

On the other hand, the refusal to give the sample was sought to be justified on the ground discussed above.

9. Gian Chand having failed to make out a case for quashing the impugned charge, his revision petition is hereby dismissed. The trial Court to proceed with the case according to law. The dismissal of this petition shall in no way prejudice Gian Chand with respect to any other valid defence open to him.

S. S. Sandhwalia, C.J.—I agree.

N.K.S.

Before B. S. Dhillon and S. S. Dewan, JJ.

DHARAM PAL ETC.,—Petitioners.

versus

STATE OF PUNJAB and another,—Respondents.

Civil Writ Petition No. 258 of 1975.

November 9, 1978.

Punjab New Mandi Townships (Development and Regulation) Act (2 of 1960)—Sections 3, 10, 12 and 13—Constitution of India 1950—Articles 14 and 19(1) (f)—Section 13—Whether ultra vires Articles 14 and 19(1) (f).

Held, that it is plain from the provisions of the Punjab New Mandi Townships (Development and Regulation) Act, 1960 that the unpaid portion of the consideration money shall be first charge on the site or the building. The transferee, after the said charge is satisfied, is entitled to sell, mortgage or otherwise transfer any right, title or interest in the site or building. A charge is created for the unpaid portion of the consideration money and the prohibition against sale, mortgage or transfer by the transferee of any right, title or interest in the site is only upto that point upto which the charge of property regarding the remaining sale consideration price is not satisfied. The statute speaks of payment of consideration money due to the Government. If the Government is the owner, the Government cannot at the same time be entitled to a charge on the property for the balance of the consideration money. A charge on the property is under the Transfer of Property Act enforced by instituting a suit

Dharam Pal etc. v. State of Punjab and another (B. S. Dhillon, J.)

and bringing the property to sale. If the property yields a higher price than what the charge represents, the owner is entitled to the excess sum. It is further clear that under the provisions of section 12 of the Act, in the event of default of payment of any due under the Act, the same can be recovered as arrears of land revenue. Section 13 of the Act empowers the State Government to resume the site in question and forfeit the whole or any part of the money which has already been paid in respect of the site. Under the ordinary law of the land, there is a relief against forfeiture for breach of covenant or provisions. Section 13 of the Act does not offer any relief against forfeiture. This feature that the Government can proceed either under the ordinary law of land or under the Act shows that there is discrimination. Further, there is nothing in the statute to guide the exercise of power by the Government as to in which case and how one of the methods will be chosen. There being charge on the property, the Government can proceed under the ordinary law by instituting a suit in a court of law. The owner will have the opportunity of paying the money and clearing the property of the charge. On the other hand, when the Government proceeds under section 13 of the Act to resume the site, it is a more harsh provision to the subject. There is no guideline in the Act as to when the Government will resort to either of these remedies. The provisions of section 13 of the Act are, therefore, *ultra vires* Articles 14 and 19(1) (f) of the Constitution of India 1950. (Paras 7 and 8).

Writ petition under Articles 226 and 227 of the Constitution of India praying that :—

- (a) *a writ of Mandamus declaring Section 13 of the Punjab New Mandi Townships (Development and Regulations) Act 1960 as void, invalid ultra vires, discriminatory and unconstitutional ;*
- (b) *a writ of Certiorari quashing the impugned ex-parte order dated 18th October, 1974,—vide Annexure III ;*
- (c) *any other writ, direction or order as this Hon'ble Court may deem fit in the interest of justice in the circumstances of this case ;*
- (d) *the cost of the petition be awarded to the petitioners ;*
- (e) *may be further pleased to issue Stay-order staying the operation of the impugned ex-parte Order dated 18th October, 1974,—vide Annexure 'III' ;*
- (f) *production of attested copies of the documents be dispensed with.*

Bhal Singh Malik, Advocate, for the petitioners.

A S. Sarhadi, A. G. Punjab with N. S. Bhatia, Advocate, for the Respondents.

