

It is common ground that the house which was attached and sold in the execution of the decree obtained by Seth Rattan Chand in the present case was evacuee property, that this property vested in the Custodian and that it could not be attached or sold in the execution of a decree. In view of the positive prohibition imposed by section 17 of the Administration of Evacuee Property Act, it seems to me that it was not within the power of the executing Court to bring it to sale or to confirm the sale. As the action of the executing Court was in contravention of the express provisions of law, it was, in my opinion, within the power of the said Court to review its own order and to set aside the order of the 17th March 1951 by which the sale was confirmed. Unfortunately the Court declined to take the only course which was open to it under the circumstances of the case.

Assistant
Custodian,
Evacuee
Property
Amritsar, etc.,
v.
Seth Rattan
Chand and
another
—
Bhandari,
C. J.

For these reasons, I would allow the petition, set aside the order of the executing Court as well as the order, dated the 17th March 1951, by which the sale was confirmed in favour of Udham Singh. I further direct that the auction-purchaser will be entitled to recover from the decree-holder through the executing Court any amount which may have been paid by him to the decree-holder on account of the price of the property in question. There will be no order as to costs of this Court.

CIVIL ORIGINAL

Before Khosla and Harnam Singh, JJ.

PUNJAB STATE,—*Petitioner.*

versus

INDER SINGH, ETC.,—*Respondents.*

Civil Original No. 106 of 1951.

1952

July 14th

*Punjab Pre-emption Act (I of 1913) Sections 14, 15,—
Constitution of India, Article 19(I) (f)—Whether Punjab
Pre-emption Act, ultra vires of the Constitution of India
—Whether restrictions imposed by Sections 14 and 15 of
the Punjab Pre-emption Act upon the freedom to acquire,*

hold and dispose of property are not reasonable restrictions—Effect of the repeal of the Alienation of Land Act upon Sections 14 and 15 of the Punjab Pre-emption Act.

Held, that the Punjab Alienation of Land Act having been repealed, there is no distinction between “agriculturist” and “non-agriculturist” in this State and, therefore, the provisions of section 14, Punjab Pre-emption Act, are of no effect, but this circumstance does not in any way affect the provisions of section 15. as section 15 is in no way dependent upon section 14. Section 15 deals with agricultural land and village immovable property, and the manner of its disposal does not necessarily depend on who owns the land or who buys it and if section 14 is treated as non-existent, section 15 can still stand by itself. Therefore, the repeal of the Punjab Alienation of Land Act, does not in any way affect the provisions of section 15 or render them null and void.

Held further, that there can be very little doubt that the law of pre-emption is a clog or fetter upon the freedom of sale. But the restrictions imposed by the law of pre-emption being reasonable and in the public interest are saved by Article 19(5) of the Constitution. The sole object of the law of pre-emption is the preservation of a homogeneous village community and it cannot be said that this is an object which is not in the public interest. This restriction has existed for many years and its extent is just sufficient to achieve the aims in view and as section 15 does not go beyond the objects aimed at, it is not *ultra vires* of the Constitution.

This case was transferred to this Court for disposal from the Court of Senior Sub-Judge, Gurdaspur,—*vide* order of Mr. Justice Kapur, dated the 11th June 1951 (Original Suit No. 251 of 1950. Inder Singh *versus* Sardha Singh, etc., was pending in the Court of Senior Sub-Judge, Gurdaspur).

S. M. SIKRI and D. K. KAPUR, for Petitioner.
PARTAP SINGH, for Respondent.

ORDER.

KHOSLA, J. This pre-emption suit was originally filed in the Court of the Senior Subordinate Judge, Gurdaspur. One of the pleas raised in defence was that the Punjab Pre-emption Act is *ultra vires* the Constitution. The Advocate-General for the Punjab moved this Court with a prayer that the case be transferred to this Court and heard on the original side. In view of the importance of the question involved, Kapur, J.,

ordered the case to be transferred to this Court. Subsequently many other cases were dealt with in the same manner and in all these cases the question for consideration is whether the Punjab Pre-emption Act is *ultra vires* the Constitution and therefore whether a suit for pre-emption is competent. It must be clearly understood that we are only called upon to give our decision on this law point and are not concerned with the merits of any individual case. We have heard counsel for both sides and have also heard the learned Advocate-General, and we now proceed to give our decision.

