It is also well settled that if a person enters into a transaction on the faith of revenue records he is protected under section 41. I am fortified in the above view by *Smt. Asharfi Devi* v. *Tirlok* Chand and others (12) and *Avtar Singh's case* (supra).

(15) Adverting to the facts of this case it is admitted that the land had been mutated in the name of the donee before his death who died near about 1920 and his inheritance was mutated in the name of his three sons, namely, Surjan Singh, Sher Singh and Labh Singh. They were being shown as owners after the death of their father. Niranjan Singh defendant appeared as a witness and deposed that before purchasing the property he looked up the *jamabandis*. It is also relevant to point out that Labh Singh absconded in a murder case and his land was mutated in the name of the Punjab State. No objection was raised by the plaintiff at that time. It was his duty to raise an objection at the time when the land was mutated in the name of the Punjab State. After taking into consideration all the aforesaid circumstances, I find that the finding of the appellate Court that the transferees were protected under section 41 is unassailable and consequently I affirm the same.

(16) For the aforesaid reasons there is no merit in the appeal and consequently I dismiss the same with costs.

N.K.S.

Before: S. P. Goyal and D. V. Sehgal, JJ.

SAMITA DAHIYA AND ANOTHER,—*Petitioners.*

versus

M. D. UNIVERSITY, ROHTAK AND OTHERS,—*Respondents.*
Amended Civil Writ Petition No. 4297 of 1985

January 21, 1986.

Constitution of India, 1950—Articles 14 and 15—Maharishi Dayanand University Act (XXV of 1975)—Sections 9-A(5), 10 and 13—Admissions to medical college made on the basis of entrance exami-

(12) AIR 1965 Pb. 140.

nation—Eligibility for admission to entrance examination governed by the Prospectus—Certain percentage of marks required to be obtained to compete for admission—Authorities having the right to relax the required percentage of the qualifying candidates are not available to fill the vacancies both general and reserved—Non availability of requisite number of candidates securing qualifying marks for reserved seats—Reserved seats left unfilled—Whether should be thrown open to the general category candidates—Power to relax the condition of qualifying marks without prescribing the minimum standard—Whether arbitrary—Order of relaxation required to be passed by the competent authority—Such an order passed by the Vide Chancellor—Whether Valid—Candidates for admission to contrance examination required to possess domicile of Haryana—Term 'domicile' as used in the instructions—Meaning of.

Held, that note (i) at the end of Chapter III of the prospectus provides that a competition for reserved seats will be among the candidates belonging to the category for which the seats have been reserved and that the reserved seats remaining vacant on account of non-availability of eligible candidates would be placed under the open merits seats. This obviously talks of the eligibility of the candidates for admission to the entrance examination and has noting to do with the requirement of the passing of the entrance examination. The eligibility chapter requires that all candidates must have secured atleast 50 per cent marks in the Pre-Medical examination before they could be eligible to take entrance examination. If the requisite number of candidates for the reserved seats securing atleast 50 per cent marks in the Pre-Medical examination is not available then the Note comes into operation and the seats to the extent their number falls short are to be thrown open to the general category. The reserved seats in the absence of the availability of requisite number of candidates securing qualifying marks cannot, however, be thrown open to the general category candidates.

(Para 4)

Held, that the provision of the prospectus conferring powers to relax the minimum qualifying marks cannot be said to confer arbitrary powers even though no minimum standard having been prescribed. The power of relaxation for admission to the medical college cannot be said to be unreasonable nor offending Article 15(1)(2) or Article 14 of the Constitution.

(Para 5)

Held, that the order of relaxation could only be passed by the competent authority which according to the provisions of section 10 read with section 13 of the Maharishi Dayanand University Act, 1975

was the Academic Council of the University. By virtue of the provisions of section 9-A(5) of the Act, the Vice Chancellor may, if he is of the opinion that immediate action is necessary on any matter exercise any power conferred on any authority of the University by or under the Act though that action is required to be ratified by the concerned authority in the next meeting. The matter of admission to the examination was such which required immediate action and, therefore, the power of relaxation was validly exercised by the Vice Chancellor.

(Para 6)

Held, that the term 'domicile' in its ordinary acceptation means the place where a person lives or has his home. In this sense the place where a person has his actual residence, inhabitancy or commorancy, is sometimes called his domicile. In a strict and legal sense, that is properly the domicile of a person where he has his true fixed permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning. When understood in its strict legal sense all citizens of India have only one domicile, that is, Indian domicile and none can be said to have a domicile in any particular State. It is, therefore, obvious that the word, domicile has been used in the instructions to connote the actual residence of a person in the State of Haryana.

