

FULL BENCH

MISCELLANEOUS CIVIL

Before Prem Chand Jain, S. S. Sidhu and Ajit Singh Bains, JJ.

KEWAL KRISHAN PURI and another,—*Petitioners.*

versus

THE STATE OF PUNJAB, etc.—*Respondents.*

Civil Writ No. 5697 of 1975

January 28, 1977.

Punjab Agricultural Produce Markets Act (XXIII of 1961)—Sections 23, 26 and 28—Punjab Agricultural Produce Markets Amendment Act (XIV of 1975)—Punjab Agricultural Produce Markets (General) Rules 1962—Rule 29—Constitution of India 1950—Seventh Schedule, List II Entries 14, 18 and 28—Money realised through levy of fee—Expenditure therefrom—Whether can be incurred for the development of principal market yard alone or the entire notified market area—Contributions to Chief Minister's Flood Relief Fund—Whether authorised—Sections 26 and 28—Whether constitutional—Levy of fee—Whether a tax.

Held, that a bare perusal of the provisions of the Punjab Agricultural Produce Markets Act 1961 would show that a Committee is established for a notified market area. The principal market yard and one or more sub-market yards are established for that notified market area. The principal market yard is only a small place where the producers come and dispose of their produce. If there is no development of the notified market area; then the development of the principal market yard or sub-market yard is of no use. The producers who live in villages which form part of the notified market area are to be provided with facilities which are essential in order to achieve the objects of the Act. If the poor agriculturists are not provided proper facilities and a fair return for their produce is not secured, then the whole purpose of the legislation would be frustrated. Thus, the area for the development of which the funds are realised by a Committee by imposing fee in exercise of its powers under section 23 of the Act read with rule 29 of the Punjab Agricultural Produce Markets (General) Rules 1962 cannot be limited to the principal market yard or sub-market yard and the committee has jurisdiction over the entire notified market area and it is for the development of that area that the committee is entitled to incur expenditure.

(Para 10)

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Held, that giving of donations for the Chief Minister's Flood Relief Fund by the Market Board or the Market Committee out of the Marketing Development Funds would not be justified as the same has no correlation with the object to be achieved under the Act and the same would be unauthorised and illegal.

(Para 23)

Held, that clauses (v), (x), (xiii) and (xiv) of section 26 and clauses (xi) and (xiii) of section 28 of the Act are valid as the amounts realised by a committee can be spent for the development of the notified market area also. The broad object of the Act is only to protect the producers of agricultural produce from being exploited by middlemen and pronteers and to enable them to secure a fair return of their produce. If this object is kept in view then, clauses (x), (xiii) and (xiv) of section 26 fall within the ambit of entry 28 of List II of the Seventh Schedule to the Constitution of India 1950. These clauses would help the growers to make improvements in the production of agricultural produce with the result that their agricultural produce would find a better market resulting in getting them high price for the same. These clauses are therefore constitutional. Clause (viii) of section 28 of the Act is also valid as the construction and repair of approach roads, culverts, bridges and other such purposes is an essential expenditure that has to be incurred by a committee in order to find a better market and to ensure the sale of the produce by the growers.

(Paras 12, 14, 15 and 16)

Held, that the levy of fee under section 23 of the Act is not a tax in the garb of fee.

(Para 19)

Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court be pleased to issue :—

- (i) *a writ of Certiorari quashing the impugned telegraphic instructions dated 21st August, 1975 vide Annexure P-5 circulated by the Board of all the Market Committees of Punjab ;*
- (ii) *a Writ of Mandamus declaring the Punjab Agricultural Produce Market (Amendment) Act; 1975, dated 8th August, 1975 vide Annexure P-4 as void, invalid, unconstitutional ultra vires;*
- (iii) *a writ of mandamus declaring Sections 23, 26, 27 and 28 of the Act as void, invalid, ultravires and unconstitutional ;*

- (iv) a Writ of Mandamus declaring rule 29 as void, invalid, ultravires and unconstitutional ;
- (v) a Writ of Mandamus restraining the respondents from realising the market fee over and above Rs. 1.50 ;
- (vi) a Writ of Mandamus directing the Market Committee, Moga to refund the entire amount of money paid by mistake as market fee ;
- (vii) Production of certified copies of Annexures and the Notices of Motion on the Respondents may be dispensed with ;

It is further prayed that till the decision of this Writ Petition a stay order be granted staying the operation of the impugned Amending Act 14 of 1975 vide Annexure P-4 and the unauthorised telegraphic instructions issued by the Board dated 21st August, 1975 vide Annexure P-5 subject to the conditions as this Hon'ble Court may deem fit otherwise despite the fact that the Act 13 of 1974 was struck down, the Market Committees and the Board are creating every possible impediments, obstacles and not refunding a penny and the dealers of Punjab have to file writ petitions in this Hon'ble High Court asking for refund of the amount.

