

Sodhan v. Faquir Singh and another (S. S. Sodhi, J.)

or to impose restrictions upon the use and development of land comprised in the controlled area under any other law for the time being in force.

(7) In view of the above discussion, it is clear that the provisions of the Scheduled Roads Act do not operate in the unbuilt area declared by the order of Governor of Haryana Annexure P. 2 falling within the municipal limits of Thanesar town, and the powers of the Municipal Committee, the Deputy Commissioner and the State Government to prepare and finalise the town planning scheme for the unbuilt area in which the land of the petitioners is located are in no way fettered by the Scheduled Roads Act. The Government while finalising the town planning scheme is no doubt to take into consideration the fact that such a town planning scheme in no way causes infringement of the law which provides for proper maintenance, expansion and further development of the scheduled roads in the State.

(8) Consequently I allow these petitions and issue a writ of *mandamus* and direct the respondents to prepare for immediate implementation the town planning scheme under section 203 of the Municipal Act for the unbuilt area declared,—*vide* order Annexure P. 2 wherein the land of the petitioners is situate; to notify the same for inviting objections thereto; to dispose of such objections and finalise the scheme within six months from today.

(9) There shall be no order as to costs.

H. S. B.

Before : S. S. Sodhi, J.

SODHAN,—Petitioner.

versus

FAQUIR SINGH and another,—Respondents.

Civil Revision No. 68 of 1986

July 30, 1986

Indian Evidence Act (1 of 1872)—Sections 137 and 138—Statement of a witness partly recorded in a Court—Said witness allowed to be given up by the party calling him on the plea that the witness

had been won over—Court further directing that evidence so recorded should be treated as non-existent—Opposite party seeking to cross-examine the said witness—Said permission declined by the Court on the plea that the evidence recorded was treated to be non-existent—Aforesaid order—Whether contrary to law and as such liable to be set aside.

Held, that after the oath had been administered to the witness and the statement partly recorded the said witness cannot be given up as having been won over by the party calling him. There is no provision in law that could support or justify the order of the Court declining the prayer of the opposite party to cross-examine the said witness on the plea that the witness had already been given up and his evidence ordered to be treated as non-existent. As such the order of the trial Court is blatantly contrary to law and liable to be set aside.

(Para 2).

Petition under section 115, C.P.C. for the revision of the order of the Court of Shri Bhupinder Singh Sidhu, P.C.S., Sub-Judge, 1st Class, Kharar, dated 2nd November, 1985 rejecting the application, seeking permission to cross-examine Kehar Singh, D.W.

Brij Mohan Lal, Advocate, for the Petitioner.

Satya Dev Bansal, Advocate, for the Respondent.

JUDGMENT

S. S. Sodhi, J.:

(1) After the statement of a witness has been partly recorded, can he be allowed to be given up by the party calling him, on the plea that he has been won over and it be ordered that his testimony be treated as non-existent? The challenge here is to precisely such an order.

(2) One Kehar Singh *lambardar* was produced as a witness by the defendant. After the oath had been administered to him and his statement partly recorded, he was allowed to be given up on the plea of the defendants that he had been won over and it was directed that his statement be not read in evidence. Counsel for the plaintiff instead sought permission to cross-examine the witness. This request was declined on the ground that the witness had already been given up and his evidence ordered to be treated as non-existent. There is no provision of law that counsel for the

**Shamsher Singh v. Commissioner, Jullundur Division
and others (S. S. Kang, J.)**

respondents could point to support or justify this order. This being so there can be no escape from the conclusion that the procedure adopted by the trial court was one wholly unknown to law and the impugned order must thus be set aside as being blatantly contrary to law.

(3) Faced with this situation, Mr. Satya Dev Bansal, counsel for the respondents sought to prevent interference with the impugned order on the plea that the provisions of Section 115 of the Code of Civil Procedure, do not permit challenge in revision against it. This is indeed a contention wholly devoid of merit. Material irregularity in the impugned order is writ large and if allowed to stand, the order would undoubtedly occasion failure of justice. This being so, interference in revision is both competent and imperative.

(4) The impugned order of the trial court is accordingly hereby set aside with the direction that the witness—Kehar Singh *lambardar* be allowed to be further examined by the defendants, if they so desire, and he, thereafter be allowed to be cross-examined by the plaintiff. Counsel for the respondent made a prayer here that this witness may be declared to have been won over by the plaintiff and may consequently be permitted to be cross-examined by the defendants too. This is a prayer which may be addressed to the trial court and if made there, it would, of course, be open to the trial court to pass such orders thereon as it may deem appropriate.

(5) This revision petition is accordingly hereby accepted with costs. Counsel fee Rs. 200.

H. S. B.

Before : P. C. Jain, C.J. and S. S. Kang, J.

SHAMSHER SINGH,—Appellant.

versus

COMMISSIONER, JULLUNDUR DIVISION and others,—
Respondents.

Letters Patent Appeal No. 535 of 1982

August 5, 1986

Constitution of India, 1950—Articles 226 and 227—Punjab Land Revenue Act (XVII of 1887)—Section 3(8) as amended by Punjab