Punjab State
v.
Inder Singh,
etc.
—
Khosla, J.

The main line of attack is on behalf of the vendees, and the argument urged on their behalf is that the Punjab Pre-emption Act is *ultra vires* as its provisions contravene Article 19 (1) (f) of the Constitution. It is contended that sections 14 and 15 of the Punjab Pre-emption Act impose restrictions upon the freedom to acquire, hold and dispose of property, and these restrictions not being in the nature of reasonable restrictions cannot be allowed to stand. With regard to section 14 it is also alleged that since the Punjab Alienation of Land Act has been repealed there is no such thing as an "agricultural tribe" in the Punjab and section 14 must be considered void and of no effect. In this respect it was contended that section 15 was dependent upon section 14 and quite apart from Article 19(1) (f) of the Constitution the provisions of section 15 must be deemed to have been repealed by the repeal of the Punjab Alienation of Land Act.

I shall first deal with the second objection, as it can be disposed of in a few words. The Punjab Alienation of Land Act having been repealed, there is no distinction between "agriculturist" and "non-agriculturist" in this State and therefore the provisions of section 14, Punjab Pre-emption Act, are of no effect, but this circumstance does not in any way affect the provisions of section 15, as section 15 is in no way dependent upon section 14. Section 15 deals with agricultural land and village immovable property, and

Punjab State
 v.
 Inder Singh,
 etc.

 Khosla, J.

the manner of its disposal does not necessarily depend on who owns the land or who buys it, and if section 14 is treated as non-existent section 15 can still stand by itself. Therefore the repeal of the Punjab Alienation of Land Act does not in any way affect the provisions of section 15 or render them null and void.

With regard to Article 19 (1) (f), there can be very little doubt that the law of pre-emption is a clog or fetter upon the freedom of sale. It disqualifies certain types of persons from purchasing land freely. It may be said that the disability attaches to the land itself and not to the persons owning it or proposing to purchase it, but whether this be so or not the fact remains that if a person purchases a certain property he may be deprived of it by another person who has a superior right of pre-emption under the provisions of section 15 of the Act; and this being so, it follows that the original vendee does not enjoy the right to acquire and hold property freely. It is also possible to argue that the right of the vendor also is restricted in some measure, for he cannot sell it to anyone he pleases. In my view, however, the disability or restriction attaches primarily to the vendee. The vendor whenever he wishes to sell his property can do so. He may be obliged to offer the first refusal to the pre-emptor, but subject to this he can sell the property to anyone he likes. Besides, the right to sell is not the right to sell to anyone and if there are restrictions upon the persons who can buy the land these are not restrictions upon the vendor. So in my view it is the right of the vendee which is restricted and of nobody else, although it cannot be denied that the vendor's right is also subject to some minor restrictions. It was pointed out in *Gobind Dayal v. Inayatullah* (1), that the right of pre-emption "amounts to a qualified disability, distinctly operating in derogation of the vendor's absolute right to sell the property, and thus affects his title, which would otherwise amount to absolute dominion," and in a broad view of the matter it may

(1) I. L. R. 7 All. 725 at p. 805

be conceded that the rights of the vendor and also of the vendee are restricted by the law of pre-emption. It is, however, argued that these restrictions are reasonable and are in the public interest. Therefore they are saved by Article 19 (5). The objects of the law of pre-emption may be briefly enumerated as follows :—

Punjab State
v.
Inder Singh,
etc.
—
Khosla, J.

- (1) To preserve the integrity of the village and the village community.
- (2) To implement the agnate theory of law.
- (3) To avoid fragmentation of holdings.
- (4) To reduce the chances of litigation and friction and to promote public order and domestic comfort.
- (5) To meet the needs of a particular society at particular stage of the evolution.

These objects have been recognized and stated in a number of decisions. It was pointed out in *Nusrat Reza v. Umbul Khyr Bibee* (1), that the "right of pre-emption is very special in its character. It is founded on the supposed necessities of a Mahomedan family, arising out of their minute sub-division and inter-division of ancestral property."

