only other point for decision is whether the action of Government in assuming superintendence and control over the estate of the petitioner was *mala fide* or in excess of the powers conferred upon it by law. It is said that action must be deemed to have been taken in bad faith; (a) because action was taken at the instance of the sons of the petitioner who were inimically disposed towards him; (b) because although the Deputy Commissioner had recommended that the estate of the petitioner should be placed under the control of the Court of Wards, the Commissioner declined to accept this recommendation: and (c) because the Financial Commissioner unjustifiably accepted the recommendation of the Deputy Commissioner, ignoring that of the Commissioner, and advised Government to take the estate of the petitioner under control. It may be that the Financial Commissioner did not accept the advice of the Commissioner and preferred that of the Deputy Commissioner but that fact of itself would not show that

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either the Financial Commissioner or the State Government was actuated by improper motives.

A number of subsidiary questions have also been raised. It is stated in the first place that the Deputy Commissioner did not hold an enquiry into the condition of the petitioner, but the affidavit filed on behalf of Government makes it quite clear that the enquiry was made and the property was taken under the Superintendence of the Court of Wards on the recommendation of the Deputy Commissioner. Again, it is contended that the principles of natural justice were violated inasmuch as no opportunity was afforded to the petitioner to appear either before the Deputy Commissioner while the enquiry under section 12 was in progress or before the Financial Commissioner when the orders under section 5 were under contemplation. This objection too appears to me to be devoid of force. In the first place there is no allegation in the petition that no opportunity was afforded to the petitioner to appear before the Deputy Commissioner and in the absence of this allegation the State has not had an oportunity to make a categorical denial thereof. Secondly, there is no clear requirement that the enquiry must be held in the presence of the land-holder although the provisions of subsections (2), (3) and (4) of section 11 appear to indicate that the Deputy Commissioner is expected to secure his presence and to ascertain his wishes. In the absence of the record of the enquiry held by the Deputy Commissioner, it must be assumed that he enquired into the condition of the petitioner, found him to be a spendthrift and thereafter took the necessary steps to take his property under the Superintendence of the Court of Wards. Be that as it may, the fact remains that as there is no allegation in the petition that no notice was given, it must be assumed that, in view of the

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provisions of section 114 of the Indian Evidence Act, the Deputy Commissioner, who is a public servant, complied with the necessary formalities.

Again, it was contended on behalf of the petitioner that the provisions of section 5 were not complied with (a) because the petitioner has not entered upon a course of wasteful extravagance which was likely to dissipate his property; (b) because he does not belong to a family of political or social importance; and (c) because Government was not satisfied that it was desirable, on grounds of public policy or general interest, to make an order. It is not within the competence of this Court to examine the evidence on the basis of which the State Government came to the conclusion that the conditions set out in subsection (2) of section 5 have been complied with. The affidavit which has been presented to this Court on behalf of Government shows that the petitioner inherited 1,110 *ghumaons* 7 *kanals* and 15 *marlas* of *malkiat* land and *marus* in village Mukandpur besides other property in various places in the year 1908. The revenue records show that he sold 290 *ghumaons* 3 *kanals* of land for Rs. 1,30,682 and mortgaged 131 *ghumaons* 1 *kanal* and 16 *marlas* of land for Rs. 61,013 from the 24th January 1926 to December 1950, and from the 29th May 1924 to the 1st January 1948, respectively. Although there is no record relating to the sale of 10 squares of land situate in the Lyallpur District and a bungalow at Bunga, it has been stated that the petitioner sold these properties for a handsome amount. He is a big landlord of Jullundur and the income from his land is sufficient to maintain him. The sales and mortgages of land leave no doubt whatever that his expenditure is far in excess of his income. It has also been verified that he has married a hill girl from the Kangra District, he mutated some land in her

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name, has built a bungalow at Manali for her use and has removed several pieces of furniture from his village for the purpose of furnishing this house. These facts led the Deputy Commissioner to the belief that the petitioner has entered upon a course of wasteful extravagance likely to dissipate his property. This Court cannot constitute itself into a Court of appeal in cases of this kind and it is not within the province of this Court to express an opinion on the adequacy or otherwise of the material on which the conclusion of a Deputy Commissioner is based.

For these reasons, I would hold that the Court of Wards Act, 1903, is not *ultra vires* the Constitution and that the order passed by the State Government and the notification issued by the Financial Commissioner were in accordance with law. The petition must, therefore, be dismissed with costs.

Khosla, J.

KHOSLA, J.—I agree.