

Mool Chand
Jain
v.
Rulia Ram
and another

going to stand as a candidate for election to a Legislature and who withdraws from his candidature on account of some political arrangement relating to election in some other constituency.

Dua, J.

Although I entertain a certain amount of doubt about the correctness of the view adopted by my learned brother as to the meaning and scope of the word "Bribery" as used in reference to the withdrawal of a candidate's candidature, I would not like to press my doubt to the point of positive and express dissent from his opinion. And this for two reasons: first, because I have great respect for the opinion of my learned brother and would be reluctant in too readily disagreeing with him; and in the second place because on the arguments addressed at the bar I have not been persuaded, as at present advised, to hold that the appellant has succeeded in dislodging the view of the tribunal by showing it to be clearly wrong. With these observations and without pursuing the matter further I agree with the final order proposed, though not wholly without hesitation.

B.R.T.

Before D. Falshaw, C.J. and Jindra Lal, J.

BIR SNGH AND OTHERS,—*Petitioners.*

versus

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

Civil Writ No. 449 of 1962.

1963

May, 21st.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Ss. 23 FF and 32 K.K.—Partition amongst members of Joint Hindus family effected between 21st of August, 1956 and 30th of October, 1956—Whether amounts to disposition of land.

Held that section 32 KK of the Pepsu Tenancy and Agricultural Lands Act, 1955 is no more than a clarification

of and an addition to the provisions of section 32-FF, which itself was retrospective to the extent that although it only came into force on the 30th of October, 1956 it hit certain transactions which took place after the 21st of August, 1956. The obvious reason for choosing the 30th of October, 1956 as the date from which section 32-KK was to have effect was to bring it into line with section 32-FF, which was also operative from the same date. Thus as the law now stands section 32-FF and section 32-KK have to be read together, and certain transactions which were not thought to be covered by section 32-FF, though the date as the 30th of October, 1956 the Legislature intended the Legislature probably intended them to be, are now to be deemed to be covered by it. It is inconceivable that by fixing the date from which section 32-KK was to be operative to exempt partitions of joint Hindu family property which took place between the 21st of August, 1956 and the 30th of October, 1956 from its scope.

Case referred by Hon'ble Mr. Justice Mehar Singh on 18th January, 1963 to a Larger Bench for decision owing to the importance of question of Law involved in the case. The case was finally decided by Hon'ble the Chief Justice Mr. D. Falshaw and Hon'ble Mr. Justice Jindra Lal, on 21st May, 1963.

Petition Under Articles 226/227 of the Constitution of India praying that a writ order of Certiorari, mandamus or any other appropriate writ, order, or direction be issued quashing the order of respondent No. 2, dated 23rd May, 1961, declaring 21.83 Acres of land as surplus.

JAGJIT SINGH CHAWLA AND R. K. SAINI, ADVOCATES, for the Petitioners.

L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE-GENERAL, S. C. SIBAL AND K. R. MAHAJAN, ADVOCATES, for the Respondents.

ORDER

FALSHAW, C.J.—This is a petition under Articles 226 and 227 of the Constitution which has been referred by Mehar Singh, J., to a larger Bench in consequence of the fact that he discovered that an earlier

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decision of his own on the point in issue was in conflict with a decision of Shamsheer Bahadur, J., on the same point.

The case arises out of the Pepsu Tenancy and Agricultural Lands Act, XIII of 1955, the effect of which is to restrict the holding of any landowner to 30 standard Acres, the balance of his land becoming so-called surplus area which is taken away and allotted to tenants.

The relevant facts are that Bir Singh petitioner owned 58 standard acres of land which he partitioned among the members of his family, his son and his two wives who are also petitioners, by means of a report made to the Patwari on the 4th of September, 1956. Bir Singh and his son constituted a Joint Hindu family.

By Punjab Act III of 1959 section 32-FF was inserted in the Pepsu Act as from the 30th of October, 1956. This section reads:—

Save in the case of land acquired by the State Government under any law for the time being in force or by an heir by inheritance or up to the 30th of July, 1958, by a landless person or a small landowner, not being a relation as prescribed of the person making the transfer or disposition of land, for consideration up to an area which with or without the area owned or held by him does not in the aggregate exceed the permissible limit, no transfer or other disposition of land effected after the 21st of August, 1956, shall affect the right of the State Government under this Act to the surplus area to

which it would be entitled but for such transfer or disposition:

Provided that any person who has received any advantage under such transfer or disposition of land shall be bound to restore it, or to make compensation for it, to the person from whom he received it."

