Bhau Ram

Vs

B. Baijnath Singh

Civil Appeal No. 270 of 1955

(P. B. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo,

K.C. Das Gupta, N. Rajgopala Ayyangar JJ)

07.03.1962

JUDGMENT

WANCHOO, J. -

These three appeals which have been heard together raise the constitutionality of certain provisions of the pre-emption laws prevailing in the States of Madhya Pradesh (Rewa-State area), Delhi and Maharashtra (Berar-area). Three suits for pre-emption were brought by pre-emptors which were decreed, and the present appeals are by purchasers. Though the appeals were heard together as some of the points involved were common, it would be convenient to deal with each appeal separately because the law involved in each case is different.

We shall begin with C.A. 207 of 1955. This is concerned with the Rewa State Pre-emption Act, 1946 (hereinafter called the Rewa Act), and particularly with s. 10 thereof, which is in these terms :-

> "Classes of pre-emptors :- Persons of the following classes shall have a right of pre-emption :-
>
> (1) Any person who is a co-sharer or partner in the property sold and foreclosed.
>
> (2) Any person who owns any immovable property adjoining the property sold or foreclosed or in case of transfer of tenancy rights, the land which is the subject of such rights.
>
> Provided that among the above mentioned classes the first in order will exclude the second and among persons of the same class, the nearer in relationship to the person whose property is sold or foreclosed will exclude the more remote."

We are in the present case concerned with the second clause by which a person owning immovable property adjoining the property sold or foreclosed is entitled to pre-empt subject to the order provided in the proviso. In this case, both the purchaser and the pre-emptors hold property adjoining the property sold, but as the pre-emptors were related to the vendor, while the purchaser was not, the suit was decreed in favour of the pre-emptors in view of the proviso.

The question therefore that arises is whether a right of pre-emption by vicinage offends Art.

19(1)(f). There has been divergence of opinion between various High Courts on this question. The High Courts of Rajasthan, Madhya Bharat and Hyderabad and the Judicial Commissioner, Vindhya Pradesh have taken the view that such a right of pre-emption offends Art. 19(1)(f) while the High Court of Punjab has held otherwise. Before, however, we deal with the main points urged in this case we may notice the argument based on the decision of this Court in Shri Audh Behari Singh v. Gajadhar Jaipuria, where it was held that the law of pre-emption creates a right which attaches to the property and on that footing only it can be enforced against the purchaser. The argument is that since the right of pre-emption attaches to the property sold it is an incident of property, and therefore cannot be held to be a restriction on the right to acquire, hold and dispose of property. On the other hand it is urged that if the law of pre-emption creates a right which is an incident of property, even so it would be a restriction created by law on the fundamental right guaranteed under Art. 19(1)(f) of the Constitution. We are of opinion that even if the law of pre-emption creates a right which attaches to property it would be creating a restriction so far as the acquiring, holding or disposing of property is concerned which was not there before the law of pre-emption was enacted. Therefore, even if the liability attaches to the property, it will still amount of a restriction on the right guaranteed by Art. 19(1)(f), when it attaches to the property by the law of pre-emption.

Article 19(i)(f) gives a fundamental right to a citizen to acquire, hold and dispose of property and cl. (5) of that Article permits reasonable restrictions to be imposed by law on this right in the interests of the general public. There can be no doubt that a law of pre-emption does impose restriction on the fundamental right guaranteed under Art. 19(i)(f) and the question is whether the restriction imposed in the Rewa case is reasonable and in the interests of the general public. Section 10 of the Rewa Act applies to all kinds of property, whether urban or rural, and whether agricultural land or house property, and it is in that context that its reasonableness will have to be judged. There is nothing to show in this case that there was any pre-existing custom of a similar nature prevalent in any part of the area to which the Rewa Act applies, and even if any custom was prevalent in any area, there is nothing to show what precisely that custom was. In any case even if any custom was prevalent in this area before the Rewa Act came into force and it was held reasonable by courts, that would not in our opinion be a decisive factor in considering whether the restrictions imposed by the Rewa Act are reasonable or not. We have to judge the reasonableness of the law in the context of the fundamental rights which were for the first time conferred by the Constitution on the people of this country and which were not there when the courts might have considered the reasonableness of the custom, if any in the context of things then prevalent. Nor do we think that the fact that the right of pre-emption may not be actually exercised in the case of even a large number of sales can have any bearing on the question whether the law imposing the restriction is reasonable or not.

Let us therefore see what the Rewa Act provides. Section 10, as we have pointed out, gives a right of pre-emption first to co-sharers and secondly to owners of adjoining property to which we shall refer hereafter as pre-emption by vicinage. We are not concerned in the present appeal with the case of co-sharers, with which we shall deal in a later part of the judgment. Ordinarily, if there was no law of pre-emption a vendor would be entitled to sell his property to anybody for any price that may be settled between him the purchaser. This right is clearly restricted by the law of pre-emption which may in many cases result in a depression of the price which the vendor may otherwise be able to get for his property. Further the Act provides that if the vendor and the vendee desire that there may be no suit for pre-emption the vendor can give notice to possible pre-emptors of the price at which the vendor is willing to sell such property. This notice is given through the court within the local limits of whose jurisdiction the property is situate. On such notices being given to possible pre-emptors, the pre-emptor will lose the right of pre-emption unless within one month from the date of service of the such notice, he or his agent pays or tenders the price to the vendor : see ss. 12

and 13. Further, s. 15 shows that even where such a notice has been given and the price has not been paid or tendered, a suit for pre-emption can be filed after the sale in spite of s. 13 on the ground that the price stated in the notice was not fixed in good faith. The court then decides whether the price stated in the notice is the proper price, and if it comes to the conclusion that it is not it has the power to fix such price as appears to it to be the fair market price of the property sold. Clearly, therefore, there is a restriction on the right of the vendor to sell the property at any price to which the purchaser has agreed and a suit for pre-emption can be filed even where a pre-emptor is not prepared to pay the agreed price and can have it reduced. The notice therefore provided in s. 12 and the failure of the pre-emptor to comply with it under s. 13 are really of not such value, for the pre-emptor can always get over the provisions of s. 13 by alleging that the price entered in the notice was not fixed in good faith. In effect, therefore, every sale will be open to pre-emption and the law of pre-emption thus provides a crop of litigation for the vendor and the vendee. This is the first result of the law of pre-emption. Further we see no reason to think that the law of pre-emption prevents the sale of property at an unconscionable price for if a vendor is demanding an unconscionable price he will not be able to find a vendee. In any case the price is always settled by agreement between the vendor and the vendee and there is no reason to hold that such an agreed price would be an unconscionable price. Nor do we think that the law of pre-emption in intended to provide for fixation of reasonable price by courts; therefore that can hardly be a reason to hold that it is a reasonable restriction in the interests of the general public on the right of the vendor under Art. 19(1)(f). We do not think that the restrictions placed by the law of pre-emption in a case based on vicinage have any effect on prices being reasonably fixed, and the main effect we can see is that the law may give rise to a crop of litigation. We cannot therefore see any advantage to the general public by such a law of pre-emption and in any case the disadvantage certainly overweighs the advantage that may result to a small section of the public.