Bhal Singh Malik, Advocate with Vinod Kataria, Advocate, for the Petitioners.

H. L. Sibal, Sr. Advocate with S. C. Sibal, S. K. Sharma, G. C. Garg, N. K. Sodhi, Advocates for Respondent No. 2.

J. L. Gupta, Advocate for Respondent No. 3.

V. P. Prashar, A. A. G. (Pb.) for Respondent No. 1.

R. L. Batta, Advocate, as Intervener.

JUDGMENT

Prem Chand Jain, J.

(1) M/s. Devi Dass-Gopal Krishan (P) Ltd., petitioner No. 2, is a private limited company registered under the Companies Act and petitioner No. 1 is its Director. The petitioners through this petition filed under Articles 226 and 227 of the Constitution of India have called in question the constitutional legality and validity of the Punjab Agricultural Produce Markets (Amendment) Act, 1975 (Punjab Act No. 14 of 1975), copy Annexure P-4 to the petition.

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(hereinafter referred to as the 'Amendment Act'), the telegraphic instructions issued by the Chairman, Punjab State Agricultural Marketing Board (copy Annexure P-5 to the petition), sections 23, 26, 27 and 28 of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as the 'Act') and rule 29 of the Punjab Agricultural Produce Markets (General) Rules, 1962 (hereinafter referred to as the 'Rules').

(2) The State of Punjab enacted the Act in the year 1961. Section 23 of the Act authorizes levy of market fee. Under this provision a Committee was empowered to levy fee, but a higher statutory limit was prescribed as 50 nP. for every one hundred rupees. Later on, Section 23 had been the subject matter of several amendments. By the Punjab Agricultural Produce Markets (Amendment) Act, 1969 (Punjab Act No. 25 of 1969), copy Annexure P-1, the market fee was fixed at Rs. 1-00 per one hundred rupees. By the Punjab Agricultural Produce Markets (Amendment) Act, 1973 (Punjab Act No. 28 of 1973), copy Annexure P-2, the rate of market fee was enhanced to Rs. 1-50 P. Again by the Punjab Agricultural Produce Markets (Amendment) Ordinance, 1974 (Punjab Ordinance No. 4 of 1974), which was later on converted into Act 13 of 1974, the rate of market fee was enhanced to Rs. 2-25 P. for every hundred rupees. This action for enhancement was challenged in this Court successfully and by a Division Bench of this Court in *M/s. Hanuman Dall and General Mills, Hissar v. The State of Haryana and others*, (1), the Ordinance and the Amendment Act 13 of 1974 were struck down. Thereafter by the impugned Amendment Act, the Market Committees were authorized to levy on *ad valorem* basis fees on the agricultural produce at the rate not exceeding Rs. 2-25 P. per one hundred rupees. Further, telegraphic instructions were issued to all the Market Committees in the State of Punjab to start charging fee at 2 per cent *ad valorem* on all items of agricultural produce bought or sold by licensees with effect from 23rd of August, 1975 (copy of the telegraphic instructions is attached with the petition as Annexure P-5).

(3) The petitioners, after tracing the aforesaid history, have alleged in the petition that the income from the market fee has been converted into a source of revenue; that the Market Committee, Moga has collected from the petitioners alone over Rs. 7 lakhs of

(1) A.I.R. 1976 Pb. and Haryana 1.

rupees in the past that the Market Committee, Moga has rendered no service to the petitioners in the past ten years that the Market Committee, Moga did not fix any fee nor did it convene any meeting and on the basis of unauthorized directions from the Board has started charging market fee at the rate of Rs. 2 per one hundred rupees; that there must be a co-relationship in the amount collected as fee and the amount spent in rendering services, i.e., there must be an element of *quid pro quo* between the licensees and the Market Committee; that the Market Committee have surplus funds with the result that the Board donated Rs. 1 crore to Medical College, Faridkot, that all the Committees have been directed to deposit all their amounts in the Government Treasury in the year 1974; that the Agricultural Board and the Committee had given Rupees five crores to the Punjab State Co-operative Supply and Marketing Federation (known as 'Markfed') without charging any interest and the loan is interest-free, because this money was lying surplus with the Committees, and that the primary object of the Act is to protect the producers from being exploited by middlemen, profiteers and to enable them to secure a fair return for their produce. The petitioners, on the basis of the aforesaid facts, have enumerated various legal grounds on the basis of which the legality and the constitutionality of the Amendment Act as well as certain other provisions of the Act have been challenged.

