(1962) 04 P&H CK 0003

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ No. 199 of 1961

Durga Dass		APPELLANT
	Vs	
The Financial Commissioner, Revenue and Others		RESPONDENT

Date of Decision: April 26, 1962

Acts Referred:

- Constitution of India, 1950 - Article 14, 15, 226, 227
- Pepsu Tenancy and Agricultural Lands Act, 1955 - Section 51
- United Provinces Muslim Wakf Act, 1936 - Section 3

Citation: (1962) 2 ILR (P&H) 761

Hon'ble Judges: Daya Krishan Mahajan, J

Bench: Single Bench

Advocate: J.N. Kaushal, for the Appellant; H.S. Doabia, A.A.G., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Daya Krishan Mahajan, J.
This judgment will dispose of Civil Writ No. 199 of 1961 and Civil Writ No. 437 of 1961. The land in dispute in these petitions under Articles 226 and 227 of the Constitution belongs to a Dharamsala known as Dharamsala Phagwara. The manager of the Dharamsala instituted proceedings in the revenue Court for the ejectment of the tenant. The principal defence of the tenant with which we are concerned was that he could not be evicted in view of the provisions of the Pepsu Tenancy and Agricultural Lands Act, 1955 (Act No. 13 of 1955). The reply of the Petitioner was that this Act has no applicability to the Dharamsala''s lands in view of the provisions of Section 51 of the Act. This plea has been negatived by the Assistant Collector, the Collector, the Commissioner and the Financial Commissioner in various appeals and revisions filed under the Tenancy Act with the result that the Petitioner has come to this Court under Articles 226 and 227 of the Constitution. The

contention of the learned Counsel for the Petitioner is that the lands of the Dharamsala are exempt under the provisions of Section 51. He relies on Section 51 which is in these terms--

[His Lordship read Section 51 and continued:]

Section 51 was substituted for the original Section 51 by the Pepsu Act No. 15 of 1956. The original section was in these terms--

51. Exemption of certain lands.--The provisions of this Act shall not apply to--

(a) lands owned by or vested in the State Government;

(b) lands belonging to any religious or charitable institution;

(c) lands which are granted to any members of the Armed Forces of the Union for gallantry; and

(d) private lands leased by the Government.

It will be seen from these two provisions that attempt has been made in the substituted provision to define the religious and charitable institutions as far as practicable. The contention of the learned Counsel for the Petitioner is that this institution falls under Clause (iii) of the Explanation whereas the contention of the learned Counsel for the tenant and the State is that it falls in Clause (v) of the Explanation. But unfortunately this question has not been determined by the authorities below. They have not given any decision as to whether the institution falls in Clause (iii) or Clause (v) but they have proceeded on the basis that even if it falls in Clause (iii) or Clause (v), there being no notification specifying the institutions under the Explanation, therefore the exemption u/s 51 is not available. This argument is met by the learned Counsel for the Petitioner on the short ground that the notification is only required with regard to institutions mentioned in Clause (v) of the Explanation but not in regard to institutions mentioned in Clauses (i) to (iv). It is in this perspective that the Explanation has to be interpreted and it has to be determined which of the two contentions is correct. Therefore, it will be proper at this stage to examine in detail the respective contentions of the learned Counsel for both the sides.

2. The Petitioner''s counsel contends that the requirement as to notification is merely restricted to Clause (v) of the Explanation and that is so because in each case it has to be determined whether the institution which falls under Clause (v) answers the requirements set out in that clause whereas with regard to the remaining four clauses that requirement is not needed because whether a temple or gurdwara or a religious place is a public place of worship can always be determined and is always determinable from its past history. But this cannot be said with regard to Clause (v). The contention on the other hand of the learned Counsel for the tenant is that the last words of the Explanation "which the State Government may, by notification in

the Official Gazette, specify" govern all the five clauses. In other words it is open to the Government to notify whether temples will be entitled to the exemption or gurdwaras will be entitled to the exemption or any other religious places of a public nature or a wakf as defined in Clause (1) of Section 3 of the Muslim Wakfs Act, 1954 (Parliament Act 29 of 1954), or any other institution of a public nature the object of which is relief to the poor, education, medical relief or the advancement of any other object of general public utility including religious teaching or worship will be entitled to exemption. If the argument of the learned Counsel for the tenant is accepted the provision would enable the State Government to discriminate between a temple and a gurdwara or a temple and a Muslim wakf or a temple and a Dera which obviously is sought to be covered by Clause (iii) of the Explanation and thus this power would be hit by Article 15 of the Constitution. If on the other hand the Government has the power to give exemption to one temple vis-a-vis the other temple or one gurdwara vis-a-vis the other gurdwara and similarly with regard to other institutions mentioned in Clauses (iii) and (iv), this will hit Article 14 of the Constitution. Therefore, this power of the State Government would be ultra vires the Constitution and will be struck down. Therefore, the short question that requires determination is, as to what is the true scope and ambit of the State Government''s power under the aforesaid Explanation. According to the well-settled rule of construction of statutes, where a statute is capable of two interpretations, one which makes it invalid and the other which gives effect to it, the interpretation which will make it invalid would be ruled out in favour of the interpretation which does not impair its validity. For this reason I must hold that the interpretation sought to be placed by the State counsel and also by the tenant''s counsel must be avoided for that interpretation will make the statutory provision wholly redundant. Therefore, we are left with the only interpretation which can be placed on these concluding words of the Explanation, namely that it merely governs institutions which fall under Clause (v). The reason for this power is obvious and based on public policy. That is it is meant to avoid private people trying to avoid the operation of the Act by transferring their lands to institutions covered by Clause (v) and reserving bulk of the benefits of those lands to themselves. It has been pointed out at the bar that all temple lands and gurdwara lands have been exempted under the Act without there being any specific notification to that effect. How far that is correct I am not in a position to say. Be that as it may, to me it appears that the correct interpretation is that the concluding words of the Explanation merely govern Clause (v) and do not govern the first four Clauses of the same.

3. Now only a few contentions raised by the tenant''s counsel remain to be examined. One of those contentions is that the concluding words of the Explanation, if they were intended to govern Clause (v), would have run along that clause and would not have been disjointed from that clause. Whatever the reason for that may be I cannot on that ground put such a meaning on this clause as would make the Explanation wholly void and I have already stated why the Explanation would

become void if the concluding words under Clause (v) are not restricted to Clause (v) and it is not necessary to repeat the same all over again.

4. The other contention advanced is that this Court has no jurisdiction to interfere under Article 226 of the Constitution. The short answer to that argument is that the error is apparent on the face of the record and as held in Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, and Kaushalya Devi and Others Vs. Bachittar Singh and Others, , this Court has ample jurisdiction to correct errors of the subordinate tribunals, and the Calcutta High Court in Shib Prosad Mondal v. The State of West Bengal and Ors. 68 Cal. W.N. 88, did correct a similar legal error.

5. The last contention is that the tribunal has not determined whether the institution falls under Clause (iii) or Clause (v) of the Explanation and therefore, till that matter is determined no relief, can be granted to the Petitioner. That appears to be so but then this Court can issue directions to the tribunal concerned to determine that matter. I, therefore, allow this petition and quash the order of the Financial Commissioner and the authorities subordinate to him and direct the authorities concerned to determine under what category of the Explanation the Petitioner''s institution falls and thereafter decide the matter in accordance with law. There will be no order as to costs.