Now let us look at the matter from the point of view of the vendee. He comes to an agreement with the vendor to purchase the property at a certain agreed price. Let us also assume that the vendor has given notice under s. 12 and no action has been taken by the pre-emptor under s. 13. Thereafter the vendee purchases the property and would be entitled to hope that as the price was not paid or tendered under s. 13, he would be able to hold and enjoy the property without any further trouble. But as we have pointed out already even though ss. 12 and 13 are there it is always open to a pre-emptor to file a suit for pre-emption after having failed to take action under s. 13 by merely alleging that the price stated in the notice given to him was not fixed in good faith. So the vendee who may have purchased the property after action being taken under ss. 12 and 13 is forced into litigation on the ground that the price agreed is presumably too high. Thus there is clearly a restriction on his right to hold property, and even though the vendee may eventually succeed on the footing that the price agreed is not above the market value he is compelled to go through litigation in order to hold the property. Such a restriction would thus appear to be unreasonable for it allows the pre-emptor to go to court even after ss. 12 and 13 have been complied with.

Let us further look to the broader aspects of the provisions relating to pre-emption by vicinage. It may be stated that the right of pre-emption was not recognised under the Hindu law and is not enforced in large parts of this country to the south of the Vindhyas. It came to be enforced after the advent of Mohomedan rule as based on custom which was accepted by courts, particularly in Northern India. While in Northern India the courts enforced the right of pre-emption based on custom, even where there was no statutory law of the pre-emption holding that it was in accordance with justice, equity and good conscience, in Southern India the view taken was that it was opposed to principles of justice, equity and good conscience : (see Ibrahim Saib v. Muni Mir Udin Saib and ((1870) 6. Mad. H.C.R. 26.) Mohomed Beg Amin Beg v. Narayan Meghaji Patil) ((1916) I.L.R. 40

Bom. 358.). The reasonableness of a custom is, however, not a constant factor and what is reasonable at one stage of the progress of society may not be so at another stage. It is in this context that we have to judge the law of pre-emption as it was later put into the various statutes. Before the Constitution came into force, the statutes if they were passed by competent authority, could not be challenged; but we have now to judge the reason ableness of these statutes in the light of the fundamental rights guaranteed to the citizens of this country by the Constitution. In a society where certain classes were privileged and preferred to live in groups and there were discriminations, on grounds of religion, race and caste, there may have been some utility in allowing persons to prevent a stranger from acquiring property in an area which had been populated by a particular fraternity of class of people and in those times a right of pre-emption which would oust a stranger from the neighbourhood may have been tolerable or reasonable. But the Constitution now prohibits discrimination against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them under Art. 15 and guarantees a right to every citizen to acquire, hold and dispose of property, subject only to restrictions which may be reasonable and in the interests of the general public. Though therefore the ostensible reason for pre-emption may be vicinage, the real reason behind the law was to prevent a stranger from acquiring property in any area which had been populated by a particular fraternity or class of people. In effect, therefore, the law of pre-emption based on vicinage was really meant to prevent strangers i.e. people belonging to different religion, race or caste, from acquiring property. Such division of society now into groups and exclusion of strangers from any locality cannot be considered reasonable, and the main reason therefore which sustained the law of pre-emption based on vicinage in previous times can have no force now and the law must be held to impose an unreasonable restriction on the right to acquire, hold and dispose of property as now guaranteed under Art. 19(1)(f), for it is impossible to see such restrictions as reasonable and in the interests of the general public in the state of society in the present day.

It is urged, however, that at any rate, in the case of agricultural properties, pre-emption by vicinage results in consolidation of agricultural lands, and that at any rate is an advantage. How far the argument of consolidation can be availed of now when we find that in most States laws are being passed which are putting ceilings on agricultural holdings is a matter which it is unnecessary to consider in the present case, for the Rewa Act applies not only to agricultural holdings but also to burn property including house property. There is no question of any advantage arising out of consolidation where one is dealing with urban property or house property. The matter of consolidation might have had some bearing if the Rewa Act was applicable to agricultural lands only. But as it applies to urban lands as well as house property where no question of consolidation of holdings arises, the impugned provision cannot be held to be a reasonable restriction in the interests of the general public on the ground that it leads to consolidation of agricultural holdings. There is no way of severing the application of the law so far as it relates to agricultural holdings from its application to urban or house property and therefore the entire provision as to vicinage must fall, even if something could be said in its favour with respect to agriculture holding on the ground of consolidation. We are therefore of opinion that the second clause of s. 10 imposes an unreasonable restriction on the right to acquire, hold or dispose of property guaranteed under Art. 19(1)(f) of the Constitution and must be struck down. So far as the proviso is concerned it applies both to the first and the second clause and it will survive for the purpose of the first clause only, which is not in dispute before us.

In this view of the matter C.A. 270 of 1955 must succeed.

We next come to C.A. 595 of 1960. This relates the Punjab Pre-emption Act, 1913 (Punj. 1 of 1913), (hereinafter referred to as the Punjab Act), as applied to the city of old Delhi. We are

concerned with s. 16 of the Punjab Act, which deals with urban immovable property and is in these terms :-

> "The right of pre-emption in respect of urban immovable property shall vest,.
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> firstly, in the co-shares in such property, if any;
>
> secondly, where the sale is of the site of the building or other structure, in the owners of such building or structure;
>
> thirdly, where the sale is of a property having a staircase common to other properties, in the owners of such properties;
>
> "fourthly, where the sale is of a property having a common entrance from the street with other properties, in the owners of such properties;
>
> fifthly, where the sale is of a servient, property in the owners of the dominant property, and vice versa;
>
> sixthly, in the persons who own immovable property contiguous to the property sold."

The suit was brought by Nanak Singh respondent who claimed pre-emption with respect to a sale in favour of the appellant of a house and was rested on the first, third, fourth and sixth grounds in the section. The question whether s. 16 of the Punjab Act was ultra vires the Constitution was tried as a preliminary issue. The subordinate judge held in favour of the respondent. Thereupon the appellant went in revision to the High Court. The High Court held that the first, third and fourth grounds in s. 16 did not offend Art. 19(1)(f); it further held that the sixth ground offended Art. 19(1)(f). This last view was apparently in conflict with the earlier Full Bench decision of that Court in Uttam Singh v. Kartar Singh (A.I.R. 1954 Pun. 55.). Later the High Court held in Sardha Ram v. Haji Abdul Majid Mohd. Amir Khan (A.I.R. 1960 Pun. 196.) by a five-Judge Bench that the provisions contained in clause "sixthly" of s. 16 were not ultra vires the provisions of the Constitution inasmuch as the restrictions imposed were not unreasonable. The appellant thereupon came to this Court on a certificate granted by the High Court challenging the view of the High Court that the first, third and fourth grounds were Constitutional. Further, in view of the five-Judge decision in 1960 which has shaken the view taken in the judgment under appeal on the sixth grounds, the appellant has urged that that decision is correct.