(4) Separate written statements have been filed on behalf of respondent No. 2 and respondent No. 3. In both these affidavits, besides denying the allegations made in the petition, one common preliminary objection has been taken that no joint writ petition is maintainable. In the affidavit filed by Shri Jagraj Singh Gill, Chairman Punjab State Agricultural Marketing Board, on behalf of respondent No. 2, as earlier observed, the material allegations made in the petition have been controverted and it has been specifically averred that even with the increase in the income of the Market Committees resulting from increase in the rate of market fee, funds even at the moment are not sufficient to finance properly the development works in hand, for those to be taken in hand in the very near future and that there is deficit of about Rs. 6 lakhs. In the affidavit filed by Shri Kulbir Singh, Secretary, Market Committee, again the allegations made in the petition have been controverted and a specific allegation has been made that in spite of the increase in the rate of market fee, the answering-respondent does not have sufficient funds to properly

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finance the development work already undertaken or those proposed to be undertaken.

(5) The petitioners have filed replication, in which the stand taken in the writ petition has been reiterated.

(6) Before I deal with the respective contentions of the learned counsel for the parties, the provisions of the Act and the Rules may be noticed briefly. As stated in the preamble, the object of the Act is to provide for the better regulation of the purchase, sale, storage and process of agricultural produce and the establishment of markets for agricultural produce in the State of Punjab. "Market" in Section 2 has been defined to mean a market established and regulated under this Act for the notified market area, and includes a market proper, a principal market yard and sub-market yard. "Notified Market Area" means an area notified under Section 6. "Principal Market Yard" and "Sub Market Yard" mean an enclosure, building or locality declared to be a principal Market Yard and Sub-market yard under Section 7. Section 6 prescribes the procedure for the declaration of a Notified Market Area. Section 7 gives the procedure for the development of market yards. Under Section 11, the State Government through a Notification establishes a Market Committee for every notified market area and specifies its headquarters. Section 12 prescribes the constitution of Committees. Under Section 13, the duties and powers of the Committee are prescribed. Under Section 23, procedure is prescribed for levying fees by the Committee. Section 26 gives purposes for which the marketing development funds may be expended. Section 27 talks of market committee funds; while Section 28 gives the purposes for which the market committee funds may be expended. Under Section 29, power is given to the State to make rules for carrying out the purposes of this Act. Under Section 44, power is given to a Committee to make bye-laws in respect of notified market area subject to any rules that may be made by the State Government under Section 43. Mr. Malik, learned counsel for the petitioners, raised the following two contentions:—

- (1) That Sections 26 and 28, in general, and section 26(v), (vii), (x), (xi), (xiii), (xiv) (xv) and (xvii) and section 28 (viii), (x), (xi), (xiii) (xv) and (xvii), in particular; are void and unconstitutional and have been enacted in a

colourable exercise of power. The authorisation of levy and collection of fee under section 23 of the Act for securing these unauthorized purposes mentioned above is beyond the legislative competency and the legislature has transgressed its power in enacting the impugned provisions and is outside the field of marketing and fairs as enumerated in entry 28, List II of the Seventh Schedule.

- (2) That by securing these purposes no service is being done to the buyer including the petitioners. There is a complete absence of *quid pro quo* and the levy is in fact a tax in the garb of fee.

During the course of arguments, the learned counsel only challenged the following clauses :—

(a) Section 26, clauses (v), (x), (xi), (xiv) and (xvii).

(b) Section 28, clauses (viii), (xi), (xiii) and (xvii).

(7) While developing his arguments, it was submitted by the learned counsel that the money realised through the levy of fees could be spent for the development of the principal market yard and that the Committee had no power under the Act to incur any expenditure on the development of notified market area. In other words, what was sought to be argued by Mr. Malik was that the area of operation or the activities had to be confined to the principal market yard and that the notified market area could not be the subject-matter of development.

(8) On the other hand, Mr. Sibal, Senior Advocate, learned counsel for the respondents, submitted that the provisions referred to in the first contention of Mr. Malik, did not suffer from any vice of unconstitutionality and were valid piece of legislation. In respect of second contention, the learned counsel submitted that there are two types of fees which are chargeable, viz; license fee as envisaged under Section 10 read with Section 13 of the Act and the fee which is levied on agricultural produce bought or sold by the licensee. According to the learned counsel, the principle of *quid pro quo* is applicable only in respect of the fees which are leviable under Section 10 read with Section 13 of the Act; while in the case of fee which is levied

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under Section 23 read with rule 29, the only ingredient necessary to be looked at is, whether levying of the fee has any co-relation with the object for which the Act has been made. According to the learned counsel, under section 23 read with rule 29, whatever fee is being collected, is to promote the object of the Act.

(9) It was also submitted by Shri Sibal that the contention of Shri Malik suffers from inherent fallacy when it is being argued that the area of operation on the activities is to be confined to the principal market-yard and that the notified market area cannot be the subject-matter of development. Mr. Sibal submitted that if this connection is accepted, then the whole purpose of the Act would be frustrated.

