

M/s Muller & Phipps (India) Private Ltd. v. M/s Muller & Phipps (India) Private Ltd. Employees' Union and others

learned counsel for the petitioner-company, the effect would be that not only respondent No. 2 but Mongia also, would become junior to Goyal. Such a result would be, on the face of it, inequitable. I cannot, therefore, find in the impugned order any infirmity which could be rectified in exercise of the extraordinary jurisdiction of this Court. The writ petition is, therefore, dismissed with costs.

B.R.T.

Capoor, J.,

APPELLATE CIVIL

Before Harbans Singh, J.

BAKKAR SINGH AND ANOTHER — *Appellants*

versus

BAGGU SINGH AND OTHERS, — *Respondents.*

Regular Second Appeal No. 1248 of 1965.

1966.

February 28th

Punjab Pre-emption Act (1 of 1913)—S. 8(2)—Whether ultra vires the Constitution—Law of pre-emption—Scope of—“Rai Sikhs” and “Mahtams”—Whether interchangeable terms.

Held, that guidance for the exercise of the powers under section 8(2) of the Punjab Pre-emption Act is available from the preamble and the operative provisions of the Act. Moreover such exercise of power does not amount to legislation. Hence this section is not *ultra vires* the Constitution.

Held, that the law of pre-emption is an exception to the ordinary law of the land by which any person is at liberty to purchase land. Provisions in the Pre-emption Act provide an exception and give a preferential right of taking over sales against the wishes of the purchasers and in such a case it is only proper that the State Government be given power in appropriate cases to exempt certain sales from the provisions of the Act and the result is that so far as the exempted sale is concerned, the law applicable is the ordinary law of the land.

Held, that the “Rai Sikhs” are also known as “Mahtams” and these two words are inter-changeable.

Second Appeal from the decree of the Court of Shri Muni Lal Verma, II Additional District Judge, Ferozepore, dated the 31st day of May, 1965 reversing that of Shri Vinod Kumar Jain, Sub-Judge IInd Class, Fazilka, dated the 16th January, 1965, and dismissing the plaintiffs' suit and leaving the parties to bear their own costs throughout.

H. R. AGGARWAL, ADVOCATE, for the Appellants.

N. L. DHINGRA, ADVOCATE, for the Respondents.

JUDGMENT

HARBANS SINGH, J.—This appeal has arisen out of a Harbans Singh, J. suit filed by the tenants seeking possession by pre-emption of a sale effected by the landlords Lal Chand and others in favour of the vendees who resisted the claim, *inter alia*, on the ground that they were Mahtams by caste residing within the jurisdiction of Police Station, Fazilka and as such sales in their favour were exempt from the operation of the Pre-emption Act. Two points were dealt with by the Courts below (1) whether the vendees are Mahtams as aforesaid and, (2) whether the notification exempting them from the operation of the Pre-emption Act was invalid being *ultra vires* the Constitution. Both the Courts below have held the notification to be valid. The trial Court found that the vendees have not been proved to be Mahtams and were, therefore, not entitled to the protection of the notification and, consequently, decreed the suit. The learned lower appellate Court on the other hand found that the vendees were Mahtams and, consequently, dismissed the suit.

I have been taken through the judgment of the lower appellate Court and I have heard the arguments of the learned counsel for the appellants and have come to the conclusion that the finding of the lower appellate Court that the vendees are Mahtams is well based apart from its being a finding of fact. The position taken up by the witnesses on behalf of the vendees, Pathana, D. W. 1 and Kala Singh, D. W. 2 was that the words 'Mahtams' and 'Rai Sikhs' are interchangeable and Rai Sikhs are also known as Mahtams and *vice versa*. On the other side, the position taken was that only Muslims are known as Mahtams, and Hindus and Sikhs are never known as Mahtams and that Mahtams and Rai Sikhs are two different tribes. The learned lower Appellate Court referred to the Government Gazetteer of the district relating to 1935 as well as to a notification of the year 1942 issued by the Punjab Government under section 4 of the Punjab Alienation of Land Act, and from these two documents inferred that Rai Sikhs are also known as Mahtam and inasmuch as the vendees were admittedly Rai Sikhs, they could take advantage of the notification which granted exemption to Mahtams of the Fazilka Police Station. In the District Gazetteer,

Bakkar Singh and another v. Baggu Singh and others
 Harbans Singh, J.

Part B, Table 15; where list of tribes and castes is given, under the head 'Mahtam' one finds that the majority of the persons of that tribe were Hindus and Sikhs and a very small minority were Mohammadans. It is obvious, therefore, that the position taken up on behalf of the pre-emptors that Hindus and Sikhs are never described as Mahtams is wrong. Furthermore, I find from this list that Rai Sikhs are not mentioned at all under a separate tribe. Apart from this, Ferozepore Gazetteer of 1915 at page 99 has a clear statement to the effect that Rai Sikhs are also called Mahtams. This is what is stated while describing Mahtams, in the district of Ferozepore:—

"They speak Punjabi and are classed as Hindu or Sikh. No other tribe intermarries with them. They object to the name Mahtam and call themselves Rai. They trace their descent to the Suraj Bansi Rajputs. One of their ancestors, Jaspal, was a Kanungo in the service of Akbar, who gave him the title of Mahta, hence the name Mahtam."

