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plaintiffs and other residents and inhabitants of village Chakarpur from grazing their cattle in the land in suit and from removing dried wood for fuel and from utilising the *shamilat deh* in the manner permitted by the Punjab Village Common Lands (Regulation) Act and the Rules made thereunder.

It may also be mentioned that the plea against maintainability of the suit taken by the defendants was altogether different. They sought rejection of the plaint on the ground that the plaintiffs should have sued for possession and the trial Court rightly declined to entertain this contention. It may also be noticed that this plea was not even reiterated before the lower appellate Court which, after examining the contentions raised by the appellants, had expressly said that no other point was urged or argued in appeal.

Finally, the learned counsel for the appellants urged that it was no longer open to his clients to challenge that the area in suit was *shamilat deh* and that it actually vested in the Panchayat in view of the concurrent findings of the Courts below, but nevertheless this suit was not maintainable. I have already expressed by disagreement with this contention.

This appeal is devoid of merit and deserves to fail. The appeal is, therefore, dismissed with costs. In the result, the plaintiffs are entitled to a decree for permanent injunction as prayed.

Capoor, J. S. B. CAPOOR, J.— I agree.

B.R.T.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

IRON TRADERS (PRIVATE) LTD., AND OTHERS,—*Appellants*

versus

HIRA LAL MITTAL AND ANOTHERS.—*Respondents.*

Regular Second Appeal No. 92-D of 1961.

1961

December, 11th.

Companies Act (I of 1956)—Section 155—Power of directors to rectify the Register of Members—Transfer of

shares sanctioned by Directors in favour of a stranger without complying with the provisions of articles of association—Whether can be revoked—Code of Civil Procedure (V of 1908)—Order I, Rule 10—Transferor of shares—Whether necessary party to a suit by the transferee challenging the removal of his name by the directors.

Held, that the directors of a company have no power to rectify the Register of Members by removing the name of a transferee of shares in whose favour the transfer had been sanctioned by the Directors in complete disregard of the provisions of the Articles of Association of the company. Such a transfer is not void as being *ultra vires* but is only irregular. The transferee of shares was entitled to assume that the directors were acting regularly and had complied with the formalities before registering the transfer. The registration was made at the instance of the proposing transferor and it could rightly be presumed by the transferee that the company could not find any willing member to take over such a large number of shares. If the Directors later discovered that the shares had first to be offered to members of the company, it behoved them to give notice at least to the transferee before cancelling the transfer.

Held, that the transferor of shares was not a necessary party to a suit where there was a contest simpliciter between the company and the transferee of shares, the Directors having taken upon themselves the task of rectifying the register without giving notice to the transferee. The transferor had ceased to be a member of the company after the shares had been transferred in the name of the transferee and there is no reason why it was necessary to implead the transferor.

Regular Second Appeal from the decree of the Court of Shri Gurbachan Singh, Additional District Judge, Delhi, dated the 22nd day of April, 1961; ordering that the decree granted will ensure for the benefit of Hira Lal Mittal, plaintiff and not for the benefit of M/s Hira Lal and Sons or the sons of Hira Lal, who were not parties to this suit thus modifying that of Shri S. S. Kalha, Sub-Judge, 1st Class, Delhi, dated the 14th September, 1960, who granted the plaintiff a decree embodying a declaration to the effect that the removal of the name of the plaintiff from the register of share-holders of the defendant company by the

latter's Board of Directors,—vide *resolution No. 3, dated the 16th January, 1957, is illegal and invalid and a mandatory injunction directing the defendant company and its directors defendants Nos. 1 to 3 to rectify its register of share-holders by including in it again the name of the plaintiff as a share-holder, but dismissed plaintiff's suit regarding the other relief claimed by him.*

A. N. KHANNA, ADVOCATE, for the Appellant.

RADHEY LAL AGGARWAL, ADVOCATE, for the Respondent.

JUDGMENT

Shamsher Bahadur, J.

SHAMSHER BAHADUR, J.—The questions which arise for determination in this appeal are whether the transfer of 133 shares of the Iron Traders Private Limited in the name of Hira Lal Mittal, respondent No. 1, was validly cancelled by the company, and secondly, if the suit brought by respondent No. 1 could be entertained without impleading the transferor of these shares.