It may be noted that the under s. 7 of the Punjab Act s. 16 only applies to a town sub-division of a town when a custom of pre-emption is proved to have been in existence in such town or sub-division at the time of the commencement of the Act and not otherwise. It is not disputed that s. 16 applies to that area of old Delhi in which the property is situate. The fact however that such a custom was prevalent in this area before 1913 when the Punjab Act came into force is not a decisive factor in holding that the provisions of s. 16 of the Punjab Act are necessarily reasonable. We have already dealt with this aspect of the matter when dealing with the Rewa Act, and need not add anything more. We have also dealt with the question as to the right of pre-emption based on vicinage when dealing with the Rewa Act, and for the reasons given earlier we hold that pre-emption based on vicinage is an unreasonable restriction on the right to hold, acquire or dispose of property conferred by Art. 19(1)(f). We may however briefly notice the grounds on which the two Punjab cases of 1954 and 1960 have held otherwise. In the 1954 case both ss. 15 and 16 of the

Punjab Act were dealt with together. We are not here concerned with s. 15 and express no opinion with respect to it. As to s. 16, the reasons which impelled the learned Judges to hold that the provisions of s. 16 were constitutional were "to reduce the changes of litigation and friction and to promote public order and domestic comfort, and to promote private and public decency and convenience". We are not able to understand how providing pre-emption on the ground of vicinage would carry out these objects, assuming their promotion is in the interests of the general public. Perhaps the reasons why these grounds were given in the 1954 case may be that the learned Judges were considering not merely pre-emption by vicinage but also with other grounds provided in s. 16. Whatever may be said about these reasons so far as other grounds, of pre-emption contained in s. 16 are concerned, these reasons have in our opinion no validity so far as pre-emption by vicinage is concerned. Turning now to the case of Sardha Ram (A.I.R. 1960 Pun. I 96.), we may note that the learned Judges observed that "pre-emption imposes restrictions on the right of the vendee to acquire and hold property and the right of the vendor to dispose of property. It limits the power of the vendor to sell his property to whomsoever he may please or prevents him from showing preference to anyone to whom he may wish to sell ..... it is a clog on the freedom on sale and tends to diminish the market value of the property." They were also conscious of the trials and tribulations of a vendor whose property is governed by the law of pre-emption. But they seem to have upheld the constitutionality of the sixty ground mainly for two reasons, namely (i) that it had already been upheld in Uttam Singh's case (A.I.R. 1954 Pun. 55.) and (ii) that "what is reasonable in any particular case is difficult of ascertainment; that the choice of measures is for the legislature, that the legislatures are presumed to have investigated the subject and to have acted with reason, that an Act of the legislature should be sustained unless it violates constitutional limitations beyond reasonable question". The last Punjab case therefore does not add any further reason is support of the reasonableness of the restriction placed by the law of pre-emption relating to vicinage, and if anything, the observations mentioned earlier show now unreasonable the restriction can be, and in the circumstances we must hold that the sixth ground in s. 16 is unconstitutional for reasons already indicated when dealing with the Rewa Act.

This brings us to the consideration of the first ground which gives a right of pre-emption to a co-sharer in the property sold. The question as to the constitutionality of a law of pre-emption in favour of a co-sharer has been considered by a number of High Courts and the constitutionality has been uniformly upheld. We have no doubt that a law giving such a right imposes a reasonable restriction which is in the interest of the general public. If an outsider is introduced is a co-sharer in a property it will make common management extremely difficult and destroy the benefits of ownership in common. The result of the law of pre-emption in favour of a co-sharer is that if sales take place the property may eventually come into the hands of one co-sharer as full owner and that would naturally be a great advantage the advantage is all the greater in the case of a residential house and s. 16 is concerned with urban property; for the introduction of an outsider in a residential house would lead to all kinds of complications. The advantages arising from such a law of pre-emption are clear and in our opinion outweigh the disadvantages which the vendor may suffer on account of his inability to sell the property to whomsoever he pleases. The vendee also cannot be said to suffer much by such a law because he is merely deprived of the right of owning an undivided share of the property. On the whole it seems to us that a right of pre-emption based on co-sharership is a reasonable restriction on the right to acquire, hold and dispose of property and is in the interests of the general public.

The same reasoning in our opinion will apply to the third ground, "where the sale is of a property having a staircase common to other properties, in the owners of such properties". This ground stands on the same footing practically as the first ground relating to co-sharers, and for the same reason we

hold that it is a reasonable restriction, and is in the interest of general public.

Turning now to the fourth ground, "where the sale is of a property having a common entrance from the street with other properties, in the owners of such properties", this ground is in our opinion similar to the third ground, the only difference being that in one case there is a common staircase while in the other case there is a common private passage from the street. The idea behind this ground seems to be that the buildings are in a common compound and perhaps were originally put up by members of one family or one group with a common private passage from the public street. In such a case the owners of the buildings would stand more or less in the position of co-sharers, though actually there may be no co-sharership in the house sold. But as we have said this case would approximate to cases of a common staircase and co-sharer; therefore, for reasons given in the case of co-sharers we uphold the right of pre-emption covered by the fourth ground in s. 16. The case falling under the fourth ground must be distinguished from katras which are exempt from the provisions of the Act in s. 5 : (see Karim Ahmad v. Rahmat Elahi) (A.I.R. 1946 Lah. 432.).

A conteetion was also revised that s. 16 offends Art. 14 of the Constitution. This was based on s. 5 of the Punjab Act which gives exemptions to certain properties from the application of the Act and also on the ground that it did not apply to agricultural property. So far as agricultural properties are concerned, they form a distinct class by themselves and therefore there can be no question of discrimination on that account. With regard to exemptions contained in s. 5 with respect to shop, serai, katra, dharmsala, mosque or other similar building, these are obviously distinguishable, for they are generally places to which public resort. In particular stress was laid on the exemption of katra. A katra is not defined in the Act; but it appears that the primary meaning of the word "katra" is enclosure and the secondary meaning is market; see Karim Ahmad v. Rahmat Elahi. Generally, therefore, a katra would be a business locality though there might be purely residential katras. However, even purely residential katras would consist of a large number of houses to which a large number of people will resort. In the circumstances, the premises exempted under s. 5 are practically of one class, namely, those to which the public has to resort and it is this class which is distinct from the rest of residential property meant for private residence of individuals which has been exempted. In the circumstances we do not think that s. 16 can be said to violate Art. 14 of the Constitution in the light of s. 5 of the Punjab Act. In the result, the appeal fails and is hereby dismissed. The case will now go back for disposal according to law and we trust its decision will be expedited.

This brings us to C.A. 430 of 1958. In this case a pre-emption suit was brought by the respondents under Chap. XIV of the Berar Land Revenue Code, 1928 (hereinafter called the Code) with respect to survey No. 285, sub-division I. The pre-emptors hold sub-division 2 of survey No. 285 and based their claim on s. 174 of the Code. Section 174 lays down that the right of pre-emption thereunder shall arise only for unalienated lands held for agricultural purposes in favour of occupants in a survey number in respect of transfers of interests is that survey number. An "occupant in a survey number" has been defined in s. 173 to mean a person having the right of an occupant; whether in his sole right or jointly with others, in that survey number, or in any portion of it. But the right of pre-emption does not arise even on a transfer of a part of a survey number when the transfer is in favour of another occupant in that survey number or when the transfer is made with consent of all the occupants in the survey number. The only point which has been raised before us is whether the right of pre-emption given by s. 174 of the Code is an unreasonable restriction on the right to acquire, hold or dispose of property guaranteed under Art. 19(1)(f). It may be mentioned that the suit was decreed and on appeal to the High Court the decree of the trial court was confirmed. The appellant had contended before the High Court that the law of pre-emption had been rendered void as it was inconsistent with Art. 19(1)(f) of the Constitution. But this contention was negatived on the basis of

an earlier judgment of the Nagpur High Court in Ramchandra v. Janardan (A.I.R. 1955 Nag. 225.) by which the right of pre-emption contained in Chap. XIV of the Code was held constitutional. The present appeal challenges the correctness of the view taken in that case.