In notification No. 1939-R, dated 18th of November, 1942, after declaring Mahtam tribe of Hoshiarpur, Jullundur, Ferozepore, etc., as agricultural tribe for the purposes of Punjab Alienation of Land Act, three notes were appended as follows:—

- (a) All persons either holding land or ordinarily residing in these districts, and belonging to the Rai tribe, shall be deemed to be an agricultural tribe within these districts;
- (b) the Rai tribe shall be deemed to be included in the group of agricultural tribes of these districts;
- (c) Rais are also known as Mahtams and shall be considered as members of a notified agricultural tribe in these districts under whichever designation they prefer to be known."

No doubt is left from the above that Rai Sikhs are also known as Mahatams and these two words are interchangeable. In view of the above, therefore, the finding of the Court below that the vendees, who are admittedly Rai Sikhs, are Mahtams must be upheld.

Another question raised in this Court was as to whether the notification covers the vendees, who are admittedly residents of Police Station Fazilka Sadar as distinguished from Police Station Fazilka City, the argument being that in the notification the words used are "Fazilka Police Station" and this should be taken to refer to Fazilka City and not to Fazilka Sadar. If the words "Fazilka Police Station" have to refer to only to one of these police stations, it should more appropriately refer to Fazilka Sadar rather than Fazilka City because there would not be any considerable agricultural land in the Fazilka City Police Station nor would this tribe be residing there. This tribe, as described in the Gazetteer, is used to hunting and live on the bank of river Suttlej. As at present advised, therefore, I feel that the words "Fazilka Police Station" would cover both Fazilka City and Fazilka Sadar, and, consequently, any Mahtam or Rai Sikh living in either of these two police stations would be covered by the notifications.

Bakkar Singh
and another
v.
Baggu Singh
and others

Harbans Singh, J.

This now brings us to the last argument and that was with regard to the validity of the notification. Sub-section (2) of section 8 of the Pre-emption Act, under which the notification has been issued runs as follows:—

"The State Government may declare by notification that in any local area or with respect to any land or property or class of land or property or with respect to any sale or class of sales, no right of pre-emption or only such limited right as the State Government may specify, shall exist."

The argument is two-fold. In the first place, it is urged that under this sub-section the State Government can declare sales (1) in any local area, (2) with respect to any particular type of property, or (3) with respect to a particular class of sales to be exempt from pre-emption and that the sub-section does not give power to the State Government to exempt a sale in favour of a particular tribe or person. I feel there is no force in this argument. This type of exemption will be covered by the words "with respect to any sale or class of sales" because sales in favour of a particular backward tribe can be treated as "a class" of sales.

Bakkar Singh
and another
v.
Baggu Singh
and others

Harbans Singh, J.

The other argument is that this sub-section clothes the Executive with excessive legislative powers without fixing any criteria on which this power should be exercised and that this section should be struck down on that ground. In the Full Bench case *Ramji Lal and another v. The State of Punjab and others* (1), this question was before the Bench. Referring to Supreme Court decision in *P. J. Irani v. State of Madras* (2), it was held that guidance for the exercise of the powers under section 8(2) of the Punjab Pre-emption Act was available from the preamble and the operative provisions of the Act, and after discussing the operative provisions, Mr. Justice Mehar Singh delivering the judgment of the Full Bench, noted the arguments that the operative provisions of the Act provide for certain types of sales to be excluded and that this should afford proper guidance. It was urged that (i) sales by Courts or revenue officers are excluded by section 3(5) (a) and creation of occupancy tenancies by section 3(5) (b), (ii) that business premises are excluded by section 5(a) (i), (iii) that religious buildings, buildings of public utility such as Dharamsalas, and the like buildings are excluded by section 5(a) (i) and (ii), (iv) that to protect a person bringing under plough waste land sales of such land are excluded by section 5(b); (v) that right of pre-emption is excluded from any cantonment except when it is permitted under a notification by the State Government in the case of the sale of any agricultural land which is provided in section 8(1); (vi) that sales made by and to the Government and local authorities are excluded by section 9, and (vii) that a sale made to any company under the provisions of Part VII of the Land Acquisition Act, 1894, is also excluded by section 9.

That was a case where land was purchased by a limited company but it was not done through the Government and the company's acquisition was sought to be protected by the Government by issuing the impugned notification. It was urged that the protection so sought to be afforded was akin to the protection of the acquisition by the company through the instrumentality of State Government which is exempt from pre-emption under section 9. Though

(1) I.L.R. (1966) 2 Punj. 125.