JUDGMENT

B. S. Dhillon, J.

(1) The petitioners in this case are purchasers of a plot each from the State of Punjab. The sale was made under section 3 of the Punjab New Mandi Townships (Development and Regulation) Act, 1960 (hereinafter called Act). The petitioner No. 1 having failed to comply with the terms and conditions of sale, the Administrator exercising the powers as such under section 13 of the Act, resumed the sites allotted to him by passing an order dated 18th October, 1974, copy of which is Annexure P/3, which order is sought to be impugned in this writ petition. The petitioners have challenged the Constitutional validity of section 13 of the Act. With a view to appreciate the contentions raised by the learned counsel for the petitioners, the relevant provisions of the Act may be reproduced.

Section 3 of the Act is as follows:—

“3. Powers of State Government to declare New Mandi Townships and to transfer lands and buildings therein—

- (1) The State Government may, from time to time, by notification in the official Gazette, declare any area to be a new mandi township for the purposes of this Act to be known by such name as may be specified in the notification ;
- (2) The State Government may sell, lease or otherwise transfer by auction, allotment or otherwise any land or building belonging to or vested in the State Government in any new mandi township on such terms and conditions as it may, subject to any rules that may be made under this Act, deem fit to impose.
- (3) Any amount due to the State Government on account of the sale, lease or transfer or any site or building under sub-section (2) shall be first charge on that site or building, and notwithstanding anything contained in any other law for the time being in force, no transferee shall be entitled to sell, mortgaged or otherwise transfer any right, title or interest in the site or building transferred to him under sub-section (2) except by

Dharam Pal etc. v. State of Punjab and another (B. S. Dhillon, J.)

way of a lease from month to month until the amount mentioned as first charge under this subsection has been paid in full."

Sections 10, 11, 12 and 13 of the Act are in the following terms :—

Levy of fees for amenities :

10. For the purpose of providing, maintaining or continuing any amenity in the new mandi township, the State Government may levy such fees as it may consider necessary in respect of any site or building on the transferee or occupier thereof.

Imposition of penalty :

11. Where any transferee or occupier defaults in the payment of any fee levied under this Act and such default has continued for three months from the due date, then, in addition to the arrears, a sum equal to twenty per centum of that amount shall be recovered from the transferee or occupier, as the case may be, by way of penalty.

Mode of recovery of arrears :

12. In the event of default in the payment of any amount due under this Act, the outstanding amount together with the penalty, if any, may be recovered from the transferee or occupier, as the case may be, as arrears of land revenue.

Forfeiture for breach of conditions of transfer :

13. (1) Notwithstanding anything contained in any other law for the time being in force, the Administrator may resume any site or building if the transferee or occupier persistently fails to use such site or building for the purpose for which it is sold, leased or transferred or fails to build upon the site within the period allowed or fails to pay the sale price or lease money of such site or building due under this Act or the rules made thereunder.

- (2) In the event of such resumption of any site or building, any money paid or deposited in respect of such site or building may also be forfeited:

Provided that no order of resumption or forfeiture of money shall be passed under this section without affording the defaulter an opportunity to show cause against it.

(3) The resumed site or building, as the case may be resold by auction and any loss resulting from such resale which is not covered by the amount forfeited under sub-section (2), shall be recoverable as arrears of land revenue from the defaulter.

(2) The constitutional validity of section 13 has been challenged on the grounds of violation of the fundamental rights of the petitioners as contained in Articles 19(1) (f) and 14 of the Constitution. It has been contended that the petitioners became the owners of the site and, therefore, no resumption of the site could be ordered by the Administrator under the provisions of section 13 of the Act under which the impugned order has been passed as Section 13 of the Act is violative of Articles 19 (1) (f) of the Constitution.

