

Pritam Singh
v.
Gurdial Kaur
and another

Dua, J.

Harnam Singh. Under the existing law Harnam Kaur would be an absolute owner and the declaratory decree might legitimately be considered to have become infructuous and inoperative. This view would seem to find support from the fourth conclusion in the judgment of M.C. Mahajan J. (as he then was) in *Ali Mohammad Mt. Mughlani* (2). But since this aspect was not debated at the bar, I need say nothing more on it.

The last contention that Gurdial Kaur's suit is barred by time, though faintly suggested, was not seriously pressed before us and indeed the observations of the learned Single Judge more than amply justify the conclusion that within twelve years of the date of the suit the appellant was admittedly holding possession as a tenant of Harnam Singh and it was only after Harnam Singh's demise that he thought of putting forth his claim to ownership of the property. Harnam Singh having died in 1954, the present suit filed in 1960 is clearly within time.

The result is that this appeal fails and is hereby dismissed but without costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

NARINJAN SINGH,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ No. 1151 of 1961.

1962

March, 29th

Punjab Control of Bricks Supplies Order, 1956—Clause 4(iii)—District Magistrate—Whether can refuse to grant or renew a licence on the ground that the applicant had been indulging in anti-national activities, etc.

Held, that there is no provision in the Punjab Control of Bricks Supplies Order, 1956, or in the rules made thereunder authorising the District Magistrate to refuse the

grant or renewal of the licence on the ground that the applicant had been found to have been indulging in anti-national activities which tend to cause disharmony likely to result in breach of the peace between different communities. Such a refusal cannot be made under sub-clause (iii) of Clause 4 of the said Order.

Petition under Article 226 of the Constitution of India praying that an appropriate Writ, Direction or Order, be issued quashing the entire proceedings taken by the respondents in respect of two kilns of the petitioner in village Ghungrali and Kakrala Khurd, and also the notice issued by respondent No. 3, dated 20th July, 1961.

H. S. GUJRAL, ADVOCATE, for the Petitioner.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for the Respondent.

ORDER

MAHAJAN, J.—This is a petition under article 226 of the Constitution by one Narinjan Singh who was carrying on the business of manufacture of bricks in villages Ghungrali and Kakrala Khurd in the district of Ludhiana and is directed against the order of the District Magistrate, Ludhiana, refusing to renew his licence for the years 1960-61 and 1961-62. The ground on which this renewal has been refused is stated in the orders of the District Magistrate in these terms:—

Mahajan, J.

“Whereas * * * * *
has been found to have been indulging in anti-national activities which tend to cause disharmony likely to result in breach of the peace between different communities in contravention of sub-clause (iii) of clause 4 of the Punjab Control of Bricks Supplies Order, 1956, I, Sube Singh, I.A.S., District Magistrate, Ludhiana, hereby order that the aforesaid licence shall not be renewed for the years 1960-61 and 1961-62 for the contravention of sub-clause (iii) of clause 4 *ibid*”.

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 others
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 Mahajan, J.

I have made a reference to sub-clause (iii) of clause 4 of the Punjab Control of Bricks Supplies Order, 1956, and I find that this order cannot be justified thereunder. There is no provision in the Control Order or in the rules made thereunder authorising the District Magistrate to refuse the grant of licence on the basis on which he has done and none has been pointed out to me by the learned counsel for the State. Therefore it is obvious that the refusal to grant the licence is wholly against law. The record smacks of the way in which the petitioner has been unjustly persecuted.

The result therefore, is that this petition is allowed and the District Magistrate is directed to grant the necessary licence to the petitioner. The petitioner will have his costs of this petition which are assessed at Rs. 50.

B.R.T.

FULL BENCH

Before S. S. Dulat, Inder Dev Dua and Daya Krishan Mahajan, JJ.

PRITAM KAUR,—Appellant.

versus

THE STATE OF PEPSU AND ANOTHER,—Respondents.

Letters Patent Appeal No. 22 of 1958

1962
 June, 1st

Pepsu Court of Wards Act (No. 1 of 2008 Bk.)—Section 5(2)—Whether ultra vires the Constitution of India—Res judicata—Decision by Court without jurisdiction—Whether operates as res-judicata—Obiter dictum—Whether operates as res judicata—Objection as to res-judicata—Whether can be waived.

Held, that section 5(2) of the Pepsu Court of Wards Act, 2008 Bk., is *ultra vires* the Constitution. It is only the subjective satisfaction of the Government or of the Deputy Commissioner which deprives the citizens of their property. The Act provides no machinery whereby any