

The above observation was cited with approval by the House of Lords in *Lord Howard De Walden v. Inland Revenue Commissioners* (9). I am persuaded by the above reasoning not to construe section 3(a) of the Delhi and Ajmer Rent Control Act, 1952; in a manner so as to add an exception in the case of auction-purchasers to whom sale certificate has not yet been issued. The decision of the Supreme Court in *Messrs Bombay Salt and Chemical Industries v. L. J. Johnson and others* (1), leaves no room for doubt that an auction-purchaser in the condition of the present landlords is not transferee of the property sold at the auction.

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The question referred to the Division Bench must be answered in the affirmative. I am, therefore, of the view that an auction-purchaser of evacuee property, who has not yet obtained a sale certificate but to whom the occupier has attorned, can, under the ordinary law, maintain a suit for ejection.

By this judgment, only the question referred to the Division Bench is being answered. It will not be for learned Single Judge to decide this and other connected cases on their respective merits in the light of the above answer.

D. FALSHAW, C.J.—I agree.

Falshaw, C.J.

K.S.K.

#### CIVIL MISCELLANEOUS

Before S. B. Kapoor and Prem Chand Pandit, JJ.

MESSRS GOKAL CHAND NATHI RAM.—Petitioners.

versus

THE STATE OF PUNJAB.—Respondent.

Civil Writ No. 1171 of 1962.

*Punjab Agricultural Produce Markets (General) Rules, 1962—Rule 24 sub-rules (12) and (14)—Whether ultra vires.*

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*Held*, that sub-rules (12) and (14) of rule 24 of the Punjab Agricultural Produce Markets (General) Rules, 1962, are not *ultra vires* Article 19 of the Constitution of India. Even if it be held that these sub-rules, which provide that a *kutchra arhtiya* can charge his commission only from the buyer and not from the seller, impose any restrictions on the fundamental rights of a *kutchra arhtiya* in carrying on his trade, these restrictions are reasonable restrictions and, therefore, protected under clause (6) of Article 19 of the Constitution.

*Petition under Article 226 of the Constitution of India, praying that a writ of certiorari, mandamus, prohibition, or any other appropriate writ, order or direction be issued, that the provisions of sub-rules 5, 9, 10, 12 and 14 of rule 24 and proviso of rule 26 and conditions of licence issued under rule 17(7) numbers 3, 6, 9, 10, 11 and 12 of the Punjab Agricultural Produce Markets (General) Rules, 1962 notified by the respondent in Punjab Government gazette (Extra) dated 11th July, 1962 are ultra vires the constitution and beyond the scope of the said Act and rule-making power of the respondent.*

ATMA RAM, ADVOCATE WITH R. S. MARYA, ADVOCATE for the Petitioners.

PARTAP SINGH, ADVOCATE for the ADVOCATE GENERAL for the Respondents.

#### ORDER

Capoor, J.

CAPOOR, J.—Messrs Gokal Chand-Nathi Ram, the petitioners in this civil writ petition under Article 226 of the constitution of India, are carrying on business as commission agents and *Kutchra arhtiyas* in various commodities, such as grain, cotton, oilseeds, at Kurali in the district of Ambala and they hold a license to carry on such business. This license was originally issued under the Punjab Agricultural Produce Markets Act, 1939 (Punjab Act No. 5 of 1939) (since replaced by the Punjab Agricultural Produce Markets Act, 1961 (Punjab Act No. 23 of 1961), hereinafter to be referred to as the Act). By Punjab Government notification No.

GSR|PA-23|61|S. 43|62, dated the 9th of July, 1962, the Punjab Agricultural Produce Markets (General) Rules, 1962, have been promulgated under the Act and the petitioners challenge the *vires* of sub-rules (5), (9), (10), (12) and (14) of rule 24, proviso to rule 26, and certain conditions of the license issued to them under sub-rule (7) of rule 17, viz., conditions Nos. 3, 6, 9, 10, 11 and 12. It was contended that these rules and conditions were *ultra vires* the Constitution and beyond the scope of the Act and the rule-making power of the Punjab State, which is the respondent to this petition, and the petitioners pray that a writ of *mandamus*, prohibition, *certiorari* or any other relief, to which the petitioners may be entitled, be granted. The Punjab State has filed a return opposing the petition.

