

JOHRIMAL

v.

DIRECTOR OF CONSOLIDATION OF HOLDINGS, PUNJAB

March 28, 1967

[K. N. WANCHOO, R. S. BACHAWAT AND V. RAMASWAMI, JJ.]

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948) Ss. 18, 36 and 42 and Rules 16(ii)—Scheme confirmed—If can be varied by State—Procedure—Proprietors' Gher land taken and formed into common pool—Legality.

A scheme was prepared and confirmed under s. 20 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, providing that the owners of permanent ghers or enclosures would be permitted to retain them in their possession. The respondent, under s. 42 of the Act, reconsidered this matter and ordered that the plot of the appellant, who had made a gher, should be kept for non-proprietors and consolidation records should be changed to that effect. The appellant successfully challenged the respondent's order in a writ petition, which in appeal was reversed. In appeal to this Court, the appellant contended that (i) the power of the State Government under s. 42 was controlled by the procedure prescribed under s. 36 if it involved a variation of the confirmed scheme and the order of the respondent was *ultra vires* since the procedure contemplated by s. 36 had not been followed, and (ii) the respondent's order was illegal as it violated s. 18(c) and Rule 16(ii) because under Rule 16(ii) only a fraction of each proprietors' land could be taken and formed into a common pool so that the whole may be used for the common needs and benefits of the estate and there was no such reason mentioned in the impugned order as required by s. 18.

HELD: (i) The power conferred on the State Government by s. 42 is not controlled by s. 36 and the procedure of publication and hearing objections contemplated by ss. 19 and 20 of the Act is not necessary. Sections 36 and 42 envisage two different situations and the intention of the Act is to give powers respectively to the Confirming Authority and to the State Government to act under these sections in their discretion in any particular case. The reason for two different provisions in ss. 36 and 42 of the Act is also clear for if a scheme is varied or revoked by the authority confirming it, then the new scheme has to be published so that interested parties may object and their objection decided by competent authorities set up under the Act those decisions being finally appealable to the State Government. But when a scheme is to be varied by the State Government itself under s. 42 of the Act, there is no requirement of the statute that the varied scheme should be published. The State Government is only required to give notice and to give an opportunity to the interested parties to be heard before the variation is made. [293G-294B]

(ii) The respondent's order was illegal. In view of the decision in *Ajit Singh v. The State of Punjab*, [1967] 2 S.C.R. 143 the wide interpretation of s. 18(c) would make the operation of the section unconstitutional. It is a well established rule that a statute has to be so read as to make it valid, it has to be construed *ut res magis valeat quam pereat*. Applying the principle to the present case, it is manifest that

- A** s. 18(c) must be read in a restricted sense and the authority of the Consolidation Officer to reserve land for the common purpose under s. 18(c) of the Act must be restricted and it must be held that the Consolidation Officer has power under the section to take the land out of the common pool of the village only according to the rateable share from the proprietors and other right-holders for any common purpose including the extension of the village *abadi*. It is also clear that the power of the State Government to make reservation of land for common purposes under s. 42 is co-terminus with the power of the Consolidation Officer under s. 18(c). [296G-297D]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 153 of 1964.

Appeal from the judgment and order dated November 8, 1960 of the Punjab High Court in L. P. A. No. 284 of 1958.

C *Bishan Narain, B.R.L. Iyengar, S. K. Mehta and K. L. Mehta*, for the appellants.

Gopal Singh, S. P. Nayyar for *R. N. Sachthey*, for the respondents.

- D** The Judgment of the Court was delivered by

Ramaswami, J. This appeal is brought, by certificate, from the judgment of the Punjab High Court dated November 8, 1960 in Letters Patent Appeal No. 284 of 1956.

- E** For the consolidation of land holdings in village Kheowara, a scheme was prepared by the Consolidation Officer under s. 14 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (Act L of 1948), hereinafter called the 'Act', and the scheme was confirmed by the Settlement Officer acting under s. 20 of the Act. The scheme, among other things, provided that the owners of permanent ghers or enclosures will be permitted to retain them in their possession. One of the proprietors, **F** *Johrimal* had made a gher in khasra No. 3942 and, under the scheme, this was to remain with him. Para 7 of the Scheme which was finalised under s. 20 of the Act provided as follows :

- G** "The existing houses and permanent enclosures shall be kept in the ownership and possession of those proprietors who were owners in possession prior to the consolidation and in addition if these persons so desire, they shall be entitled to be given additional area upto one bigha for extension of the *abadi*. In the case of such persons of right holders who have constructed houses or enclosures etc. within the *Shamlat* area they would keep them in their possession but adjustment would be made **H** out of their *Khewat* land."

