CIVIL MISCELLANEOUS

Before Tek Chand and P. D. Sharma, JJ.

HIS HIGHNESS MAHARAJA SIR PARTAP SINGH, MALVENDRA BAHADUR,—*Petitioner.*

versus

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

Civil Writ No. 39 of 1961.

1962

November, 9th.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955) S. 32-FF and 32-K—'Transfer' and 'disposition'—Meaning of—Change of the use of land from one purpose to another—Whether constitutes 'disposition of the land'—Exemption from ceiling on land in respect of orchards, etc.,—Whether applies to orchards, etc., in esse or also to those in posse—S. 32-M—Scope of—Whether conflicts with S. 32-K—Constitution of India—Article 362—Competency of Legislatures to make laws affecting the guarantee or assurance given to the Rulers of Indian States under a covenant—Extent of—Interpretation of statutes—Rules as to, stated.

Held, that a 'transfer' is an act by which the owner of a thing delivers it to another person with the intent of passing the rights, which he has in it, to the latter. A 'disposition' is the getting rid or making over of anything. It includes relinquishment distribution or alienation of something. A right to select or reserve an area under Pepsu Tenancy and Agricultural Land Act for purposes of self-cultivation or other purposes which under the Act entitle the owner to exemption from ceiling on land, by no stretch of language can be treated as either 'transfer' or 'other disposition of land'. It is not any dealing with the land by the landowner himself which can be termed 'other disposition of land'. A 'disposition' as, for example, in a will, is the expression of an intention on the part of the owner as to the manner of disposal or distribution of his property. A 'disposition' may also be in the form of a settlement of a family arrangement. A person, who changes the use of his land from one purpose to another, from agricultural purpose to utilisation as a dairy farm, is not making a disposition of the land. When

a person makes over or conveys something to another, he is said to make a disposition. The Legislature could not have used the word 'disposition' in any other sense, as, no person when making use of his property in a different manner than formerly can be said to subject it to a 'disposition' in the legal sense.

Held that the exemption from ceiling on land as expressed in section 32-K of the Act applies to orchards, specialised farms, sugarcane farms, efficiently-managed farms, etc., which were in actual existence when Chapter 4-A was inserted, that is, on 30th October, 1956 and not to those which can come into existence in future. The date of vestment in the State Government of the surplus lands under section 32-E cannot be treated as a *terminus ad quem* up to which the person may qualify himself for obtaining exemption as it will introduce an element of uncertainty and the time for transferance of valuable rights of ownership will become uncertain and fortuitous. The provisions of the Act cannot be construed so as to enable a party to qualify himself to continue to earn exemptions till he is divested. Where the Legislature intended to give time to an owner after the coming into force of Chapter 4-A to qualify himself for the exemptions, it has so expressed itself in clear language as in section 32-K(1)(vi) and section 32-B. No exemption can be claimed for what is *non-est*. A mere expression of intention to utilise some area in future for purposes for which exemption in law is available, is not enough within the contemplation of section 32-K. On the basis of what the landowner intends to do in future no return can be based, no enquiry can be made by the Collector and no advice can be submitted by the Land Commission. It is not the intention of the law to give exemption to orchards and specialised farms mentioned in section 32-K(1)(i) to (iv) while they are in an embryonic stage. Section 32-K(1)(i) to (iv) refers to existing orchards, specialised farms, sugarcane farms, etc., and not to those which are brought into being after 30th of October, 1956, and prior to the vestment of the surplus area in the State Government.

Held, that section 32-B deals with both the matters relating to selection of land for the purpose of retention up to the permissible limits and also to the land in respect of which exemption is being claimed. The language of

section 32-M is confined to the former class of land which is selected, that is desired to be retained within the permissible limits for personal cultivation, but not to the second category of land mentioned in section 32-B, i.e., lands in respect of which exemption is being claimed. It cannot, therefore, be urged with any degree of plausibility that section 32-M contemplates a subsequent claim in section 32-K regarding the land which is the subject-matter of future acquisition by inheritance. The language of section 32-M does not warrant such an inference. Alternatively, even if it were so, section 32-M confines itself to an entirely different class of land which is subject-matter of future acquisition by inheritance. The provisions of section 32-M in no way conflict with those of section 32-K.

Held, that Article 362 casts an obligation upon the State Legislature to take into consideration, while passing any legislation affecting the covenanted rights of the Ruler of an Indian State, the undertaking given therein. These rules are not sacrosanct and may be disregarded by the competent State Legislature. They do not override the powers of the Legislature to pass legislation affecting the guarantees given. The guarantee or assurance given to a Ruler under the terms of the Covenant is not infringed by the passing of an Act adversely affecting such a guarantee. The term "due regard" means, the consideration in a degree appropriate to the demand of the particular matter. It indicates exercise of sound discretion after balancing the pros and cons. The Covenant is subject to a new legislation. After due consideration is paid to the guarantee given to him, the petitioner like an ordinary citizen enjoys no other immunity from the applicability of this provision to him.

Held, that the basic rule of interpretation of a statute is that it has to be expounded 'according to the intent of them that made it'. Where the words of the statute admit of no ambiguity and by themselves are precise and clear, their natural and ordinary meanings have to be ascertained in order to discover the intention of the Legislature. Another well-known rule of interpretation is that the words of a statute, when there is doubt about their meanings, are to be understood in the sense in which they best harmonise with the subject of the enactment and the

object which the Legislature has in view. Where a text is susceptible of more than one meaning, the effects or consequences which would ensue, if a particular meaning is adopted rather than the other, may aid in pointing the real intention of the Legislature. If one of the inferences shows that that was not the intention of the Legislature, then that construction should be avoided. The Courts, where they find it absolutely necessary, may even go to the extent of departing from the ordinary meaning and grammatical construction if the apparent purpose of the enactment is defeated thereby or leads to unintended hardship or absurdity. The office of the Judge is, to make such construction as will suppress the mischief, and advance the remedy, and to suppress all evasions for the continuance of the mischief. As remarked by Maxwell, "to carry out effectually the object of a statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it is prohibited or enjoined".

Held, that where the language of the statute is clear and unambiguous on its face it must be given effect to. The first duty of the Court is to ascertain the legislative intention from the expressed words of the enactment. It is only in the case of doubt arising from any imprecise language used that resort has to be made to statutory interpretation. In such an eventuality, in the words of Lord Coke, "the office of all the Judges is always to make such construction as shall suppress the mischief, advance the remedy, and to suppress subtle invention and evasions for continuance of the mischief, and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the act *pro bono publico*". When construing a statute, the Courts have to bear in mind the reason for its enactment with reference to its intended scope and purpose. It is the endeavour of the Courts to carry out this purpose rather than to frustrate it.

