STATE OF PUNJAB

v.

RAMJILAL & ORS.

October 12, 1970

[J. C. SHAH, K. S. HEGDE AND A. N. GROVER, JJ.]

Punjab Pre-emption Act I of 1913—*Notification dated September* 13, 1962, *under s.* 8(2) *of the Act whether issued* mala fide—*Party alleging* mala fide *whether must name officer or officers misusing authority of State for collateral purpose—Such burden would be intolerable.*

Surinder Kumar and Virender Kumar (defendants in the suit) purchased on May 9, 1958 a plot of land in District Gurgaon. On January 9, 1959 the plaintiffs filed a suit in the Civil Court to pre-empt the sale. On November 16, 1961 the Government of Punjab issued in exercise of the power conferred by s. 8(2) of the Punjab Pre-emption Act, 1913, a notification declaring "that no rights of pre-emption shall exist with respect to urban of village immovable property or agricultural land when purchased by any person for setting up or expansion of any industry in the State with the permission of the Director of Industries, Punjab." By order dated February 16, 1962 the Civil Court passed a decree for pre-emption conditionally on payment of the amount for which the property was sold. The Civil Court found that the defendants had failed to establish that they intended to establish a factory on the land in question. The defendants appealed to the Court of the Senior Subordinate Judge against the decree of the Trial Court. Thereafter the Government of Punjab issued another notification on September 3,1962, that the Governor of Punjab was pleased to order that "no right of pre-emption shall exist with respect to the sale of land, described in the Schedule to this Notification made on the 9th May, 1958, in favour of Messrs. Surinder Kumar and Virender Kumar, opposite Railway Station, Faridabad for the establishment of a factory for manufacture of cork products". In the Schedule was described the prpperty aforesaid purchased by the defendents. The plaintiffs then moved a petition in the High Court challenging the validity of the Notification dated September 3, 1962 among others on the ground that in issuing the order the Government acted *mala fide*. The High Court held that the notification extinguishing the right of pre-emption in the property issued during the pendency of the appeal did not disentitle the plaintiffs to maintain their claim of pre-emption already exercised and in respect of which a decree was granted to them. The notification dated September 3, 1962 was held to have been issued *mala fide* and on that account invalid though s. 8(2) of the Punjab Act I of 1913 was held not offend Art. 14 of the Constitution. With special leave the State of Punjab appealed to this Court.

HELD : The High Court rightly held on the facts that the impugned notification was issued *mala fide*. The plaintiffs who claimed that they had a right to pre-empt the sale filed a suit against the defendants and obtained a decree. On the finding of the High Court it was clear that except disclosing that the defendants intended to construct a factory, nothing more was said. The State Government still proceeded to exclude from the operation of the Act the land so as to defeat the right of pre-emption exercised by the plaintiffs in respect of which a decree was passed

A by the Civil Court. The State Government had not in their affidavit satisfactorily explained the circumstances in which the order was passed. The conclusion of the High Court was borne out by the evidence and no ground was made out calling for interference in this appeal by special leave. [554 E; 556 B-C]

The contention on behalf of the State that the party alleging that the
B action of the State was not *bona fide* must name the officer or officers guilty of conduct which justifies an inference that the official act was done for a collateral purpose, could not be accepted. It would be placing an intolerable burden of proof of a just claim to require a party alleging *mala fides* of State action to aver in his petition and to prove by positive evidence that a particular officer was responsible for misusing the authority of the State by taking action for a collateral purpose. [555 F-H]

C [The impugned notification having been held invalid the question whether s. 8(2) of the Punjab Pre-emption Act was *ultra vires* Art. 14 of the Constitution did not survive for consideration.] [553 B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1946 of 1966.

D Appeal by special leave from the judgment and order dated December 6, 1965 of the Punjab High Court in Civil Writ No. 1523 of 1962.

V. C. Mahajan, for the appellant.

Abad Behari, for respondents Nos. 1 and 2.

E The Judgment of the Court was delivered by

Shah, J. On May 9, 1958 Khillu and two others sold a plot of land in village Majesar, Tehsil Ballabhgarh, District Gurgaon to Surinder Kumar and Virender Kumar (who will hereinafter be referred to as "the defendants"). On January 9, 1959 Ramjilal
F and Khazan hereinafter called the "plaintiffs" filed a suit in the Civil Court to pre-empt the sale. On November 16, 1961 the Government of Punjab issued in exercise of the power conferred by sub-section (2) of Section 8 of the Punjab Pre-emption Act, 1913 a notification declaring "that no rights of pre-emption shall exist with respect to urban or village immovable property or agri-
G cultural land when purchased by any person for setting up or extension of any industry in the State with the permission of the Director of Industries, Punjab."

