

The State of Haryana, etc. *v.* Hari Singh, etc. (Sodhi, J.)

promotees were assigned the year of allotment in which they were not on the Select List and in that context I held that their appointments to the I.A.S. could not be made from a date earlier than the one on which their names were brought on the Select List. On facts, therefore, that case is clearly distinguishable and the learned counsel cannot derive any assistance therefrom. In the case of respondents 7 and 9, their appointments were not made from an earlier date; they were only given the benefit of their past service which they had rendered in the Irrigation Department from where they were transferred to the Service of the Board. This submission of the learned counsel for the appellant is also repelled.

(7) For the reasons given above, we find no merit in the submission of the learned counsel for the appellant that proviso fourthly to Regulation 15(1) is unconstitutional as being violative of Article 14 of the Constitution. The result is that this appeal fails and is dismissed with costs. Counsel's fee Rs. 100.00.

K. S. K.

LETTERS PATENT APPEAL

Before D. K. Mahajan and H. R. Sodhi, JJ.

THE STATE OF HARYANA, ETC.,—*Appellants.*

versus

HARI SINGH, ETC.,—*Respondents.*

Letters Patent Appeal No. 650 of 1970.

September 23, 1971

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Sections 2(8), 18 and 46—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules (1949)—Rule 16(ii)—Reservation of land for common purposes—Scale of—Whether can be fixed by executive instructions.

(Held, that section 18 of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, empowers the Consolidation Officer to reserve land for common purpose in certain contingencies but the manner in which reservation is to be made is guided and controlled by rule

16(ii) of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949. Under this rule, land can be reserved from the common pool of the village at a scale prescribed by the Government from time to time. Under section 2(g) of the Act, the expression "prescribed" means prescribed by rules made under the Act. A meaning has, therefore, been given to the word "prescribed" by the Act and if the same expression is used in the rules, it cannot be given a different meaning unless the content points to the contrary or it leads to any repugnancy. The State Government has the power to make rules under section 46(2)(e) in regard to the manner in which area is to be reserved under section 18 and the matter of fixation of scale beyond doubt relates to the manner of such reservation. It cannot possibly be intended that the scales can be fixed by executive instructions when, as a matter of fact, the fixation of such scales is of great value and significance to the landowners in regard to reservation of land for common purposes. Executive instructions cannot take the place of rules and any interpretation permitting executive instructions to change the scales from time to time will be contrary to the scheme of the Act which provides for rules to be made for the manner in which an area is to be reserved for common purposes.

(Paras 2 and 3)

LETTERS PATENT APPEAL Under Clause X of the Letters Patent against the order dated 29th May, 1970, passed by Hon'ble Mr. Justice A. D. Koshal in Civil Writ No. 615 of 1970.

Ashok Bhan, Advocate for Advocate-General, Haryana, for the appellants.

U. D. Gaur, Advocate, for the respondents.

JUDGMENT

The judgment of this Court was delivered by :—

SODHI, J.—(1) The sole question that arises for determination in this letters patent appeal relates to the interpretation of the expression "prescribed" as used in rule 16(ii) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 referred to hereinafter as the Rules, framed under the rule making power conferred by section 46 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, hereinafter called the Act.

(2) A scheme of consolidation of holdings for village Bahlba, tehsil Gohana, district Rohtak, was prepared by the consolidation

authorities and an area measuring 3220 Kanals 4 Marlas was reserved for common purposes allegedly under section 18 of the Act. Sixty-six right holders filed a writ petition in this Court under Articles 226 and 227 of the Constitution of India challenging the scheme and the attack was directed mainly on the ground that the said reservation was in contravention of section 18 read with rule 16(ii). These provisions have been reproduced by the learned Single Judge in his judgment but for facility of reference they may be quoted again *in extenso*:—

Section 18.

“Lands reserved for common purposes.—Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Consolidation Officer to direct—

- (a) that any land specifically assigned for any common purpose shall cease to be so assigned and to assign any other land in its place ;
- (b) that any land under the bed of a stream or torrent flowing through or from the Shiwalik mountain range within the State shall be assigned for any common purpose;
- (c) that if in any area under consolidation no land is reserved for any common purpose including extension of the village *abadi*, or if the land so reserved is inadequate, to assign other land for such purpose.”

Rule 16 (ii).

“In an estate or estates where during consolidation proceedings there is no *Shamlat deh* land or such land is considered inadequate, land shall be reserved for the village Panchayat and for other common purposes, under section 18(c) of the Act, out of the common pool of the village at a scale prescribed by Government from time to time. Proprietary rights in respect of land so reserved (except the area reserved for the extension of *abadi* proprietors and non-proprietors) shall vest in the proprietary body of the estate or estates concerned and it shall be entered in the column of ownership of record of rights as (Jumla Malkan W Digar Haqdarān Arazi Hasab Rasad Raqba). The management of such land shall be done by the Panchayat of the

estate or estates concerned on behalf of the village proprietary body and the Panchayat shall have the right to utilise the income derived from the land so reserved for the common needs and the benefits of the estate concerned."