Case referred by Hon'ble Mr. Justice Tek Chand to a larger Bench on 27th March, 1962, for decision owing to importance of the questions of law involved in the case. The case was finally decided by a Division Bench consisting of Hon'ble Mr. Justice Tek Chand and Hon'ble Mr. Justice P. D. Sharma, on 9th November, 1962.

Petition under Article 226 of the Constitution of India, praying that a writ in the nature of certiorari, mandamus *or any other appropriate writ, order or direction be issued quashing the report of respondent No. 2, dated 17th October, 1962.*

H. L. SIBAL AND B. R. AGGARWAL, ADVOCATES, for the Petitioner.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL AND A. M. SURI, ADVOCATES, for the Respondents.

ORDER

TEK CHAND, J.—By my order dated 27th March, 1962, this case was referred to a Division Bench as I thought that the question involved in this case was of considerable importance and no guidance was forthcoming from any decided case cited at the bar. Tek Chand, J.

The facts giving rise to this writ petition under Article 226 of the Constitution are that the petitioner was a sovereign Ruler of Nabha State prior to 15th August, 1947. With the consent of the sovereign Rulers of the Punjab State, a Union was formed with the concurrence of the Government of India known as the Patiala and East Punjab States Union. Before the formation of this Union, a Covenant was entered into between all the sovereign Rulers and the Government of India. Under Article 12(1) of the Covenant, "the Ruler of each Covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of his making over the administration of that State to the Rajpramukh". Accordingly, land measuring 254 Bighas and 4 Biswas in village Alhoran, tahsil Nabha, district Patiala, besides some other property, was declared to be the private and personal property of the petitioner by the Government of Pepsu (*vide*

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annexure 'A'). The petitioner states that he has throughout been in possession of this area as owner. The Pepsu Tenancy and Agricultural Lands Act (Pepsu Act 13 of 1955) became law on 4th March, 1955. This Act was passed to amend and consolidate the law relating to tenancies of agricultural lands and to provide for certain measures of land reforms and for the security of land tenures. The purpose of the Act was said to protect the tenants against unjust and abrupt termination of tenancies. The object of the Act was expressed in these words—

> "Relationship between the landlords and tenants in Pepsu are strained resulting in an explosive situation. Legislation to amend and consolidate the existing law in the State relating to tenancies of agricultural lands and to provide for certain measures of land reforms on the lines undertaken by the adjoining State of Punjab is not only necessary but also urgent. The Bill also seeks to give effect to some of the recommendations made by the Pepsu Agrarian Reforms Committee appointed to examine the system of land tenure in the State."

This Act has been amended from time to time. Chapter 4-A, containing sections 32-A to 32-N was inserted by Pepsu Act 15 of 1956, which came into force on 30th October, 1956. A new section 32-NN was added later on. Chapter 4-B which was also inserted by Pepsu Act 15 of 1956, consists of one section, section 32-P, which deals with the constitution, functions and powers of the Land Commission. The Pepsu Land Commission is established by the State and one of its duties is to advise the State Government with regard to the exemption of Lands from the ceiling in accordance with the

provisions of section 32-K. The advice given by the Commission shall be binding on the State Government and no final statement shall, in a case in which exemption is claimed under section 32-K, be published unless such advice is included therein. The other duties of the Land Commission are to determine fair rents for the purposes of section 32-G, and the market value of any building, structure, tubewell or crop under sub-section (4) of section 32-G.

Before dealing with the allegations and the prayer of the petitioner, it is desirable to give a brief resume of the relevant provisions of the Pepsu Tenancy and Agricultural Lands Act, hereinafter referred to as the Pepsu Act.

Section 3 of the Act define the permissible limit which means 30 standard acres of land. There is a proviso in the case of an allottee where the permissible limit varies.

Section 4, lays down that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any usage, agreement, settlement, grant, Sanad or any decree or order of any Court or other authority. These provisions of the Act override inconsistent provisions contained in any other law or instrument, agreement, etc.

Section 5 enables, the land owner owing land exceeding 30 standard acres to select for personal cultivation from the land held by him in the State any parcel or parcels of land not exceeding in aggregate area the permissible limit. He may reserve such land for personal cultivation by intimating his selection in the prescribed form and manner to the Collector. The right to reserve

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land for personal cultivation shall cease if it is not exercised by the land owner, *inter alia* within a period of six months from the commencement of the President's Act (Act 8 of 1953). The land thus reserved for personal cultivation is to be notified by the Collector (*vide* section 6).

Chapter 3 commencing with section 7 deals with rights of tenancy and other allied matters and Chapter 4 beginning with section 20 deals with acquisition of proprietary rights by tenants. The provisions of these two chapters need not be noticed as their consideration does not arise in this case.

Chapter 4-A was inserted by Pepsu Act 15 of 1956, which had come into force on 30th October, 1956.

Section 32-A places ceiling on land and provides that no person shall be entitled to own or hold as land owner or tenant land under his personal cultivation within the State which exceeds in the aggregate the permissible limit.

Section 32-B requires the filing of returns by persons having land in excess of the ceiling. This has to be done within a period of one month from the commencement of the Pepsu Tenancy and Agricultural Lands (Amendment) Ordinance, 1958. Thus the last date for furnishing return to the Collector is 30th August, 1958. The return has to be filed in the prescribed form and a selection of the parcel or parcels of the land not exceeding in the aggregate the permissible limit which the applicant desires to retain and also the lands in respect of which he claims exemption from the ceiling, is to be indicated.

Section 32-BB requires the furnishing of a declaration supported by affidavits in the case of land situated in more than one Patwar circle in a

form and manner as may be prescribed. Where this is not done, the prescribed authority may direct that the whole or part of the land of such land owner or tenant as the case may be in excess of ten standard acres shall be deemed to be surplus area.

Section 32-C enables the Collector to obtain information through other agency.

Under section 32-D, the Collector is required to prepare a draft statement in the manner prescribed giving particulars of the total area of land owned and the specific parcels which the land-owner may retain by way of his permissible limit or exemption from ceiling and also the surplus area. Sub-section (2) requires that the draft statement shall include the advice of the Pepsu Land Commission appointed under section 32-P regarding the exemption from ceiling, if claimed, by the land owner. It is also provided that a person aggrieved by an order of the Collector may prefer an appeal to the State Government. After the appeal is disposed of, the draft statement shall be made final in terms of the order of the Collector or the State Government, as the case may be, or in terms of the advice of the Pepsu Land Commission regarding exemption from the ceiling claimed by the land owner, if any, and published in the official gazette.

Section 32-E, requires that after the publication in the official gazette of the final statement, the surplus area shall be vested in the State Government for a public purpose and all rights, title, interest, etc., of all persons in such land shall be extinguished, and all such rights shall vest in the State Government free from encumbrances created by any person.

