

Ram Saran Dass v. The Commissioner, Ambala Division, Ambala etc.
(Sandhawalia, J.)

of a detenu detained under the law pertaining to preventive detention is not forwarded by the State Government to the Advisory Board soon after it is received. This unexplained delay, inordinate and culpable as it is, vitiates the detention and renders it illegal.

(5) For the foregoing reasons, I allow the writ petition and direct that the detenu be forthwith set at liberty.

N.K.S.

CIVIL MISCELLANEOUS

Before S. S. Sandhawalia, J.

RAM SARAN DASS,—Petitioner.

versus

THE COMMISSIONER, AMBALA DIVISION, AMBALA, etc.,—Respondents.

Civil Writ No. 3726 of 1971.

March 30, 1972.

Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Sections 5, 6 and 10-A—Sale or disposition of Panchayat land under section 5—Section 10-A—Whether applicable.

Held, that the crucial words in section 10-A of Punjab Village Common Lands (Regulation) Act, 1961, are "lease, contract or agreement". None of these words cover completed sales. A sale involves a transfer of ownership in exchange for a price paid or promised, or part paid and part promised. It passes the title from the seller to the purchaser. A contract of sale on the other hand does not create any interest in or charge on the property regarding which the agreement is made. Hence section 10-A of the Act is not applicable to a sale or disposition of any land made by the Panchayat for the benefit of the inhabitants of the village under section 5 of the Act. Moreover, section 6 of the Act expressly provides for a remedy for any person aggrieved by any act or decision under section 5 to file an appeal within a limited period of 30 days. The remedy under this section is the specific remedy provided for the infraction of section 5 and, therefore, resort cannot possibly be made to the general provision of section 10-A. (Paras 5 and 6).

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of certiorari, or any other appropriate writ, order

or direction be issued quashing the order dated 3rd February, 1971 of the Commissioner, Ambala Division, Ambala and upholding the order of the Collector, Gurgaon.

Amar Datt, Advocate, for the petitioner.

J. M. Sethi, Advocate for respondents Nos. 3 to 7.

V. M. Jain, Advocate for Advocate-General, Haryana, for respondents 1 to 2.

JUDGMENT

SANDHAWALIA, J.—Does section 10-A of the Punjab Village Common Lands (Regulation) Act, 1961, apply to a sale or disposition of Panchayat land under section 5 of the said Act is the only question that falls for determination in this writ petition.

(2) The issue above-said arises from the following facts which are not in serious dispute. The Gram Panchayat, Bhiwan, passed a resolution dated the 1st of August, 1967, seeking the sanction of the Deputy Commissioner, Gurgaon, for the sale of land vested in it in order to raise funds for the construction of an urgently needed high school building (*vide* annexure R. 2 to the written statement). On the following day, that is, the 2nd of August, 1967, a public auction was held in which the highest bid was given on behalf of respondents Nos. 3 to 7 and Rs. 700 were paid in advance at the time of auction. Subsequently by a regular deed executed on the 10th of August, 1967, and registered on the following day the 11th of August, 1967, the above-said sale was completed. The petitioner who averred himself to be aggrieved by this sale made an application before the Collector, Gurgaon well nigh two years after the execution of the above-said registered deed seeking that the same be set aside. This application was specifically made under section 10-A of the Act. The Collector by his order dated the 28th August, 1970, held that there was an infraction of rule 12 of the Punjab Village Common Lands (Regulation) Rules, 1961 and also suspecting the sale set aside the same. An appeal was carried to the Commissioner, Ambala Division who by his impugned order dated the 3rd of February, 1971, accepted the same holding that no application under section 10-A was competent before the Collector and therefore set aside his order. He took the view that the only remedy open to the petitioner was under section 6 of the Act of which he had not availed himself. Against the said order the petitioner moved the Financial Commissioner, who, however, dismissed the same on the ground that the

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same was not maintainable. He has now come up by way of this writ petition to impugn the Commissioner's order, annexure 'C' to the petition.

(3) Learned counsel for the petitioner forcefully contended that section 10A is an independent section which stands by itself and reliance in this regard was placed on the *non obstante* clause with which this section begins. Counsel argued that the terms of this section are wide enough to include within its ambit a completed sale of immovable property. It was further argued that a sale was only an executed contract whilst a contract of sale was executory and no distinction need be drawn between the two for the purpose of excluding the applicability of section 10A.