(3) The second contention raised is that section 13 of the Act is violative of Articles 14 inasmuch as that sections 12 and 13 of the Act provide for the same matter and there is no indication as to when action should be taken under either of these sections. The learned counsel for the petitioners places reliance on a decision of the Supreme Court in *M/s Jagdish Chand Radhey Shyam v. The State of Punjab and others*, (1) and a Division Bench decision of this Court in *Tej Ram Sharma v. The State of Haryana and others* (2). The provisions of section 9 of the Capital of Punjab (Development and Regulation) Act, 1952 (hereinafter called the Capital Act) were under attack in *M/s Jagdish Chand Radhey Shyam's case* (supra). It will be useful if the relevant provisions of the said Act are also reproduced so as to have a complete comparison between the provisions of the said Act and the provisions which are now under challenge. Sections 3, 8 and 9 of the Capital Act were as follow:—

“3(1) The State Government may sell, lease or otherwise transfer, whether by auction, allotment or otherwise, any land or building belonging to the Government in Chandigarh on such terms and conditions as it may, subject

(1) AIR 1972 S.C. 2587.

(2) 1974 PLR 477.

to any rules that may be made under this Act, think fit to impose.

- (2) The consideration money for any transfer under sub-section (1) shall be paid to the State Government in such manner and in such instalment and at such rate of interest as may be prescribed.
 - (3) The unpaid portion of the consideration money together with interest or any other amount if any due to the State Government on account of the transfer of any site or building under sub-section (1) shall be a first charge on that site or building as the case may be, and notwithstanding anything contained in any other law for the time being in force, no transferee shall except with the previous permission in writing of the Estate Officer, be entitled to sell, mortgage or otherwise transfer (except by way of lease from month to month) any right, title, or interest in the site or building transferred to him under sub-section (1) until the amount which is a first charge under this sub-section has been paid in full to the State Government.
8. (1) Where any transferee makes any default in the payment of any consideration money or instalment thereof or any other amount due on account of the transfer of any site or building under section 3 or of any rent due in respect of any lease, or where any transferee or occupier makes any default in the payment of any fee or tax levied under section 7, the Estate Officer may direct that in addition to the amount of arrears, a sum not exceeding that amount shall be recovered from the transferee or occupier, as the case may be, by way of penalty.
- (2) In the case of any default in the payment of an amount payable under this Act, the outstanding amount in default together with any sum, if any, directed to be paid by way of penalty under sub-section (1) may be recovered from the transferee or occupier, as the case may be, in the same manner as an arrear of land revenue.
9. In the case of non-payment of consideration money or any instalment thereof on account of the transfer of any site or

building under section 3 or of any rent due to respect of the lease of any such site or building or in case of the breach of any other conditions of such transfer or breach of any rules made under this Act, the Estate Officer may, if he thinks fit, resume the site or building so transferred and may further forfeit the whole or any part of the money, if any, paid in respect thereof."

The provisions of section 9 of the Capital Act were challenged on the ground of the same being violative of Articles 19(1) (f) and 14 of the Constitution. The challenge was repelled by this Court but in appeal, the provisions of section 9 of the Capital Act were declared *ultra vires* Articles 19 (1) (f) and 14 of the Constitution.

Their Lordships of the Supreme Court, after construing the language of the provisions as contained in section 3 read with sections 8 and 9 of the Capital Act, came to the conclusion that it was obvious that the transferee became the owner of the property on his depositing the first instalment and the State was divested of the ownership of the property. The said property could not be expropriated by the State by resorting to provisions of section 9 of the Capital Act, and thus it was found that the said provisions contravene Article 19(1) (f) of the Constitution. It was further found that under the provisions of section 8 of the Capital Act, consideration money etc. could be recovered as arrears of land revenue whereas under section 9 of the Capital Act, the Estate Officer had been given powers to resume the site on the ground of non-payment of consideration etc. It was, therefore, held that two remedies were provided to meet the same situation and there being no guidelines provided as to which remedy may be made applicable in given circumstances and one remedy being more drastic than the other therefore discrimination of the subject was inherent. Thus, it was held that the provisions of section 9 of the Capital Act were *ultra vires* Article 14 of the Constitution as well.