(Para 7)

Petition under Articles 226/227 of the Constitution of India praying that:—

(i) *That a writ in the nature of mandamus be issued directing the respondents 1 and 2 to admit the petitioners in place of respondents No. 3 to 62 except those who qualified in the test.*

(ii) *That the respondents be directed to notify the subject-wise marks obtained by all the candidates.*

(iii) *That the power to relax the minimum standard be quashed as violative of Articles 14 and 15 of Constitution of India and Note (1) of Chapter-III.*

(iv) *That an ad interim order directing the respondents 1 and 2 to admit the petitioners subject to the decision of their writ petition and allow to attend the classes.*

(v) *That the amended petition be allowed to substitute C.W.P. No. 4297 of 1985.*

(vi) *That the admission of the students admitted on false domicile and of respondents who did not secure minimum standard be quashed;*

(*vii*) *That a writ in the nature of certiorari be issued calling for the records of the respondent No.* 1 *and* 2 *and after its perusal any order relaxing the minimum standard be quashed;*

(*viii*) *Any other writ order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case, be issued;*

(*ix*) *Cost of the petition be allowed;*

(*x*) *That the filing of Annexures P/1 be exempted and P/1 attached to C.W.P.* 4297 *of* 1985 *be read as P/1 to this petition.*

I. S. Balhara, Advocate, *for the Petitioner.*

H. L. Sibal, AG Haryana with S. C. Sibal, Advocate, *for the Respondent.*

JUDGMENT

S. P. Goyal, J.

(1) This judgment will dispose of five petitions, Civil Writ Petitions Nos. 4060, 4276, 4297, 4302 and 4760 of 1985 which have been filed to challenge the admissions made to M.B.B.S. Course scheduled to commence in August 1985. For the purpose of this judgment the facts of Civil Writ Petition No. 4297 of 1985 have only been noticed.

(2) There were 115 seats only out of which 57 were reserved seats and the remaining open ones. Admission to the course was to be made on the basis of entrance examination to be regulated and held according to the provisions of the Prospectus issued for the year 1985. The eligibility for admission to the entrance examination is governed by Chapter IV of the Prospectus of which two clauses are only relevant for the purpose of this petition. Clause I of this Chapter provides that a candidate for admission to the Entrance Examination must possess Haryana residence/domicile as defined in the Haryana Government letter No. 4863-6-GSI-77/19856, dated 26th July, 1977. Clause IV(i) provides that the candidate must have passed either pre-medical examination of M.D. University, Rohtak or of any other University/Board recognised as equivalent by M.D. University with atleast 50 per cent marks in English, Physics, Chemistry and Biology, all taken together. The entrance

examination is regulated by Chapter V and its clause 4 whose vires have been challenged reads as under :

> "A candidate shall have to obtain at least 50 per cent of the total marks allotted to all Science subjects and English in the Medical/Dental Entrance Examination in order to compete for admission. Candidates belonging to Scheduled Castes/Tribes shall have to obtain at least 40 per cent of the aggregate marks in the Entrance Examination. However, if the number of qualifying candidates securing 50 per cent or 40 per cent or more marks in the test as the case may be, are not available to fill up the vacancies, both general and reserved, the authorities will have the right to relax the above condition, to the extent it may deem appropriate."

(3) In the entrance examination only one scheduled caste candidate, four ex-service-men and one backward class candidate got the qualifying marks. Rest of the seats were filled by relaxing the provisions of clause 4 of Chapter V reproduced above. The challenge against these admissions is three-fold. First, that the reserved seats in the absence of the availability of requisite number of candidates securing qualifying marks, should have been thrown open to the general category candidates, as envisaged in Note (i) of Chapter III of the Prospectus. Second, that the provisions of the said clause confer arbitrary powers to relax the condition of qualifying marks without prescribing any minimum standard. Third, that the competent authority never passed any order relaxing the condition of qualifying marks. Apart from the challenge to the admission of the reserved category candidates admission of 15 respondents named in Civil Misc. Application No. 2048 of 1985 of general category was also challenged on the ground that they were neither *bona fide* residents nor had Haryana domicile at the relevant time.

(4) Note (i) at the end of Chapter III provides that a competition for reserved seats will be among the candidates belonging to the category for which the seats have been reserved and that the reserved seats remaining vacant on account of non-availability of eligible candidates would be placed under the open merit seats. This Note obviously talks of the eligibility of the candidates for admission to the entrance examination and has nothing to do with the requirement of the passing of the entrance examination. Clause IV(i) of the Eligibility Chapter requires that all candidates must have secured atleast 50 per cent marks in the pre-Medical examination before

they could be eligible to take entrance examination. If the requisite number of candidates for the reserved seats securing atleast 50 per cent marks in the pre-Medical Examination is not available then this Note comes into operation and the seats to the extent their number falls short are to be thrown open to the general category. The contention raised is, therefore, wholly misconceived.