The Iron Traders Private Limited was incorporated in 1932 and has a subscribed capital of Rs. 3,00,000 divided into 300 shares of Rs. 1,000 each. On 29th of October, 1954, Chhote Lal Sanwal Das wrote to the company that they had transferred 44 shares of Hira Lal Mittal (hereinafter referred to as the first respondent). On 20th of May, 1955, these shares were transferred in the name of the first respondent by the company and he was duly informed about this transfer on 27th of May, 1955. Thereafter, the first respondent purchased from the same party another lot of 89 shares which were similarly transferred and registered by the company on 6th and 11th of October, 1956. After the acquisition of 44 shares, the first respondent was appointed a Director on 27th of February, 1956. At that time, the company had two other Directors Hanuman Pershad and Bisakha Singh, who are appellants Nos. 2 and 3. The first respondent did not feel quite content with the management of the company and filed

a suit for restraining it from appointing a Managing Director and also gave notice of a meeting for discussion of a no-confidence motion against Hanuman Pershad and Bisakha Singh. The company, on its part, asked the first respondent to resign from the Directorate under clause 94(4) of the Articles of Association requiring a Director to vacate his office "on his being requested by his co-Directors to do so". These internecine disputes were settled by addition of two more Directors, one of these being the son of the first respondent and the withdrawal of the proceedings initiated at the instance of the first respondent against his colleagues. The harmony between the Directorate, however, was short-lived and another notice was given for a meeting by the first respondent on 29th of November, 1956. This meeting was called for 19th of January, 1957. Before that date, however, the Directors received the letter dated 8th of January, 1957, Exhibit D.W. 1/1, from Chhote Lal, Sanwal Das, wherein it was pointed out that the transfer of shares in favour of the first respondent had been made in contravention of the Articles of Association, being in favour of an outsider without the other members having received a notice of the sale of shares. The company then sent a notice marked 'Z' on 12th of January, 1957, for an emergent meeting of the Board of Directors to be held on "Tuesday, the 15th day of January, 1957" for consideration *inter alia* of the "letter dated 8th of January, 1957 of Messrs Chhote Lal-Sanwal Das, Delhi, and the legal adviser's opinion thereon". The first respondent, who had deposited proxies for the general meeting which had been convened in pursuance of his requisition for 19th of January, 1957, found that no meeting of Directors was held on 15th of January, 1957. It appears that a meeting was held instead on the 16th of January, 1957, and the only business transacted was to strike the name of the first respondent and his son from the register of membership and the vacation of their offices as Directors (Exhibit D.W. 1/11).

The first respondent on his removal from the Directorate filed the present suit for rectification

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of the company's register and his reinstatement as a Director of the company. There were many pleas raised in defence but the only two issues for purposes of this appeal relate to the cancellation of the first respondent's name from the register and the necessity of Chhote Lal-Sanwal Das being impleaded as party. Issue No. 2 to the effect "whether Chhote Lal-Sanwal Das are necessary parties to the suit" was decided as a preliminary issue and was decided in favour of the first respondent by the Subordinate Judge on 17th of July, 1957. On the other relevant issue in this appeal it was held that the Directors had no warrant to cancel the name of the first respondent from the membership register. The suit was decreed by the trial Judge and the appeal preferred by the company and the other Directors was dismissed by the learned Additional District Judge, Delhi, on 22nd of April, 1961. Feeling aggrieved, the company and its Directors have again preferred an appeal to this Court.

It has been contended by Mr. Khanna, the learned counsel for the appellants, that the transfer of shares in favour of the first respondent was in contravention of the Articles of Association of the company and being a void transaction, there could be no question of any acquiscence on behalf of the company. Reference at this stage may be made to the following relevant clauses of the company's Articles of Association:—

> "36. A share may be transferred by a member or other person entitled to transfer the same to any other member holding shares who is selected by the transferor but save as aforesaid and save as provided by Clauses 40 and 43 hereof no shares shall be transferred to a person who is not a shareholder so long as any shareholder is willing to purchase the same at a price to be fixed as hereinafter provided."
>
> "37. Except where the transfer is made to a shareholder selected as aforesaid or

aforesaid or pursuant to Clauses 40 and 43 hereof the person proposing to transfer any share (hereinafter called 'the proposing transferor') shall give notice in writing (hereinafter called 'the transfer notice') to the Company that he desires to transfer the same."

Clause 38 relates to the manner in which the price of share is to be fixed and there is provision for arbitration in case of difference of opinion in clause 40 regarding the fixation of price of the share proposed to be transferred.