Under section 32-F, the Collector is empowered after the vesting of the surplus area to direct the

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land owner or the tenant to deliver possession thereof.

Under section 32-FF, transfers or other dispositions of land effected after 21st August, 1956, shall not effect the right of the State Government to the surplus area to which it would be entitled but for such transfer or disposition save in cases specified in the section. It has to be noted that this provision relates to transfers or other dispositions.. A 'transfer' is an act by which the owner of a thing delivers it to another person with the intent of passing the rights, which he has in it, to the latter. A 'disposition' is the getting rid or making over of anything. It includes relinquishment, distribution, or alienation of something. A right to select or reserve an area under this Act for purposes of self-cultivation or other purposes which under the Act entitle the owner to exemption from ceiling on land, by no stretch of language can be treated as either 'transfer' or 'other disposition of land.'

Section 32-G refers to principles for payment of compensation and section 32-H to payment of compensation, which may be given in cash or in bonds or partly in either.

Section 32-J provides that the surplus area acquired under section 32-E shall be at the disposal of the State Government.

Section 32-K deals with exemption from ceiling on land. As the main arguments have centred round its interpretation, it is reproduced below *in extenso*—

"32-K. Exemption from ceiling on land.—

(1) The provisions of section 32-A shall not apply to—

(i) orchards where they constitute reasonably compact areas;

(ii) specialised farms engaged in cattle breeding, dairying or wool raising;

(iii) sugarcane farms operated by sugar factories;

(iv) efficiently managed farms which consist of compact blocks on which heavy investment or permanent structural improvements have been made and whose break-up is likely to lead to a fall in production;

(v) lands belonging to registered co-operative societies formed for the purpose of co-operative farming; provided the land owned by an individual member of the society does not exceed the permissible limit; and

(vi) where a landowner gives an undertaking in writing to the Collector that he shall, within a period of two years from the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, plant an orchard in any area of his land not exceeding ten standard acres, such area of land.

(2) Where a landowner has, by an undertaking given to the Collector, retained any area of land with him for planting an orchard and fails to plant the orchard within a period of two years referred to in clause (iv) of sub-section (1), the land so retained by him shall, on the expiry of that period, vest in the State Government under section 32-E, and compensation therefor, shall be payable in accordance with the provisions of this chapter."

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Section 32-L places a ban on future acquisition of land in excess of permissible limit; and Section 32-M places ceiling on future acquisition of inheritance.

Section 52 confers rule-making power on the State Government and in pursuance of that power the Pepsu Tenancy and Agricultural Lands Rules, 1958, were made by the Government of Punjab by notification No. 126-LR-57/1611, dated 21st March, 1958.

Rule 30 of the rules requires the Pepsu Land Commission to take into account certain specified factors while advising the State Government with regard to exemption of orchards constituting reasonable compact areas or specialised farms engaged in cattle breeding, dairying or wool raising or sugar-cane farms operated by sugar factories from the ceiling in accordance with the provisions of section 32-K.

The petitioner, besides maintaining that the provisions of the Pepsu Act did not apply to him in view of the covenant entered into between him and the Union of India, also claimed exemption under section 32-K(i)(ii) of the Act contending that after furnishing particulars, as required under section 32-B, he had set up a dairy farm on a piece of land and had already spent a sum exceeding Rs. 2.00 lakhs. The petitioner had made an application under section 32-B on 30th August, 1958, which was the last date claiming exemption under section 32-K, *inter alia*, on the ground that he had set apart the area for a specialised farm engaged in cattle breeding and dairying. It is not denied by the petitioner that there was no dairy farm in existence when the return was filed under section 32-B. At that time he had

only indicated his intention of establishing a dairy farm on the land which he had reserved for the purpose. The cattle were actually purchased according to one witness in 1959, and according to the other in 1960.

The Pepsu Land Commission inspected the spot on 2nd September, 1960, and sent their report on 17th October, 1960. At that time there existed proper dairy farm which was being maintained. According to the findings of the Commission, the dairy farm was started in December, 1958, and it began to function in March, 1960. It was conceded by the petitioner's counsel before the Land Commission that the dairy farm came into existence considerable time after the passing of the Act in 1955. The Commission felt that the exemption could be granted only if conditions justifying exemption existed at the time when Chapter 4-A was added, that is, on 30th October, 1956. In other words, exemption could be given for such a specialised farm if the same existed on 30th October, 1956, and not if it came into existence subsequently, and in this case it was several years after. The Commission concluded that the exemption under section 32-K(i)(ii) could not be given in this case and sent an advice to the State Government to that effect. The petitioner, on the above facts, preferred a writ petition to this Court contending that the advice of the commission was illegal. So far, no final statement incorporating the advice has been published and the surplus area covered by the dairy farm has not yet vested in the State Government.

The arguments addressed by the learned counsel for the petitioner may be considered under two heads. It is contended that Article 12 of the Covenant entered into between the petitioner and the Union of India gave him complete

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immunity against the Pepsu Act and he cannot be deprived of any part of his property. The second contention is that his title under section 32-E of the Act can be extinguished by vestment in the State Government only on the date when the final statement is published in the official gazette under section 32-D of the Act and till then he continues to be an absolute owner and is entitled to exemption enumerated in section 32-K; in other words, the contention under this head is that it is not a requisite of the law that the specialised farms engaged in cattle breeding and dairying should be in existence on 30th October, 1956, when Chapter 4-A, was inserted by Pepsu Act 15 of 1956, but that exemption could be earned by making such a farm at any time before the date of vestment of surplus area in the State Government under section 32-E.

The view expressed by the Pepsu Land Commission to the effect that section 32-FF was applicable and that the user of the land for purposes of this specialised farm amounted, if not to transfer, at least to 'other disposition of land' was erroneous. This view of the Commission is obviously untenable. It is not any dealing with the land by the land owner himself which can be termed 'other disposition of land.' A 'disposition' as, for example, in a will, is the expression of an intention on the part of the owner as to the manner of disposal or distribution of his property. A 'disposition' may also be in the form of a settlement or a family arrangement. A person who changes the use of his land from one purpose to another as in this case from agricultural purpose to utilisation as a dairy farm, is not making a disposition of the land. The view of the Land Commission to the contrary cannot be supported either by reference to any lexicon or to the context.

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Neither in the etymological sense nor in any derivative sense can the phrase 'other disposition of land' be applied to a change in the use to which the land is being put by the landowner. The word 'disposition' is derived from latin word *dis-ponere*. The prefix '*dis*' means 'away or aside' and '*ponere*' means 'to place.' When a person makes over or conveys something to another, he is said to make a disposition, The Legislature could not have used the word 'disposition' in any other sense, as, no person when making use of his property in a different manner than formerly can be said to subject it to a 'disposition' in the legal sense.