Later on the Director of Consolidation, to whom the powers of the State Government under s. 42 of the Act had been delegated

reconsidered this matter and ordered that this particular piece of land *i.e.*, khasra No. 3942 should be reserved for the extension of abadi for non-proprietors. The Director of Consolidation accordingly ordered that instead of being reserved for Johrimal, the plot should be kept for the non-proprietors and the Consolidation records should be changed to that extent. The order of the Director of Consolidation was dated March 8, 1957. Aggrieved with this order, Johrimal applied to the High Court for grant of a writ under Art. 226 of the Constitution. The petition was heard by Grover, J. who allowed the petition holding that the Director of Consolidation had no authority to make any order contrary to the scheme without amending the scheme itself, and an amendment of the scheme could be made only under s. 36 of the Act and not under s. 42 of the Act. It was accordingly held that the order of the Director of Consolidation was *ultra vires* and must be quashed by grant of a writ in the nature of *certiorari*. Against this order the Director of Consolidation of Holdings appealed under cl. 10 of the Letters Patent. The appeal was heard by a Full Bench which, by its judgment dated November 8, 1960, allowed the appeal and reversed the order of the learned Single Judge and ordered that the writ petition should be dismissed. The view taken by the majority of the Judges of the Full Bench was that the impugned order amounted to an alteration of the Consolidation scheme and the State Government had power, under s. 42 of the Act as amended by the East Punjab Holdings (Consolidation and Prevention of Fragmentation) (Second Amendment and Validation) Act (Punjab Act 27 of 1960), to make any change in the Consolidation scheme subject to the requirements of that section. The present appeal is brought by Johrimal against the judgment of the Full Bench of the Punjab High Court.

The Act was passed to provide for the compulsory consolidation of agricultural holdings and for preventing the fragmentation of agricultural holdings in the State of Punjab. Chapter III of the Act deals with Consolidation of Holdings and it is provided by s. 14 that the Government may either *suo motu*, or on application made, declare its intention by notification to make a scheme for consolidation of holdings in an estate or estates or part thereof as may be specified. The Consolidation Officer is required to obtain the advice of the land owners and of the non-proprietors and of the Gram Panchayat and he is thereafter directed to prepare a Scheme for the consolidation of holdings. Section 15 requires the Consolidation Officer to provide for the payment of compensation to any owner who is allotted a holding of less market value than his original holding and for the recovery of compensation from any owner who is allotted a holding of greater market value than that of his original holding. Under s. 19, the Consolidation Officer shall cause to be published the draft scheme of consolidation, and

- A** within 30 days of such publication any person likely to be affected by such scheme may communicate in writing to the Consolidation Officer, any objection relating to it. The Consolidation Officer shall then consider the objections, if any and submit the scheme with such amendments as he may consider to be necessary together with his remarks on the objection to the Settlement Officer (Consolidation). The scheme as amended shall then be published. Section 20 provides that if no objections are received to the draft scheme, the Settlement Officer (Consolidation) shall confirm the scheme. If objections are received, then the Settlement Officer (Consolidation) may either confirm the scheme, with or without modifications, or refuse to confirm it. If the scheme is confirmed it should be published. Section 21 relates to repartition to be carried out by the Consolidation Officer in accordance with the scheme as confirmed under s. 20 and the boundaries of the holdings as demarcated are required to be shown on the shajra which shall be published in the prescribed manner in the estate or estates concerned. Any person aggrieved by the repartition may file written objections before the Consolidation Officer who shall after hearing the appellant pass such order as he considers proper. An appeal is provided from the order of the Consolidation Officer to the Settlement Officer (Consolidation). A person aggrieved by the order of the Settlement Officer (Consolidation) may appeal to the State Government. Section 22 provides for the preparation of a new record-of-rights by the Consolidation Officer in accordance with the provisions contained in Ch. IV of the Punjab Land Revenue Act, 1887 for the area under consolidation, giving effect to the repartition. Section 23 deals with the rights to possession of new holdings. Section 36 provides for the power to vary or revoke the scheme and reads as follows :

- F** "A scheme for the consolidation of holdings confirmed under this Act may, at any time, be varied or revoked by the authority which confirms it subject to any order of the State Government that may be made in relation thereto and a subsequent scheme may be prepared, published and confirmed in accordance with the provisions of this Act."

- G** Section 42 of the Act, as it originally stood, was to the following effect :

- H** "The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed by any officer under this Act call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit :

Provided that no order shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration."