The plaintiffs contended that the notification issued by the Government did not prejudicially affect their claim to pre-empt the sale. By order dated February 16, 1962 the Civil Court passed
H a decree for pre-emption conditionally on payment of the amount for which the property was sold. The Civil Court found that the defendants had failed to establish that they intended to establish a factory on the land in question.

The defendants appealed to the Court of the Senior Subordinate Judge against the decree of the Trial Court. Thereafter the Government of Punjab issued another notification on September 3, 1962, that the Governor of Punjab was pleased to order that "no right of pre-emption shall exist with respect to the sale of land, described in the Schedule to this Notification made on the 9th May, 1958, in favour of Messrs. Surinder Kumar and Virender Kumar, opposite Railway Station, Faridabad, for the establishment of a factory for manufacture of cork products". In the Schedule was described the property sold to the defendants by Khillu and two others.

The plaintiffs then moved a petition in the High Court of Punjab challenging the validity of the notification dated September 3, 1962, among others on the ground that in issuing the order the Government acted *mala fide*. A Division Bench of the High Court referred the case for hearing before a full bench of the Court.

The full bench held that in a suit for pre-emption the claimant must prove that his right to pre-empt subsisted till the date of the decree of the first Court and that loss of the right after the date of the decree "by his own act or by an act beyond his control" did not affect his claim in the suit. Accordingly the notification under s. 8(2) of the Punjab Pre-emption Act, 1913 extinguishing the right of pre-emption in the property issued during the pendency of the appeal against the decree of the Trial Court did not disentitle the plaintiffs to maintain their claim of pre-emption already exercised, and in respect of which a decree was granted to them. The High Court also held that s. 8(2) of Punjab Act I of 1913 did not offend Art. 14 of the Constitution, but the notification dated September 3, 1962, was issued *mala fide*, and was on that account liable to be struck down as invalid." With special leave, the State of Punjab has appealed to this Court.

It was urged, that s. 8(2) infringes the guarantee of equality under Art. 14 of the Constitution. In terms, s. 8(2) provides :

> "The State Government may declare by notification that in any local area or with respect to any land or property or class of land or property or with respect to any sale or class of sales, no right of pre-emption or only such limited right as the State Government may specify shall exist."

The High Court was of the view that s. 8 must be read in the light of the scheme of the Act and especially s. 9 which excludes from the operation of the Act sales made by or to Government, or by or to any local authority, or to any company under the provisions of Part VII of the Land Acquisition Act, 1894, or in respect of any sale sanctioned by the Deputy Commissioner under s. 3(2) of

A the Punjab Alienation of Land Act, 1900. The power conferred by s. 8(2) to declare by notification that to certain sales the Act will not apply is independent of the exemption which is statutorily prescribed by s. 9. Exercise of the power under s. 8(2) is apparently not restricted to transactions of the nature specified in s. 9, but for the purpose of the present case we do not feel called upon B to decide whether sub-s. (2) of s. 8 invests the State Government with "arbitrary, unguided and uncanalised power" so as to infringe the guarantee of Art. 14 of the Constitution, for, in our view the plea that the order was issued *mala fide* raised by the plaintiffs and upheld by the High Court must be decided in their favour.

C The High Court on a review of the evidence found it proved, that, although at some stages reference to the pre-emption suit filed by the plaintiffs appeared in the history of the case, the defendants did not disclose the fact that a decree had been passed in favour of the plaintiffs in the suit, nor did any authority (except the Tehsildar) try to find out whether a decree had been passed in that suit; that it was never brought to the notice of any authority D by the defendants that the finding of the Trial Court was against them and it was because they had failed to prove that they intended to set up a factory, no authority ever tried to learn anything about that finding; that only a few days after the filing of the appeal by the defendants against the decree of the Trial Court an affidavit was filed by one of the defendants that they intended to put up a E factory on the land in question; that the District Inspector of Industries at Gurgaon made a report in favour of the defendants, only on the basis that they had started building the boundary wall; that the Tehsildar made a report adverse to the defendants, and pointed out that they had only constructed a small room in the middle of the land and not a factory building; that the move of the defendants "was to stultify and defeat that decree; that the Deputy Commis- F sioner first ordered that a copy of the report of the Tahsildar be forwarded to the Government, but two days later the Deputy Commissioner changed his mind when the defendants approached him and on the mere statement of the defendants that they intended to set up a factory in the land in question, he proceeded to recommend G that "exemption notification under s. 8(2) of the Act" be issued in favour of the defendants and that this was followed up by the higher authorities; that the report of the Tahsildar which had material bearing on the decision to be taken in the matter of issue of the impugned notification was suppressed and for this suppression there was no explanation "on the side of the State"; that although in the note dated March 14, 1962 of the Joint Director of Indus- H tries, it was directed that the defendants were to sign an agreement that the exemption to be granted to them would not be "misutilised" and the land would "not be sold for money-making", and although in the Revenue Department's note of August 14, 1962, it was

stated that the Director of Industries be asked to obtain such an undertaking before the issue of the notification, no such agreement or undertaking was obtained from the defendants and all that was done was that on November 8, 1962 (a day before the date of the notification and some days before its publication) another affidavit was obtained from the defendants that the land had been purchased for establishing a factory and "they solemnly undertook not to misuse or abuse the land", and declared and undertook that the land shall be used only for industrial purposes, but there was "no manner of contract by them whereby they would have to surrender back the land in the event of their not using it for the purpose of establishing a factory".

