

Didar Singh *alias* Dari *v.* The District Magistrate, Amritsar etc.
(Gopal Singh, J.)

120 out of which the candidate must secure 60 marks in order to pass the examination.

(3) It is admitted by the learned counsel for the Guru Nanak University that the petitioner has secured 50 per cent marks out of the aggregate 120 meant for internal assessment as a whole and has thus complied with the requirement of Regulation 10-A (iii). He has also obtained more than 50 per cent marks in each theory paper and practical including internal assessment marks, so that the petitioner has complied with the requirements of Regulation 10-A (i) and (ii) as well. Accordingly he should have been declared as having passed the examination. Instead he has been wrongly declared as having failed.

(4) For the reasons given above, I accept this writ petition and quash the result of the petitioner already declared, and direct the Guru Nanak University to declare the result of the petitioner in accordance with the interpretation of Regulations 10-A and 10-B as made above. Since the matter was *res integra*, I leave the parties to bear their own costs.

N.K.S.

CRIMINAL MISCELLANEOUS

Before Gopal Singh, J.

DIDAR SINGH ALIAS DARI,—Petitioner.

versus

THE DISTRICT MAGISTRATE, AMRITSAR, ETC.—Respondents.

Criminal Writ No. 25 of 1972.

March 30, 1972.

Maintenance of Internal Security Act (XXVI of 1971)—Sections 3(2) and 12(1)—Constitution of India (1950)—Article 22(4) and (5)—Detention by District Magistrate under section 3(2)—Order of confirmation passed by State Government after more than three months from the date of detention—Such detention—Whether becomes illegal—Unjustified delay in forwarding

the representation of the detenu by the State Government to the Advisory Board—Whether renders the detention illegal.

Held, that under clause (4) of Article 22 of the Constitution of India, 1950, an order of confirmation of detention has to be passed by the State Government within three months of the date of detention. If the order of confirmation is not so passed within this period, the detention becomes illegal. (Para 3).

Held, that under clause (5) of article 22 of the Constitution, a detenu has to be afforded the earliest opportunity in making a representation against his order of detention. The affording of the earliest opportunity loses its purpose and significance, if after the representation is made, the same without any justifiable cause is retained and no heed, for its being promptly forwarded to the Advisory Board, for whose consideration it is meant, is paid to it. Article 22(5) of the Constitution connotes that no time should be lost in forwarding the representation to the Advisory Board, and the Advisory Board should hear a detenu on the earliest date to be fixed after a period of time just sufficient to enable the detenu to appear and be heard in support of representation. The safeguard provided for a detenu in clause (5) to protect him against invasion upon his civil liberty guaranteed to the citizens of the country becomes illusory, if the representation made on behalf of a detenu detained under the law pertaining to preventive detention is not forwarded by the State Government to the Advisory Board soon after it is received. Hence unjustified delay in forwarding the representation of the detenu by the State Government to the Advisory Board renders the detention illegal.

(Para 4).

Petition under Article 226 of the Constitution of India, read with Section 491 Criminal Procedure Code, praying that this Hon'ble Court be pleased to issue Rule Nisi to the respondents directing them to produce the petitioner before this Hon'ble Court and to justify his detention in accordance with the procedure established by law, and after hearing the parties issue a writ of habeas corpus or any other appropriate writ, direction or order for setting aside the petitioner at liberty.

T. S. Munjral, Advocate, for the petitioner.

I. S. Tiwana, Assistant Advocate-General, Punjab, for the respondents.

JUDGMENT

GOPAL SINGH, J.—(1) This is *habeas corpus* petition filed by Didar Singh. He is a detenu. On December 11, 1971, order of detention of the detenu was passed by the District Magistrate, Amritsar

Didar Singh *alias* Dari *v.* The District Magistrate, Amritsar etc.
(Gopal Singh, J.)

under Section 3(2) of Maintenance of Internal Security Act, 1971, hereinafter called the Act. The detenu was detained on that date. Grounds of detention were supplied to the detenu on December 15, 1971. The detenu forwarded a representation to the State of Punjab on December 30, 1971. The representation was received by the Secretary, Home Department on January 3, 1972. It was sent for comments of the District Magistrate on January 5, 1972. Comments were made by him on January 19, 1972. It was received back from the District Magistrate by the Secretary on January 20, 1972. It was forwarded on February 16, 1972 to the Advisory Board. The Board met on February 17, 1972. It took the view that the grounds justified the detention. On March 14, 1972, the State of Punjab passed order of confirmation of detention under Section 12(1) of the Act.