Section 18 of the Act is important and provides as follows :

"Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Consolidation Officer to direct—

(a) that any land specifically assigned for any common purpose shall cease to be so assigned and to assign any other land in its place;

(b) that any land under the bed of a stream or torrent flowing through or from the Siwalik mountain range within the State shall be assigned for any common purpose;

(c) that if in any area under consolidation no land is reserved for any common purpose including extension of the village abadi or if the land so reserved is inadequate, to assign other land for such purpose."

Section 46 of the Act confers powers on the State Government to make rules for carrying out the purposes of the Act and in particular to provide for :

"(e) the manner in which the area is to be reserved under s. 18 and the manner in which it is to be dealt with and also the manner in which the village abadi is to be given to proprietors and non-proprietors (including scheduled castes, Sikh backward classes, artisans and labourers) on payment of compensation or otherwise;"

On March 3, 1956 the Punjab Government, by a notification, added rule 16 to the Rules for reservation of the abadi for the proprietors as well as the non-proprietors and it read as follows :

"The area to be reserved for the common purpose of extension of abadi for proprietors and non-proprietors under section 18(c) of the Act shall be reserved after scrutinizing the demand of proprietors desirous of building houses and of non-proprietors including Harijan families working as agrarian labourers who are in need of a site for house. The land reserved for extension of abadi shall be divided into plots of suitable sizes. For the plots allotted to proprietors area of equal value shall be deducted from their holdings but in the case of non-proprietors including Harijan families these shall be allotted without payment of compensation and they shall

- A be deemed to be full owners of the plots allotted to them."

On April 9, 1957 the Punjab Government added rule 16(ii) which provided for reservation of lands for the Gram Panchayat. It read as follows :

- B "In an estate or estates where during consolidation proceedings there is no shamlat deh land or such land is considered inadequate, land shall be reserved for the village Panchayat, under section 18(c) of the Act, out of the common pool of the village at a scale prescribed by Government from time to time. Proprietary rights in respect of land, so reserved (except the area reserved for the extension of abadi of proprietors and non-proprietors) shall vest in the proprietary body of the estate or estates concerned, and it shall be entered in the column of ownership of record of rights as (jumla malikan wa digar haqdarani arazi hasab rasad raqba). The management of such land shall be done by the Panchayat of the estate or estates concerned on behalf of the village proprietary body and the Panchayat shall have the right to utilize the income derived from the land so reserved for the common needs and benefits of the estate or estates concerned."

- E In *Munsha Singh v. State of Punjab*⁽¹⁾, the Punjab High Court declared rule 16(ii) as *ultra vires*. After the decision of that case the second amending Act (27 of 1960) was passed. It gave a legal cover to rule 16(ii) by including in s. 2 of the Act the following :

"2(bb) 'Common purpose' means any purpose in relation to any common need, convenience or benefit of the village and includes the following purposes :—

- F (i) extension of the village abadi;
- (ii) provide income for the Panchayat of the village concerned for the benefit of the village community;
- G (iii) village roads and paths; village drains; village wells, ponds or tanks; village water-courses or water channels; village bus stands and waiting places; manure pits; hada rori; public latrines; cremation and burial grounds; Panchayat Ghar; Janj Ghar; grazing grounds; tanning places; mela grounds; public places, of religious or charitable nature; and
- H (iv) schools and playgrounds, dispensaries, hospitals and institutions of like nature, waterworks or tube-wells, whether such schools, play grounds, dispensaries, hospi-

(1) I.L.R. [1960] 1 Punjab, 589.

tals, institutions, water-works or tube-wells may be managed and controlled by the State Government or not.”

A

Section 2 of the amending Act (Act 27 of 1960) amended the preamble and read as follows :

“Amendment of long title of East Punjab Act L of 1948.—In the long title of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the principal Act), the words ‘and for the assignment or reservation of land for common purposes of the village’ shall be, and shall be deemed always to have been, added at the end.”

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Section 4 added a new section 23-A which was to the following effect :

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“Management and control of lands for common purposes to vest in Panchayats.—As soon as a scheme comes into force, the management and control of all lands assigned or reserved for common purposes of the village under section 18 shall vest in the Panchayat of that village which shall also be entitled to appropriate the income accruing therefrom for the benefit of the village community, and the rights and interests of the owners of such lands shall stand modified and extinguished accordingly.”