The next question is whether exemption from ceiling on land as expressed in section 32-K applies to orchards, specialised farms, sugarcane farms, efficiently managed farms, etc., which were in existence when Chapter 4-A was inserted, that is, on 30th October, 1956, or they could come into existence later on; in other words, whether this provision relates to orchards, specialised farms, etc., *in esse* or also to those in *posse*. From the perusal of the relevant provisions, I am inclined to the view that section 32-K(1)(i) to (iv) refers to orchards, specialised farms, etc., which were in actual existence and not to those which can possibly come into existence *in future*. The above provisions construed in their ordinary grammatical meaning refer to things in actual existence and not to those which are capable of coming into existence later on. The purpose and the intention of the Act also suggest that the Legislature desired to place a ceiling on the land in one's personal cultivation. Section 32-A provides the rule and Section 32-K creates exceptions. On the exempted land, no limits are placed. Thus a specialised farm engaged in cattle breeding, dairying or wool raising may cover an area of land to any extent provided it is in consonance with the requirements of the prescribed rules as to the number and

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quality of animals. There is nothing either in section 32-K or in any other provision of the Act or in rule 30 of the prescribed rules which places any limits on the extent of the area which may be used for cattle breeding, dairying, etc. While it was being provided that personally cultivated land should not exceed in the aggregate the permissible limit and the surplus area of a particular owner was to vest in the State Government as required by section 32-E, it cannot reasonably be said that the State Government while enacting section 32-K was intending to allow the landowners and others to evade the basic purpose of the Act by allowing the owners to convert the surplus area, between 30th October, 1956, and the revestment in the State Government, into exempted area. Not only thereby the real purpose of the statute would be defeated but, further, an uncertainty would be introduced regarding the time for earning exemption. The date of vestment of the surplus area in the State Government is not pre-determined. In a particular case, a party may delay the vestment by raising objections and by filing appeals and utilise this interval for qualifying himself for earning exemption under section 32-K; and yet in another case the interval may be so short that conversion of agricultural land into an orchard or a dairy farm may be wholly insufficient. The introduction of such a flexibility would introduce an element of uncertainty which will adversely affect the equities in different cases. Moreover, the Land Commission cannot inspect the various orchards, farms, etc., at the same time, and give advice to the Government in all cases contemporaneously. In the nature of things, this is not possible. The result would be that certain surplus areas would vest in the Government earlier and some other much later. The time for transferance of valuable rights of ownership will become uncertain and fortuitous. On these grounds also, the date of

vestment in the State Government of the surplus lands under section 32-E cannot be treated as a *terminus ad quem* up to which the person may qualify himself for obtaining exemption.

The basic rule of interpretation of a statute is that it has to be expounded 'according to the intent of them that made it' [*vide Sussex Peerage case* (1)], where the words of the statute admit of no ambiguity and by themselves are precise and clear, their natural and ordinary meanings have to be ascertained in order to discover the intention of the Legislature. Another well-known rule of interpretation is that the words of a statute, when there is doubt about their meanings, they are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view, (*vide* Maxwell, 11th Ed. P. 51). Where a text is susceptible of more than one meanings, the effects or consequences which would ensue, if a particular meaning is adopted rather than the other, may aid in pointing the real intention of the Legislature. If one of the inferences shows that that was not the intention of the Legislature, then that construction should be avoided. The Courts, where they find it absolutely necessary, may even go to the extent of departing from the ordinary meaning and grammatical construction if the apparent purpose of the enactment is defeated thereby or leads to unintended hardship or absurdity. The office of the Judge is, "to make such construction as will suppress the mischief, and advance the remedy, and to suppress all evasions for the continuance of the mischief" [(*Magdalen College case* (2)]. As remarked by Maxwell, "to carry out effectually the object of a statute, it must be so construed as

(1) 8. E.R. 1034 (H.L.)
(2) (1616) 11 Rep. 71b : 77 E.R. 1235 (1242).

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to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it is prohibited or enjoined", (P. 109, 11th Ed.).

Having regard to the above principles, the provisions of the Act cannot be construed so as to enable a party to qualify himself to continue to earn exemptions till he is divested. Where the Legislature intended to give time to an owner after the coming into force of Chapter 4-A, to qualify himself for the exemptions, it has so expressed itself in clear language. Section 32-K(1) (vi) provides "where a landowner gives an undertaking in writing to the Collector that he shall, within a period of two years from the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, plant an orchard in any area of his land not exceeding ten standard acres, such area of land." This provision takes account of an orchard not yet planted, but which a landowner intends to plant within a period of two years. If the Legislature had desired to give a similar opportunity to landowners of other areas as mentioned in subclauses (i) to (v) of section 32-K(1), a similar language would have been used. The reading of section 32-B also helps in arriving at the same conclusion. A period ending with 30th August, 1958, is given to a person for submitting return showing, besides his selection of the parcel of land for self-cultivation not exceeding in the aggregate the permissible limit which he desires to retain, other lands in respect of which he claims exemption from the ceiling under Chapter 4-A. This means that a person who does not possess a specialised farm engaged in cattle breeding, dairying or wool raising, on the date when he submits his return cannot claim exemption. No exemption can be claimed for what is *non-est*. If there is no such farm in existence on the last

day when a return in this behalf is to be submitted, the question of obtaining exemption does not arise. What the law requires is that there be an existing area confirmable to the requirements of section 32-K(1) when the return is made. This return has to be scrutinised by the Collector and also by the Land Commission. That being so, a mere expression of an intention to utilise some area in future for purposes for which exemption in law is available, is not enough within the contemplation of section 32-K. On the basis of what the landowner intends to do in future no return can be based, no enquiry can be made by the Collector and no advice can be submitted by the Land Commission. It is not the intention of the law to give exemption to orchards and specialised farms mentioned in section 32-K(1) (i) to (iv) while they are in an embryonic stage. In this case there was no specialised farm engaged in cattle breeding and dairying when the return was submitted under section 32-B.