(10) So far as the last contention of Mr. Malik is concerned, that the area of operation or the activities is to be confined to the principal market yard, I have no hesitation in holding that this argument of his is untenable and does not get support from any of the provisions of the statute. The bare perusal of the relevant provisions referred to above, would show that a Committee is established for a notified market area. The principal market yard and one or more sub-market yards are established for that notified market area. The principal market yard is only a small place where the producers come and dispose of their produce. If there is no development of the notified market area, then the development of the principal market yard or sub market-yards is of no use. The producers who live in villages which form part of the notified market area are to be provided with facilities which are essential in order to achieve the object of the Act. If the poor agriculturists are not provided proper facilities and a fair return for their produce is not secured, then the whole purpose of legislation would be frustrated and this object certainly cannot be achieved by developing only a principal market yard or sub-market yards. For example, if there are no proper roads for the purpose of carrying the produce from a village forming part of the notified market area to the principal market yard, then how a producer is to be benefited by the expenditure that is incurred on the development of the principal market yard or sub-market yards. The principal market yard or sub-market yard as has been defined means an enclosure, building or locality declared as such under section 7 and is only a place of activity for sale of the produce brought by the producer. In this view of the

matter, Shri Malik was not justified in contending that the area for the development of which the funds realised by the Committee by imposing fee in exercise of its powers under section 23 read with rule 29 has to be limited to principal market yard or sub-market yard; rather the Committee has jurisdiction over the entire notified market area and it is for the development of that area that the Committee is entitled to incur expenditure.

(11) Now I shall deal with the first contention of Shri Malik by which he has challenged the constitutionality of certain provisions of section 26 and 28 of the Act. The following clauses of section 26 and 28 have been the subject-matter of controversy :—

“26. The Marketing Development Fund shall be utilised out of the following purposes :—

- (v) general improvements in the markets or their respective notified market areas ;
- (x) propaganda, demonstration and publicity in favour of agricultural improvements;
- (xi) production and betterment of agricultural produce;
- (xiv) construction of godowns ;
- (xvii) with the previous sanction of the State Government, any other purpose which is calculated to promote the general interests of the Board and the Committees or the national or public interest :”

28. Subject to the provisions of section 27, the Market Committee Funds shall be expended for the following purposes :—

- (viii) providing comforts and facilities, such as shelter, shade, parking accommodation and water for the persons, draught cattle, vehicles and pack animals coming or being brought to the market or on construction and repair of approach roads, culverts, bridges and other such purposes;

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(xi) production and betterment of agricultural produce;

(xiii) imparting education in marketing or agriculture;

(xvii) with the previous sanction of the Board, any other purpose which is calculated to promote the general interests of the Committee or the notified market area or with the previous sanction of the State Government, any purpose calculated to promote the national or public interest."

(12) In respect of clause (v) of section 26 the attack levelled by Shri Malik was that no expenditure could be incurred in respect of the notified market areas as has been indicated in the later part of the clause. This challenge cannot be sustained in view of my finding in the earlier part of the judgment that the amounts realised by the Committee can be spent for the development of the notified market area also.

(13) So far as clauses (x), (xi) and (xiv) are concerned, the submission of the learned counsel was that the purposes enumerated in the aforesaid clauses fall within the scope of entries 14 and 18 of List II of the Seventh Schedule, which read as under :—

"(14) Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

(18) Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans, colonization."

(14) According to the learned counsel, the act falls within entry 28 of List II of Seventh Schedule and that the aforesaid provision of section 26 could not be the subject matter of legislation under entry 28 as the same specifically fell within the purview of entries 14 and 18. I am afraid I am unable to agree with this contention of the learned counsel. The broad object of the legislation like the present one is only to protect the producers of agricultural produce from being exploited by middlemen and profiteers and to enable

them to secure a fair return of their produce. The Legislation like the present one has its root in the attempt on the part of the nation to provide a fair deal to the growers of crops and also to find a market for its sale at proper rates without reasonable chances of exploitation. If this object is kept in view, then the clauses of which the constitutionality has been challenged, would certainly fall within the ambit of entry 28. Clauses (x), (xiii) and (xiv) would help the growers to make improvements in the production of agricultural produce with the result that their agricultural produce would find a better market resulting in getting them high price for their agricultural produce. It may be observed that Shri Malik, learned counsel, in support of his contention about the unconstitutionality of the aforesaid provisions could not cite any authority and just relied on the entries. As earlier observed, the impugned provisions fall within the purview of entry 28 and cannot be struck down on the ground that it was not within the legislative competency to have enacted these provisions under entry 28.

(15) So far as clauses (xi) and (xiii) of section 28 are concerned, the contention of the learned counsel is liable to be rejected for the reasons given while repelling his contention in respect of clauses existing in section 26.