Now it will be seen that the right of pre-emption granted by Chap. XIV is of a very limited nature. In the first place it is confined to occupants in a survey number. A "survey number" means a portion of land formed into, or recognised as, a survey number at the last preceding revenue-survey or subsequently recognised as such by the Deputy Commissioner, in respect of which the area and the land revenue payable are separately entered under an indicative number in the land records. "Sub-division of a survey number" is defined to mean a portion of a survey number in respect of which the area and the land revenue payable are separately entered in the land records under an indicative number subordinate to that of the survey number of which it is a portion. It appears that generally survey numbers are the units of assessment at the time of revenue settlement and are formed under s. 86 of the Code and no new numbers can be formed under the Rules after the settlement except in special cases, e.g., where land is taken up for public purposes for public buildings, threshing floors etc., or waste land is given out for cultivation, or survey numbers exceeding 30 acres are divided into two or more survey numbers to reduce the area; in all other cases only sub-divisions of a survey number take place. sub-divisions are formed under s. 88 read with the rules framed thereunder, and it is open to amalgamate two or more adjoining sub-divisions in a survey number when they are held by the same occupants under the same tenure. On sub-division, the assessment of a survey number is distributed over its sub-divisions as agreed between the occupants. It is clear therefore that the assessment of a survey number is one and under s. 132 where there are more than one occupant of a survey number, all such occupants are jointly and severally liable to the payment of the land-revenue assessed on it. To begin with therefore the holders of a survey number are really co-sharers. For one reason or the other, if during the currency of the settlement co-sharers decide to sub-divide the number, the assessment is distributed amongst the sub-divisions and each sub-divisions then becomes a holding on being thus separately assessed to land-revenue. The right of pre-emption under Chap. XIV is confined only to the survey number which as we have pointed out earlier is one unit of assessment, the occupants of which are co-sharers and are jointly and severally responsible for the payment of land revenue. In effect, therefore where a survey number is sub-divided during the currency of a settlement and sub-divisions are formed with separate assessment of land-revenue on such sub-divisions, the holders of various sub-divisions, though they are not strictly co-sharers, are very much akin to co-sharers. The pre-emption therefore as provided in r. 174 of Chap. XIV is really pre-emption in favour of co-sharers strictly so-called before there is any sub-division of a survey number and after such sub-division between persons who though not strictly co-sharers are still akin to co-sharers. It also appears from the Rules that a separate survey number is generally expected to be about 30 acres, though in particular cases it may be larger. Therefore, the law of pre-emption in s. 174 of the Code applies to those who are co-sharers or akin to co-sharers and results in consolidation of holdings generally upto about thirty acres, this being the general extent of a survey number. The right of pre-emption is further restricted under s. 184 which provides that no right of pre-emption would arise on an exchange of land with the occupant of another survey number. In effect therefore the Code creates a right of pre-emption in the holder of an interest in a survey number only when an occupant having an interest in that survey number sells it or there is forclosure or a usufructury mortgage, or a lease exceeding fifteen years is created in favour of a stranger subject to the land being unalienated land held for agricultural purposes. Considering therefore the nature of the right created under the Code, we have no hesitation in coming to the conclusion that this right is in reality in favour of a co-sharer strictly so-called or some one who is akin to a co-sharer, and the reasons which we have already indicated when dealing with the Punjab

Act relating to co-sharers will apply with full force to the right created under the Code with this addition that this being agricultural land there will be further advantage inasmuch as the right of pre-emption would result in consolidation of holdings within a survey number which as we have said is generally of an extent of thirty acres. We are therefore of opinion that the view taken in Ramchandra v. Janardan (A.I.R. 1954 Nag. 225.) to the effect that the law of pre-emption provided in Chap. XIV of the Code does not infringe Art. 19(1)(f), is correct. This being the only point urged before us in the appeal, we are of opinion that the appeal must fail.

We therefore allow C.A. 270 of 1955 with costs and dismiss the suit for pre-emption. No order as to costs in this appeal C.A. 595 of 1960 and C.A. 430 of 1958 are hereby dismissed with costs.

SARKAR, J. -

These three appeals arise out of suits for pre-emption of properties. Broadly put, the question in each appeal is whether the law creating the right of pre-emption with which it is concerned, is void as offending Art. 19(1)(f) of the Constitution. One of the appeals involves also the question whether the law is invalid as offending Art. 14 of the Constitution.

The right of pre-emption challenged is in each case based on a statute. So there are three different statutes to deal with. Though some of the features of these statutes are substantially common, there are some others which are not so. Each appeal has therefore to be considered independently in reference to its own statute. It may however be observed here that these statutes are all pre-Constitution laws but the sale on which the right of pre-emption was claimed had taken place in each case after the Constitution had come into force.

We shall first take Civil Appeal No. 270 of 1955. That is concerned with the Rewa State Pre-emption Act, 1946. We shall be concerned with s. 10 of the Act which is in these terms :

> S. 10 Persons of the following classes shall have a right of pre-emption :-
>
> (1) Any person who is a co-sharer or partner in the property sold or foreclosed :
>
> (2) Any person who owns any immovable property adjoining the property sold or foreclosed or in case of transfer of tenancy rights, the land which is the subject of such rights.

Provided that among the above mentioned classes the first in order will exclude the second and among persons of the same class, the nearer in relationship to the person whose property is sold or foreclosed will exclude the more remote.

In this case, pre-emption was decreed on the ground of ownership of adjoining property but as both the purchaser and the pre-emptor held lands adjoining the property sold, the pre-emption decree was passed in favour of the pre-emptor under the proviso to s. 10 as he was related to the vendor while the purchaser was not so related.

The question that arises in this case is whether a right of pre-emption based on vicinage offends Art. 19(1)(f). On this question there has been a divergence of opinion in the High Courts. It would not be profitable to discuss these decisions in detail because in what follows we shall deal with the various points considered in them. It may however be stated that the High Courts of Rajasthan Madhya Bharat. Vindhya Pradesh and Hyderabad have taken the view that such a right of pre-emption

offends Art. 19 : see Panch Gujar Gaur Brahmins v. Amarsingh (A.I.R. (1954) Raj. 100.), Babulal v. Gowardhan Das (A.I.R. (1956) M.B. 1.), Sewalal Ghanshyam v. Param Lalanju (A.I.R. (1956) V.P. 9.), (this dealt with the Act with which we are dealing), and Moti Bai v. Kand Kari Channaya (A.I.R. (1954) Hyd. 161.). On the other hand the High Court of Punjab has held that the right of pre-emption based on vicinage does not offend Art. 19(1)(f) : see Sardha Ram v. Haji Abdul (A.I.R. (1960) Punj 196.). It may perhaps be said that the High Court of Nagpur has also taken the same view as the High Court of Punjab : see Ramchandra Krishnaji Dhagale v. Janardan Krishnappa Marwar (A.I.R. (1955) Nag. 225.).

