

Before : Ashok Bhan, J.

KULDIP SINGH,—Appellant.

versus

SMT. BALWANT KAUR (DECEASED) AND OTHERS,
-Respondents.

Regular First Appeal No. 637 of 1978.

21st November, 1990.

Indian Registration Act, 1908 (XVI of 1908)—Ss. 23 & 47—Transfer of Property Act, 1882—S. 48—Execution of two sale deeds by vendor in respect of same property at different points of time—Deed executed earlier registered later—Date of operation of such deed—Operates from date of execution and not registration.

Held, that a perusal of Ss. 23 and 47 of the Registration Act would show that if a document is executed then the same can be presented for registration within four months. If that document is registered later, then it would be operative and effective not from the date of its registration but from the time and date it was executed.

(Paras 12 & 15)

Held, further, that the fact that the subsequent purchaser is a bona fide purchaser cannot be a ground by itself for postponing the rights of the prior transferee. This can be supported by another reasoning that no person can convey a better title than what he has and he cannot go back from his grant and deal with the property free from the rights created by him under the earlier sale deeds. His absolute ownership is diminished by rights already created under the earlier transaction and S. 48 of the Transfer of Property Act does not save a subsequent transferee, who purchased property without notice or knowledge of the prior transfer.

(Para 17)

Regular First Appeal from the order of the court of Shri Bhagwan Singh Sub Judge, 1st Class, Amritsar, dated the 6th day of March, 1978, dismissing the suit of the plaintiff and leaving the parties to bear their own costs.

CLAIM: *Suit for recovery of possession of building two storeyed bearing Municipal No. 226/1-2 situated at Amritsar, Katra Ghanayan and for rent and or mesne profits amounting to Rs. 8,600 with effect from 3rd November, 1971, till date.*

CLAIM IN APPEAL : *For reversal of order of Lower Appellate Court.*

S. C. Sibal, Sr. Advocate with R. K. Handa, Advocate, for the Appellants.

H. L. Sarin, Sr. Advocate with Hemant Sarin, Sr. Advocate and Jaishree Thakur, Advocate, for the Respondent.

Kuldip Singh v. Smt. Balwant Kaur (deceased) and others
(Ashok Bhan, J.)

JUDGMENT

Ashok Bhan, J.

(1) Plaintiff-appellant has filed this appeal which arises out of a suit filed by the plaintiff-appellant for recovery of possession of a two-storeyed building bearing municipal No. 226/1-2, situated at Katra Ghanayan, Amritsar and for recovery of Rs. 8,600 as rent and/or mesne profits of the building with effect from 3rd November, 1971 till the filing of the suit in September, 1975.

(2) The main facts of the case are that Lal Singh defendant No. 12, agreed to sell the property in dispute to the plaintiff-appellant on 3rd of October, 1971,—*vide* agreement to sell Exhibit P-3. In pursuance of this agreement, sale deed Exhibit Ex. P.1 was executed on 3rd of November, 1971, but the same could not be registered. Consideration was Rs. 13,000 out of which Rs. 1,300 were paid at the time of agreement to sell and the rest of the amount was to be paid at the time of registration. The document was presented for registration on 2nd of March, 1972, i.e. within four months of its execution, as provided under Section 23 of the Indian Registration Act, 1908. The Sub-Registrar refused the registration of the document on 17th of July, 1972, on the ground that the property in dispute had already been sold,—*vide* sale deed dated 29th November, 1971 (Exhibit DW 3/1), in favour of defendants No. 1 to 11. An appeal was preferred by the plaintiff before the Registrar, who remanded the case to the Sub-Registrar on 30th April, 1973, with certain directions. The Sub-Registrar, again refused registration and the plaintiff-appellant again went in appeal, which was accepted by the Registrar, with directions to the Sub-Registrar to register the sale and the parties were directed to appear before the Sub-Registrar on 12th of May, 1975, on which date the plaintiff-appellant appeared with the remaining amount of Rs. 11,700, for payment to the vendor but the vendor Lal Singh did not appear. The sale deed which was executed on 3rd of November, 1971, in favour of the plaintiff-appellant was ultimately registered on 14th of May, 1975. On the basis of this document, plaintiff-appellant became absolute owner of the property in dispute with effect from 3rd November, 1971, i.e., the date on which the sale deed was executed in his favour. In the sale deed, it was recited that Attar Singh was a tenant on the ground floor of the building and the vendor was to get the lease deed executed from Attar Singh in favour of the plaintiff-appellant. Attar Singh was a statutory tenant. He died and the defendants No. 1 to 11 are stated to be

