

Privy Council Appeal No. 66 of 1946

Khuda Bakhsh and another - - - - - *Appellants*

v.

Sardar Budh Singh and another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 29TH JULY, 1947.

Present at the Hearing :

LORD SIMONDS

LORD NORMAND

LORD MACDERMOTT

[*Delivered by* LORD MACDERMOTT]

By a Sale-Deed dated 16th September, 1940, the defendant-respondent, Sardar Ajit Singh, purported to have sold to the appellants at the price of Rs.26,000 certain agricultural land in the district of Shahpur. The plaintiff and respondent, Sardar Budh Singh, thereupon claimed a right of pre-emption in respect of this land and sued for possession.

The Subordinate Judge of Sargodha held in the plaintiff's favour and his decision was affirmed by the High Court of Judicature at Lahore. It is from this affirmance that the defendants, other than Sardar Ajit Singh, now appeal.

The only issue for the determination of the Board is whether the land in question was subject to the right of pre-emption at the time material to the plaintiff's claim.

The custom of pre-emption in the Punjab, its nature, extent and procedure were dealt with comprehensively by the Punjab Pre-emption Act, 1905. This Act has now been repealed and replaced by the Punjab Pre-emption Act, 1913, but, as was very properly conceded, this repeal does not affect the matter in question.

Section 5 of the Act of 1905 declared that " a right of pre-emption shall exist in respect of agricultural land and village immovable property ".

Section 6 declared similarly in respect of urban immovable property in any town or sub-division of a town if the custom existed therein at the commencement of the Act but not otherwise. Section 7 (1) provided that " no right of pre-emption shall exist within any cantonment " except as might be otherwise declared, in the case of agricultural land, in a notification by the Local Government. Section 7 (2) was as follows:—

" (2) No right of pre-emption shall exist in any other local area, which the Local Government may by notification specify ".

On the 6th December, 1910, the Punjab Government exercised its powers under this sub-section by issuing a notification which, omitting what is not material, reads thus:—

" No. 771.—Notification. In accordance with the provisions of section 7 (2) of the Punjab Pre-emption Act, His Honour the Lieutenant-Governor is pleased to direct that no right of pre-emption shall exist in

(a) any local area to which the Government Tenants Act, 1893, has been made applicable (b)”

The Government Tenants (Punjab) Act, 1893, provided for the grant of special tenancies of certain Government lands in the Punjab. By Section 3 of this measure the Punjab Government was empowered to apply its provisions by notification to “any tract of land” which was the property of the Government and was wholly or partly irrigable from a canal the property of the Government.

On the 28th July, 1902, the Punjab Government in exercise of this power issued the following notification:—

“No. 128—Notification.—In accordance with the provisions of section 3 of Act III of 1893, the Government Tenants (Punjab) Act, the Hon’ble the Lieutenant-Governor is hereby pleased to apply the provisions of that Act to all land in the Shahpur and Jhang Districts which is the property of the Government and is situated within the irrigation boundaries of the Jhelum Canal”.

It was agreed that the property in question lay within the tract of land specified in this notification. This being so, when it and notification No. 771 are read together the subject-matter of the present suit would appear *ex facie* to have been, since 1910, part of an area in which, in the words of Section 7 (2) of the Act of 1905, “no right of pre-emption shall exist”.

For the plaintiff, however, it was contended that, for either of two reasons, this was not the true position.

First of all it was said that this land had ceased to be “the property of the Government” and had therefore fallen out of the area specified in notification No. 128 before the date of notification No. 771, with the result that that notification had never affected it.

There is no doubt that the land in dispute was the property of the Government when notification No. 128 was issued in July, 1902. But in the month of October of that year the predecessors in title of the defendant-respondent contracted at a public auction to purchase the full proprietary interest subject to several stipulations which provided, *inter alia*, that the Government should have the right to rescind on default of payment of the purchase price and interest as agreed, and also that when the whole purchase money had been paid, and not before, the Colonization Officer should execute on behalf of the Government a conveyance of the property incorporating certain specific conditions. This conveyance was not executed until 16th June, 1920. It transferred the full proprietary right subject to the right of the Government to re-enter on breach of any of the several covenants on the part of the purchaser therein contained.