"42. If the Company shall not within the space of six months after being served with the transfer notice find a shareholder willing to purchase the shares and give notice in manner aforesaid the proposing transferor shall at any time within three calendar months afterwards be at liberty subject to Clause 47 hereof to sell and transfer the shares to any person and at any price not being less than the price fixed by the proposing transferor in his notice to the Company under Article 38 hereof."

"47. The Directors may without assigning any reason decline to register any transfer of shares upon which the Company has a lien or of shares which are not fully paid up."

Admittedly, no notice was sent by the proposing transferor to the company which never made an offer of these shares to any of its members. It may be mentioned here that the three appellant-Directors are holding only 17 shares of the value of 17,000 between themselves. 133 shares, as already mentioned, have been transferred in favour of the first respondent. The remaining 150 shares of the company are held by other persons.

Basing his submissions on clauses 36 and 37 of the Articles of Association, the learned counsel

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argues that the shares in favour of the first respondent could never have been transferred by the company, the act being *ultra vires* altogether. It is not denied that the company itself had made the registration and had taken the first respondent as a Director on 27th of February, 1956. The transfer deeds had been signed by the transferor along with the letter Exhibit P. 1. It is well to observe that the first respondent was never aprised either by Chhote Lal-Sanwal Das or the company about the procedure which had to be followed and he could have legitimately presumed that the company had taken all the steps which it was required to adopt before transferring the shares to a person who was not a member of the company. Under clause 42 if the company defaults in finding a shareholder willing to purchase the shares offered by the transferor, the proposing transferor could transfer the shares to any person at any price not less than the price fixed by the proposing transferor. The shares were sold to the first respondent at the face value and the company never demurred in registering the transfer in favour of the first respondent under clause 47 of the Articles of Association.

Mr. Khanna relies on paragraph 427 of Halsbury's Laws of England, Volume 15, Third Edition, where it is stated that "a party cannot by representation, any more than by other means, raise against himself an estoppel so as to create a state of things which he is legally disabled from creating. Thus, a corporate or statutory body cannot be estopped from denying that it has entered into a contract which it was *ultra vires* for it to make." This doctrine cannot however, apply in the circumstances of the present case. The transfer of shares *per se* is not prohibited by the Articles of Association. It is only the manner of transfer which is prescribed. All that can be said is that the transfer of shares was irregular but there is no warrant for the inference that the transaction becomes *ultra vires*. The transfer would be *ultra vires* only if the Articles of Association had laid on absolute embargo on transfer in favour of a non-member. This

distinction between *ultra vires* and irregular acts has been brought out clearly in paragraph 428 of Halsbury's Laws of England, Volume 15, Third Edition, page 227, where it is stated "A distinction must be made between acts which are *ultra vires* and those for the validity of which certain formalities are necessary. In the latter case, persons dealing without notice of any informality are entitled to presume *omnia rite esse acta*. Accordingly a company which, possessing the requisite powers, so conducts itself in issuing debentures as to represent to the public that they are legally transferable, cannot set up any irregularity in their issue against an equitable transferee for value who has no reason to suspect it." In this connection, reference may be made to *Robinson* v. *Montgomeryshire Brewery Company* (1).

The first respondent was never told about the procedure of transfer either by the proposing transferor or the company and having paid the full value of the shares he could justifiably be said to be an equitable transferee for value and is well protected under the rule stated in Halsbury's Laws of England.

Moreover, persons who are dealing with the company are entitled to presume that it is acting within the scope of its authority. This principle is illustrated in the case of *Royal British Bank* versus *Turquand* (2), referred in Halsbury's Laws of England, Volume VI, Third Edition, page 59, where it is stated that "if the Directors have power to bind the company, but certain preliminaries are required to be gone through on the part of the company before their power can be duly exercised, the person so dealing is not bound to see that all those preliminaries have been observed, but is entitled to presume that the Directors are acting regularly." This principle sometimes expressed as the doctrine of indoor management is designed to protect innocent persons who are

(1) (1896) 11 Ch. D. 841
(2) (1856) 6 E.D.B. 327

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acting bona fide in the belief that the company is transacting business in accordance with its articles. It is only an *ultra vires* act which can still be challenged although the Directors have given their assent to it.