D

Section 5 amended s. 42 of the Act and was to the following effect :

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“Amendment of section 42 of East Punjab Act L of 1948.—In section 42 of the principal Act, for the words ‘any order passed by any officer under this Act’, the words ‘any order passed, scheme prepared or confirmed or repartition made by any officer under this Act’, and for the words ‘no order shall be varied’ the words ‘no order, scheme or repartition shall be varied’ shall be, and shall be deemed always to have been, substituted.”

F

Section 6 provides for validation and reads as follows :

“Notwithstanding anything to the contrary contained in any judgment, decree or order of any court,—

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(a) where in any scheme, made before the commencement of this Act, land has been reserved for the Panchayat of the village concerned for utilising the income thereof, or

(b) where before such commencement the State Government or any authority to whom it has delegated its powers has passed an order under section 42 of the principal Act revising or rescinding a scheme prepared or

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A confirmed or repartition made by any officer under that Act.

B such reservation of land or such order, as the case may be, shall be deemed to be valid, and any such scheme or order shall not be questioned on the ground that such reservation of land could not be made or, as the case may be, that under section 42 of the principal Act, the State Government or such authority had no power to pass such order."

On behalf of the appellant Mr. Bishen Narain put forward the argument that the order of the Director of Consolidation dated March 8, 1957 was an order varying para 7 of the confirmed scheme and no such variation could be made without following the procedure laid down under s. 36 of the Act, viz., the requirement with regard to the publication and hearing of objections contemplated in ss. 19 and 20 of the Act. To put it differently, the contention of the appellant was that the power of the State Government under s. 42 was controlled by the procedure prescribed under s. 36 if it involved a variation of the confirmed scheme and the order of the Director dated March 8, 1957 was *ultra vires* since the procedure contemplated by s. 36 of the Act has not been followed. In our opinion, there is no justification for this argument. Section 42 of the Act as amended by Act 27 of 1960 authorised the State Government to interfere with the scheme of consolidation or repartition made under the Act. What the amending Act has done is to substitute for the words 'any order passed by any officer under this Act', the words 'any order passed, scheme prepared or confirmed or repartition made by any officer under this Act'. Section 36 of the Act, on the other hand, authorises the authority confirming a scheme to alter or revoke it and in that case the new scheme must be published, objections heard and decided and the scheme has to be confirmed once again in accordance with the procedure under ss. 19 and 20 of the Act. In our opinion the power conferred on the State Government under s. 42 is a separate power independent of s. 36 of the Act which deals with the power of the authority confirming the scheme. There is hence no force in the contention that the scheme of consolidation cannot be varied by the State Government under s. 42 of the Act except in accordance with s. 36 of the Act. The reason for the two different provisions in ss. 36 and 42 of the Act is also clear for if a scheme is varied or revoked by the authority confirming it, then the new scheme has to be published so that interested parties may object and their objection decided by competent authorities set up under the Act, those decisions being finally appealable to the State Government. But when a scheme is to be varied by the State Government itself under s. 42 of the Act, there

is no requirement of the statute that the varied scheme should be published, for the State Government is required to give notice and to give an opportunity to the interested parties to be heard before the variation is made. We are therefore of the opinion that the power conferred on the State Government by s. 42 is not controlled by s. 36 and the procedure of publication and hearing objections contemplated by ss. 19 and 20 of the Act is not necessary. Sections 36 and 42 envisage two different situations and the intention of the Act is to give powers respectively to the Confirming Authority and to the State Government to act under these sections in their discretion in any particular case. We accordingly hold that Mr. Bishen Narain is unable to make good his argument on this aspect of the case.

We proceed to consider the next question arising in this appeal, viz., whether the order of the Director dated March 8, 1957 is illegal because it violates s. 18(c) of the Act read with Rule 16(ii). It was contended for the appellant that under Rule 16(ii) only a fraction of each proprietor's land is taken and formed into a common pool so that the whole may be used for the common needs and benefits of the estate. The argument was stressed that Rule 16(ii) contemplates that all the proprietors and other right holders of the land are entered in the column of ownership of the record of rights according to the rateable share and therefore the land taken by each proprietor should be according to the rateable share of the land possessed by him in the total area of the village. It was pointed out that the order of the Director dated March 8, 1957 does not indicate that the area taken from the appellant was in proportion to the rateable share. It was also stated that s. 18(c) requires that before the Consolidation Officer directs reservation of any land for the village abadi, no land should have been reserved for a common purpose in the area under consolidation or the lands so reserved should have been inadequate. It was pointed out that in the order of the Director there is no mention that no land had been reserved for the common purpose in the village or that the land so reserved in the scheme was inadequate. The opposite view-point was presented by Mr. Gopal Singh on behalf of the respondents. It was contended that s. 18(c) gives a wide power to the Consolidation Officer to reserve any land for the common purpose including extension of the village abadi and there is no requirement imposed in the section that the land reserved should be taken from the proprietors and other right-holders in accordance with their rateable share. It was contended by the respondents that no limitation should be placed on the plain language of the section.

