

Before Sukhdev Singh Kang, J.

KRISHAN GOPAL KATARIA AND ANOTHER,—Petitioners.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 1706 of 1985

February 18, 1986.

Registration Act (XVI of 1908)—Sections 21, 23, 28, 32, 35, 69 and 74—Government instructions directing Sub Registrars not to register sale or lease deeds pertaining to properties of certain charitable/religious institutions—State Government—Whether competent to issue such directions—Such directions—Whether binding on the Sub Registrar.

Held, that from a reading of Sections 21, 23, 28, 32 and 35 of the Registration Act, 1908, it is apparent that the powers of the Sub Registrars and Registrars have been clearly defined and demarcated therein. Clear provisions have been made authorising the Sub Registrar to refuse to register documents if they are not properly executed or presented or the subject matter of the document is beyond territorial jurisdiction of the Sub Registrar or the Registrar as the case may be and also in the situation mentioned above under the afore quoted sections. There is no provision in the Act requiring or authorising Sub Registrars to refuse to register a document because of any instructions issued by the State Government or the Registrar restraining or prohibiting him from registering a document. The Sub Registrar and the Registrar are the creation of the statute and they draw their authority therefrom and their statutory functions could not be curtailed by any executive instructions issued by the State Government or the Registrar. As such the State Government had no power or authority to issue instructions or directions to the authorities functioning under the Act restraining or restricting them from registering documents pertaining to the transfer of rights in immovable property belonging to religious/charitable institutions and the Sub Registrar is not bound by the aforesaid instructions.

(Paras 10 and 13).

Petition under Articles 226/227 of the Constitution of India praying that :—

- (i) a writ of Certiorari quashing the impugned orders dated 22nd October, 1982 (Annexure P-3) and 1st June, 1984

(Annexure P-4) of respondent No. 2 and dated 14th March, 1983 (Annexure P-2) of respondent No. 3 be issued;

- (ii) a writ of Mandamus be issued to respondent No. 3 to effect the registration of the deed dated 14th March, 1983 presented before him;
- (iii) any other writ, direction or order as this Hon'ble Court may deem just and proper in the circumstances of the case be also issued;
- (iv) filing of certified copies of the annexures may kindly be dispensed with; and
- (v) costs of the writ petition be also allowed.

Harmohan Singh Sethi, Advocate, for the Petitioner.

H. L. Sibal, Sr. Advocate, (S. P. Gupta, Advocate with him), for Respondent Nos. 2 and 3.

G. S. Chawla, Advocate, for A.G. (Punjab).

JUDGMENT

Sukhdev Singh Kang, J.

(1) At issue, in this writ petition under Articles 226 and 227 of the Constitution of India is the legality and validity of instructions, dated October 21/22, 1982 (Annexure P-3), issued by the Additional Deputy Commissioner, Patiala, debarring Sub-Registrars from registering the sale or lease deeds in respect of the properties pertaining to religious places and Deras; order, dated March 14, 1983 (Annexure P-2) passed by the Sub-Registrar, Patiala, declining to register the lease-deed presented by the petitioners and the order, dated June 1, 1984, of the Registrar, Patiala (Annexure P-4), dismissing the petitioners' appeal against the order of the Sub-Registrar.

(2) A broad brush backdrop will help to delineate the contours of forensic controversy :—

Surinder Singh, petitioner No. 2, took on perpetual lease land measuring 4 Bighas belonging to Shivala Mandir, situate in village Badungar, Tehsil and District Patiala,—vide a registered lease-deed, dated July 15, 1982. This land represented 1/3rd share of Khasra

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No. 456-min measuring 12 Biswas. It was stipulated in the lease deed that the lessee was entitled to sub-let the property on the same terms and conditions on which lease was granted to him. Petitioner No. 2 entered into an agreement for sub-leasing of property mentioned above to petitioner No. 1 for 96 years,—*vide* agreement, dated March 14, 1983. This lease-deed was presented for registration before the Sub-Registrar, Patiala, respondent No. 3 by the petitioners, who declined to register the document and passed the following order :—

“The document was presented before me today. On scrutiny it was found out that it is a lease-deed. This land originally belonged to Dera which is now being transferred on a sub-lease. As per instructions of the Government, the registration of the properties pertaining to the Deras and other institutions has been stopped. Therefore, the registration of the lease-deed is declined. A copy of the order and the original lease-deed be returned to the applicant.”