A similar point arose in a Madras case in *P. V. Damodara Reddi and another* v. *Indian National Agencies, Ltd.*, (3), where a company consisting of six members, who were all Directors, allotted 5 per cent of the shares to two outsiders. The allotments were later discovered to be in contravention of the Articles of Association which required sanction of the general meeting. It was held by Clark J. that the allotments could not be avoided as the applicants were entitled to assume that the Directors were acting regularly and that the sanction of the company had in fact been obtained. On a parity of reasoning, it was not incumbent on the first respondent to make an enquiry whether the Directors had complied with the formalities before registering the transfer. I am in respectful agreement with the judgment of Clark J. which has been mentioned with approval by Tek Chand J. in *Dewan Singh* v. *The Minerva Films Limited, Sonepat* (4).

Mr. Khanna further contends that the Directors can always rectify the register if they discover any patent mistake therein. The power of the Court to rectify a register is defined in section 155 of the Companies Act and it cannot be disputed that no rectification could have been made without notice being issued to the first respondent. Mr. Khanna has canvassed the proposition that the Directors are not fettered in their discretion to rectify the register when they discover a patent mistake. I do not think that it is a legitimate argument on behalf of the Directors when in complete disregard of the provisions of the Articles of Association they registered the transfer in favour of the first respondent of as many as 133 shares out

(3) A.I.R. 1946 Mad. 35
(4) 1959 P.L.R. 61

of the total holding of 300 shares of the company. The registration was made at the instance of the proposing transferor and it could rightly be presumed by the first respondent that the company could not find any willing member to take over such a large number of shares. If the Directors later discovered that the shares had first to be offered to members of the company, it behoved them to give notice at least to the first respondent before cancelling the transfer.

It is difficult to avoid the conclusion that the action of the Directors was *mala fide* as the opposition of the first respondent was distasteful to them. The meeting of the Directors, convened for the 15th of January, 1957, was actually held on the following day. I cannot subscribe to the proposition that "16th of January, 1957" was merely a typing error for 15th of January, 1957. The day was also mentioned as 'Tuesday' and that fell on 15th of January, 1957. Moreover, there can be no inkling of a suggestion from the agenda that the question for consideration was whether the shares in favour of the first respondent should be cancelled. I am in complete agreement with the conclusions reached by the Courts below that the Directors' cancellation of the name of the first respondent from the register was illegal and unjustifiable.

It remains to dispose of the other contention of the counsel for the appellants that Chhote Lal-Sanwal Das was a necessary party to the suit. If it were a contest between the transferor and the transferee, there could be no manner of doubt that Chhote Lal-Sanwal Das was a necessary party. The name of the first respondent, however, having been registered as a member at the instance of Chhote Lal-Sanwal Das, I do not see any reason why it was necessary for the plaintiff in this suit to have impleaded this firm as a party. This was a contest *simpliciter* between the company and the first respondent, the Directors having taken upon themselves the task of rectifying the register without giving notice. Chhote Lal-Sanwal Das

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had ceased to be a member of the company after the shares had been transferred in the name of the first respondent and there is no reason why it was necessary to implead the firm. In this view of the matter, this appeal must fail and is dismissed with costs.

B.R.T.

REVISIONAL CIVIL

Before S. B. Capoor, J.

BAL KISHAN AND ANOTHER,—*Petitioners.*

versus

GOPI CHAND AND ANOTHER,—*Respondents.*

Civil Revision No. 265 of 1961

1961

December, 19th.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 4—Fair rent fixed under the Pepsu Urban Rent Restriction Ordinance (VIII of 2006 Bk.) in 1954 on the application of the tenant—Whether can be reopened after merger of Pepsu with Punjab and application of the East Punjab Act to the transferred territories in place of the Pepsu Ordinance—Principle of res judicata*—Whether applicable—Punjab Laws (Extension No. 4) Act (XVIII of 1958)—Section 6—Effect of.*

Held, that by virtue of the proviso to section 6 of the Punjab Laws (Extension No. 4) Act, 1958, the fixation of fair rent by the Controller under the Pepsu Urban Rent Restriction Ordinance, 2006 Bk, was to be construed as fixation of fair rent by the Controller under section 4 of the East Punjab Urban Rent Restriction Act, 1949, and thereafter it could be varied only according to the provisions of the Act, that is, only if there was some change in the circumstances of the tenancy. The principle of *res judicata* is of universal application and applies to the fixation of fair rent in proceedings under the East Punjab Urban Rent Restriction Act also. The tenant cannot be allowed to agitate the matter over and over again. The decision of the Rent Controller, dated the 15th March,