his heirs and legal representatives. The plaintiff had further alleged that after the death of Attar Singh they did not derive any title and right and they are only trespassers in the eye of law and instead of delivering the possession of the shop, they forcibly occupied the first floor of the building and were in unlawful possession of the property in dispute. It was further alleged that defendants No. 1 to 11 are claiming to have become the owners of the property in dispute by virtue of sale deed, which was executed in their favour by defendant No. 12, subsequent to the sale deed which was executed in favour of the plaintiff-appellant. It was further alleged that Lal Singh defendant could not sell the property in dispute to the defendants No. 1 to 11, as he had no right or title in the property in dispute because he had already transferred the same in favour of the plaintiff on 3rd of November, 1971. Since defendants No. 1 to 11 refused to hand over the possession inspite of repeated requests, the plaintiff was forced to file the present suit for recovery of possession of the property in dispute and for recovery of an amount of Rs. 8,600 as mesne profits for use and occupation of the property in dispute.

(3) The defendants contested the suit and alleged, *inter alia*, that no valid sale deed was executed in favour of the plaintiff by Lal Singh defendant No. 12 and that the plaintiff had never become the absolute owner of the property and that the defendants were the *bona fide* purchasers of the property,—*vide* sale deed dated 29th November, 1971 (Exhibit DW 3/1), for valuable consideration without notice of the sale deed dated 3rd of November, 1971. Apart from this, other technical objections regarding the maintainability, valuation, cause of action, non-joinder and mis-joinder of parties were also taken. Material improvement was stated to have been made by the defendants on the property in dispute and the defendants claimed that in case the suit is decreed they are entitled to interest on the amount of improvement made by them.

(4) On the basis of the pleadings of the parties, the following issues were framed :—

1. Whether the suit is properly valued for the purposes of court-fees and jurisdiction ? O.P.P.
2. Whether the suit is not maintainable in the present form ? O.P.D.
3. Whether the defendants No. 1 to 11 are *bona fide* purchasers for valuable consideration, without notice of the sale deed dated 3rd November, 1971, in favour of the plaintiff ? O.P.D. 1 to 11 defdts.

**Kuldip Singh v. Smt. Balwant Kaur (deceased) and others
(Ashok Bhan, J.)**

4. Whether Attar Singh deceased was a statutory tenant ? If so, its effect ? O.P.P.
5. Whether defendants No. 1 to 11 have made any improvements in the suit property ? If so, of what value and to what effect ? O.P.D.
6. Whether defendants No. 1 to 11 are liable to pay court-fee on the amount of the improvements claimed by them ? O.P.P.
7. Whether the defendants No. 1 to 11 are entitled to any interest on the amount of improvements made by them ? If so, how much and from whom ? O.P.D.
8. Whether the claim for mesne profits is within limitation ? O.P.P.
9. Whether the plaintiff is entitled to possession of the property in dispute ? If so, on what terms ? O.P.P.
10. Whether the suit is bad for non-joinder and mis-joinder of parties and causes of actions ? O.P.P.
11. Relief.

(5) Issues No. 1, 2, 5, 6, 7, 8 and 10 were decided in favour of the plaintiff-appellant and the findings on these issues were not challenged before this Court, in appeal. On issues No. 3 and 9, it was held that defendants No. 1 to 11, were *bona fide* purchasers for valuable consideration without notice of the sale deed dated 3rd of November, 1971, and that the plaintiff was at fault in not getting the sale deed dated 3rd of November, 1971 registered and because of this he was not entitled to the possession of the property in dispute. Under issue No. 4, it was held that Attar Singh was not a statutory tenant. Since he had denied the ownership of the plaintiff, he ceased to be the tenant of the property in dispute. Under issue No. 8, it was held that part of the claim for mesne profits is beyond limitation. Because of the findings recorded on issues No. 3, 4 and 9, the suit of the plaintiff was dismissed and hence, the present appeal.