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It is not disputed that Kurali has been declared a "notified market area" under section 6 of the Act. Sub-section (3) of that section provides that no person shall set up, establish or continue any place for the purchase, sale, storage and processing of an agricultural produce notified under the Act, or purchase, sell, store or process such agricultural produce except under a license granted in accordance with the provisions of that Act, the rules and bye-laws made thereunder and the conditions specified in the license. Applications for a license are made under section 10 of the Act. The petitioner-firm, which is a "dealer" as defined in clause (f) of section 2, has taken out a license under rule 17. The rule-making power of the State Government is detailed in section 43 of the Act and clause (ix) of sub-section (2) enables rules to be made for the issue by the Chairman of the State Agricultural Marketing Board of licenses to dealers, the form in which, and the conditions under which, such licenses shall be issued or renewed and the fees, if any, to be charged therefor. The license grants to the petitioner-firm is in form B of the forms appended to the rules and it incorporates various conditions of the license, the first being that the licensee

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shall comply with the provisions of the Act and rules and bye-laws framed thereunder and instructions issued from time to time. Sub-section (3) of section 43 provides that the rules made under this section may specify that any contravention thereof or of any of the conditions of any license issued or renewed shall be punishable with fine which may extend to Rs. 500. Rule 39, which is made under sub-section (3) of section 43, provides that any person committing a breach of any of the provisions of these rules or any of the conditions of his license shall be punishable with fine which shall not be less than Rs. 50 and not more than Rs. 500.

It is thus maintained on behalf of the petitioner-firm that the breach of the rules, the bye-laws and the conditions of the license entails penal consequences and those rules and conditions of the license, which are *ultra vires* of the Constitution or the rule-making power of the respondent, are liable to be struck down. However, since the rules were promulgated, there have been extensive amendments and the petitioner no longer challenges sub-rules (5), (9) and (10) of rule 24 or the proviso to rule 26. Mr. Atma Ram, learned counsel for the petitioner, also did not seriously press his objections to conditions Nos. 3, 6, 9, 10 and 12 of the license, while condition No. 11 has been deleted. So far as condition No. 3 is concerned, all that it requires is that the licensee shall surrender his license, on demand, to the Chairman of the Board or any other officer authorised by him in this behalf or the Chairman of the Market Committee against a receipt to be given to the licensee in this connection. Mr. Atma Ram's grievance was that under condition No. 5 the dealer is required to display his license at a conspicuous place on his business premises and he could not comply with this particular condition if he was required to surrender his license under condition No. 3. However, as provided in condition No. 3, a receipt has to be given to the dealer, who

surrenders his license and this receipt will be sufficient protection to him if a question arises of his not complying with condition No. 5. All that Mr. Atma Ram could urge with regard to conditions Nos. 6, 10, and 12 was that they were unconstitutional or *ultra vires*. Condition. No. 9 is as follows:—

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“He ( the licensee) shall not take or continue in his service any licensed broker, weighman, measurer, surveyor or *palledar*.”

A broker, weighman, measurer, surveyor, godown-keeper or *palledar* is required to take out a license under section 13 of the Act read with sub-rule (2) of rule 19 of the Punjab Agricultural Produce Markets (General) Rules, 1962, and the form of the license is form E. Condition No. 7 of this particular license is that the licensee (except the godown-keeper) shall not accept any service under the dealer. If, therefore, a licensed broker, weighman, measurer, surveyor or *palledar* commits a breach of his license by accepting service under a dealer, it follows that the dealer cannot take any such person in his service and ultimately Mr. Atma Ram gave up his challenge to condition No. 9 as given in form B also.

Actually the learned counsel for the petitioner firm pressed his objections only with regard to sub-rules (12) and (14) of rule 24. Sub-rule (12) is as follows :—

“Every Kacha Arhtiya shall, on delivery of agricultural produce to a buyer, execute a memorandum in Form I and deliver the same to the buyer on the same day or the following day, mentioning sale-proceeds plus market charges admissible under rules and bye-laws. The counterfoil shall be retained by the Kacha Arhtiya.”

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There is a column in form I which gives the list of market charges and one of these is "Commission". Sub-rule (14) relates to delivery of agricultural produce after sale and is to the effect that delivery shall not be made or taken unless and until the kutchā *arhtiya* or, if the seller does not employ a Kutchā *arhtiya* the buyer has given to the seller a sale voucher in form J. This form does not mention any commission to be charged by the kutchā *arhtiya* from the seller. The contention on behalf of the petitioner is that the cumulative effect of these sub-rules, when taken along with the bye-laws, is that the petitioners as kutchā *arhtiyas* can charge commission only from the buyer and not from the seller, while according to the conditions prevailing in the trade the petitioner-firm has been charging commission from both the seller and the buyer. It is thus maintained that the restriction imposed by these sub-rules was unconstitutional. The particular bye-law is not reproduced in the petition, but in paragraph 2 of the return it is stated that the bye-laws of the Market Committee, Kurali, were published,—*vide* Punjab Government notification No. 3669-Agr., dated the 21st of November, 1945 and bye-law 13(1) prescribed that a dealer as commission agent for services actually rendered by him in connection with any transaction of sale or purchase of agricultural produce would not receive any remuneration in excess of Re. 1 per Rs. 100 of the value of agricultural produce bought or sold. The return further says that "in all Mandis of the Punjab the custom of the trade was to charge commission either from the buyer or the seller (except in the case of agricultural produce of chillies in certain Mandis of erstwhile Pepsu State)." The bye-laws of different Market Committees in the erstwhile areas of the Punjab State (before the merger of Pepsu) nowhere provided that commission agents were to receive commission from both the sellers as well as the buyers. Accordingly the contention on behalf of the petitioner, that according to