(2) Shri Tirath Singh Munjral appearing on behalf of the detenu has raised the following points:—

- (1) That the detention of the detenu is illegal inasmuch as more than three months have passed from the date of detention when the order of confirmation was made by the State of Punjab.
- (2) That delay of 27 days in forwarding the representation by the State of Punjab to the Advisory Board renders the detention illegal.

(3) I take up point No. 1. The order of detention was served on the detenu on December 11, 1971, while the order of confirmation was made on March 14, 1972. Thus, confirmation was made more than three months after the date of detention. Under clause (4) of article 22 of the Constitution, an order of confirmation of detention has to be passed by the State Government within three months of the date of detention. The question whether it could be so on the basis of the language of clause (4) of article 22 of the Constitution came up for consideration in the Supreme Court in *Shri Ujjal Mandal v. The State of West Bengal* (1). It was held that if order of confirmation is not passed by the State Government within three months from the date of detention of a detenu, the detention

(1) Writ Petition No. 420 of 1971 decided by Supreme Court on 21st January, 1972.

becomes illegal. Bound as I am by the decision of the highest Court in India, I declare the detention of the detenu in the instant case to be illegal.

(4) Even on point No. 2, I find that the detention of the detenu is illegal. As is clear from the facts given above, the representation made on behalf of the detenu was received back, from the District Magistrate after he appended his comments to it in the office of the Home Secretary on January 20, 1972. It was forwarded by the Secretary to the Advisory Board on February 16, 1972. There is no explanation whatsoever forthcoming on behalf of the respondents as to why no attention was paid for as long a period of time as 27 days to deal with the representation and why utter callousness was shown in not caring to forward promptly the representation soon after it was received. Under clause (5) of article 22 of the Constitution, a detenu has to be afforded the earliest opportunity in making a representation against his order of detention. The affording of the earliest opportunity loses its purpose and significance, if after the representation is made, the same without any justifiable cause is retained in the office of the Home Secretary of a State Government and no heed, for its being promptly forwarded to the Advisory Board, for whose consideration it is meant, is paid to it. The expression, 'afford him earliest opportunity' in making a representation in article 22(5) connotes that the representation should be dealt with by the Home Secretary soon after its receipt, no time should be lost in forwarding it to the Advisory Board and the Advisory Board should hear a detenu on the earliest date to be fixed after a period of time just sufficient to enable the detenu to appear and be heard in support of representation. The words, 'the earliest' in that expression mean the minimum time just sufficient for the said three purposes and nothing more. The words 'in making the representation' in relation to the affording of the earliest opportunity not only mean filing, presenting or forwarding the representation but also and more so effectively enabling him to place at the earliest his case before the Board. This implies that a detenu should be heard by the Board within minimum period of time indispensably necessary to forward the representation and to enable him to appear for being satisfactorily heard in its support by the Board. The safeguard provided for a detenu in clause (5) of article 22 of the Constitution to protect him against invasion upon his civil liberty guaranteed to the citizens of the country becomes illusory, if the representation made on behalf

Ram Saran Dass v. The Commissioner, Ambala Division, Ambala etc.
(Sandhawalia, J.)

of a detenu detained under the law pertaining to preventive detention is not forwarded by the State Government to the Advisory Board soon after it is received. This unexplained delay, inordinate and culpable as it is, vitiates the detention and renders it illegal.

(5) For the foregoing reasons, I allow the writ petition and direct that the detenu be forthwith set at liberty.

N.K.S.

CIVIL MISCELLANEOUS

Before S. S. Sandhawalia, J.

RAM SARAN DASS,—Petitioner.

versus

THE COMMISSIONER, AMBALA DIVISION, AMBALA, etc.,—Respondents.

Civil Writ No. 3726 of 1971.

March 30, 1972.

Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Sections 5, 6 and 10-A—Sale or disposition of Panchayat land under section 5—Section 10-A—Whether applicable.

Held, that the crucial words in section 10-A of Punjab Village Common Lands (Regulation) Act, 1961, are "lease, contract or agreement". None of these words cover completed sales. A sale involves a transfer of ownership in exchange for a price paid or promised, or part paid and part promised. It passes the title from the seller to the purchaser. A contract of sale on the other hand does not create any interest in or charge on the property regarding which the agreement is made. Hence section 10-A of the Act is not applicable to a sale or disposition of any land made by the Panchayat for the benefit of the inhabitants of the village under section 5 of the Act. Moreover, section 6 of the Act expressly provides for a remedy for any person aggrieved by any act or decision under section 5 to file an appeal within a limited period of 30 days. The remedy under this section is the specific remedy provided for the infraction of section 5 and, therefore, resort cannot possibly be made to the general provision of section 10-A. (Paras 5 and 6).

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of certiorari, or any other appropriate writ, order