(4) As the contentions of the parties turn primarily on the relevant provisions of the statute, it is now necessary to set down the provisions of sections 5(1), 6 and 10A(1) :—

"5(1) All lands vested or deemed to have been vested in a Panchayat under this Act shall be utilized or disposed of by the Panchayat for the benefit of the inhabitants of the village concerned in the manner prescribed :

(2) * * * *

6. Appeal.

(1) If any person is aggrieved by an act or decision of a Panchayat under section 5, he may, within thirty days from the date of such act or decision, appeal to the Collector who may confirm, reverse or modify the act or decision, or make such other order as he thinks to be just and proper.

(2) The appellate order of the Collector shall be final ;

10-A. Power of Collector to cancel or vary leases etc. of lands vested in Panchayat.

(1) Notwithstanding anything contained in this Act or the Shamilat Law or in any other law for the time being in force, the Collector may call for, from any panchayat in his district the record of any lease, contract or agreement entered into by the Panchayat in respect of any land vested or deemed to be vested in it,

whether such lease, contract or agreement is entered into before or after the commencement of the Punjab Village Common Lands (Regulation) Amendment Act, 1964, and examine such record for the purpose of satisfying himself as to the legality or propriety of such lease, contract or agreement.”

(2) * * * *

(5) Despite the persistence and ability with which Mr. Amar Dutt has advanced the argument that Section 10A would be attracted to the case of the petitioner, it is not possible to accede to his contention. The crucial words in section 10A of the Act within which the completed sale in the present case is sought to be brought are—“lease, contract or agreement”. It was fairly conceded on behalf of the petitioner that neither the word lease nor agreement would be applicable to a completed sale. The argument was mainly centred round the word contract and the gravamen thereof was that there was no distinction between a contract to sell or a completed sale. To my mind it appears that this is a proposition which runs counter to settled law on the point. Indeed a distinction between a duly registered sale and a contract to sell or an agreement to sell is too fundamental and a little too well known to be either ignored or to need any great elaboration. The line that divides sale from a mere agreement to sell is clear and distinct. It is evident even by a bare reference to the relevant statutory provisions. Section 54 of the Transfer of Property Act clearly mentions that sale involves a transfer of ownership in exchange for a price paid or promised or part paid and part promised. As is well known a sale passes the title from the seller to the purchaser. A contract of sale on the other hand does not create any interest in or charge on the property regarding which the agreement is made. It is needless to enter into a long dissertation on the point as the same is well established and if any authority was needed for the proposition then reference may usefully be made to *Sah deo Singh v. Kuber Nath Lal and others* (1), I, would, therefore, hold that a duly registered sale of land is not within the ambit of section 10A of the Act.

(6) A reference to the provision of above-quoted section 5(1) would show that it is this provision which specifically authorises the

(1) A.I.R. 1950 All. 632.

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disposition of land by the Panchayat for the benefit of the inhabitants of the village concerned. It is the common case of the parties that the challenged sale was made under the provisions of this Act. Rule 12, the infraction of which was relied upon both on behalf of the petitioner and also by the Collector would show that it is expressly framed under section 5 read with section 15(2)(f) of the Act, the latter section merely giving the rule making power for the purpose. As the Commissioner has duly noticed, there was a slight irregularity in compliance with rule 12 though it is not in dispute that the sale was made for the purpose of constructing the building of a High School in the village which purpose would be well covered by sub-clause (i) of rule 12. Once it is held that the sale or disposition of the land was made under section 5 of the Act it is evident from section 6 that it expressly provides for a remedy for any person aggrieved by any act or a decision under section 5 to file an appeal within a limited period of 30 days. The remedy under this section is the specific remedy provided for the infraction of section 5. On ordinary canons of interpretation therefore where a special provision has been made under section 6, resort cannot possibly be made to the general provision of section 10A.

(7) It is evident, therefore, that the view of the learned Commissioner that no application under section 10-A on the present facts was competent is correct and consequently there is no merit in this petition which must fail and is dismissed, however, without any order as to costs.

B. S. G.

CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

LACHMAN DASS CONSTABLE,—Petitioner.

versus

THE STATE OF PUNJAB ETC.,—Respondents.

Civil Writ No. 3725 of 1971.

March 30, 1972.

Punjab Police Rules (1934)—Rules 13.7 and 13.8A—Removal of the name of a constable from list B-1 during trial on criminal charge—Trial