(3) Aggrieved, the petitioner filed an appeal against this order of the Sub-Registrar before the Registrar, Patiala, under Section 71 of the Indian Registration Act (for short ‘the Act’).

(4) On enquiry, the petitioners learnt that after receipt of some orders from the State Government the Additional Deputy Commissioner, Patiala, issued instructions, dated October 21/22, 1982. (Annexure P-3) directing the Sub-Registrars in the District not to register sale-deeds or lease-deeds in respect of the properties belonging to religious/charitable institutions, as these were being sold or leased out by the Managers and money received was being mis-appropriated by them.

(5) The Registrar dismissed the appeal filed by the petitioners,—*vide* order, dated June 1, 1984 on the ground that the Additional Deputy Commissioner, Patiala, as also the State Government had issued clear cut instructions that since the Pujaris/Mohtmims of the religious institutions such as Deras, Thakar Dwaras and Samadhis, etc., were indulging in illegal disposal of lands attached to these institutions in violation of the Farman-e-Shahi and the terms and conditions on which Muafis were granted to these institutions, Sub-Registrars and Joint Registrars should not register

such sale-deeds and property transactions. These orders were issued to protect the properties of the Deras from being illegally transferred and were in public interest. They were binding on the Registrars and Sub-Registrars. The Sub-Registrar was fully justified in refusing to register the lease-deed presented before him. He confirmed the impugned order and dismissed the appeal.

(6) Still undaunted, the petitioners have come up with this writ petition.

The petitioners challenge the orders of the Sub-Registrar and Registrar and the instructions issued by the Additional Deputy Commissioner, *inter-alia* on the grounds:—

- (i) That the Registrar had no authority in law to issue instructions directing the Sub-Registrars not to effect the registration of a document pertaining to properties belonging to religious/charitable institutions like Deras and Temples, etc., and
- (ii) The Sub-Registrar was under a legal obligation to effect the registration of the documents presented to him and he cannot refuse their registration on the basis of the instructions (Annexure P-3).

(7) The respondents contested the writ petition and filed a written statement wherein it has been averred that the registration of the lease-deed was refused in accordance with the instructions of the Government. It was pleaded that the Registrar had issued the instructions to the effect that no lease-deed pertaining to religious/charitable institutions be registered. The Registrar, respondent No. 2, was fully competent to issue such instructions. It was contended that the impugned orders were legal, valid and within jurisdiction. Alongwith the written statement they appended two documents Annexures R-1 and R-2. Annexure R-1 is described as Farman-e-Shahi, dated April 18, 1921. This document *inter-alia* prohibits the Mahants from selling or mortgaging the lands belonging to Deras. *Vide* Annexure R-2 directions had been issued by the State Government to the Deputy Commissioners of the State that they should take necessary steps to ensure proper management of land and property attached to religious institutions and issue instructions to the Sub-Registrars and Joint Registrars not to allow registration of sale/lease or property transactions of

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lands which were granted to the Deras, Thakar Dwaras and Samadhs, etc.

(8) Learned counsel for the petitioners argued that the Mahant had already leased out 4 Bighas of land belonging to Shivala Mandir to petitioner No. 1, that lease-deed had been registered in 1982. Annexure R-1 only prohibits mortgage or sale of the property belonging to the Deras, etc., it did not place any restrictions on the leasing out of these properties. The Act did not authorise the State Government or the Registrar to issue instructions to the Sub-Registrars not to register sale-deeds or lease-deeds of any properties. There is no provision in the Act expressly conferring such powers. They could not be even impliedly derived from the provisions of the statute. The Act was a complete Code. It enumerates specific reasons for which the Registrar or the Sub-Registrar may refuse to register a document. Under Section 69 of the Act, Inspector-General has been authorised to exercise general superintendence over all the Registrars functioning in the State and to make rules consistent with the Act providing for the matters enumerated therein. The State Government had not been invested with any powers of superintendence or control over the Sub-Registrars, Registrars or the Inspector-General of Registration. It cannot issue any instructions to these officers. The powers of the Sub-Registrars cannot be curtailed by any instructions issued by the State Government. The Sub-Registrar by declining to register the lease-deed presented by the petitioners had failed to exercise the jurisdiction vested in him. The Registrar while dismissing the appeal also committed the same error.