One argument advanced on behalf of the pre-emptor, which applies to all the appeals, may be noticed here. Our attention was drawn to Shri Audh Behari Singh v. Gajadhar Jaipuria ((1955) 1 S.C.R. 70, 80.) where it is stated that "In our opinion the law of pre-emption creates a right which attaches to the property and on that footing only it can be enforced against the purchaser". It was said that since the right of pre-emption is attached to property it is an incident on which property is held and therefore it is not a restriction on the right to hold property. On behalf of the purchaser it was said that even so it would be a restriction because a right to hold property existed independently of the law of pre-emption and this law effected adversely the right to property. As at present advised, we are unable to say that the contention of the purchaser is entirely without foundation. In the view however that we have taken of these cases, we think it unnecessary to pronounce finally on the point so raised. We shall proceed on the basis that even if the law of pre-emption creates a right which attached to property, it may amount to a restriction on the right guaranteed by Art. 19(1)(f)

Article 19(1)(f) of the Constitution states that every citizen shall have the right "to acquire, hold and dispose of property". Clause (5) of this Article says that reasonable restrictions on this right may be imposed by law in the interests of the general public. There is no doubt that a law of pre-emption does impose a restriction on the rights mentioned in Art. 19(1)(f). The extent of the restriction will be considered by us in more detail later. The question is whether the restriction is reasonable and in the interests of the general public. In deciding the question of reasonableness, we think, we have to balance the disadvantage to the person injuriously affected by the law and the advantage conferred by it on the community in general. If we find that the advantage outweighs the disadvantage, then we would be justified in holding the restriction imposed by the law to be reasonable. In considering the question of reasonableness, we do not conceive it any part of our duty as a Court to go into questions of policy, or to ask whether if it was for us to make the law how we would have made it. Once we find that the restriction imposed by the law is reasonable, we think, we are bound to uphold it.

The first thing that we wish to observe is that the result of a law of pre-emption is not that every sale is likely to be pre-empted. One does not exercise the right of pre-emption for the fun of it nor does so out of perversity. One has to have money to be able to exercise that right. It can be presumed that given the money the right will be exercised only when it would be decidedly advantageous to do so. We think that it may therefore be fairly said that the right of pre-emption will not be exercised in a very large number of cases. The restriction imposed by it will not therefore affect many. This we think is a legitimate consideration in judging the reasonableness of a restriction imposed by the law of pre-emption.

There is one other general consideration to which we propose now to refer. In large parts of this country there has been for a long time a customary right of pre-emption including a right to pre-empt on the ground of vicinage. Before the Constitution that custom had been upheld by courts of law. In Audh Behari Singh's case ((1955) 1 S.C.R. 70, 80.) this court itself upheld a custom giving a

right of pre-emption on the ground of vicinage. The Courts could not have upheld the customary right of pre-emption unless they held the custom to be reasonable. It is well known that "A custom must be reasonable. If it is against reason it has no force in law." : see Halsbury's Laws of England, 3rd ed. vol. 11 p. 162. In Tyson v. Smith ((1938) 9 Ad. & Ed. 406, 421.), Tindal, C.J., observed "Nor is a custom unreasonable because it is prejudicial to the interests of a private man, if it be for the benefit of the commonwealth". These words, it will be noticed, are very near to the words used in cl. (5) of Art. 19. We then come to this : before the Constitution various courts in India held the customary right of pre-emption on the ground of vicinage to be a reasonable custom, that is, in the opinion of the courts the restriction imposed by it was a reasonable restriction. We are unable to discover why after the Constitution, the law imposing a similar restriction, customary or otherwise, should be held to be unreasonable. There has not been any such vast change in the social or economic structure of the country which would justify the view that a restriction which was reasonable before January 26, 1950, has since then become unreasonable. It is true that courts in Madras refused to apply the Mahomedan Law of pre-emption as a matter of justice, equity and good conscience. But we are not concerned with Mahomedan Law or with justice, equity and good-conscience. Even in Madras a local custom giving a right of pre-emption had been upheld : see Tulla's Mahomedan Law, 15th ed. p. 202.

The restriction imposed by the law of pre-emption has different aspects when considered from the point of view of a vender and a vendee. We will first take up the case of a vendor. We think it will not be wrong to say that the reports show that a vendor has rarely come to court complaining that the law of pre-emption has cast an unreasonable burden on his right to dispose of property.

Now the Rewa Act provides by s. 12 that when a person proposes to sell immovable property he may give notice of his intention to do so to the person or persons having the right of pre-emption under the Act in respect of the sale and of the price at which he is willing to sell. Section 13 provides that any person having the right of pre-emption shall lose such right unless within one month of the notice he pays or tenders the price mentioned in it to the vendor. The result of these provisions is that the vendor can unless perhaps where he was selling for an unreasonably high price, ascertain before hand whether any person entitled to pre-empt is likely to exercise his right. If he finds that such persons do not insist on their right, then he can sell it to anyone he likes and at any price. It may reasonably be expected that there will be many cases in which this will happen. To a person having a right of pre-emption, he will be compelled to sell at a reasonable price.

Thus the Rewa law of pre-emption imposes on a vendor two restrictions. The first is that he may be prevented from selling property at any price he likes, and the second is that he cannot sell it to anyone of his choice. Now the first restriction is clearly a reasonable restriction. One cannot complain if he is made to accept a fair market price for the property he is willing to sell and is deprived of the chance of extracting an unconscionable price. Such a measure would control prices and check speculation in land. It would help to stabilize the economy of the country. It would prevent a wealthy man with his resources in money from outbidding a poorer man in respect of a property which is of great advantage to the poorer man to have by reason of its vicinage with property he holds and which may not have that value for the richer man. It was contended that the law of pre-emption had the effect of amassing wealth in one ownership. For the reasons just mentioned, we think it really prevents the richer man from acquiring properties when it is to the advantage of a poorer man to have the same. In so far as the law prevents a vendor from selling his property at an exorbitant price it cannot, in our view, be said to impose an unreasonable restriction on him.

Then, as we have said, the law of pre-emption prevents a vendor from selling his property to anyone he likes. We cannot imagine this to be a great deprivation. Really, the freedom to sell to anyone has perhaps no more value than a sentimental one. As against this the advantage accruing to the neighbouring owner is that he is able to enlarge the property previously held by him. We think that balancing the two sides the scale dips much in favour of the pre-emptor. There are also other reasons for this view which we shall presently state.