the custom of the trade the petitioner-firm could charge commission both from the sellers and the buyers, remains a disputed question of fact which cannot be gone into in this writ petition. Mr. Atma Ram, however, made the grievance as to why by the combined operation of sub-rules (12) and (14) of rule 24 and the bye-laws the petitioner should be forced to charge commission from the buyer rather than the seller and, according to him, it would be more advantageous for the petitioner to charge commission from the seller rather than the buyer.

The rule-making power, as given in section 43 of the Act, confers ample power on the State Government to make rules as to the conditions under which licenses shall be issued to the dealers and others, and Mr. Atma Ram did not in fact maintain that the rules were *ultra vires* of the rule-making power of the State Government under this section. So far as the question of unconstitutionality is concerned, it was alleged in the petition that the restriction imposed by sub-rules (12) and (14) was an infringement of the petitioners' fundamental right to carry on their trade. This is the right guaranteed by sub-clause (g) of clause (I) of Article 19 of the Constitution. Clause (6) of that Article provides that nothing in sub-clause (g) shall affect the operation of any existing law in so far as it imposes, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by this sub-clause. On behalf of the State it is contended that inasmuch as according to the custom of the trade, the dealer could charge commission either from the buyer or the seller but not from both, there would really be no restriction in providing that he should charge commission from the buyer and not the seller. Further it is pointed out in the return that even if this be construed as a restriction, it is a reasonable restriction within the meaning of clause (6) of Article 19. The kutchha *arhtiya* has to do a lot of work for the buyer. The producers have to

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pay incidental charges, that is, charges incurred before the auction is held. After the auction is over, the kutchra *arhtiya* has to do everything for the buyer, for instance he has to get the produce weighed, filled in the bags of the buyer, get the bags stitched, etc. Moreover it is a general practice in the markets that the kutchra *arhtiya* makes payment to the seller on behalf of the buyer without his having received actual payment from the buyer. Thus the kutchra *arhtiya* invests money in order to safeguard the interest of the buyer and renders a great deal of assistance to him. The buyer is an educated person, who can conveniently keep the accounts of the commission, while the seller, who is usually the grower, is frequently an illiterate person liable to be exploited. In view of all this it is reasonable that the commission be charged from the buyer by the commission agents. In this connection reference was made to Statement of Objects and Reasons of Punjab Act No. 5 of 1939, as published in the Punjab Gazette, Extraordinary, dated the 1st of July, 1938, at page 98, in which it was particularly mentioned that the object of the legislation was to eliminate various malpractices to which the producer was subjected when he went to sell his produce in the Mandis and to eliminate the various charges which were levied from him under one pretext or the other. In *M. C. V. S. Arunachala Nadar v. State of Madras* (1), the constitutionality of the Madras Commercial Crops Markets Act, 20 of 1933, which was in some respects similar to the Act under consideration, was upheld and the same is the case with regard to Bombay Agricultural Produce Markets Act, 22 of 1939, in *Mohammad Hussain v. The State of Bombay* (2).

There is great deal of force in the contentions submitted on behalf of the respondent and I am of the view that even if it be held that sub-rules (12) and (14) of rule 24 impose any restrictions on the fundamental

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(1) A.I.R. 1959 S.C. 300.

(2) A.I.R. 1962 S.C. 97.

rights of the petitioner-firm in carrying on its trade, these restrictions are reasonable restrictions and therefore, protected under clause (6) of Article 19. The advantage, which according to Mr. Atma Ram would accrue to the petitioner by realising commission from the seller rather than the buyer, is merely this, that under sub-rule (10) the commission agent can, with the prior consent of the producer, who has engaged him to sell his produce, act as a buyer for himself and in that event he (the commission agent) would not be able to earn any commission. It would appear, however, that if the commission agent buys for himself, he renders hardly any service to the seller which would entitle him to earn a commission. The advantage suggested by Mr. Atma Ram is, therefore, merely hypothetical, while, as pointed out on behalf of the State, the provision, that commission be charged from the buyer and not the seller, advances the objects of the legislation and must be regarded in the circumstances as a reasonable restriction.

For all the reasons given above, there is no substance in this writ petition which is accordingly dismissed, but, as there have been some amendments in the rules which were originally impugned in the writ petition, I would leave the parties to bear their own costs.

PREM CHAND PANDIT, J.—I agree.

B.R.T.

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JAGIR SINGH AND OTHERS,—*Petitioners.*

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*Civil Writ No. 859 of 1962.*

*East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—S. 14(1)—Whether ultra vires of the Constitution—State Government—Whether*

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