It will also be useful to refer at this stage to section 46(2)(c) which gives the rule making power. This provision reads as under:—

"46(2) In particular and without prejudice to the generality of the foregoing power, the State Government may make rules providing for—

* * *

(e) the manner in which the area is to be reserved under section 18 and the manner in which it is to be dealt with and also the manner in which the village *abadi* is to be given to proprietors and non-proprietors (including scheduled castes, Sikh backward classes, artisans and labourers) on payment of compensation or otherwise."

Section 2(g) defines the expression "prescribed" as follows:—

" 'prescribed' means prescribed by rules made under this Act;"

Section 18 admittedly empowers the Consolidation Officer to reserve land for common purpose in certain contingencies but the manner in which reservation is to be made is guided and controlled by rule 16(ii). A plain reading of this rule indicates that in an estate or estates where during the consolidation proceedings there is no *shamlat deh* or such land is considered inadequate, land has to be reserved for the village Panchayat, and for other common purposes, out of the common pool of the village, and the scale of such reservation is to be prescribed by the Government from time to time.

(3) It is a common ground before us that a scale has been fixed by executive instructions issued by the State Government but not prescribed under the Rules. The contention on behalf of the State is that the word "prescribed" as used in rule 16(ii) must not be given the meaning as assigned to it by section 2(g) of the Act and all that is necessary under the rules is that some scale must be fixed. The contention, in other words, is that it could not be intended by the rule making authority that every time a scale is to be fixed or

changed, the rules be amended. We are afraid there is no substance in this contention. A meaning has been given to the word "prescribed" by the Act and if the same expression is used in the rules, it cannot be given a different meaning unless the context points to the contrary or it leads to any repugnancy. The State Government has the power to make rules under section 46(2)(e) in regard to the manner in which area is to be reserved under section 18 and the matter of fixation of scale beyond doubt relates to the manner of such reservation. It could not possibly be intended that scales could be fixed by executive instructions when, as a matter of fact, the fixation of such scales is of great value and significance to the land-owners in regard to reservation of land for common purposes. Executive instructions cannot take the place of rules and any interpretation permitting executive instructions to change the scales from time to time will be contrary to the scheme of the Act which provides for rules to be made for the manner in which an area is to be reserved for common purposes. Reference to section 18 of the Punjab General Clauses Act is not out of place in this connection and it reads as under:—

"Where, by any Punjab Act, a power to issue any notification, order, scheme, rule, form, or bye-law is conferred, then expressions used in the notification, order, scheme, rule, form or bye-law shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act, conferring the power."

This provision again shows that an expression used in any Act or the rules made thereunder has to be given the same meaning.

(4) Narula J. in *Ganda Singh v. State of Punjab and others* (1), had an occasion to consider section 18(c) and rule 16(ii). A controversy was raised before the learned Judge as to whether a scale of reservation as contemplated by rule 16(ii) had been prescribed or not. On a reference to the averments of the parties, the learned Judge reached the conclusion that though reservation had been made for common purposes out of the common pool, no such scale had been prescribed by the Government, as urged by the counsel for the State. This authority does not directly cover the point in the instant case.

(5) Again, the judgment of B.R. Tuli J., in *Puran and others v. The State of Haryana and others* (2), obliquely lends support to the proposition that reservation must be prescribed under rule 16(ii) but there is no discussion on the subject.

(6) The point in question has been dealt with only by R. S. Sarkaria J. in *Bool Singh v. State of Punjab and others* (3), where it is observed that "prescription of a scale by a mere executive order, as distinguished from a statutory rule, is not valid prescription of the scale within the contemplation of rule 16(ii), and has, therefore, to be ignored.

(7) We are in respectful agreement with the view of Sarkaria J. in the aforesaid case and must hold that the scale for reservation has to be prescribed in the rules itself and not that the same can be fixed by executive instructions.

(8) For the foregoing reasons, there is no merit in the appeal which stands dismissed with no order as to costs.

K. S. K.

LETTERS PATENT APPEAL

Before D. K. Mahajan and H. R. Sodhi, JJ.

THE MUNICIPAL COMMITTEE, LUDHIANA—;—Appellant.

versus

SURINDER KUMAR,—Respondent.

Letters Patent Appeal No. 568 of 1970.

September 23, 1971

Punjab Municipal Act (III of 1911)—Section 35—Judgment of a civil Court against a Municipal Committee—Committee passing no resolution to file appeal against the judgment—Appeal filed at the instance of the Executive Officer acting under section 35—Municipal Committee ratifying the action of the Executive Officer—Such ratification—Whether bad in law—Resolution of the Municipal Committee for the ratification passed after the expiry of period of limitation for the appeal—Such appeal—Whether to be treated within time.

(2) 1969 P.L.J. 47.

(3) 1968 C.L.J. (Pb. & Hr.) 911.