mortgagees or not was not mentioned in the previous judgment. It cannot, therefore, be said that the order of Shri Aggarwal was only one of correcting a clerical error due to an accidental slip or omission under section 152. In this view of the matter the appeal could be filed only from the decree as amended and the appeal against the original decree was rightly held to be incompetent.

As the point was of some difficulty it may still be open to the appellant to file a fresh appeal against the amended decree and pray for extension of time under section 5 of the Limitation Act if so advised.

In the result the appeal fails and is dismissed but in the circumstances of the case the parties are left to bear their own costs throughout.

B. R. T.

LETTERS PATENT APPEAL

Before D. Falshaw, C.J., and Mehar Singh, J.

THE MUNICIPAL COMMITTEE, MALERKOTLA,— *Appellant.*

versus

HAJI ISMAIL AND ANOTHER,—*Respondents*

Letters Patent Appeal No. 299 of 1961.

1965

August, 24th.

Punjab Municipal Act (III of 1911)—Ss. 188(e) and 197—Municipal bye-laws limiting the sale of fruits and vegetables to only four shops in the Sabzi Mandi—Whether valid—Such bye-laws—Whether create a monopoly.

Held, that the power given under clause (a) of section 197 of the Punjab Municipal Act, 1911, is confined to licensing premises for the purposes stated in that clause and prohibiting the same in premises not licensed. This power does not mean fixation of a defined and particular place or places for that purpose. Any places considered proper and suitable by a municipal committee may be licensed for the purpose stated in clause (a) and it may then proceed to prohibit that no premises not having a licence for that purpose will be used for the same. The power in clause (a) of section 197 does not extend to fixing and limiting the sale of fruits and vegetables by the impugned bye-laws to four shops in the Sabzi Mandi at Malerkotla. Those bye-laws do not thus conform to the power under clause (a) of section 197 of the Act and are to this extent *ultra vires* of that provision.

Held, that in sub-clause (ii) of clause (e) of section 188 of the Punjab Municipal Act, 1911, the words 'regulate' has been used in the sense of prescribing rules for control of conduct. Under this clause the Municipality has not the power to make a regulation confining the business of sale, wholesale or by auction, of fruits and vegetables to four shops in the Sabzi Mandi.

Held, further that the impugned bye-laws are to be struck down as they create a monopoly in favour of four persons who are the highest bidders at the auction and which amounts to more than a reasonable restriction on the right of other persons who wish to carry on that business at other places after obtaining the necessary licence. Monopoly need not necessarily be confined to one person. There can be a monopoly in the case of more persons than one, so long as exclusive right or power to carry on a particular business or trade or the like is granted as a privilege to such persons.

Letters Patent Appeal under Clause 10 of the Letters Patent against the judgment of Hon'ble Mr. Justice Grover dated 11th September, 1961 in Civil Writ No. 498 of 1961.

D. S. NEHRA, ADVOCATE, for the Appellant.

G. S. GREWAL, ADVOCATE, for the Respondents.

JUDGMENT

Mehar Singh, J.

MEHAR SINGH, J.—In this appeal under clause 10 of the Letters Patent from the judgment, dated September, 11, 1961, of a learned Single Judge accepting the prayer of Haji Mohd. Ismail, respondent, in a petition under Article 226 of the Constitution, that the bye-laws framed by the appellant, Municipal Committee of Malerkotla, whereby the sale of vegetables and fruits, wholesale or by auction, has been limited to those obtaining a right to do so under a public auction in four shops only in the Sabzi Mandi of Malerkotla, are void and ineffective, two questions arise for consideration, (a) whether the bye-laws in question are *ultra vires* the provisions of the Punjab Municipal Act, 1911 (Punjab Act 3 of 1911), and (b) whether the same are to be struck down as creating a monopoly for the wholesale of vegetables and fruits in favour of four persons only, who obtain right to do so on a public auction in regard to the four shops in the Sabzi Mandi of Malerkotla.

The learned Judge has answered these questions in favour of the respondent and against the appellant Municipality. On the first question the learned Judge has relied

upon *Ghanaya Lal* v. *Municipal Committee, Montgomery* (1), *Mula Mal* v. *Emperor* (2), and *Wariam Singh*, v. *Municipal Committee, Nabha* (3), the ratio of which cases completely supports the view taken by the learned Judge. On the second question the learned Judge has relied upon a case to a considerable extent similar to the facts of the present case, *Rashid Ahmed* v. *The Municipal Board, Kairana* (4), not accepting the applicability of the ratio of the facts of the present case in *Co-overjee B. Bharucha* v. *Excise Commissioner, Ajmer* (5), because that case related to the sale of liquor in consequence of an auction according to the relevant excise law in that case.