I do not find any cogency in the argument that till the petitioner's ownership rights are extinguished by vestment in the State Government, he is at liberty to utilise his land in any manner he likes and, therefore, he can by making an orchard or specialised farm as the case may be qualify himself for the exemption by the date of vestment. It is true that the ownership rights of the petitioner to a restricted extent continue, even after the passing of the Act, in the surplus area till they are extinguished by vestment under section 32-E. It cannot, however, follow that during the transitional period during which surplus area is being ascertained and the right to the exemption is being examined, the owner is at liberty by converting his land into orchard or specialised farm, etc., to earn exemption from ceiling on land. According to the scheme of the

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Act no person shall be entitled to own or hold as landowner or tenant land under his personal cultivation which exceeds in the aggregate the permissible limit. But in so far as the provisions of the Act do not permit him to get exemption from ceiling on land he cannot on the mere ground, that his title has not yet been extinguished, claim exemption. It is for the Legislature to determine the date by which the exemption from ceiling can be claimed. In this case the exemption must be claimed latest within one month from the commencement of the Pepsu Tenancy and Agricultural Lands (Amendment) Ordinance, 1958. The last date for furnishing to the Collector the return giving the particulars of selection and for claiming exemption from the ceiling is the 30th August, 1958. The time by which the exemption is to be claimed depends upon the terms of section 32-K and not on the continuance of title in the owner. For the same reasons, it will be fallacious to hold that though under section 32-FF no transfer or other disposition of land effected after 21st August, 1956, shall affect the right of the State Government under this Act, the owner so long as his rights of ownership are not extinguished by vestment in the State Government may make valid transfers or dispositions. From the mere continued existence of ownership rights it cannot be postulated that all conceivable rights of ownership including right of alienation remain inviolate. If that were so the avowed object of the Act can easily be frustrated either by transfers or dispositions, or by conversion of the land into specialised farm, etc. I am not aware of any ambiguity or doubt so far as the statutory language is concerned and where the language of the statute is clear and unambiguous on its face it must be given effect to. The first duty of the Court is to ascertain the legislative intention from the expressed words of the enactment. It is only in the case of

doubt arising from any imprecise language used that resort has to be made to statutory interpretation. In such an eventuality, in the words of Lord Coke, "the office of all the judges is always to make such construction as shall suppress the mischief, advance the remedy, and to suppress subtle invention and evasions for continuance of the mischief, and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the act *pro bono publico*" (*Heydon's case* (3). It is not necessary to go to numerous subsidiary cannons of construction where the intention of the legislature can clearly be ascertained from the language used. Section 32-K took effect as law on 30th October, 1956, when Chapter 4-A, was inserted by Act 15 of 1956. The intention of section 32-K(1)(i) to (iv) as can be gathered from the plain language is that it refers to the state of matters as existing on the date of the enforcement of the provision.

When construing a statute, the Courts have to bear in mind the reason for its enactment with reference to its intended scope and purpose. It is the endeavour of the Courts to carry out this purpose rather than to frustrate it. The legislative intent in this case would be defeated if section 32-K is meant to be read in the manner contended for by the petitioner. The legislative purpose was to allow the owner to put under his personal cultivation land not in excess of the permissible limit and to place the surplus area at the disposal of the State Government for being utilised according to scheme framed by the State Government. This purpose will not be served if owners are permitted to retain land exceeding the permissible limit by converting their lands into orchards, specialised farms, etc., after coming into force of

(3) Co. Rep. 72 : 76 E.R. 637.

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the provisions and during the period awaiting extinction of their title in the surplus area. This is not a case in which the statute contemplates the granting of a period within which the use of the land may be divested for the purpose of obtaining exemption. There is in this case no scope for putting strict or liberal construction on the statute, as the language used does not admit of flexibility. The Courts will refrain from straining the language of the Act or from placing forced or unnatural meaning on the expressions used, if that would defeat the effectuation of the real purpose of the Act.

It was argued by the learned counsel for the petitioner that strict interpretation put on section 32-K(1)(i) to (iv) will make this provision inconsistent with section 32-M. There is no merit in this contention. The argument is that under section 32-M, a ceiling is placed on future acquisition by inheritance. Thus if any person acquires by inheritance or by bequest or gift from a person to whom he is an heir, any land, which with or without the lands already owned or held by him, exceeds in the aggregate the permissible limit, then he shall within the period prescribed, furnish to the Collector, a return in the manner specified in section 32-B giving the particulars of all lands and selecting the land he desires to retain; and if the land of such person is situated in more than one Patwar circle, he shall also furnish a declaration required by sub-section (1) of section 32-BB. It is contended that section 32-M contemplates a right in a person who has acquired land by inheritance to give particulars of all the lands in the manner specified in section 32-BB and selecting the land he desires to retain. The argument is raised on the premise that in so far as section 32-B contemplates both the selection of the land within

permissible limit which the person desires to retain, and also the land in respect of which he claims exemption from the ceiling therefor, section 32-M also is deemed to refer not merely to the retention of the land within the permissible limit but also to land in respect of which he claims exemption. Section 32-M refers to only a portion of section 32-B, which relates to the giving of the particulars of all the lands and selecting the area desired to be retained but not to the lands in respect of which he claims exemption from the ceiling. No doubt section 32-B deals with both the matters relating to selection of land for the purpose of retention up to the permissible limits and also to the land in respect of which exemption is being claimed. The language of section 32-M is confined to the former class of land which is selected, that is desired to be retained within the permissible limits for personal cultivation, but not to the second category of land mentioned in section 32-B, i.e., lands in respect of which exemption is being claimed. It cannot, therefore, be urged with any degree of plausibility that section 32-M contemplates a subsequent claim in section 32-K regarding the land which is the subject matter of future acquisition by inheritance. The language of section 32-M does not warrant such an inference. Alternatively, even if it were so, section 32-M confines itself to an entirely different class of land which is subject matter of future acquisition by inheritance. The provisions of section 32-M in no way conflict with those of section 32-K. Another argument which should be taken notice of on behalf of the petitioner is that the return giving requisite particulars in section 32-B is to be submitted in a prescribed form. The statutory rules giving the form were published on 21st March, 1958, and, therefore, a person could claim exemption for land at least up to the date of the publication of rules. This again is a pointless contention.

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The qualifying date for the purposes of the exemption is to be ascertained from the Act. If that date is the date when Chapter 4-A was inserted, the period for earning the qualification cannot be deemed to have been extended because it took some time before the prescribed rules were framed and published. The rules lay down the form of the application containing the returns. These rules cannot govern the provisions of the Act which indicate that the date for earning exemption is the date when Chapter 4-A, becomes law.

Taking into consideration all the arguments urged in this behalf by the learned counsel for the petitioner, I am of the view that section 32-K(1)(i) to (iv) refers to existing orchards, specialised farms, sugarcane farms, etc., and not to those which are brought into being after 30th of October, 1956, and prior to the vestment of the surplus area in the State Government.