(16) So far as clause (viii) is concerned, the attack levelled by Mr. Malik was that no expenditure could be incurred on the construction and repair of approach roads, culverts, bridges and other such purposes. I am afraid I am unable to agree with the learned counsel. The construction and repair of approach roads, culverts, bridges and other such purposes is an essential expenditure that has to be incurred by the Committee in order to find a better market and to ensure the sale of the produce by the growers. If the approach roads, culverts or bridges are in such a bad shape that they would become hindrance in the mobility of the produce from one part of the notified market area to the principal market yard, then the worst sufferer would be the grower for whose benefit the act has been enacted. For better marketing of the produce, the purpose enumerated in the later part of clause (viii) on which expenditure can be incurred is most essential and such a provision has validly been made under section 28 of the Act.

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(17) The only clause to which reference has to be made is clause (xvii) and the same would be dealt with by me in the later part of my judgment.

(18) This brings me to the next contention of Mr. Malik that by securing the aforesaid purposes, no service is being done to the buyer including the petitioners and that there is a complete absence of *quid pro quo*, and the levy is in fact a tax in the garb of fee. What was sought to be argued by Mr. Malik was that in order to justify the imposition of fee, the element of *quid pro quo*, i.e., the services rendered to payers of the fee by the market committees, has to be co-related to the amount of fee collected from them. According to Mr. Malik, if the costs of the services rendered to the payers of the fee are insignificant or the services rendered are worth much less than the amount charged from them, the fee will amount to 'tax' and colourable exercise of power to impose tax in the garb of fee by the Legislature, the Marketing Board and the Market Committees. In support of his contention, various judicial pronouncements were placed before us, but I do not propose to deal with those decisions individually as a similar question arose before a Division Bench of this Court in *M/s Hanuman Dall and General Mills, Hissar v. The State of Haryana and others* (1) (supra), wherein Tuli J. (as his Lordship then was), speaking for the Court, after considering the entire case law and the relevant provisions, held as under :—

"In view of these authoritative judgments, it is futile for the petitioners to urge that the fee levied under Section 23 of the Act is not a 'fee' but a 'tax'. Shri Hira Lal Sibal, the learned Senior Advocate for the Agricultural Marketing Board, Punjab, has also argued that if the levy cannot be justified as a fee on the basis of correlation with the services rendered, the levy may be considered partly as a fee and partly as a tax and should be upheld as such, in view of the judgment of the Supreme Court in *The Corporation of Calcutta v. Liberty Cinema* (2). In that case, the so-called fee was held to be a tax and the Calcutta Municipal Corporation was held to have the power to impose the tax in order to meet its expenses for carrying out the various obligations imposed on it by the

(2) AIR 1965 S.C. 1107.

Calcutta Municipal Act. No such power has been given to the market committees by the Legislature to impose a tax to raise revenue for carrying out the objects of the Act and the ratio of the decision in *Liberty Cinema's case* does not apply. In my view, the levy permitted under Section 23 of the Act is primarily a fee and can also be called compensatory fee on the parity of reasoning with regard to compensatory tax stated in the Supreme Court judgment in *Automobile Transport (Rajasthan) Ltd., etc. v. State of Rajasthan* (3). The amount of the fee collected by the market committees goes to the market committee fund constituted under Section 27 of the Act and that fund has to be utilised for the purposes mentioned in that section and Section 28."

After making the aforesaid observations, the learned Judge further formulated certain propositions which emerged on the basis of the various judicial decisions, which read as under :—

1. That the fees are of various kinds and it is not possible to formulate a definition that would be applicable to all cases. The matter shall have to be decided in each case taking into consideration the objects of the Act and the kind of service to be rendered;
2. that the collections from the fees must not be merged in the general revenue but should be kept apart and appropriated for rendering the services;
3. that the amount of the fees charged must have a reasonable relationship with the cost of services rendered or to be rendered to the payers of the fees. However, it is impossible to have an exact relationship and so the relationship expected is one of general character and not of arithmetical exactitude; and
4. that the amount of fees so collected are not to be spent exclusively for rendering services to the payers of the fees but can also be utilised for carrying out the purposes or objects of the Act under which they are levied. They

(3) AIR 1962 S.C. 1406.

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cannot, however, be utilised for purposes which have no connection with the main purposes of the Act for which fee is levied, as explained by the Supreme Court in *The Secretary, Government of Madras, Home Department v. Zenith Lamps and Electricals Ltd.* (4), with respect to Court-fees. It was said therein that the Court-fees collected can be spent for the administration of justice and the maintenance of the Courts for that purpose but not for road building or building schools etc. On the parity of reasoning it can be said that the fees collected under the Act cannot be spent for carrying out the governmental functions of the State but for rendering services to the payers of the fees in accordance with the provisions of the Act."

(19) Mr. Malik, learned counsel for the petitioners, could not, on the basis of the decisions of their Lordships of the Supreme Court in *The State of Maharashtra and others v. The Salvation Army, Western India Territory* (5), *The Municipal Council, Madurai v. R. Narayanan etc.* (6), and *Har Shankar and others etc. etc. v. The Deputy Excise and Taxation Commissioner and others etc.* (7), persuade us to take a view contrary to the one arrived at by the Division Bench in the above mentioned case and hence the contention that the levy of the fee is in fact a tax in the garb of fee, cannot be legally sustained.