(9) On the other hand Shri H. L. Sibal, Senior Advocate, learned counsel for the respondent, contended that unlimited powers have been given to the Sub-Registrar to refuse registration of a document. These powers are not hedged in or circumscribed by any limitation. Section 74 posited that in case the requirements of the law for the time being in force had not been complied with on the part of the person presenting a document for registration, the authorities were entitled to refuse to register that document. The Ruler of Patiala State, who was a sovereign, issued Farman-e-Shahi, dated October 26, 1943, laying down that the lands or shops belonging to Deras, Gurdwaras, Temples and Mosques leased for more than three years shall stand annulled and in future the managers of such institutions shall before leasing out the land or

giving on lease a shop must seek the permission of Sardar Sahib Deorhi Mualla. This was the command of the sovereign which was law as defined in Article 13 of the Constitution, so by a law validly passed and promulgated by a sovereign the managers of religious/charitable institutions have been debarred from leasing out properties of these institutions for any period of time without the previous permission of the State Government. After the formation of the Patiala and East Punjab States Union (popularly called and hereinafter referred to as PEPSU) this law continued to remain in force and it governed the properties of these religious institutions. After the merger of the Pepsu with Punjab this law still continued to operate. So the State Government could, on the authority of this law, direct the Registrars/Sub-Registrars not to register any lease-deeds relating to the properties of the religious/charitable institutions. Mr. Sibal has placed on record a certified copy of the above-mentioned Farman-e-Shahi.

(10) It is apparent from the perusal of the various provisions of the Act that the powers of Sub-Registrars and Registrars have been clearly defined and demarcated by the Act. Clear provisions have been made authorising the Sub-Registrar to refuse to register documents if they are not properly executed or presented or the subject-matter of the document lay beyond the territorial jurisdiction of the Registrar or the Sub-Registrar as the case may be. The Sub-Registrar can refuse to register a document under Section 21 of the Act, if it does not contain the description of the immovable property sufficient to identify the same; under Section 23 if the document is not presented within four months of the date of its execution; under Section 28 if the document is presented for registration in the office of the Sub-Registrar within whose sub-District the whole or some portion of the property is not situated; under Section 32 if the document to be registered is not presented by the person executing it or claiming under the same or by representative or assign of such person; under Section 35 if the Sub-Registrar is not satisfied about the identity of the person/persons they represent themselves to be, or such a person or persons do not admit the execution of the document, or a person or such persons appear to be minor or lunatic or idiot or if the person by whom the document purports to be executed is dead and his representatives or assigns deny its execution. There is no provision in the Act requiring or authorising the Sub-Registrar to refuse to register a

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document because of any instructions issued by the State Government or the Registrar, restraining or prohibiting him from registering a document. Under Section 69 the Inspector-General of Registration has been invested with the general superintendence over all the Registrars functioning in the State and to make Rules consistent with the Act, providing for the matters mentioned therein. The Sub-Registrar and the Registrar are the creation of the statute and they draw their authority therefrom. Their powers and duties are covered by the Act. Their statutory functions could not be curtailed by any executive instructions issued by the State Government or the Registrar. Instructions issued by the State Government and Registrar, Patiala, were wholly without jurisdiction and were not binding on the Sub-Registrar. The Sub-Registrar did not reject the prayer of the petitioners for registering document because any one or more of the conditions specified in any of the sections of the Act mentioned above had not been fulfilled or violated. He had declined to register the lease-deed only because instructions issued by the respondents had debarred him from registering the lease-deeds relating to the properties of the religious institutions. The Sub-Registrar, or the Registrar did not refer to or rely on this order, dated October 26, 1943. Even in the written statement there is no reference to this order. It was only during the course of arguments that Mr. Sibal produced a copy of this order. So it is not necessary to decide whether this order is law as envisaged by Article 13 of the Constitution. Even if for the sake of argument it be accepted that this order was a Farman-e-Shahi and was law as contemplated by Article 13 of the Constitution of India, it was not enforceable, or workable. With the merger of the State of Patiala in the Pepsu, the office of Sardar Sahib Deorhi Mualla came to be abolished. There is no institution like Sardar Sahib Deorhi Mualla in the present democratic Punjab, as such the State Government has not authorised any officer to perform the functions of Sardar Sahib Deorhi Mualla. So, there is no officer from whom the manager of a religious property can seek permission. Furthermore the order, dated October 26, 1943 did not prohibit the Sub-Registrar from registering lease-deeds pertaining to lands of religious or charitable institutions. It had only cast a duty on the manager of a religious/charitable institution to seek such a permission. It has not been mentioned in the order as to what will be the effect of non-compliance thereof.