(4) With a view to appreciate the contentions raised in this case, the difference in the provisions of the Act as compared to the above-referred provisions of the Capital Act may be noticed. The provisions of section 3(1) of the Capital Act and the provisions of section 3 (2) of the Act are *pari materia* the same except in the Capital Act the land or building in question was situate in Chandigarh

Dharam Pal etc. v. State of Punjab and another (B. S. Dhillon, J.)

whereas in the Act the land or building is situate in new mandi townships. As regards the provisions of sub-section (3) of section 3 of the Capital Act and the provisions of sub-section (3) of section 3 of the Act, the first clause in both these sub-sections is almost in the same language as the amount due on account of sale, lease or transfer etc. has been provided to be first charge on that site or building notwithstanding with anything contained in any other law. It is no doubt true that in the said provisions of the Capital Act the words used are "consideration money" whereas in the Act the words used are "any amount due to the State Government on account of sale, lease and transfer etc.". But there does not appear to be any material difference. As regards the other sub-clause in the same sub-section in the Capital Act, it has been provided that no transferee shall, except with the previous permission in writing of the Estate Officers, be entitled to sell, mortgage or otherwise transfer (except by way of lease from month to month) any right, title or interest in the site or building transferred to him until the amount which is first charge under this section has been paid in full to the State Government, whereas in the Act it has been provided that no transferee shall be entitled to sell, mortgage or otherwise transfer any right, title or interest in the site or building transferred to him under sub-section (2) except by way of lease from month to month until the amount mentioned as first charge under this section has been paid in full. It would thus be seen that in the Capital Act, the transferee could sell, mortgage or otherwise transfer the site in question with the previous permission in writing of the Estate Officer. Under the provisions of the Act, no such right has been given to the transferee until the amount mentioned as charge has been paid in full.

(5) Section 10 of the Act authorizes the State Government to levy fee as it may consider necessary for the purpose of providing, maintaining or continuing any amenity in the new mandi township. Under section 11 of the Act, if the transferee or the occupier makes default in payment of any fee levied under section 10 of the Act, he can further be burdened with a penalty. There are no analogous provisions to section 10 of the Act in the Capital Act. Section 8 of the Capital Act clearly provides that where any transferee makes any default in payment of consideration money or instalment thereof or any other amount due on account of transfer of any site or building etc., the Estate Officer may direct that in addition to the amount of arrears, a sum not exceeding that amount shall be recovered from the transferee or occupier by way of penalty. Sub-section (2) of

section 8 of the Capital Act further provides that in case of any default of payment of amount payable under the Capital Act, the outstanding amount in default together with the sum, if any, directed to be paid by way of penalty under sub-section (1) may be recovered from the transferee or the occupier in the same manner as arrears of the land revenue. The provisions of sub-section (1) of section 8 of the Capital Act are analogous to the provisions of section 11 of the Act whereas the provisions of sub-section (2) of section 8 of the Capital Act are analogous to the provisions of section 12 of the Act.

(6) Section 9 of the Capital Act authorizes the Estate Officer to resume the site or building and further to forfeit the whole or any part of the money paid in respect thereof in the case of non-payment of consideration money or any instalment thereof on account of transfer. Under section 13 of the Act, the Administrator has been empowered to resume any site or building if the transferee or the occupier persistently fails to use such site or building for the purpose it is sold, leased or transferred or fails to build upon the site within the period allowed or fails to pay the sale price or lease money of such site or building due under this Act or Rules thereunder. Sub-section (2) of section 13 of the Act further authorizes the forfeiture of money paid in respect of the forfeited property. Sub-section (3) thereof further provides that in case of resumption of a site or building and on its being resold, if any loss results from such resale which is not covered by the amount forfeited under sub-section (2), the said amount shall be recovered as arrears of land revenue from the defaulter. It would thus be seen that the provisions of section 9 of the Act and section 13 of the Act as far as the point in issue is concerned are the same.