The High Court also observed that there was no allegation that any superior officer "in the Revenue Department such as the Secretary or the Deputy Secretary had acted in a *mala fide* manner in the issue of the impugned notification". But it was pressed before the Court that the notification was not really the act of one single person finally approving that the notification be issued : it was the result of a process of formal or informal inquiries and reports and consideration of various authorities at various stages leading up to the recommendations based on material collected which went to form the basis of the judgment whether or not such a notification should issue in any particular case. Approving of the process, the High Court observed that on a consideration of all the circumstances the impugned notification must be held to have been issued *mala fide*. The High Court concluded :

> "The reason in the circumstances of this case is simple. In the first place, the report of the Tahsildar was a crucial and vital document in this case, which would substantially and materially affect the approach of the higher authorities in the conclusion to issue or not to issue the notification. In this respect what happened before the Deputy Commissioner (Collector) had also the same bearing. It should have been disclosed what orders the Deputy Commissioner (Collector) passed first and what was the order which he passed two days later. An endeavour should have been made by somebody to find out what was the finding given by the Trial Court in the decision of that suit. This was not done even after the matter was pointed out by the Tahsildar. In other words, either deliberately or by sheer avoidance no effort was made to find out what finding the Trial Court had given in the matter . . . . In spite of it having been pointed out that before the issue of the notification an agreement be obtained from respondents

A 2 and 3 (the defendants) against misuse and misutilisation of the land for the purpose other than that for which it was being exempted from the right of pre-emption of the petitioners and for not making it an otherwise profiteering transaction, no such agreement, binding in law, was obtained from these respondents (the defendants), but instead the matter was slurred over by obtaining a second affidavit from the two respondents (the defendants). It is thus apparent that at the final stages, when the question for consideration was whether or not the impugned notification should be issued, whether all the circumstances were present which justified the issue of such a notification and whether all the obligations that were required to be taken by respondents 2 and 3 (the defendants) had been taken before its issue, were matters which either could not be considered because substantial material collected was withheld or clear directions were completely ignored. In the circumstances of the case, to my mind, the impugned notification cannot be held to have been issued in good faith and has to be held to have been issued *mala fide*."

This is a finding based on appreciation of evidence, and no case is made on which may justify us in interfering with that finding. It appears that the subordinate authorities withheld very important facts which had bearing on the issue of the notification by the State Government excluding the land sold under the sale deed dated May 9, 1958 executed by Khillu from the operation of the Punjab Pre-emption Act 1 of 1913 even after a decree was passed by the Civil Court granting pre-emption.

Counsel for the State of Punjab contended that the plea that the action of the State was not *bona fide* established, cannot be said to be unless the party alleging that case names the officer or officers guilty of conduct which justifies an inference that the official act was done for a collateral purpose, and since no such attempt was made and the High Court did not find that any named officer or officers was or were responsible for that official act, the plea that it was *bona fide* must fail. We do not think that the law casts any such burden upon the party challenging the validity of the action taken by the State Government. The State Government has undoubtedly to act through its officers. What matters were considered, what matters were placed before the final authority, and who acted on behalf of the State Government in issuing the order in the name of the Governor, are all within the knowledge of the State Government, and it would be placing an intolerable burden in proof of a just claims to require a party alleging *mala fides* of State action to aver in his petition and to prove by positive

evidence that a particular officer was responsible for misusing the authority of the State by taking action for a collateral purpose. A

The facts in the present case are eloquent. A sale deed was executed in favour of the defendants. The plaintiffs who claimed that they had a right to pre-empt the sale filed a suit against the defendants and obtained a decree. On the finding of the High Court it is clear that except disclosing that the defendants intended to construct a factory, nothing more was said. The State Government still proceeded to issue, in exercise of the power under s. 8(2) of the Punjab Pre-emption Act, a notification to exclude from the operation of the Act the land so as to defeat the right of pre-emption exercised by the plaintiffs in respect of which a decree was passed by the Civil Court. The State Government has filed no affidavit explaining the circumstances in which the order came to be passed : they have merely offered "comments" on the petition filed by the plaintiffs. In our judgment, the conclusion of the High Court was borne out by evidence and no ground is made out calling for our interference with that conclusion in this appeal with special leave. B C D

The appeal therefore fails and is dismissed with costs.

G.C. *Appeal dismissed.*