In the official publication of the Municipal Committee of Malerkotla of 1959, bye-laws with regard to fruits and vegetables appear at page 23. It is stated that those bye-laws have been made under sections 197 and 188(e)(ii) of Punjab Act, 3 of 1911. Bye-laws 5, 6 and 7 concern the matter of licence fee and the conditions of a licence, the remaining four bye-laws relevant and are in this form—

"1. (a) No person shall sell wholesale or by auction any fruit, vegetables or sugarcane within the Municipal Limits, at any premises other than Sabzi Mandi or any other place specially demarcated by the Municipal Committee in this behalf.

(b) The Municipal Committee will demarcate premises for the purpose of sale, wholesale or by auction, of any fruit, vegetable or sugarcane, from time to time as the necessity may arise.

2. Any person wishing to obtain a licence for the premises for sale, wholesale or by auction, of any fruit, vegetable or sugarcane, may apply to the Committee in the first week of March, every year, provided that in the first year of the enforcement of these bye-laws such applications may be made at any other time, and that licence fee shall be in proportion to the portion of the year for which licence is granted.

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(1) A.I.R. 1928 Lah. 540.
(2) A.I.R. 1929 Lah. 607.
(3) A.I.R. 1953 Pepsu 127.
(4) A.I.R. 1950 S.C. 163.
(5) A.I.R. 1954 S.C. 220.

The Municipal Committee, Malerkotla
v.
Haji Ismail and another

Mehar Singh, J.

3. In the Sabzi Mandi or in any other specified premises number of plots to be licensed shall be fixed by the Committee and each plot shall be let out by public auction on the plot under an agreement drawn by the Committee for this purpose.

4. Lessee of each of the above auctioned plots shall be granted a licence by the Committee for the sale and auction of fruits and vegetables on his plot on payment of a fee mentioned in clause 5 of the bye-laws."

The appellant Municipality has demarcated only four shops for the purpose under the bye-laws and nobody can sell, wholesale or by auction, any fruits and vegetables except in four specified shops in the Sabzi Mandi of Malerkotla. No doubt the right to such a sale is put to auction and given to the four highest bidders, but the sale,wholesale or by auction, of fruits and vegetables is confined to those four shops in the Sabzi Mandi, and the effect of the bye-laws is that the appellant Municipality has precluded itself from granting licence for such sale in or on any premises other than those four shops. There was once clause (d) in section 197 of the Act, which read—

> "The committee may, by bye-law, fix the places in which any specified article of food or drink may be sold or exposed for sale or the places in which it may not be sold or exposed for sale."

This provision gave power to a Municipal Committee to fix the sale of such articles to a particular place or places. This provision was, however, repealed in 1923 as has been pointed out in *Mula Mal's case.* Clause (a) of section 197 was, previous to that repeal, slightly differently worded and its present form now is—

> "197. The committee may, and shall if so required by the State Government, by bye-law—
>
> (a) prohibit the manufacture, sale, or preparation or exposure for sale, of any specified articles of food or drink, in any place or premises not licensed by the committee."

It is obvious that the power under this clause is to prohibit such sale except in premises licensed by the committee, but it is not a power, as was the case in the old clause (d), to

fix a particular place or places for that purpose. It is clear that the scope and nature of the power is entirely different from what was the power under old clause (d) that has been taken away. The power to fix place or places for the sale of articles of food or drink having been once granted and specifically taken away, cannot be read by implication in the words of clause (a). Otherwise, as has been pointed out above, the scope of clause (a) is quite different from what was the scope of old clause (d). The power given under clause (a) of section 197 is confined to licensing premises for the purposes stated in that clause and prohibiting the same in premises not licensed. This power does not mean fixation of a defined and a particular place or places for that purpose. Any places considered proper and suitable by a municipal committee may be licensed for the purpose stated in clause (a) and it may then proceed to prohibit that no premises not having a licence for that purpose will be used for same. The conclusion of the learned Judge is, therefore, correct that the power in clause (a) of section 197 does not extend to fixing and limiting the sale of fruits and vegetables by the impugned bye-laws to four shops in the Sabzi Mandi at Malerkotla. Those bye-laws do not thus conform to the power under clause (a) of section 197 of the Act and have to this extent been rightly held to be *ultra vires* of that provision. This conclusion is consistent with the ratio in the three cases upon which the learned Judge has placed reliance in this respect.