After arguments had been concluded in this case and the judgment had been reserved, a recent decision of the Supreme Court in petitions Nos. 261 and 365 of 1961, decided on 27th July, 1962 (*Shivdev Singh* v. *State of Punjab*), in petition No. 261 of 1961, and (*Krishan Kumar Khosla* v. *State of Punjab*, in petition No. 365 of 1961), under Article 32 of the Constitution, has been brought to our notice. One of the questions that came up for decision before their Lordships of the Supreme Court was the date when benefit under section 32-K(1)(iv) of the Act could be availed of in respect of "efficiently managed farms which consist of compact blocks on which heavy investment or permanent structural improvements have been made and whose breakup is likely to lead to a fall in production." Wanchoo, J., said—

> "Therefore, before any farm can claim that the ceiling as contained in section 32-A

shall not apply to it, it has to comply with the conditions in clause (iv). These conditions, which may be deduced from clause (iv) are—

(i) that the farm should be efficiently managed;

(ii) that it should consist of compact blocks;

(iii) that heavy investment or permanent structural improvements must have been made on the farm; and

(iv) the break-up of the farm is likely to lead to a fall in production.

Before, therefore, a person owning or holding a farm can claim exemption from the ceiling provided in section 32-A, he has to show that his farm complies with all the four conditions mentioned above. * * * * * There can be no doubt, therefore, that in order that a farm may get the benefit of section 32-K(1)(iv), it must satisfy the four conditions set out above."

Further on it was observed—

"Section 32-K came into force on October 30, 1956, and it is obvious that it is as on that date that the Commission will have to decide whether a particular farm complies with the requirements of section 32-K(1)(iv) and should, therefore, be exempted from the operation of the ceiling provided in section 32-A. The statistics that have been provided to us, however, are of a later period. We propose to consider them but it will always

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have to be kept in mind that the decision of the Commission has to be on the facts as they stood on October 30, 1956, so far as section 32-K(1)(iv) is concerned."

The above observations further fortify the conclusion that the date on which benefit of exemption under section 32-K(1)(i) to (iv) can be claimed is 30th October, 1956.

I may now deal with the second contention of the petitioner. It is contended on his behalf that being the Ruler of a Covenanting State, his proprietary rights have been safeguarded under the Covenant and cannot, therefore, be adversely affected by the provisions of the Act so far as he is concerned. Article 12 of the Covenant reads as under:—

"(1) The Ruler of each Covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of his making over the administration of that State to the Rajparmukh.

(2) He shall furnish to the Rajparmukh before the 20th day of September, 1948, an inventory of all the immovable properties, securities and cash balances held by him as such private property.

(3) If any dispute arises as to whether any item of property is the private property of the Ruler or State property, it shall be referred to such person as the Government of India may nominate in consultation with the Rajparmukh and the decision of that person shall be final and binding on all parties concerned."

Article 362 of the Constitution of India, provides that in the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such Covenant or agreement as is referred to in Article 291, with respect to personal rights, privileges and dignities of the Ruler of an Indian State.

The term "due regard" means, the consideration in a degree appropriate to the demand of the particular matter. It indicates exercise of sound discretion after balancing the pros and cons. Article 362 casts an obligation upon the State Legislature to take into consideration while passing any legislation affecting the covenanted rights of the Ruler of an Indian State, the undertaking given therein. These rules are not sacrosant and may be disregarded by the competent State Legislature. They do not override the powers of the Legislature to pass legislation affecting the guarantees given. The guarantee or assurance given to a Ruler under the terms of the Covenant is not infringed by the passing of an Act adversely affecting such a guarantee and there is nothing on the record that the Act is not conformable to Article 362 or in other words due regard was not given to the guarantee or the assurance. The Covenant is subject to a new legislation. After due consideration is paid to the guarantee given to him, the petitioner like an ordinary citizen enjoys no other immunity from the applicability of this provision to him. Reference in this connection may be made to the observations of the Supreme Court in *Jagannath Behera* v. *Raja Harihar Singh*(4). I, therefore, do not find any merit in the contention urged on the basis of the breach of Covenant. The Covenant

(4) A.I.R. 1958 S.C. 239.

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is not infringed in the absence of any proof that due regard was not paid by the Legislature to the guarantee contained in clause 12 of the Covenant entered into by the Union of India with the petitioner.

I would, therefore, dismiss the petition, but leave the parties to bear their own costs.

Sharma, J.

P. D. SHARMA, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before Prem Chand Pandit, J.

PARBHU AND ANOTHER,—*Appellants.*

versus

THE GRAM PANCHAYAT,—*Respondent.*

Regular Second Appeal No. 852 of 1960

1962

November, 12th.

Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Sections 2(g), 3 and 4—Land vested in Gram Panchayat as shamilat under the Punjab Village Common Lands (Regulation) Act, 1953—Whether continues to be shamilat land even if not covered by definition in Section 2(g).

Held, that sub-section (1) of section 3 of the Punjab Village Common Lands (Regulation) Act, 1961, clearly provides that before the commencement of this Act, the 1953 Act shall be deemed always to have applied to all lands which are *shamilat deh* as defined in clause (g) of section 2 of 1961 Act. When the 1953 Act came into force, the land in dispute was entered as *shamilat deh* in the revenue records and it was outside the *abadi deh*. No *gitwar* or *kotha* was constructed thereon at that time. Therefore, it was '*shamilat deh*' as defined in clause (g) of section 2 of 1961 Act. Consequently, the provisions of 1953 Act applied

and by virtue of section 3 of that Act, on 9th January, 1954, all rights, title and interest in the land vested in the Panchayat. Having rightly vested, the Panchayat cannot be deprived of these rights unless there is a specific provision to this effect in the 1961 Act. All that sub-section (2) of section 3 of the 1961 Act means is that only those lands shall revest which were covered by items (i) to (ix) mentioned in section 2(g) of the 1961 Act, at the time when the 1953 Act came into force. If in a particular case some land was not covered by any of these items at the commencement of the 1953 Act, but later on it was so used that it fell within any one of these items, sub-section (2) of section 3 would have no effect on the same, because this land had rightly vested in the Panchayat on the commencement of the 1953 Act. In other words, sub-section (2) of section 3 of the 1961 Act applies in those cases where the lands fell within items (i) to (ix) of section 2(g) of this Act at the time when the 1953 Act came into force, but not to those lands which later on by use, etc., fell within any of these items.

Second Appeal from the decree of the Court of Shri H. C. Gupta, Senior Sub-Judge, with Enhanced Appellate Powers, Rohtak, dated the 24th day of May, 1960, affirming with costs that of Shri M. L. Jain, Sub-Judge 1st Class, Rohtak, dated the 8th January, 1960, granting the plaintiff a decree with costs for possession of the land in dispute as shown by letters ABCD in the plan attached and further ordering that the defendant would be entitled to the Malba of construction by the defendant.

PREM CHAND JAIN, ADVOCATE, for the Appellants.

SHAMAIR CHAND, ADVOCATE, WITH PARKASH CHAND JAIN, ADVOCATE, for the Respondents.

JUDGMENT

Pandit, J.