(20) It was next contended that the increase in the fee effected by the impugned notification cannot be justified and the fee has become so excessive or exorbitant so as to change its character from fee to tax. In this respect what was sought to be argued by Mr. Malik was that it was for the respondents to prove that the enhancement in the rate of fee was justified and was not so excessive or exorbitant so as to change its character from fee to tax. The learned counsel further contended that in spite of the repeated requests made by the petitioners, copies of the budget and the balance-sheets were not supplied. During the course of arguments

(4) AIR 1973 S.C. 724.

(5) AIR 1975 S.C. 846.

(6) AIR 1975 S.C. 2193.

(7) AIR 1975 S.C. 1121.

it was suggested that the respondents be directed to produce the copies of the budget and the balance-sheets so as to justify the enhancement of the fee; otherwise, the only inference that could be drawn was that the rate of fee had been enhanced arbitrarily. In support of his contention, the learned counsel drew our attention to the specific allegations made in paras 9, 10, 13 and 14, which read as under :—

- “9. That the Market Committee has rendered no service to the petitioners in the past 10 years and the petitioners enquired by a letter dated 5th September, 1975, copy of which is attached as Annexure P-6 as to what expenses had been incurred by the Committee in the last 10 years on the production and betterment of agricultural produce, oilseeds and cotton [Section 28 (ii), (viii) (xiii)]. The petitioners again applied for the copy of the Budget and the Balance-sheets against payment of the prescribed fee under Rule 42 and Bye-law 25, copies of the applications are attached as Annexures P-7 and P-8.
10. That the only services which the Market Committee, Moga is rendering to the petitioner is the harassment and they have now turned even to reply to the letters of the payees of market fee who are paying nearly Rs. 1.5 lacs per year and in the whole principal market yard of Moga. The Market Committee has dug one well for drinking water and four lightening bulbs have been provided which are always fused and are without light and during the rainy season Principal Market Yard is without exception under knee deep water. No shelter has been provided by the Market Committee. In fact the crores of rupees collected by the Market Committee, Moga are misused and spent elsewhere.
13. That the Market Committee Moga has not fixed any fee nor it convened any meeting, nothing was discussed or debated as to its financial position, budget, its needs, programmes and plannings but under unauthorised directions from the Board, they started charging at the rate of Rs. 2 per 100 rupees.

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14. That the petitioners wanted to deposit fee at the rate of Rs. 1.50 which was refused and the petitioners wrote a letter dated 25th August, 1975,—*vide* Annexure P-9. The petitioners again wrote a letter dated 27th August, 1975,—*vide* Annexure P-10 demanding the copies of the Balance Sheet of the Market Committee for the years 1971-72, 1972-73, 1973-74, 1974-75 along with the copies of the Budget for 1974-75 and 1975-76 on urgent fee prescribed by bye-law 25. But the Committee will never supply the copies of Balance Sheet and the Budget and every thing will be kept secret for fear of being exposed.

After giving my thoughtful consideration to the entire matter, I am of the view that the contention of Mr. Malik is again untenable and that the petitioners, after making vague allegations, are trying to build a point without any foundation. In the return filed in the shape of an affidavit of Shri Kulbir Singh, Secretary, Market Committee, Moga, it has been stated thus:—

- “7. In reply to para 7 of the writ petition, it is admitted that the rate of market fee has been increased from time to time. This has, however, been done on account of the rise in price index and the increase of expenses on the various activities of the Market Committee as envisaged under the Act. It is respectfully submitted that in spite of the increase in rate of market fee, the answering respondent does not have sufficient funds to properly finance the development works already undertaken or those proposed to be undertaken. A perusal of the budget of the Market Committee would show that the expenses likely to be incurred for the year 1975-76 amount to Rs. 61,53,955 while the total income including the assets amounts to Rs. 55,50,406. There is thus a deficit of Rs. 6,03,549. Besides the above, certain new schemes relating to the provision of Canteens at Moga and Ajitwal (which is a sub-yard of the principal yard at Moga) have been undertaken by the answering respondent. These Canteens are proposed to be run on no-profit-no-loss basis to provide reasonable facilities to the farmers and Dealers in the market area. The estimated cost of land and buildings is expected to be more than Rs. 5 lakhs. Besides