There is next the consideration of section 188(e)(ii) of Punjab Act 3 of 1911, which is also one of the provisions mentioned in the beginning of the bye-laws under which the same have been made. There is clause (v) of section 188, which gives power to a municipal committee to make bye-laws to 'generally provide for carrying out the purposes of this Act'. Some reliance was placed on this clause before the learned Judge, but no provision in the Act was referred to with reference to which the bye-laws under consideration could be considered under this clause. The learned counsel for the appellant Municipality has not been able to further his argument in this respect. Section 188(e)(ii) reads—

"188. A committee may, and shall if so required by the State Government by bye-law,—

* * * *

(e) provide —

* * * *

The Municipal Committee, Malerkotla
v.
Haji Ismail and another

(ii) for the inspection and proper regulation of markets and stalls, for the preparation and exhibition of a price current and for fixing the fees, rents and other charges, to be levied in such markets and stalls."

Mehar Singh, J.

The emphasis laid by the learned counsel for the appellant Municipality is on the power for the 'proper regulation of markets', and it is contended by him that the word 'regulation' has within its ambit complete prohibition. The learned counsel refers to the meaning of the word 'regulation' as given in 76 Corpus Juris Secundum 615, and takes from the variety of meanings given there only this that this word is same as restriction and then relies upon *Narendra Kumar* v. *The Union of India* (6), to press that the word 'restriction' includes prohibition. The contention of the learned counsel thus is that under the provision now under consideration the appellant Municipality while regulating to markets has been given power to make the impugned bye-laws whereby they practically prohibit the carrying on a trade of selling, wholesale or by auction, fruits and vegetables in Malerkotla excepting at the four shops assigned for that purpose in the Sabzi Mandi. The word 'regulation' has to be read in the context in which it has been used. It appears from the very meaning of this word in 76 Corpus Juris Secundum 615 that it is variously defined as meaning a rule prescribed for conduct; a rule or order prescribed for management or government; a rule, order, or direction from a superior or competent authority; a governing direction; a regulating principle, a precept; a law; a prescription; a method. The word is also defined as meaning an exercise of control; the act of regulating; the act of reducing to order; or of disposing, in accordance with rule or established custom. A little later the statement is that 'it embraces both government and restrictions, but is not confined to the imposition of restrictions, and it may include designation and all directions by rule of the subject-matter.' When these meanings are taken into consideration, it becomes clear that ordinary meaning of this word is prescription of rules for control of conduct. In sub-clause (ii) of clause (e) of section 188, the word is used in this sense when it is considered with the whole context of that sub-clause with other matters that are dealt with in that sub-clause and when the meaning is taken in the light of those matters. The word is not to be read in isolation, but it is to be read in the

(6) A.I.R. 1960 S.C. 430.

context in which it has been used and in that context it does not bear the meaning which the learned counsel has tried to give it. Under section 188(e)(ii) the appellant Municipality has not the power to make the type of regulation that it has done in confining the business of sale, wholesale or by auction, of fruits and vegetables to four shops in the Sabzi Mandi. In this respect too I agree, with respect, with the opinion of the learned Judge.

The last question for consideration is whether the confining of the particular trade under consideration to four shops in the Sabzi Mandi at Malerkotla is a monopoly or not, and it has been contended by the learned counsel for the appellant Municipality that as the number of persons is more than one who can have license for maintaining such a business and trade in any one of the four shops in the Sabzi Mandi at Malerkotla, it is not a case of a monopoly. He has said that it could only be a case of monopoly if it was confined to one person. Black in his Law Dictionary, 1951 Edition, at page 1158, gives this meaning to the word 'monopoly'—

> "*MONOPOLY.*—A privilege or peculiar advantage vested in one or more persons or companies, consisting in the exclusive right (or power) to carry on a particular business or trade, manufacture a particular article, or control the sale of the whole supply of a particular commodity.
>
> Defined in English law to be 'a license or privilege allowed by the king for the sole buying and selling, making, working, or using, of anything whatsoever; whereby the subject in general is restrained from that liberty of manufacturing or trading which he had before."
>
> A monopoly consists in the owenrship or control of so large a part of the market-supply or output of a given commodity as to stifle competition, restrict the freedom of commerce, and give the monopolist control over prices."