(6) Learned counsel for the parties have argued only issues No. 3, 4 and 9 before me in this appeal. Mr. S. C. Sibal, Senior

counsel, appearing for the plaintiff-appellant has argued that defendants No. 1 to 11 are not *bona fide* purchasers without notice, as alleged by them. For this, he has relied upon the statement of Kuldip Singh plaintiff (PW 8), who had informed the defendants regarding the earlier agreement to sell of the property in dispute in his favour. He has also relied upon the statement of Lal Singh vendor (DW 8), who had appeared as a witness for the defendants, to the effect that he had told the defendants No. 1 to 11 that he had made an agreement with the plaintiff regarding the sale of the property in dispute in his favour. Relevant portion of his statement is reproduced below :—

“.....I told defendants No. 1 to 11 that I had made an agreement with the plaintiff. It is incorrect to suggest that I did not inform Shri Attar Singh about it.....”

This was stated by Lal Singh vendor (DW 8), on a question put to him in the cross-examination on behalf of the defendants No. 1 to 11. I find force in the submission of the learned counsel appearing for the plaintiff-appellant. The statement of Lal Singh vendor (DW 8) clearly shows that defendants No. 1 to 11 had knowledge that the property had been agreed to be sold by the vendor Lal Singh, in favour of the plaintiff-appellant. In view of this statement of Lal Singh vendor, the defendants No. 1 to 11 cannot claim that they were purchasers of the property without notice of the earlier agreement and the sale of the property in favour of the plaintiff. Apart from this, defendants No. 1 to 11 were tenants on a portion of the property and it is not probable that they would not come to know of the execution of the original agreement and the sale of the property in favour of the plaintiff. The sale deed in favour of the appellant was executed on 3rd of November, 1971, and the sale deed Exhibit DW 3/1 in favour of defendants No. 1 to 11, on 29th November, 1971. The unusual haste with which the sale deed was executed and registered in favour of defendants No. 1 to 11, immediately after the sale deed Exhibit P-1, in favour of the plaintiff-appellant by Lal Singh vendor, also goes to show that the subsequent vendees had notice of the previous agreement. Findings on issue No. 3, thus, stand reversed.

(7) The trial Court had further found that it was the plaintiff, who was at fault in not getting the sale deed registered on 3rd of November, 1971, as he did not have the balance sale money in his possession to pay to the vendor. I have seen the pass book Exhibit

Kuldip Singh v. Smt. Balwant Kaur (deceased) and others
(Ashok Bhan, J.)

P-7, which goes to show that the plaintiff-appellant was having sufficient amount in the account in the months of November and December, although on the relevant date, i.e., 3rd November, 1971, he did not have in his account a sum of Rs. 11,700. But he had withdrawn a sum of Rs. 9,000 on 7th of October, 1971 from his account. So, the finding of the trial court that the plaintiff was not possessed of sufficient amount to pay the balance sale money to the vendor also stands reversed and it is held that the plaintiff was ready and willing to perform his part of the contract and that defendants No. 1 to 11 were not *bona fide* purchasers without notice and they had the notice before they purchased the property from the vendor Lal Singh, regarding the earlier sale deed executed by the vendor in favour of the plaintiff, as is evident from the statement of Lal Singh (DW 8), the vendor himself. Consequently, the findings on issue No. 9, on facts, also stand reversed. It is held that the plaintiff-appellant would be entitled to possession of the property in dispute subject to the tenancy rights of defendants No. 1 to 11.

(8) Issue No. 4 was decided against the defendants by the trial Court. As per recital in the sale deed Exhibit P-1, Attar Singh, predecessor-in-interest of defendants No. 1 to 11 was shown to be a tenant on a portion of the property. This fact was also admitted by Madanjit Singh (PW 1), who stated that only one shop was mentioned in the sale deed Exhibit P-1 and further that the same was under the tenancy of Attar Singh. Defendants No. 1 to 11 claimed that Attar Singh was a tenant on the entire property and it was contended by the learned counsel appearing for the defendant-respondents that even if sale deed in favour of the plaintiff-appellant is proved to be valid, possession could not be given to the plaintiff because the defendants would be relegated to their position as tenant. This submission of the defendants was not accepted by the trial court and it was held that the tenancy rights were not heritable and further that tenancy came to an end as soon as the defendants claimed themselves to be owners of the property by putting a hostile title to the ownership of the plaintiff-appellant, by virtue of sale deed Exhibit DW 3/1, which has been executed in their favour by vendor Lal Singh. Finding on this issue deserves to be set aside.