Again their Lordships of the Privy Council observed in *Digambar Singh v. Ahmad Sayed Khan* (2)—

"The object is, as far as is possible, to prevent strangers to a village from becoming sharers in the village. Rights of pre-emption, when they exist, are valuable rights, * * * *."

I may also quote the following observations contained in *Khan Bahadur Muhammad Ali Khan v. R. B. Makhan Singh and others* (3)—

"One of the main reasons for the acceptance of a pre-emptive right is the vital

(1) VIII Weekly Reporter 309

(2) I. L. R. 37 All. 129 at p. 141

(3) 73 I. C. 855

Punjab State
 v.
 Inder Singh,
 etc.
 ———
 Khosla, J.

necessity felt by every community when it first becomes homogeneous, to preserve to itself its essential homogeneity. To allow landed estate to pass into hands of strangers is not only to deprive the community of a valuable asset into which its communal right has not been entirely abandoned, but also to entail the dissolution of its internal organisation by the engrafting of strangers upon the common body. For these reasons the first right of pre-emption in the case of agricultural land or of the sites of agricultural villages accrues primarily to the relatives of the original owner and after them to other members of the proprietary body."

An examination of the provisions of section 15 of the Pre-emption Act shows that this is the sole object of the law of pre-emption, and it cannot be said that this is an object which is not in the public interest. On the other hand the preservation of a homogeneous village community is undoubtedly in the interest of the general public, and it is clearly a reasonable restriction, for it has existed for many years and its extent is just sufficient to achieve the aims in view. Under section 15 the right of pre-emption has been given in the first instance to the lineal descendants of the vendor in order of succession, then to the co-sharers who are agnates in order of succession, next on the list are the persons in order of succession and fourthly to the co-sharers. Failing these the right vests in inferior or superior proprietors when the land is sold to superior or inferior proprietors respectively, then in the owners of the patti, the owners of the estate and the tenants and, finally in the occupancy tenants. The sole object of this legislation is to preserve the homogeneity of the village community and to prevent fragmentation of holdings. The terms of section 15 do not go beyond the objects aimed at and the restrictions imposed are just sufficient to achieve the interest of general public in the way indicated above. I must, therefore,

hold that section 15 of the Punjab Pre-emption Act is not *ultra vires* the Constitution.

Punjab State
v.
Inder Singh,
etc.

The case can now be sent back to the trial Court for disposal according to law.

Khosla, J.

In a number of other cases, namely, C.O. No. 182 of 1951, C.O. No. 149 of 1951, C.O. No. 72 of 1951, Civil Reference No. 6 of 1951, C.O. Nos. 4 and 5 of 1952 and Civil References Nos. 1 and 2 of 1952, the same point arose and our decision will operate in these cases also. All the original cases will be sent back to the Courts concerned for disposal according to law.

HARNAM SINGH, J. I agree.

Harnam Singh
J.

APPELLATE CIVIL

Before Khosla and Harnam Singh JJ.

M/S CHAMAN LAL LOONA AND CO.,—Appellant

1952

versus

July 17th

DOMINION OF INDIA, NEW DELHI,—Respondent.

First appeal from order No. 9 of 1949.

Indian Independence (Rights, Property and Liabilities) Order, 1947, Clause 8—Construction and meaning of—Relevant date for the examination of the purpose under clause 8 (i), indicated—Date of the performance of contract, whether material—Contract performed before 15th August 1947, but liability undischarged thereunder effect of—The Joint Defence Council Order, 1947—Military Stores, effect of on clause 8—Clause 8, whether applies to executory contracts.

Firm C. L. & Co. supplied fodder to Military Dairy Farm at Lahore under contract entered into in 1945. Partition of India took place on 15th August 1947 and Lahore became part of Pakistan. On 10th August 1948 the firm C. L. & Co. filed an application in the court of Sub-Judge, Ferozepore, under sections 20 and 8 (2) of the Arbitration Act for reference of the dispute to arbitration in pursuance of the arbitration clause in the contract. The Dominion of India opposed the application on the basis of Clause 8 of the Indian Independence (Rights, Property