This completely meets the argument of the learned counsel that a monopoly must necessarily be confined to one person. There can be a monopoly in the case of more persons than one, so long as exclusive right or power to carry on a

The Municipal Committee, Malerkotla
v.
Haji Ismail and another

Mehar Singh, J.

particular business or trade or the like is granted as a privilege to such persons. The learned counsel for the appellant Municipality has, as was his case before the learned Judge, relied, with some emphasis, upon *Cooverjee B. Bharucha's case,* but the learned Judge very rightly points out that the observations in that case are confined to the particular type of business of liquor which, in the interests of the public at large, is necessarily controlled by the State to a very large measure and such business has nothing parallel with the ordinary business of selling fruits and vegetables. The observations of their Lordships in that case with regard to the business of liquor obviously can have no bearing on a case like the present in which what is sought by the respondent is a licence to carry on the business of selling fruits and vegetables. Similarly *M.C.V.S. Arunachala Nadar* v. *State of Madras* (7), has no bearing so far as the present case in concerned, because that was a case in which constitutional validity of the Madras Commercial Crops Markets Act, 1933, was in question, and it is obvious that the consideration of such statutes proceeds on an entirely different basis than the bye-laws, which have been reproduced above, in the present case. A case somewhat more near to the present case is *Rashid Ahmed's case* on which the learned Judge has relied in support of his conclusion that the confinement of the business of sale of fruits and vegetables, wholesale or by auction, to four shops in Sabzi Mandi at Malerkotla is more than a reasonable restriction on the respondent and the persons like him who wish to engage themselves in such business or trade. The only difference between that case and the present case is that there the Board had prohibited establishment of a market for wholesale transactions in vegetables except with its permission, it made no bye-laws for issuing license in that respect, and in fact it granted a monopoly contract to one man for that business according to one of the bye-laws. Their Lordships observed that in this way the Board had granted a monopoly to one man to whom it had given the business and had put it out of its power to grant licence to the petitioner in that case, and their Lordships held that that was much more than a reasonable restriction as contemplated by clause (6) of Article 19 of the Constitution. The bye-laws were consequently struck down under Article

(7) A.I.R. 1959 S.C. 300.

13(1) of the Constitution. The only difference between that case and the present case is that there it was a business given to one man and here it is a business given to four persons who are the highest bidders at a public auction for the four shops for the sale of fruits and vegetables in Sabzi Mandi at Malerkotla. In substance there is really no difference between the two cases and it has been shown that monopoly is not confined to one person and may extend to more persons than one. So the restriction placed by the appellant Municipality in the impugned bye-laws confining the business of the sale, wholesale or by auction, of fruits and vegetables to just four shops in Sabzi Mandi of Malerkotla is, to use their Lordships' expression, more than a reasonable restriction on the right of the respondents in this case.

The respondent was denied a licence for the sale of fruits and vegetables whether wholesale or retail or by auction within the municipal limits of Malerkotla on the sole ground that he was not one of the four persons, who had successfully bid for one of the four shops for that purpose in Sabzi Mandi of Malerkotla. This, the learned Judge rightly considered, was not a valid and a legal ground in view of the *ultra vires* nature of the impugned bye-laws and the restriction imposed by the same on the right of the respondent to carry on that particular business, which restriction has been found to be far from reasonable.

Falshaw, C.J.

In this view, the appeal of the appellant Municipality fails and is dismissed with costs.

D. FALSHAW, C.J.—I agree.

B.R.T.

APPELLATE CIVIL

Before S. K. Kapur, J.

DELHI IMPROVEMENT TRUST,—*Appellant.*

versus

CHANDRA BHAN AND OTHERS.—*Respondents*

R.S.A. 9-D of 1958.

1965

August, 24th.

United Provinces Town Improvement Act (VIII of 1919) as extended to Delhi—Scheme of the Act and types of schemes that can be sanctioned—S. 49—Applicability of S. 193 of the Punjab Municipal Act (III of 1911)—Effect of.