(5) The Second ground that the provisions of the said Clause IV confer arbitrary powers to relax the minimum qualifying marks again has to be turned down in view of the authoritative pronouncement of the Supreme Court in *State of M.P. and another* v. *Kumari Nivedita Jain and others*, (1) wherein the right of the Government to relax such a condition in the case of scheduled caste and scheduled tribe candidates to any extent was upheld. The learned Counsel for the petitioners, however, relying on the observation in para 26 that some kind of minimum standard for selection for admission to the Medical College apart from the eligibility should be there, urged that in the present case no minimum standard having been prescribed the power of relaxation was liable to be struck down as arbitrary. In spite of that observation relaxation made by the State Government under the rules regarding selection of candidates belonging to scheduled castes and scheduled tribes for admission to the Medical College was held to be not unreasonable either offending Article 15(1) and (2) or Article 14 of the Constitution, as there was no relaxation in the standard of medical education or curriculum of studies in the medical colleges for those candidates after their admission to the college and the standard of examination and curriculum remains the same for all the students.

(6) On the third ground, the argument advanced was that the order of relaxation can only be passed by the competent authority which according to the provisions of section 10 read with section 13 of the Maharshi Dayanand University Act, 1975 was the Academic Council of the University. From the perusal of the record produced by the respondents it was revealed that the order of relaxation has been passed by the Vice-Chancellor. It was, therefore, contended that the order of relaxation was never passed by the competent authority. The learned counsel for the respondents, on the other hand, pointed out that by virtue of the provisions of section 9-A(5) of the said Act, the Vice-Chancellor may, if he is of the opinion that

(1) A.I.R. 1981 S.C. 2045.

immediate action is necessary on any matter exercise any power conferred on any authority of the University by or under this Act though that action is required to be ratified by the concerned authority in the next meeting. The matter of admission to the examination was such which required immediate action and, therefore, the power of relaxation was validly exercised by the Vice Chancellor. Though no foundation has been laid in the written statement to show the circumstances under which the power was exercised by the Vice Chancellor yet on this ground action cannot be struck down because in the petition also no grievance was made that the power had not been exercised in accordance with the provisions of law. The only point made in the petition was that no order of relaxation was passed at all if there was any it was not passed by the competent authority. Because of lack of necessary averments in this regard in the petition no proper averments were made in the written statement as well. Therefore, on the pleadings as they stand, the ground urged to attack the relaxation order has to be overruled.

(7) On the question of domicile of 15 respondents named in the application referred to above, from the perusal of the original record we find that apart from Vijendra Sarup, Miss Namita Swarup and Miss Jaya Kak all other respondents were held to possess residence/domicile of Haryana on the basis other than that of the ownership of the property. The challenge against them, therefore, was not pressed by the learned counsel for the petitioners. Vijendra Sarup and Miss Namita Swarup both did not avail of the admission as they secured the same in the Medical College in Delhi. The admission of Miss Jaya Kak, therefore, only remains disputed. At it is not controverted that even if her admission is cancelled, none of the petitioners in any of the petitions would be able to get admission to the course, they would have no *locus standi* to challenge the admission of Miss Jaya Kak. Moreover, the certificate of domicile having been granted to her in accordance with the letter of the Haryana Government, she cannot be said to have committed any act for which her admission can be cancelled at this stage when she cannot avail of her chance for admission in some college in any other State. In none of the petitions the vires of the said letter have been challenged and for this reason also the admission of Miss Jaya Kak would not be open to challenge on the ground that she could not be considered a *bona fide* resident/domicile of Haryana. However, we cannot help observing that several clauses of the letter of the Government referred to above which confer deemed residence/domicile on a particular person are open to challenge. The term 'domicile' as stated in

Wharton's Law Lexicon, in its ordinary acceptation, is meant the place where a person lives or has his home. In this sense the place where a person has his actual residence, inhabitancy or commorancy, is sometimes called his domicile. In a strict and legal sense, that is properly the domicile of a person where he has his true fixed permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning. When understood in its strict legal sense all citizens of India have only one domicile, that is, Indian domicile and none can be said to have a domicile in any particular State. It is, therefore, obvious that the word, domicile has been used in the letter to connote the actual residence of a person in the State of Haryana. In *D. P. Joshi* v. *State of Madhya Bharat and another*, (2) the word, 'domicile' used in the rules relating to the admission to Mahatma Gandhi Memorial Medical College Indore was also said to have been used in its popular sense conveying the idea of residence. If that is so, then only those persons can be considered as resident/domicile of Haryana who either actually have permanent residence in the State or had a permanent residence at the relevant time and are for the time being temporarily residing outside the State. We have refrained from considering the validity of each clause of the said letter because of lack of proper challenge but we have no doubt that the State Government would reframe those clauses keeping in view the observations made above.

(8) In the result these petitions fail and are hereby dismissed. In the circumstances of the case the parties are left to bear their own costs.

D. V. Sehgal, J—I agree.

N. K. S.

Before: *S. S. Sodhi, J.*

PREM KUMAR,—*Appellant.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Regular Second Appeal No. 813 of 1985

January 21, 1986.

Punjab Civil Services (Punishment & Appeal) Rules, 1970—*Rules* 5 *and* 9—*Departmental enquiry held against the delinquent*

(2) A.I.R. 1955 S.C. 334.