(2) A.I.R. 1961 S.C. 1731.

the decision of the Full Bench was not based on this argument, yet at page 17 of the original judgment it was observed that there was force in the contention of the learned Advocate-General. Before me it was urged that apart from these guiding principles that are available from the operative part of the Act itself, there are two Articles of the Constitution which also provide some guidance. These are clause (4) of Article 15 and Article 46. Clause (1) of Article 15 provides that there should be no discrimination against any citizen on grounds only of religion, race, caste, sex, etc. Then clause (4), which was added by the First Amendment Act of 1951, provides as follows:—

Bakkar Singh
and another
v.
Baggu Singh
and others

Harbans Singh, J.

“Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.”

Article 46 is as follows:—

“The State shall promote with special care the educational and economic interest of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, *

* * *

In the present case there can be no manner of doubt that Mahtams or Rai Sikhs not only belong to scheduled caste but they are economically backward. Paragraph (xx) at page 98 of the Ferozepur District Gazetteers of the year 1915 clearly shows that this tribe is backward not only socially but also economically and that these Mahtams were mostly from Mamdot and Fazilka * * * “they seemed to be originally a tribe of hunters living chiefly on the river banks and hunting in the tamarisk (pilchi) jungle which grows along the river on land subject to inundation. * * * * * The Mahtam is very fond of *sarr* grass, and one of his chief employments is making rope and other articles out of it. They are considered a low caste and often live apart from the other villagers, but many of them have taken to agriculture, and make very good industrious cultivators, especially on

Bakkar Singh and another
 v.
 Baggu Singh and others
 Harbans Singh, J.

lands subject to inundation. Some villages and parts of villages on the Sutlej are owned by them: their huts are often squalid and dirty, but they are as a rule prosperous and somewhat quarrelsome. Their dark complexion and general appearance as well as their hereditary occupation of hunting have led some to argue them an aboriginal tribe." If, in view of this state of affairs of their economic and social development the State Government felt it desirable to assist them in their economic progress by not applying the law of pre-emption to sale taken by them, that would certainly be in accordance with the guidance afforded by the provisions of the Constitution.

It has further to be borne in mind that the law of pre-emption is an exception to the ordinary law of the land by which any person is at liberty to purchase land. Provisions in the Pre-emption Act provide an exception and give a preferential right of taking over sales against the wishes of the purchasers and in such a case it is only proper that the State Government be given power in appropriate cases to exempt certain sales from the provisions of the Act and the result is that so far as the exempted sale is concerned, the law applicable is the ordinary law of the land. This aspect was considered by a Division Bench of this Court in *Sadhu Singh v. District Board, Gurdaspur, and another* (3). Before the Bench what was being considered was the provisions in the East Punjab Urban Rent Restriction Act, 1949, whereby the State Government was given powers to exempt any premises or class of premises from the operation of the Act. At page 8 this matter was considered as follows:—

"In considering the respective contentions of the parties the first question that requires determination is whether the exercise of the power of exemption under section 3 amounts to legislation. It is only if it is held that it is legislation that the question that it is delegated legislation will arise. Before examining this question, it may be mentioned that the East Punjab Urban Rent Restriction Act is an exception to

(3) 1962 P.L.R. 1.

the general law of the landlord and tenant. Whenever the power of exemption under section 3 is exercised, the building or class of buildings exempted ceased to be governed by the Act and would be governed by the general law. Thus the power of exemption conferred by section 3 is merely to restore the applicability of the General law by taking away the exemption to it created by the special provision. In this view of the matter it can hardly be said that section 3 confers any legislative power".

Bakkar Singh
and another
v.
Baggu Singh
and others

Harbans Singh, J.

Then the Bench goes to support this view by decided cases which it is not necessary to reproduce. I am, therefore, as at present advised, inclined to take the view that there are not only criteria available in the preamble and operative provisions of the Act as well as in the Constitution on which power vested in the State Government is to be exercised, but also that such exercise of power does not amount to legislation. In view of this it is not correct to say that the section is *ultra vires* the Constitution.

The learned Counsel for the appellants next urged that the exemption should have been in favour of Mahtams as a whole wherever they lived and that this exemption relating to Mahtams residing in a particular area is bad. There is obviously no force in this contention because according to the State Government it may be that Mahtams living in a particular area are backward and require such protection.

For the reasons given above, I find that there is no force in the appeal which is dismissed but with no order as to costs.

K.S.K.

FULL BENCH.

Before D. Falshaw, C.J., Inder Dev Dua and Daya Krishan Mahajan, JJ.

NAR SINGH,—AND OTHERS,—*Petitioners*
versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents*.

Civil Writ No. 2200 of 1963.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—S. 42—"At any time"—Power of the State

1966.

March 17th