It is said that one of the disadvantages of the law of pre-emption is that it gives rise to a lot of litigation. We do not think that this is a legitimate argument. The law does not necessarily gives rise to litigation. Litigation arises because through cupidity people want to evade the law. In that way, a number of other laws may be thought of which cause litigation. But the defect is not in law but in human nature. We are therefore unable to agree that the fact that litigation may be caused either because the law of pre-emption is sought to be enforced or to be evaded, can be a reason to say that the restriction imposed by it is unreasonable. We also think that in deciding whether a law imposes unreasonable restrictions, the fact that it easily gives rise to litigation is a wholly irrelevant consideration. Assuming that the law imposes a restriction if it did not, no question of the reasonableness of the restriction would of course arise - that restriction would not become unreasonable if it was not otherwise so because the law caused a great deal of litigation.

Now we come to the case of a purchaser. It is well understood that the right of pre-emption is a right to be substituted in place of the purchaser. That is the view that was accepted in Audh Behari Singh's case ((1955) S.C.R. 70, 80.). So far as the Rewa Act is concerned, s. 4(i) expressly provides that the right of pre-emption is a right to be substituted in the place of the purchaser. It would, therefore, follow that the only restriction put on the purchaser is on his right to acquire a particular property. The law of pre-emption does not restrict his right to hold property. If he has acquired property in compliance with the law of pre-emption, then there is nothing to prevent him from holding it for as long as he likes.

The question then is whether the restriction on the right to acquire property is unreasonable. Is it unreasonable to say that one shall not acquire a particular property if the adjoining owner wants it ? It is not as if the purchaser is prevented from acquiring any property. There must be many other properties more or less equally good which he is free to acquire. As we have earlier pointed out, there would not be many cases in which the right of pre-emption would be exercised with the consequent restriction on a stranger's right to purchase. Now if the property is agricultural land there is no doubt that the right of pre-emption on grounds of vicinage will help consolidation of holdings. We think that balancing the advantages of the consolidation of holdings with the disadvantages resulting to a stranger by the restriction imposed on his right of acquiring that property, there is no doubt that the disadvantages are of small consequence. The advantages arising from the consolidation of agricultural holdings will be discussed in the last case that we will consider and which comes from Berar.

The Rewa Act however is not confined to agricultural land. It creates a right of pre-emption in other property also. Let us consider the case of house property in a town or village. In a town or village the Indian way of life has been to live in compact communities. There is no doubt that such living has great advantages. It is true that due to economic reasons it is not always possible nowadays for many to have the comfort of living in compact communities. But the fact that economic conditions are breaking up compact communities does not show that living in such communities has not its advantages. It seems to us that such living would help to maintain the homogeneity, comfort and peace of the people. It is common human experience that property leads to disputes concerning

boundaries, easement and concerning divers other rights connected with it. Also disputes arise because of different ways of living. Now most of these disputes would be with the adjoining owners. The right of pre-emption based on the ground of vicinage would help to avoid these disputes coming into existence. Again, it would be a great discomfort for a number of people living together for years to have to accept among themselves an outsider who may not be able to fit himself into that community or may even be an undesirable person. Furthermore, if a person is given preference in acquiring neighbouring property it would help him better to manage his properties. Privacy of the home would be better maintained. Against all these advantages the only disadvantage that the purchaser suffers is that he cannot acquire a particular property. It will often be possible for him to get another equally good property. It cannot be said that if between to such competing persons the law favour one who owns neighbouring property, the law is putting unreasonable restriction on the other person.

In none of the reported cases has it yet been held that the right of pre-emption given to a co-sharer imposes an unreable restriction on the purchaser. It seems to us that it would be impossible to take that view. A co-sharer increases his holding if he is given the preference to buy the land. He of course also prevants an outsider being thrust into joint ownership with him and this is the only difference between his case and the case of an adjoining owner. The difference is not such as would in principle lead to different conclusions as to the reasonableness of the restriction in the two cases. A co-sharer if he does not like his new co-sharer can always separate his share. It has not however been held that for this reason a law giving a co-sharer a right of pre-emption puts an unreasonable restriction on an other persons right to acquire property. We think, therefore, on the same principle it has to be held that a law giving a right of pre-emption on the ground of vicinage also imposes a restriction which is reasonable.

One of the advantages of the law of pre-emption based on vicinage earlier noticed is the preservation of the privacy of homes. In regard to this, it was said that purdah system has disappeared and therefore there is no need to protect it. It may be that purdah has disappeared but it cannot be said that the privacy of the home is a thing which is of no value nowadays. It is this that the law of pre-emption will protect and therefore be of advantage to the community. We think it wrong to imagine that privacy of a home is of value only to the people observing purdah.

Then it is said that living in compact communities has also disappeared and people now live in flats. But we do not think that it can be suggested that living in communities has not its advantages or living in flats is an ideal system. There are therefore no arguments against the view that living in compact and homogeneous communities is still desirable and has still its advantages which perhaps will always remain.

It is also said that the restriction imposed by the law of pre-emption is unreasonable because it encourages discrimination on the ground of religion, race and caste and this is what Art. 15 of the Constitution forbids. We do not think that it is a reasonable reading of the Constitution to say that it forbids people of one race, religion or caste from living together. Furthermore, compact communities are not always of the same race, religion or caste. The advantage is not due to identity of caste etc. but to the identity of thought and way of living and ties generated by long familiarity with each other and the families of each other. For all these reasons a restriction imposed by the law of pre-emption based on vicinage is, in our view, a reasonable restriction on the right to acquire and dispose of property.

Then it was argued that when a property is purchased in exercise of the right of pre-emption, it will

often happen that that property will be let out to a stranger and so the objective of living in compact communities will not be attained in many cases. This may be so in some cases but the landlord when the occasion arises, can choose that stranger. He further has some control over the tenant. He will have no property dispute with the tenant except such as might arise out of tenancy laws. If the tenant is found to be undesirable, he can be removed. All that this contention comes to is that the law of pre-emption may not completely guarantee the advantages which it is designed to create, but there is no doubt that it does guarantee a very large part of it and it would be incorrect to say that it guarantees none.

A further question remains in this case. It is said that s. 10 of the Rewa Act is bad in that it gives a preferential right to pre-empt on the basis of relationship. This however does not seem to us to be a correct way of reading the statute. What it aims at is to give a right of pre-emption on the ground of vicinage and the other ground mentioned in the section. But then it is unavoidable that there may be various persons entitled as co-owners or owners of adjoining properties to the right of pre-emption under the section. It has to be remembered that we are now proceeding on the basis that the right imposes a reasonable restriction. In order therefore that a statute legally made giving the right of pre-emption may not be rendered infructuous in certain circumstances, an order of preference among the would be pre-emptors has to be devised. This is done by the proviso to s. 10 of the Rewa Act by laying down that a person nearer in relationship to the vendor will have a preferential right of pre-emption over others. The proviso does not purport to create a right of pre-emption only on the ground of relationship. It solves a problem arising out of a right of pre-emption legitimately granted on the ground of co-ownership or vicinage. It is a corollary to the main right. If the main right is good, a provision enacted to prevent its being defeated would equally be good.

The result is that s. 10 of the Rewa Act which gives the right of pre-emption on the ground of vicinage must be declared to be a perfectly valid statutory provision which does not offend Art. 19(1)(f) of the Constitution and so is the proviso to that section which is really a part of it. That disposes of Civil Appeal No. 270 of 1955. We would therefore dismiss the appeal.