For the plaintiff it was argued that the nature of this transaction was such that the land ceased to be “the property of the Government” within the meaning of Section 3 of the Act of 1893 from the date of the agreement for sale in October 1902. For the appellants, on the other hand, it was contended that the property did not pass before the execution of the conveyance in 1920 and that even then the conditions annexed thereto left in the Government a substantial interest in the land conveyed.

As at present advised their Lordships are not disposed to accept the view that the land in question ceased to be the property of the Government for the purposes of the relevant legislation while the purchase money or part thereof remained outstanding and the right to a conveyance had not accrued. In view of the conclusions hereinafter stated, however, they do not find it necessary to express a final opinion on this or as to the nature of the Government’s interest subsequent to the conveyance.

When notification No. 128 issued in July 1902, there was no agreement for sale and the immediate effect of the notification undoubtedly was to apply the provisions of the Government Tenants (Punjab) Act 1893, to a tract of land, duly described, which included the subject matter of these proceedings. The question which then arises is not whether that tract thereafter remained in its entirety subject to the provisions of the Act of 1893. It is whether that tract as so described is

to be regarded for the purposes of notification No. 771 as a "local area to which the Government Tenants Act, 1893, has been made applicable". On the true construction of notification No. 771 their Lordships entertain no doubt that the words just quoted should be read as including a reference to the whole tract of land specified in notification No. 128 and not merely to such portions thereof as happened to remain available for the purposes of the Act of 1893 at the date of notification No. 771. In their Lordships' opinion this is the plain meaning of the words used which were not "is now applicable" or "is for the time being applicable", but "has been made applicable".

It is also to be observed in support of this construction that it enables the local areas affected by notification No. 771 to be defined with reasonable certainty and precision. While their Lordships are not concerned with matters of policy or the merits of pre-emption, the nature of that right is such that the area of its abolition would, as a matter of prudent administration, require to be fixed as clearly and definitely as possible, rather than in a manner dependent upon the effect of unspecified private transactions.

The second point advanced on behalf of the plaintiff was that the relevant portion of notification No. 771 ceased to be effective when the Government Tenants (Punjab) Act, 1893, ceased to be law on its repeal by the Colonization of Government Lands (Punjab) Act, 1912. The Subordinate Judge and the High Court both upheld this submission. In the course of his judgment Harries C.J. observed:

"It does not seem reasonable that the Government should ever have intended that the right of pre-emption should be taken away for all time. The intention appears to have been to take away that right during the continuance of the Government Tenants Act, 1893".

Their Lordships find themselves unable to accept this conclusion which appears to be somewhat speculative in character. There is nothing expressed in the relevant legislation to indicate that the wide power conferred by section 7 (2) of the Punjab Pre-emption Act, 1905, was intended to have but a transitory effect when exercised. It was certainly not limited by any reference to the Act of 1893, and the Board can see no ground for implying such a restriction.

This being the position there is no reason why the language of notification No. 771 should not be given its natural force and effect. When that is done the question of construction merges with that considered on the first point and presents little difficulty. The notification must be taken to mean what it says. No right to pre-emption shall exist in any area to which the Act of 1893 *has been made applicable*. That is not a reference to the continuing operation of that Act but to what had then been done under it.

The repeal of the Act of 1893 is therefore beside the point and it becomes unnecessary to express an opinion on the further argument advanced on behalf of the appellants to the effect that by virtue of section 6 of the Punjab General Clauses Act, 1898, notification No. 771 should be read as referring to the repealing enactment—the Act of 1912—in lieu of that repealed.

For these reasons their Lordships are of opinion that the lands in question were not subject to the right of pre-emption and that the appellants are entitled to succeed.

Their Lordships will therefore humbly advise His Majesty that the appeal be allowed.

The Order of the Subordinate Judge as to costs will stand. The appellants will have their costs in the High Court and of this appeal.

In the Privy Council

KHUDA BAKHSH AND ANOTHER

v.

SARDAR BUDH SINGH AND ANOTHER

DELIVERED BY LORD MACDERMOTT

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