(11) Provisions of Section 74 of the Act are inapplicable to the facts of the present case. These provisions are attracted only in

those cases where the Sub-Registrar has refused to register a document on the ground that the person by whom it purports to be executed had denied its execution. Only in dealing with such documents, the Registrar can, under Section 74, enquire into the question whether the requirement of law for the time being in force has been complied with.

(12) Reliance of Shri Sibal on *Munshi vs. Daulat Ram and others*, (1), is misplaced. The provisions of Section 17 of the Punjab Land Alienation Act fell for construction therein. Section 17 of the Punjab Land Alienation Act is to the effect that notwithstanding anything contained in the Registration Act or in Rules made under Section 16 of that Act, an instrument which contravenes the provisions of the Punjab Land Alienation Act shall not be admitted to registration. Mr. Sibal has not been able to bring to my notice any statutory provision debarring the Sub-Registrar from registering a document, i.e., the lease deed of a property of a religious institution. A Division Bench of the Madras High Court in *Nalla Gorender vs. Krishnaswami Naicker* (2), interpreting clause (b) of Section 74 of the Act observed that such requirements did not include the provisions of Section 145(2) of the Madras Land Act and non-compliance with that Section is not a valid ground on which registration of a document can be refused under Section 74 of the Act.

(13) The State Government had no power or authority to issue instructions or directions to the authorities functioning under the Act restraining or restricting them from registering documents pertaining to the transfer of rights in immovable properties belonging to religious/charitable institutions. Nor the Registrar had any authority to issue instructions Annexure P-3. The Sub-Registrar had refused to register the lease-deed only because of these instructions. The Registrar had also dismissed the appeal only because he was of the view that the Sub-Registrar was bound to follow the instructions issued by the State Government.

(14) For the foregoing reasons I allow the writ petition, set aside the orders of Sub-Registrar and Registrar, Patiala, as also the instructions issued by the Additional Deputy Commissioner, exercising the powers of Registrar, Patiala, annexures P-2, P-4, and P-3,

(1) A.I.R. 1944 Lahore 349.

(2) A.I.R. 1945 Madras 465.

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respectively. I further direct respondent No. 3 to register the lease-deed presented before him by the petitioners if there is no other legal impediment in the way of the petitioners. There will, however, be no order as to costs.

S. C. K.

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AMAR SINGH, *Petitioner*

versus

CHIEF SECRETARY TO GOVERNMENT, PUNJAB, CHANDIGARH
AND OTHERS,—*Respondents.*

Civil Writ Petition No. 4026 of 1985

March 10, 1986.

Constitution of India, 1950—Article 14—Punjab Civil Services (Premature Retirement) Rules, 1975—Rule 3(i)(b)—Punjab Civil Services, Rules, Volume I, Part I—Note below Rule 8.116 (iii)—Government employee retired compulsorily under Retirement Rules—Government instructions granting benefit of cash equivalent to leave salary due to employees at the time of retirement—Instructions denying such benefit to employees retired compulsorily—Said instructions—Whether discriminatory and liable to be struck down as violative of Article 14.

Held, that it is well recognized that premature retirement of a Government servant under Punjab Civil Services (Premature Retirement) Rules 1975 is not by way of punishment. It does not cast a stigma on the retiring Government servant and the orders are not passed by way of punishment and have no penal consequences. The Government employee remains entitled to all the pensionary and retirement benefits which are available to the person who retires under attaining the age of superannuation. There can be no rational distinction between the Government employees prematurely/compulsorily retired under rule 3(i)(a) of the Rules or those who retired on attaining the age of superannuation. It is further clear from a reading of Note 2 below Rule 8.116(iii) of the Punjab Civil Services, Rules Volume I, Part I, that the Government employees, who are prematurely/compulsorily retired are not denied pensionary/retirement benefits. The object behind conferring pensionary/retirement benefits on the retired Government employees