We next come to Civil Appeal No. 595 of 1960 which concerns the Punjab Pre-emption Act of 1913. The property involved in this case is a house situated in the city of Old Delhi. Section 16 of the Punjab Act which governs the property in dispute, is in these terms :

> S. 16. The right of pre-emption in respect of urban immovable property shall vest, -
>
> firstly, in the co-sharers in such property, if any;
>
> secondly, where the sale is of the site of the building or other structure, in the owners of such building or structure;
>
> thirdly, where the sale is of a property having a staircase common to other properties, in the owners of such properties;
>
> fourthly, where the sale is of property having a common entrance from the street with other properties, in the owners of such properties;
>
> fifthly, where the sale is of a servient property, in the owners of the dominant property, and vice versa;
>
> sixthly, in the persons who own immovable property contiguous to the property sold.

The Punjab Act, like the Rewa Act, contains provisions for giving notice of an intended sale to the person having a right of pre-emption, for loss of right of pre-emption when action is not taken to purchase in terms of the notice and for fixation of a fair price by the court : see ss. 19, 20, 22, 25 and 27 of the Punjab Pre-emption Act. As we have said in the Rewa case, provisions of this kind help to relax the severity of the restriction imposed on the seller.

The pre-emptor in this case based him claim on the first, third, fourth and sixth grounds mentioned in the section. The High Court held that the section did not offend Art. 19(1)(f) with regard to the first, third and fourth grounds but did so with regard to the sixth ground. The judgment of the High Court is reported in A.I.R. (1958) Punj. 44. The view there taken in so far as it concerns the sixth ground in the section is against the Full Bench decision of the same High Court in Uttam Singh v. Kartar Singh (A.I.R. (1954) Punj. 55.) and Sardharam v. Haji Abdul (AIR 1960 Pun. 196.) the latter of which expressly overruled that view.

It is interesting to note that under s. 7 of the Punjab Act a right of pre-emption in respect of urban immovable property in any town, that is, the right contemplated by s. 16, shall exist if a custom of pre-emption had existed in such town at the commencement of the Act and not otherwise.

It is plain that in the city of Delhi the custom of pre-emption had so prevailed; if it had not, then of course the point would have been taken and the case thereupon decided against the pre-emptor. Custom is a question of fact and on the state of the records in this case we must proceed on the basis that a custom of pre-emption had existed in Delhi. Now that custom, if it had prevailed must have done so because it was considered to be a reasonable rule inspite of the restriction that it imposed on the vendor or the purchaser. We have earlier said that the existence of a customary right of pre-emption indicates that the restriction imposed by it is reasonable. That view applies more strongly to the present case because here in the very area with which we are concerned that custom did exist.

The right of pre-emption based on vicinage mentioned in the sixth ground in s. 16 has already been dealt with by us in the Rewa case. For the reasons stated, there, we hold this provision in s. 16 to be a valid piece of legislation.

We have now to deal with the other grounds in s. 16 referred to earlier. The first confers a right of pre-emption on a co-sharer in a property. We feel no doubt that a law giving such a right imposes a reasonable restriction on the right conferred by Art. 19(1)(f). If an outsider is introduced as a co-sharer in a property, that is likely to make common management inconvenient and thereby destroy the benefits of ownership of the property to a large extent. Property cannot be managed profitably unless one policy is followed. If there are more than one owner of a property, it is essential for the profitable enjoyment of it that they should be able to work in unison. Therefore if by the operation of the law of pre-emption based on co-ownership the property eventually comes to be vested in a single hand that would be a great advantage to the owner. Such a law being for the benefit of all owners would surely be in the interests of the general public. Till the property comes to be vested in one owner it would have remained in the hands of two or more people who have been owning it for years and have been getting on with each other smoothly, for otherwise they would have partitioned it. In such a case if one of the joint owners goes out and in his place the remaining joint owner or owners have to accept a stranger, a good deal of irritation and mismanagement may be reasonably apprehended. If the property owned is a residential house - and s. 16 will be largely concerned with such properties - the introduction of a stranger into it would lead to an undesirable situation and often and in disaster. These are the advantages arising from a law of pre-emption based on co-ownership. The disadvantages are that the selling co-owner cannot sell it to anyone he likes or for an

extortionate price, and the purchaser is deprived of owning an undivided share in property. Neither of these seems to us to be a great deprivation. In neither case is the disadvantage suffered great as compared to the advantage accruing to the remaining joint owner. Therefore, it seems to us that the restriction imposed on the right to dispose of or acquire properties imposed by the first ground under s. 16 of the Punjab Act is a reasonable restriction.

The right based on the third and fourth grounds mentioned in the section also seems to us unobjectionable. The third ground gives to the owner of property a right of pre-emption when another property having a common staircase with his is sold. If a number of properties have a common staircase and one is sold, it would be most inconvenient and greatly disadvantageous to the owners of the unsold properties if they cannot prevent a stranger from acquiring the portion sold and thereby obtaining a right to the common user of the staircase with them. That would in a large number of cases be more or less admitting a stranger into their houses. The disadvantage arising from such a state of affairs is clearly much more than the advantage that would arise to the purchaser by the acquisition of the property. The fourth ground gives a right of pre-emption when one of several properties having a common entrance from the street is sold. The street is of course the public street which is common to all. In order that this ground may apply, there has to be a common entrance from such a street to a number of properties. This ground apparently contemplates a case of a passage leading from a public street which is common to all the owners of properties situate on that passage. This ground therefore deals with owners of properties who have to share a common passage. People living in these houses would naturally from a very compact community. Indeed very often they would be living like relatives or members of a family. A law which gives them a right to buy one of these properties when it is sold to a stranger cannot be said to impose an unreasonable restriction on anyone. As in the last case, the advantage accruing from such a law to the person desiring to pre-empt would far outweigh the disadvantage occasioned either to the vendor or the purchaser.

The learned counsel for the appellant referred to various Acts which have gradually abolished the right of pre-emption. He pointed out that by Act X of 1960 of the Punjab Legislature s. 16 has in fact been repealed as a whole and has been substituted by a provision creating a right only in a tenant to pre-empt the property held by him when the landlord desires to sell it. Punjab Act X of 1960 however has not been extended to Delhi and here the Punjab Pre-emption Act of 1913, the Act with which we are concerned, still applies. All that these subsequent pieces of legislation show is that the Legislature has thought it fit to abolish certain rights of pre-emption in various cases. But this cannot be used as an argument to contend that the Legislature considers that the law of pre-emption imposes an unreasonable restriction on the rights mentioned in Art. 19(1)(f). If it were so, then it has to be said that in so far as the Legislature has not thought it fit to repeal the law of pre-emption as it exists in Delhi, it does not consider that law to impose an unreasonable restriction. Arguments of this kind do not lead us anywhere. Furthermore, we have to decide the question of the reasonableness of the restriction for ourselves and whatever opinion a legislature expresses on the matter is not of much relevance for this purpose.