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A similar provision in the Punjab Security of Land Tenures Act, X of 1953, was considered by a Division Bench of this Court in *Jagan Nath v. The State of Punjab* (1), and it was held that when a partition of a Joint Hindu family occurs no one takes any property not previously belonging to him nor does any of them pass any interest in such property to another, and hence on such a partition there is in law no transfer or other disposition of property within the meaning of the Act. The effect of this was that Hindu Joint family arrangements similar to that in the present case were not hit by the provision in the Punjab Act corresponding to section 32-FF in the Pepsu Act.

This decision was given towards the end of 1961 and, evidently with the object of nullifying its effect, the State Government introduced similar amendments into both of Pepsu and Punjab Acts. By Punjab Act XVI of 1962 section 32-KK was inserted in the Pepsu Act with effect from the 30th of October, 1956, i.e., the date from which section 32-FF and other provisions contained in section 4-A of the Act had come into force. Section 32-KK reads:—

"Notwithstanding anything contained in this Act or in any other law for the time being in force:—

(a) where, immediately before the commencement of this Act, a landowner and his

(1) I.L.R. 1962 (1) Punj. 811.

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descendants constitute a Hindu undivided family, the land owned by such family shall, for the purposes of this Act, be deemed to be the land of that landowner and no such descendant shall, as member of such family, be entitled to claim that in respect of his share of such land he is a landowner in his own right, and

- (b) a partition of land owned by a Hindu undivided family referred to in clause (a) shall be deemed to be a disposition of land for the purposes of section 32-FF."

The validity of the amending Acts was challenged by petitions filed in this Court, but their validity has been upheld, and the question which arises in this case is what is the position as regards a partition of land among the members of a joint Hindu family effected between the 21st of August, 1956, the date mentioned in section 32-FF, and the 30th of October, 1956, from which date section 32-KK was to be deemed to have been in force.

In two cases, Civil Writ No. 17 of 1962, *Badlu and others v. The Collector, Agrarian Reforms Jind and another*, decided on the 12th of December, 1962, and Civil Writ No. 1553 of 1961, *Balwant Singh and others v. The State of Punjab and others*, decided on the 16th of January, 1963, Shamsher Bahadur, J., has taken the view that a partition which took place between the dates in question is to be deemed to be a disposition of land for the purposes of section 32-FF, whereas in *Bhura and others v. The State of Punjab and others*, Civil Writ No. 1249 of 1961 decided on the 11th of January, 1963, Mehar Singh, J., took a contrary view. The first of the cases decided by Shamsher Bahadur, J.,

about a month before his decision was apparently not brought to the notice of Mehar Singh, J.

In neither of the judgments in which these conflicting views have been expressed is there very much in the way of argument. Mehar Singh, J., was simply of the opinion that since according to the provisions of the amending Act of 1962 section 32-KK as well as certain other amendments introduced in the Act were to have effect from the 30th of October, 1956, the new section could not affect a transaction which had taken place before that date. On the other hand, Shamsher Bahadur, J., was of the opinion that this interpretation would virtually amount to amending section 32-FF, which was obviously not intended. He was of the opinion that what was clearly intended was that all dispositions of property other than those specifically expected by the provisions of section 32-FF which took place after the 21st of August, 1956, were hit by that section and the result of the amendment was simply that this applied also to petitions of Joint Hindu family property made after that date.

As a matter of fact there is little scope for argument on a point of this kind. All that the learned counsel for the petitioners could do was to quote the general principles regarding retrospectivity in the standard work 'Craies on Statute Law' to the effect that no statute should be given retrospective effect unless this is expressly mentioned or necessarily implied, and that where a statute is made retrospective, care should be taken not to extend its retrospective effect beyond what was intended.

On the whole, I am of the opinion that the view taken by Shamsher Bahadur, J., was correct. In my opinion section 32-KK is no more than a clarification of and an addition to the provisions of Section 32-FF, which itself was retrospective to the extent that although it only came into force on the 30th of October,

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Jindra Lal, J.

JINDRA LAL, J.—I agree entirely.

R.S.

REVISIONAL CIVIL

Before D. Falshaw, C.J. and Jindra Lal, J.

SWAMI TRIGUNA NAND,—*Petitioner.*

versus

MAHABIR DAL,—*Respondent.*

Civil Revision No. 807 of 1961.

1963
May, 31st

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13(3) (a) (i)—Juristic person—Whether can obtain ejectment of a tenant from a residential building on the ground of personal occupation—S. 11—Conversion of 'residential building' to 'non-residential building'—When takes place.