the above, the answering-respondent has undertaken the cleaning of Mandis, lining of village Khals (Water-courses), link roads; constructions of culverts and bridges; supply of pesticides and spray pumps on subsidized basis as also the electrification of villages. All these activities are going to cost the answering respondent an amount of several lakhs of rupees. The resources of the Committee as they originally existed were too meagre to meet all the expenses involved. Consequently, the Market Committee had no alternative except to ask for more funds. It was after lot of persuasion that the Board has finally taken the decision which was accepted by the Government. The suggestion in the writ petition that the funds of the Market Committee have been surplus is wholly misconceived. It is also wrong to suggest that the Market Committees were ever directed to deposit their entire amounts in the Government Treasury in the year 1974. All that had happened was that certain funds were lying in Banks. The Government had to construct certain link roads on behalf of the market committees. This arrangement had been entered on the request of the answering respondent. The estimated expenses had to be handed over to the Government. It was for this purpose that some money was deposited by the answering respondent in the Government Treasury. The purpose in depositing the money was that till such time as it was actually utilised, it could bear some interest. The answering respondent shall crave the indulgence of this Hon'ble Court to refer to the decision of the High Court, dated November 8, 1974.

8. Para 8 of the writ petition is denied. It is wrong to suggest that the Board and the answering respondent have already been given Rs. 5 crores to the Markfed without charging any interest. The fact of the matter is that on account of the withdrawal of the Cotton Corporation of India from the various markets, the price of cotton came down suddenly. In order to provide and ensure a reasonable price to the farmer, the Government asked the Markfed to enter the market. For this purpose, the Board contributed some amount of money. So far as

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the answering respondent is concerned, it has not contributed any money at all. The answering respondent believes that the Board has contributed only an amount of Rs. 1.43 crores and not 5 crores.

8. (REPEATED). The suggestion in this paragraph that the Board has contributed Rs. 5 crores is wholly mis-conceived. The answering respondent is not concerned with the opening balance of the Board. The payment of money by the petitioners is admitted. It may, however, be submitted that the entire money collected by the Market Committees is being used for the purposes envisaged under the Act.
9. Para 9 of the writ petition is denied. The amount being collected as market fee is being utilised for various purposes as envisaged under the Act. It is not required under the Act that the service has to be rendered by the Committee to every individual paying the market fee. The Market Committees have to provide facilities as envisaged under the Act. The petitioners had asked for the copies of balance sheets. The balance sheets were originally prepared when the accounts of the Committees were being audited by the Chartered Accountants. Now, the accounts are being audited by the Examiner, Local Fund Accounts which is a Government Agency. The preparation of balance sheets involved unnecessary expenditure and wastage of time and energy. Consequently, the practice of preparing balance sheets was given up a few years back.
13. Para 13 of the writ petition is denied. The Financial position of the Committee being very tight, it had been regularly considering the matter and it was after lot of persuasion by the Committee that the Board decided to revise the rate of market fee. After the Board accepted the Committee's request and fixed the rate of fee at Rs. 2 per cent, the Committee adopted the same.
14. In reply to para 14 of the writ petition, it is submitted that in accordance with the decision of the Committee as

adopted by them, it was conveyed to the petitioners that they had to deposit the market fee at the rate of Rs. 2 per cent. With regard to the copies of the balance sheets, etc., the position has already been explained in the preceding paragraph. Suitable reply was also sent by the answering respondent to the petitioners."

(21) From the aforesaid specific averments made in the written statement, referred to above, it is clear that to carry out the purposes of the Act it had become necessary to enhance the rate of the market fee and such an enhancement stands fully justified. The petitioners have failed to point out any specific item/items which could be termed as unauthorised as was the position in a Division Bench decision in *M/s. Hanuman Dall and General Mills*. in which case certain definite items were struck down as wholly unauthorised and not falling within the purview of section 28. It would not be inappropriate to observe that the effort of the learned counsel for the petitioners, during the course of arguments, was that in case certain provisions of sections 26 and 28 of the Act could be struck down as unconstitutional, then safely, it could be argued that the enhancement in the fee was in order to incur an expenditure on the items which fell within the purview of those clauses and that those clauses having been held to be unconstitutional, the enhancement in the fee deserved to be struck down. In the wake of the averments made in the written statement, reproduced above, there can be no manner of doubt that the enhancement in the fee has been fully justified and no ground has been made out for striking down the enhancement in the fee. I do not agree with the learned counsel for the petitioners that as copies of the balance sheets had not been given by the respondents, an adverse inference should be drawn against them and that this fact alone would be sufficient to quash the enhancement in the fee. It may, however be observed that during the course of arguments affidavit of Shri Tirath Singh, Chairman, Punjab State Agricultural Marketing Board, was placed on the file, which was not objected to by the learned counsel for the petitioners. From its perusal, I find that details of income and expenditure have been given in respect of the respondent-Committee as well of the Board. The items on which the expenditure has been incurred or the improvement schemes which are likely to be undertaken and of which there is a likelihood of incurring expenditure, clearly have a correlation with the object to be achieved under the Act.