Lastly, we have to deal with the point that s. 16 of the Act offends Art. 14 of the Constitution. It was said that it offended that article because there was no right of pre-emption in regard to agriculture land and the law was not available outside urban areas of Delhi and that it exempted from its operation shops and katras. Now with regard to agricultural land, it clearly forms a distinct class by itself and so do properties outside urban areas. Properties in urban areas have their own peculiar problems. Furthermore, there is not likely to be much agricultural land within the Union territories of Delhi. With regard to shops and katras, no doubt s. 5 of the Act exempts them from its operation.

But these also form a class by themselves different from other properties. A shop of course is essentially a business premises. What a katra is, in not defined in the Act. But it would appear that the primary meaning of katra is an enclosure and the secondary meaning is market : See Karim Ahmed v. Rehmat Alahi (A.I.R. (1946) Lah. 433.). It would therefore be safe to proceed on the basis that a katra is principally a business premises within an enclosure though no doubt it also contains residential accommodation. It can be assumed that the residential accommodation provided is for persons working in the shops in the katra. Now clearly in business one has to work and mix with strangers. One has to welcome and associate with, completely unknown persons who do not live with the persons doing the business. In order that business premises may cater to the needs of the community for which they exist, they have to be open to all. To such premises no question of any advantage flowing from community living arises. They are generally properties of great value. It seems to us that they can therefore be put in a separate class. They do not need the protection of the law of pre-emption in the same way as other properties would do. For these reasons we do not think that s. 16 can be said to violate Art. 14 of the Constitution.

In the result we hold that the first, third, fourth and sixth grounds, on which a right of pre-emption is based by s. 16 of the Punjab Act, are valid pieces of legislation. We would therefore dismiss this appeal with costs.

We come now to the last appeal, that is, Civil Appeal No. 430 of 1958. It concerns the Berar Land Revenue Code of 1928. Chapter 14 of this Code creates certain rights of pre-emption to one of which we shall presently refer. That chapter consists of ss. 173 to 187. This chapter in the Code, like the two Acts we have already dealt with, contains provisions about notice of an intended sale, loss of right to pre-empt in case the notice is not acted upon and fixation of a fair price. These are contained in ss. 176, 180 and 182. As we have earlier stated, these provisions very largely remove the rigour of the restriction imposed by the right of pre-emption on vendors of properties. The right is confined to unalienated lands held for agricultural purposes : (s. 174(2)). It arises in the case of a sale when one occupant in a Survey Number proposes to sell the whole or any portion of his interest to a stranger and the right is given to other occupants in the same Survey-Number : s. 176 and s. 182. Now a Survey-Number is defined as a portion of land recognised as such at the revenue survey in respect of which the area and land revenue payable are separately entered under an indicative number in the land records : s. 2(13). Sub-division of a survey-number means portion of a survey-number in respect of which the area and the land revenue payably are separately entered in the land records under an indicative number subordinate to that of the survey-number of which it is the portion : s. 2(12). Section 184 provides that when an occupant in a survey-number exchanges his interest in it for land elsewhere, then this exchange would not create any right of pre-emption in favour of the other persons interested in the survey-number, part of or interest in, which is exchanged. The substance of the matter therefore is that the Berar Code creates a right of pre-emption in the holder of interest in a survey-number only when anybody having an interests in any land in that survey-number sells it for a money consideration to a stranger provided that the interest sold is in unalienated land held for agriculture purpose.

In the present case, the vendor owned sub-division No. 1 in survey-number 285 and the respondents jointly owned sub-division No. 2 in the same survey-number and in that right claimed to pre-empt the sale by the vendor. There is further no controversy that the lands were unalienated land held for agriculture purpose.

Mr. Sovani appearing for the respondents said that under the Berar Code of 1928 and under the previous land laws which it replaced, an occupant is one who obtains land from the Government on

the terms mentioned in the Code and that it is only against such an occupant that a right of pre-emption is created by that Code. He therefore contended that the right to property being created on the term that it would be liable to pre-emption, it was not a case of restriction but one of the nature of the property itself and therefore no question of infringement of Art. 19(1)(f) arises by the exercise of that right. As in our opinion the respondents should succeed in this appeal for the reasons to be presently discussed, we think it unnecessary to pronounce on this contention of Mr. Sovani. We have besides no materials to show as to when the right of ownership in the property involved in this case was first created. It may have been created under a law other than the Code or its predecessors. In that case Mr. Sovani's argument would lose its principle force. Further we have not all the earlier land laws of Berar before us. It would not be right on the materials now before us to investigate and pronounce on the question raised by Mr. Sovani.

It is clear from what we have earlier stated that the lands included in one survey-number are contiguous. It is only when an interest in such lands is sold that under the Berar Code a right of pre-emption arises. It would follow inevitably that the result of the exercise of this right would be to effect a consolidation of holdings. Such a consolidation would undoubtedly be of a great benefit to the agriculturist and to the community as a whole. The evils of fragmentation of agricultural holdings in our country are too well known to need detailed discussion. Shortly put it would help an agriculturist greatly if he could extend his holdings thereby making agricultural operation economical and more productive with the resultant benefit to the country. A law which therefore tends towards consolidation has great advantages.

Ramchandra Krishnaji Dhagale v. Janardhan Krishnappa Marwar (A.I.R. (1955) Nag. 225.) was a case concerning pre-emption under the Berar Code and was heard by a Full Bench of the Nagpur High Court. The Bench presided over by the present Chief Justice of this Court found no difficulty in upholding the validity of the provisions in that Code creating the right of pre-emption. With regard to the question of consolidation, Kaushalendra Rao J. observed at p. 232.

> "It is not without significance that while in a part of the State the Central Provinces-special legislation had to be undertaken for checking the evil of fragmentation by enacting a measure like the Central Provinces Consolidation of the Holdings Act (Act VIII, 1928) no such necessity has so far been felt in Berar presumably because of the operation of the law of pre-emption."

This observation undoubtedly is of great authority coming from a Judge of eminence familiar with the conditions in Berar. It has not even been suggested that the observation was not justified. But it was said that the present tendency of legislation is fix a ceiling as to land that can be held by a person and that this shows that consolidation of holdings is no longer considered desirable. We are entirely unable to agree with this view. The idea behind fixing a ceiling for holding of land is to make an equitable distribution of the available land possible. But this is subject to the idea that each holding should be economical. In other words, the law as to ceiling does not discourage consolidation of holdings but is intended only to prevent undue grabbing of lands by persons with the necessary means to do the same. Section 184 by providing that no right of pre-emption would arise on the exchange of lands clearly indicates that the object of the Berar Code in providing for the right of pre-emption is to achieve consolidation of holding. We feel no doubt that the benefits to arise out of consolidation far outweigh the disadvantages caused by the restriction put by it on the right to property guaranteed by Art. 19(1)(f).

We, therefore, come to the conclusion that the provisions in Chapter 14 of the Berar Land Revenue

Code creating a right of pre-emption on the sale of land are valid and fully within the Constitution. This appeal therefore must also fail and we would dismiss it with costs.

BY COURT :

In accordance with the opinion of the majority Civil Appeal No. 270 of 1955 is allowed; no order as to costs.

C.A. No. 27 of 1955 allowed C.A. No. 430 of 1958 and C.A. No. 595 of 1960 dismissed.

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