(7) As is obvious from the above-mentioned comparison of the provisions of the Capital Act and the provisions of the Act, there does not appear to be any material difference and on the same logic as is held by their Lordships of the Supreme Court, the provisions of section 13 of the Act shall have to be declared *ultra vires* Articles 14 and 19(1) (f) of the Constitution. It is plain from the provisions of the Act that the unpaid portion of the consideration money shall be first charge on the site or the building. The transferee, after the said charge is satisfied, is entitled to sell, mortgage or otherwise transfer any right, title or interest in the site or building. A charge is created for the unpaid portion of the consideration money and the prohibition against sale, mortgage or transfer by the transferee of any right, title or interest

Dharam Pal etc. v. State of Punjab and another (B. S. Dhillon, J.)

in the site is only upto that point upto which the charge of property regarding remaining sale consideration price is not satisfied. The statute speaks of payment of consideration money due to the Government. On all these considerations, their Lordships of the Supreme Court while considering the provisions of Capital Act came to the conclusion that if the Government is the owner the Government cannot at the same time be entitled to a charge on the property for the balance of the consideration money. A charge on a property is under the Transfer of Property Act enforced by instituting a suit and bringing the property to sale. If the property yields a higher price than what the charge represents, the owner is entitled to the excess sum.

(8) It is further clear that under the provisions of section 12 of the Act, in the event of default of any payment due under the Act, the same can be recovered as arrears of land revenue. The contention of Mr Sarhadi, the learned Advocate-General, that the word used 'any amount due under the Act' in section 12 will not include the balance payment of the amount due by way of sale consideration, is without any merit. It is well accepted that the provisions of the enactment have to be given the interpretation which can be construed from the plain meaning of the statute. Section 12 specifically provides only that any amount due under the Act may be recovered as arrears of land revenue. It cannot be successfully contended that amount due to the State Government, which is a charge on the property itself in a given case is not amount due under the provisions of the Act when such amount has been specifically made due by the provisions of section 3 of the Act. Section 13 of the Act empowers the State Government to resume the site in question and forfeit the whole or any part of the money, which has already been paid in respect of the site. Under the ordinary law of the land, there is a relief against forfeiture for breach of covenant or provisions. Section 13 of the Act does not offer any relief against forfeiture. This feature that the Government can proceed either under the ordinary law of the land or under the Act shows that there is a discrimination. Further, there is nothing in the statute to guide the exercise of power by the Government as to in which case and how one of the methods will be chosen. There being charge on the property, the Government can proceed under the Ordinary law by instituting a suit in a court of law. The owner will have the opportunity of paying the money and clearing the property of the Charge. On the other hand when the Government proceeds under section 13 of the Act to resume the site,

it is a more harsh provision to the subject. There is no guideline in the Act as to when the Government will resort to either of these remedies. Thus, it would be seen that in cases of recovery of money or resumption of the site and forfeiture of money paid, the Government may choose and discriminate in proceeding against one person in one manner and another person in another manner. The Act creates a charge on the property. The Act forbids creation of a third party right by the transferee until the amount represented by the charge is paid in full. In the teeth of statutory security and enforceability it is totally unreasonable restriction on the enjoyment of property by resuming the site for defaults in payments of property by resuming the site for defaults in payments of money and forfeiting the moneys paid by the transferee.

(9) From what has been stated above, there does not appear to be any material difference in the provisions of the Act as compared to the provisions of the capital Act which provisions have been struck down by their Lordships of the Supreme Court.

(10) For the reasons recorded above, the writ petition is allowed and the provisions of section 13 of the Act are declared *ultra vires* Articles 14 and 19 (1) (f) of the Constitution of India. Consequently, the impugned order passed under the provisions of section 13 of the Act is quashed. However, there will be no order as to costs.

S. S. Dewan, J.—I agree.

N. K. S.

Before P. C. Jain and C. S. Tiwana, JJ.

COMMISSIONER OF INCOME-TAX, PATIALA,—*Applicant.*

versus

M/S. DEHATI CO-OPERATIVE MARKETING-CUM-PROCESSING SOCIETY,—*Respondent.*

Income Tax Reference No. 65 of 1975.

November 21, 1978.

Income-tax Act (XLIII of 1963)—Sections 139, 148 and 271(1) (i)—Income-tax (Appellate Tribunal) Rules, 1963—Rule 11—Assessee not filing return under section 139(1)—Notice under section 148 to file the return within the period stipulated therein—Belated return filed in pursuance of the said notice—Penalty for the period prior to the