(9) It has now been authoritatively held by the Supreme Court of India, in *Damadi Lal and others v. Parash Ram and others* (1).

(1) A.I.R. 1976 S.C. 2229.

that statutory tenancy is heritable. This view has now been followed by this Court, and it would be sufficient if reference is made only to one Division Bench judgment of this Court in *Mohan Lal v. Ram Dass and others* (2), in which it has been held that in Punjab statutory tenancy is heritable. In view of this, it is held that tenancy rights of Attar Singh are heritable by his successors-in-interest, defendants No. 1 to 11.

(10) The trial Court while dealing with the second point on this issue, denial of tenancy by defendants No. 1 to 11 in favour of the plaintiff, referred to a judgment of this court in *Sada Ram and others v. Gajjan* (3), wherein it was held that denial of tenancy determines a tenancy forthwith, thus, giving the right to the landlord to the possession of the leased property. That was a case under the Punjab Security of Land Tenures Act, whereas in the present case the tenant is entitled to protection of Rent Control Act and its protection cannot be denied on account of denial of tenancy by the defendants in the written statement. Reference in this regard, may be made to a decision of this Court in *Hans Raj Bansal v. Hardev Singh* (4). This apart, every case has to be decided on its own facts. In the peculiar facts of this case, where defendants No. 1 to 11 became vendees under the sale deed registered prior in time to the sale deed Exhibit P-1 (registered on 14th May, 1975), they cannot be denied of their tenancy rights on the portion of the property which they were occupying as tenants prior to the sale in favour of the plaintiff-appellant, merely on the ground that they had taken a plea that they have become owners of the property in dispute under a sale deed and were not tenants under the plaintiff. The defendants may have been under a *bona fide* belief that since their sale deed was registered earlier in point of time than to that of the plaintiff, they had become the owners. In view of this, the finding of the trial Court that tenancy came to an end as soon as the defendants claimed themselves to be the owners of the property by putting hostile title to that of the plaintiff-appellant, is reversed and it is held that defendants No. 1 to 11 would be relegated to their position as tenant on the portion of the property which was in their possession at the time of the execution of the sale deed Exhibit P-1 (dated 3rd November, 1971).

(2) 1980 (1) R.C.J. 607.

(3) 1970 P.L.R. 223.

(4) A.I.R. 1984 P&H 229.

Kuldip Singh v. Smt. Balwant Kaur (deceased) and others
(Ashok Bhan, J.)

(11) Now, I come to the legal aspects involved in this case. I have already held on facts that defendants No. 1 to 11 were not *bona fide* purchasers without notice and that they, in fact, had a prior notice regarding the earlier sale deed Exhibit P-1, executed by Lal Singh vendor in favour of the plaintiff-appellant. It was urged by the learned counsel appearing for the plaintiff-appellant that even if, assuming that defendants No. 1 to 11 were not aware of the plaintiff's agreement to sell/sale deed, it would make no difference because though the sale deed Exhibit P-1 was registered on May 14, 1975, it would take effect from the date of its execution, i.e., 3rd November, 1971, in view of the specific provisions of Section 47 of the Registration Act.

(12) In order to decide the controversy, it would be useful to advert to some relevant provisions of the Registration Act and the Transfer of Property Act. Sections 23 and 47 of the Registration Act, read thus :—

“23. Subject to the provisions contained in Sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution :

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.”

“47. A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration.”

Section 48 of the Transfer of Property Act, reads as under :—

“48. *Priority of rights created by transfer.*—Where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.”

A perusal of sections 23 and 47 of the Registration Act, would show that if a document is executed then the same can be presented for registration within four months. If that document is registered later, then it would be operative and effective not from the date of its registration but from the time and date it was executed.

(13) A number of decisions have been brought to my notice which arise under Section 47 of the Registration Act. In all these cases, it has been held that the prior transferee would be entitled to enforce his right on priority, even if the subsequent transferee had no knowledge of the prior transaction, in view of Section 47 of the Registration Act, read with Section 48 of the Transfer of Property Act. Some of these decisions to which reference was made at the time of arguments are *Duraisami Reddi v. Angappa Reddi and another*, (5), *Ramaswami Pillai v. Ramaswami Naicker and others* (6) and *Hamda Ammal v. Avadiappa Pathar & 3 others* (7), and *K. J. Nathan v. S. V. Maruthi Rao and others* (8).