PANDIT, J.—*Vide* my order dated 21st November 1961, I had remanded this case to the trial Court for giving a finding as to the effect of the enforcement of the Punjab Village Common Lands (Regulation) Act No. 18 of 1961, on the

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rights of the parties after giving them an opportunity to lead evidence thereon. This report had to come through the learned Senior Subordinate Judge, who was also directed to record his finding after hearing the parties. The report has been received and the case has been put up for hearing.

The trial Judge held that the land in suit was not *shamilat deh* as defined in clause (g) of section 2 of Punjab Act No. 18 of 1961, because it lay outside the *abadi deh* and was used as a *gitwar* and house by the defendants. That being so, the rights of the plaintiff—Panchayat therein came to an end. He, consequently, held that the plaintiff was no longer the owner of the land in suit and had no *locus standi* to bring and maintain the present suit.

The learned Senior Subordinate Judge came to the conclusion that the site in dispute having been situated outside the *abadi* and used as a *gitwar* ceased to be *shamilat deh* within the definition of the term as given in section 2(g) of the 1961 Act. By virtue of section 3(2) of this Act, it, therefore, revested in the proprietors of the village, who were the owners of the same before its vesting in the Gram Panchayat. Consequently, the plaintiff—Gram Panchayat ceased to be the owner of the land in dispute,—*vide* section 3(2) of the 1961 Act.

Learned counsel for the respondent has challenged this report. The facts found in this case are these (1) the site in dispute in 1953 was *shamilat deh* and lay outside the *abadi*. No *gitwar* or *kotha* was constructed thereon. In the revenue records in the proprietors' column, '*shamilat deh*' was written and in the cultivation column, it was written '*maqbooza malikan*' (in the possession of the proprietors), (2) on 3rd September, 1955, a mutation was effected that this land had vested in

the Panchayat, and (3) the defendants took possession of this land in *kharif* 1956 and constructed a *kotha* and a *gitwar* thereon. The Punjab Village Common Lands (Regulation) Act, 1953 (Punjab Act No. 1 of 1954) (hereinafter referred to as 1953 Act) came into force on 9th January, 1954, while the Punjab Village Common Lands (Regulation) Act, 1961 (Punjab Act No. 18 of 1961) (hereinafter referred to as 1961 Act) on 4th May, 1961. The relevant provisions of 1961 Act for the determination of this case are as follows:—

"S. 2. * * *
* * * *
* * * *

(g) '*shamilat deh*' includes—

(1) lands described in the revenue records as *shamilat deh,* excluding *abadi deh;*

* * * *
* * * *

but does not include land which—

* * *
* * *

(vi) lies outside the *abadi deh* and is used as *gitwar, bara,* manure pit or house or for cottage industry;

* * * *
* * * *

(h) '*shamilat* law' means—

(i) in relation to land situated in the territory which immediately before the 1st November, 1956, was comprised in the State of Punjab, the Punjab Village Common Lands (Regulation) Act, 1953; or

* * * *
* * * *

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"S. 3 (1). This Act shall apply, and before the commencement of this Act, the *shamilat* law shall be deemed always to have applied, to all lands which are *shamilat deh* as defined in clause (g) of section 2.

(2) Notwithstanding anything contained in sub-section (1) of section 4, where any land has vested in a *panchayat* under the *shamilat* law but such land has been excluded from *shamilat deh* as defined in clause (g) of section 2, all rights, title and interest of the Panchayat in such land shall, as from the commencement of this Act, cease and such rights, title and interest shall be revested in the person or persons in whom they vested immediately before the commencement of the *shamilat* law and the *panchayat* shall deliver possession of such land to such person or persons:

Provided that where a panchayat is unable to deliver possession of any such land on account of its having been sold or utilised for any of its purposes, the rights, title and interest of the panchayat in such land shall not so cease but the panchayat shall, notwithstanding anything contained in section 10, pay to the person or persons entitled to such land compensation to be determined in accordance with such principles and in such manner as may be prescribed.

S. 4. (1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument custom or usage or

any decree or order of any Court or other authority, all rights, title and interests whatever in the land—

(a) which is included in the *shamilat deh* of any village and which has not vested in a panchayat under the *shamilat* law shall, at the commencement of this Act, vest in a panchayat constituted for such village, and, where no such panchayat has been constituted for such village, vest in the panchayat on such date as a panchayat having jurisdiction over that village is constituted;

* * *
* * *

(2) Any land which is vested in a panchayat under the *shamilat* law shall be deemed to have been vested in the panchayat under this Act."

The reasoning of the Courts below and of the learned counsel for the appellant is like this. The land in dispute, on which a *gitwar* and a *kotha* is constructed, is excluded from the definition of *shamilat deh* as given in section 2(g) of 1961 Act. Therefore, by virtue of the provisions of section 3(2), even if this land had vested in the Gram Panchayat under the 1953 Act, all rights, title and interest of the Panchayat in this land shall from the commencement of the 1961 Act cease and such rights, title and interest shall be revested in the proprietary body of the village in whom they vested immediately before the commencement of the 1953 Act, and the Panchayat shall deliver possession of this land to those persons.

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There is a fallacy in this argument. Sub-section (1) of section 3 of 1961 Act clearly provides that before the commencement of this Act, the 1953 Act shall be deemed always to have applied to all lands which are *shamilat deh* as defined in clause (g) of section 2 of 1961 Act. In the present case, when the 1953 Act came into force, the land in dispute was entered as *shamilat deh* in the revenue records and it was outside the *abadi deh*. No *gitwar* or *kotha* was constructed thereon at that time. Therefore, it was as '*shamilat deh*' as defined in clause (g) of section 2 of 1961 Act. Consequently, the provisions of 1953 Act applied and by virtue of section 3 of that Act, on 9th January, 1954 all rights, title and interest in the land vested in the Panchayat. Having rightly vested, the Panchayat cannot be deprived of these rights unless there is a specific provision to this effect in the 1961 Act. Reliance was placed by the Courts below on sub-section (2) of section 3 of the 1961 Act for holding that the land, which had vested in the Panchayat under the 1953 Act but was excluded from the definition of '*shamilat deh*', as given in clause (g) of section 2 of 1961 Act, all rights title and interest of the Panchayat therein would cease from the commencement of the 1961 Act and the same shall revest in the persons in whom they vested immediately before the commencement of the 1953 Act. In my opinion, all that this sub-section means is that only those lands shall revest which were covered by items (i) to (ix) mentioned in section 2 (g) of the 1961 Act, at the time when the 1953 Act came into force. If in a particular case some land was not covered by any of these items at the commencement of the 1953 Act, but later on it was so used that it fell within any one of these items, sub-section (2) of section 3 would have no effect on the same, because this land had rightly vested in the Panchayat on the commencement of the 1953 Act. In other words, sub-section (2) of section 3 of the 1961 Act applies in those cases where

the lands fell within items (i) to (ix) of section 2(g) of this Act at the time when the 1953 Act came into force, but not to those lands which later on by use etc., fell within any of these items. It has, therefore, to be seen as to what was the position of the land in question at the time of the commencement of the 1953 Act. The land in dispute, admittedly, was not being used as a *gitwar* or a house on 9th January, 1954. Therefore, it rightly vested in the Panchayat even according to the 1961 Act and, consequently, it could not under the provisions of section 3(2) of the 1961 Act revest in the proprietary body of the village, in whom it vested before the commencement of the 1953 Act. The result is that it remained vested in the plaintiff-Gram Panchayat. Under these circumstances, the findings of the Subordinate Judge in his report dated 19th March, 1962 and of the learned Senior Subordinate Judge in his report dated 26th March, 1962 are set aside.