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(22) Faced with this situation, Mr. Malik drew our attention to the passages in documents, Annexures W-10, W-11 and W-12, which read as under :—

“Annexure ‘W-10’ :—The institution of Board and Market Committee do not lag behind in serving the State and the Nation in any sphere whenever there is an occasion for the same. With a view to share the pangs of sufferings hurled upon our Assami and Behari brethren as also of brave Punjabis of Amritsar and Gurdaspur Districts due to havoc of floods, truck-loads of foodgrains were rushed to Assam and over rupees 30 lakhs have been contributed for the Chief Minister’s Flood Relief Fund by the Board and the Market Committees.

“Annexure ‘W-11’ :—The Punjab State Agricultural Marketing Board has decided to set up two ginning factories and six rice shellers in the State in the near future.

Annexure ‘W-12’ :—Payments to be made by the Market Committees to the Punjab P.W.D. (B. & R.) for the construction of link roads may be admitted in audit without insisting on the usual formalities of Estimates, Technical sanction etc. till further orders.”

On the basis of the aforesaid material, the learned counsel submitted that the Board was indulging in activities which had no correlation with the object to be achieved by the Act and that the enhancement in the market fee could not be justified.

(23) In the circumstances of the case, I am unable to agree with this contention of the learned counsel. The documents to which reference has been made above were produced by the petitioners along with the replication which was filed in the shape of an affidavit of Shri K. K. Puri, Director of M/s Devi Dass Gopal Krishan Pvt. Ltd. Moga, dated 27th March, 1976. So far as Annexures W-11 and W-12 are concerned, any expenditure incurred by the Marketing Board on the setting up of the rice shellers or ginning factories or by the Market Committees on the construction of the link roads would not be inconsistent with the provisions of

the Act and the object to be achieved under the Act. The setting up of the rice shellers would be for the benefit of the producers and, as earlier observed, construction of the link roads also would be for their advantage. So far as Annexure W-10 is concerned, there can be no gain saying that giving of donation for the Chief Minister's Flood Relief Fund by the Board or the Market Committee would not be justified as the same has no correlation with the object to be achieved under the Act and in case any amount has been spent by the Committee in this respect, it would certainly be unauthorised and illegal. But, in the instant case, the petitioners have failed to show that any amount was contributed towards the Chief Minister's Flood Relief Fund and that the enhancement in the fee had any correlation with such a contribution. In this view of the matter, on the basis of Annexures W-10, W-11 and W-12; the enhancement in the fee to be levied by the Committees cannot be struck down.

It was also argued by Mr. Malik, though half-heartedly, that the Board had no jurisdiction to direct the Committee to levy the fee as has been done in the instant case by issuing telegraphic instructions dated 21st of August, 1975,—(*vide* Annexure 'P-5' attached to the petition). I am afraid I am unable to agree with this contention of the learned counsel. In the reply filed on behalf of the Committee it has been stated that the financial position being very tight, the Committee had been regularly considering the matter and it was after lot of persuasion by the Committee that the Board decided to revise the rate of market fee and that after the Board accepted the Committee's request and fixed the rate of market fee at Rs. 2 per cent, the Committee adopted the same. Further, there is no bar under the Act for the Board to revise or fix the rate of market fee. In this situation, the contention of the learned counsel is without any merit.

(24) This brings me to clause (xvii) of sections 26 and 28 of the Act, which provides the expending of the funds of the Board or the Market Committee on any purpose calculated to promote the national or public interest. What had been argued by Mr. Malik, learned counsel for the petitioners, was that the Committee or the Board had no authority to incur expenditure on any purpose calculated to promote the national or public interest and that such a provision in section 26 or section 28 could not be incorporated by the State Legislature as it was not within its competency to do so

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under entry 28. This contention of the learned counsel is only of academic importance as it has not been alleged in the petition nor proved that after the enhancement of the fee, any amount has been spent by the Committee or the Board on some purpose calculated to promote the national or public interest. In this situation, I do not propose to enter into any further discussion on this aspect of the matter as it is not necessary to do so for the determination of the controversy raised before us.

(25) Before parting with the judgment, it may be observed that Mr. R. L. Batta, Advocate, who was allowed to intervene, had adopted all the arguments of Mr. B. S. Malik, learned counsel for the petitioners, except that he did not urge that the Committee could incur expenditure only on the development of the principal market yard and not the notified market area.

(26) No other point was urged.

(27) For the reasons recorded above, this petition fails and is dismissed with costs.

S. S. Sidhu, J.—I agree.

A. S. Bains, J.—I also agree.

K.T.S.

FULL BENCH
APPELLATE CIVIL

Before S. S. Sandhawalia, Prem Chand Jain and S. C. Mital, JJ.

PARMESHWARI,—Appellant.

versus

MST. SANTOKHI,—Respondent.

Regular Second Appeal No. 418 of 1965

January 31, 1977.

Hindu Succession Act (XXX of 1956)—Section 14(1)—Gift to a female by a limited owner prior to the enforcement of Hindu Succession Act—Such female in possession of the gifted property—Whether becomes full owner after the enforcement of the Act.