(14) Relevant portion of the Supreme Court judgment in *K. J. Nathan's case* (supra) is reproduced below:—

“If the mortgage by deposit of title deeds was effected on May 10, 1947, or on July 5, 1947, the legal position would be the same, as the mortgage deed in favour of the 3rd defendant was executed only on October 10, 1947. Though Ex. A-19 was registered on June 22, 1948, under Section 47 of the Registration Act the agreement would take effect from July 5, 1947.”

In *Hamda Ammal's case* (supra), the Apex Court, held as under:—

“Section 54 of the Act defines Sale as “a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised”. Thus after the execution of the sale deed with consideration all the ingredients of sale are fulfilled except that in case of tangible immovable property of the value of Rs. 100 and upwards it can be made only by registered instrument. Now, if we read Section 47 of the Registration Act; it clearly provides that a registered

(5) A.I.R. 1946, Madras 140.

(6) A.I.R. 1960, Madras 396.

(7) J.T. 1990 (4) S.C. 391.

(8) A.I.R. 1965 S.C. 430.

**Kuldip Singh v. Smt. Balwant Kaur (deceased) and others
(Ashok Bhan, J.)**

document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. This provision makes it clear that after the registration it will relate back to the date of execution of the sale deed. The act of registration is to be performed by the registering authority. According to Section 23 of the Registration Act a document of the nature of sale deed shall be accepted for registration within four months from the date of its execution. Thus a statutory period of four months has been provided for presenting the sale deed for registration from the date of its execution. In case of dispute regarding the execution of the document an enquiry is permitted under Section 74(a) of the Registration Act and that may also take some time. The Legislature being alive of such situations has already provided in Section 47 of the Registration Act that it shall operate from the time from which it would commence to operate if no registration thereof had been required or made and not from the time of its registration. Thus in our view the vendee gets rights which will be related back on registration from the date of the execution of the sale deed and such rights are protected under Order 38 Rule 10 C.P.C. read with Section 47 of the Registration Act."

(15) In view of the authoritative pronouncements, it is held that document executed on an earlier date though registered later will operate from the date of its duly registered. Therefore, sale deed which was executed in favour of the plaintiff-appellant on 3rd of November, 1971, though registered on 14th of May, 1975, shall come into operation with effect from 3rd of November, 1971.

(16) Section 48 of the Transfer of Property Act, embodies a well established rule founded on law and justice that if the vendor creates at different times, by way of transfer, rights over the same immovable property and if such rights cannot co-exist, then each later created transfer shall be subject to rights previously created. Section 47 of the Registration Act, provides that a document executed earlier, though registered later, shall be effective and operative from the date of its execution. On this analogy, sale deed Exhibit P-1 executed on 3rd of November, 1971, though registered on 14th May, 1975, later than the subsequent sale deed Exhibit DW-3/1, registered

on 29th November, 1971, would be effective and operative from the date of its execution, i.e., 3rd November, 1971. So, in view of the provisions of Section 47 of the Registration Act and Section 48 of the Transfer of Property Act sale dated 3rd November, 1971, shall take precedence over the later sale effected by Lal Singh defendant No. 12, in favour of defendants No. 1 to 11, on 29th November, 1971 (DW-3/1). This matter was considered at length in *Sadei Sahu v. Chandramani*, (9), and by the Madras Court in *Duraisamu Reddi's case* (supra) and it was held as under :—

“Even if the second defendant is able to show that he purchased the properties *bona fide* without notice of the earlier sale, he cannot succeed unless, of course, the earlier transferee is prevented from setting up his title as against the later transferee by way of infirmative circumstances such as fraud or estoppel. The question is really concluded by Section 47 of the Registration Act and Section 48 of the Transfer of Property Act. The law gives four month's period for registration and if the document is registered within that date, the subsequent transferee cannot be heard to say that he got his document without notice, and during this period allowed to the earlier transferee, got his own document registered, he must be deemed to be a *bona fide* purchaser for value. Such a plea, if allowed, would lead to much fraud. If a later document registered earlier is to prevail over an earlier document registered later, it would always be easy for the vendor and the later purchaser to enter into a transaction, within the time given for registration of the earlier document and get the new deed registered immediately and thus defeat the purchaser under the earlier deed. The correct proposition is set down in the following short passage in Mulla's Indian Registration Act under Section 47:

“If there is a competition between registered documents relating to the same property, the document first in order of time has priority over the other, though the former document may not have been registered until after the latter.”