In view of what I have said above, the appeal fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs throughout.

B.R.T.

REVISIONAL CIVIL

Before D. Falshaw, C.J., and S. S. Dulat, J.

SANWAL DAS GUPTA,—*Petitioner.*

versus

BABUBHAI BHAWANJI JHAVERI,—*Respondents.*

Civil Revision No. 584-D of 1959.

1962

November, 14th.

Code of Civil Procedure (Act V of 1908)—Section 42 and Order XXI, rule 50(2)—Transferee Court—Whether

competent to entertain and decide an application under Order XXI, rule 50(2).

Held, that a transferee Court is competent to entertain and decide an application under Order XXI, rule 50(2) of the Code of Civil Procedure. There is no reason why full effect should not be given to the language of section 42 of the Code and why its import should be cut down. No inconvenience of any kind seems to result from the adoption of this view and it seems, on the other hand, only proper that the Court, seized of the execution proceedings for the time being, should be allowed to decide whether it would, at the instance of the decree-holder, permit execution to be taken out against a partner of a firm.

Petition under section 115 of Act V of 1908, for revision of the order of Shri O. P. Aggarwal, Sub-Judge, Ist Class. Delhi, on 8th December, 1959, dismissing the suit, but no order as to costs.

HARI SHANKAR, ADVOCATE, for the Petitioner.

K. L. ARYA, ADVOCATE, for the Respondent.

JUDGMENT

Dulat, J.

DULAT, J.—The only question in this case is whether the Court, to which a decree has been transferred for execution, is competent to entertain and decide an application under Order XXI, rule 50(2) of the Code of Civil Procedure, and it has been referred to us because of some conflict of judicial opinion on the question.

The decree in this case was obtained against a partnership firm from a Court in Bombay. It was transferred for execution to the Court of a Subordinate Judge at Delhi. The decree-holder then made an application in the Delhi Court, seeking execution against a partner of the judgment-debtor firm, and that partner, being Sanwal Dass Gupta,

objected on the ground that such an application could be entertained only by the original Court which made the decree. The executing Court overruled that objection, holding that it had jurisdiction to entertain the petition and decide whether execution should be allowed against the partner. Hence this revision petition by Sanwal Dass Gupta.

On behalf of the petitioner, reliance is placed on the language of sub-rule (2) of rule 50 of Order XXI of the Code of Civil Procedure. It says—

> "50. (2) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm, he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such Court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined."

The argument is that because this rule says that an application may be made to the Court which passed the decree, the inference must be that such an application cannot be made to the transferee-Court. This argument, however, ignores a clear provision contained in section 42 of the Code of Civil Procedure, which is in these terms—

> "42. The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself . . . . . ."

It is obvious that if full effect is given to the provision in section 42 of the Code of Civil Procedure,

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then the powers of a Court, which may have originally granted the decree, and the powers of a Court, to which it is later transferred for execution, would be identical, and the argument, that a particular application which may be made to the Court granting the decree cannot be made to the transferee-Court, would not appear to have much substance. It is admitted that as far as the Lahore High Court is concerned, the view all along has been that a transferee-Court has jurisdiction to entertain and decide an application under rule 50(2), Order XXI, Civil Procedure Code. Bhide J., sitting alone, in *E.D. Sasson and Co., Ltd.* v. *Shivji Ram Devi Das* (1) adopted that view, and the same was followed by Addison J., again sitting alone, in *Abdul Hamid* v. *Dhanpat Mal Diwan Chand* (2). Later that year Addison J., sitting in a Division Bench with Coldstream J., considered the matter again and affirmed the same view in *Bombay Company Limited* v. *Kahan Singh and another* (3). It is admitted that there is no decision of the Lahore High Court or of this Court expressing the contrary view, which is now canvassed on behalf of the petitioner. Learned counsel, however, refers to a decision of the Calcutta High Court in *Pulin Behari Pal and another* v. *Iswar Chandra Pal Firm, Decree-holder, and others* (4), where a Division Bench of that Court noticed the divergence of judicial opinion concerning the interpretation of Order XXI, rule 50, sub-rule (2), Civil Procedure Code, and came to the conclusion, in spite of the decisions of the Lahore High Court I have referred above, that the true meaning of sub-rule (2) of rule 50, Order XXI. is that such an application must be made to only the Court which had originally granted the decree. The divergence of

(1) A.I.R. 1929 Lah. 228.
(2) A.I.R. 1931 Lah. 507.
(3) A.I.R. 1931 Lah. 736.
(4) A.I.R. 1945 Cal. 303.

opinion arises out of the emphasis placed on the words of rule 50, sub-rule (2) of Order XXI in one case and the language of section 42 of the Civil Procedure Code in the other, and, as far as I can see, there is no reason why full effect should not be given to the language of section 42 and why its import should be cut down. As I have said, that has been the view of the Lahore High Court which this Court ordinarily follows, and nothing has been said in the present case to persuade us to depart from it. No inconvenience of any kind seems to result from the adoption of this view and it seems, on the other hand, only proper that the Court, seized of the execution proceedings for the time being, should be allowed to decide whether it would at the instance of the decree-holder permit execution to be taken out against a partner of a firm. I would, therefore, in agreement with the decision of the Lahore High Court, hold that in such a case as the present the transferee-Court is competent to entertain an application under Order XXI, rule 50 (2) of the Civil Procedure Code. The present revision petition must, on this view, fail and I would dismiss it but, in all the circumstances, not burden the petitioner with costs.

D. FALSHAW, C.J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

ASA NAND,—*Petitioner.*

versus

THE CENTRAL GOVENRMENT OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 1065 of 1961.

1962

December, 3rd.

Displaced Persons (Compensation and Rehabilitation) Rules, 1955—Rule 30 as amended on 24th March, 1961—Whether applies to pending proceedings.