(17) This view was later on followed in *Ramaswami Pillai v. Ramasami Naicker and others*, AIR 1960 Madras 396. I fully agree with this reasoning of Madras High Court and I have no hesitation

(9) A.I.R. 1948 Patna 60.

**Kuldip Singh v. Smt. Balwant Kaur (deceased) and others
(Ashok Bhan, J.)**

in holding, on the analogy of this reasoning that sale deed Exhibit P-1, shall take priority over the later transfer Exhibit PW-3/1 made by the vendor. The fact that the subsequent purchaser is a *bona fide* purchaser cannot be a ground by itself for postponing the rights of the prior transferee. This can be supported by another reasoning that no person can convey a better title than what he has and he cannot go back from his grant and deal with the property free from the rights created by him under the earlier sale deeds. His absolute ownership is diminished by rights already created under the earlier transaction and Section 48 of the Transfer of Property Act, does not save a subsequent transferee, who purchased property without notice or knowledge of the prior transfer.

(18) If plea of *bona fide* purchaser is permitted to be taken by the subsequent vendee and a later document registered earlier is to prevail over an earlier document registered later, it would be easy for the vendor and the later purchaser to enter into a transaction within the time given for registration of the earlier document and get the new deed registered immediately and thus defeat the purchaser under the earlier deed. In this case, sale deed Exhibit P-1 was executed on 3rd of November, 1971 (registered on 14th May, 1975) and sale deed in favour of defendants No. 1 to 11 was executed and registered on 29th November, 1971. With this subsequent sale the defendants No. 1 to 11 want to extinguish the rights of the plaintiff-appellant, which were based on an earlier sale deed executed by the vendor in favour of the plaintiff-appellant. Registration of a document is a rule of evidence which provides that rights created under executed mortgage or sale shall prevail and taken into consideration when the document is registered. Under Section 47 of the Registration Act, it is provided that once a document is registered, it shall come into effect and operate from the date of its execution. In this case, therefore, the document Exhibit P-1, which was executed earlier in time and was presented for registration within permissible time, i.e., four months, shall operate from the date of its execution and shall prevail over any other sale or mortgage which was executed later in point of time than sale deed Exhibit P-1. Any other interpretation of Section 47 of the Registration Act, read with Section 48 of the Transfer of Property Act, would result and lead to inequitable results.

(19) The plaintiff has, thus, become owner of the property in dispute and shall be entitled to take possession of the portion of the

property which was not under the tenancy of defendants No. 1 to 11, on the date sale deed Exhibit P-1, (dated 3rd November, 1971) was executed in favour of the plaintiff-appellant. So far as the portion of the property which was under the tenancy of defendants No. 1 to 11 or their predecessor-in-interest, the same shall be subject to the tenancy rights of these defendants and the plaintiff would be at liberty to obtain possession of this portion of the property in accordance with law. Plaintiff-appellant shall also be entitled to mesne profits to the extent the same were granted by the trial Court, under issue No. 8.

(20) For the reasons recorded above, the appeal is accepted and the plaintiff's suit is decreed with costs Counsel's fee Rs. 1000.

S.C.K.

Before : R. S. Mongia, J.

PUNJAB CHEMISTS ASSOCIATION (REGD.),—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 14229 of 1989.

6th December, 1990.

Drugs and Cosmetics Rules, 1945—Rl. 59—Drugs & Cosmetics (9th amendment) Rules, 1989—Rl. 49-A—Appointment of Licencing Authority—No qualifications prescribed—Civil Surgeons authorised to exercise power of Licencing Authority—Rules amended—Qualifications prescribed—Civil Surgeons not possessing prescribed qualifications—Such Surgeons cannot act as Licencing Authority.

Held, that by notification, the appointment of Civil Surgeons as Licencing Authorities is *stricto sensu* not an 'appointment'. It is conferring a power or jurisdiction on Civil Surgeons that they can exercise the powers of the Licencing Authority. Since, lateron, an embargo was placed that no person shall be qualified to be a Licencing Authority under the Act unless he has the requisite qualifications, it would follow that no person could exercise the powers or discharge the functions or act as a Licencing Authority thereafter unless he had the qualifications mentioned in Rule 49-A of the Drugs and Cosmetics (9th amendment) Rules, 1989. Therefore, the Civil Surgeon who