In our opinion, the argument put forward on behalf of the appellant is well-founded and must be accepted as correct. It is true that s. 18(c) confers a power on the Consolidation Officer to reserve.

- A the land of the proprietors for any common purpose including the extension of the village abadi and there is no express limitation in the language of the section to the effect that the land to be taken from the proprietors and other right-holders should be according to the rateable share. But the language of s. 18(c) should be interpreted in a reasonable manner. The legislature could not have intended that land should be taken from one proprietor only for common purposes. The intention must be that all proprietors should contribute rateably for such purposes. This intention is brought out by Rule 16(ii) and this is what s. 18(c) must be held to mean. In this context reference should be made to the decision of this Court in *Ajit Singh v. The State of Punjab*⁽¹⁾. The question at issue in that case was whether the reservation of land for a common purpose under s. 18(c) of the Act amounted to "acquisition by the State of any estate or rights therein" within the contemplation of the second proviso to Art. 31A(1) of the Constitution, and if so, whether compensation should be paid to the proprietors for the land reserved in the scheme for various purposes in accordance with the second proviso to Art. 31A(1) inserted by the Seventeenth Amendment of the Constitution. It was held by the majority judgment of this Court that s. 18(c) must be construed reasonably and that only a fraction of each proprietor's land was taken and formed into a common pool, so that the whole may be used for the common needs and benefits of the village. It was pointed out that the title will vest in the proprietary body, the management of the land was done by the Panchayat of the estate on behalf of the proprietary body and the land was used for the common needs and benefits of the estates concerned. It was therefore held that Rule 16(ii) only provides for adjustment of rights of persons holding land so reserved in the interest of village economy and there was no 'acquisition of land' within the meaning of the second proviso to Art. 31-A(1) and there was no question of paying compensation in cash to the proprietors for such adjustment of rights. In the course of his judgment, Sikri, J., speaking for the Court, observed as follows :

- G "In *Attar Singh v. The State of U.P.* (1959 Supp. S.C.R. 928 at p. 938) Wanchoo J., speaking for the Court, said this of the similar proviso in a similar Act, namely, the U.P. Consolidation of Holdings Act (U.P. Act V of 1954) as amended by the U.P. Act XVI of 1957 :

- H "Thus the land which is taken over is a small bit, which sold by itself would hardly fetch anything. These small bits of lands are collected from various tenure-holders and consolidated in one place and added to the land

(1) [1967] 2 S.C.R. 143.

which might be lying vacant so that it may be used for the purposes of s. 14(1) (ee). A compact area is thus created and it is used for the purposes of the tenure-holders themselves and other villagers. Form CH-21 framed under r. 41(a) shows the purposes to which this land would be applied, namely, (1) plantation of trees, (2) pasture land, (3) manure pits, (4) threshing floor, (5) cremation ground, (6) graveyards, (7) primary or other school, (8) playground, (9) Panchayat ghar, and (10) such other objects. These small bits of land thus acquired from tenure-holders are consolidated and used for these purposes, which are directly for the benefit of the tenure-holders. They are deprived of a small bit and in place of it they are given advantages in a much larger area of land made up of these small bits and also of vacant land.'

In other words, a proprietor gets advantages which he could never have got apart from the scheme. For example, if he wanted a threshing floor, a manure pit, land for pasture, khal, etc., he would not have been able to have them on the fraction of his land reserved for common purposes.

Does such taking away of property then amount to acquisition by the State of any land? Who is the real beneficiary? Is it the Panchayat? It is clear that the title remains in the proprietary body and in the revenue records the land would be shown as belonging to 'all the owners and other right holders in proportion to their areas'. The Panchayat will manage it on behalf of the proprietors and use it for common purposes; it cannot use it for any other purpose. The proprietors enjoy the benefits derived from the use of land for common purposes. It is true that the non-proprietors also derive benefit but their satisfaction and advancement enures in the end to the advantage of the proprietors in the form of a more efficient agricultural community. The Panchayat as such does not enjoy any benefit. On the facts of this case it seems to us that the beneficiary of the modification of rights is not the State, and therefore there is no acquisition by the State within the second proviso."

In view of this decision the wider interpretation of s. 18(c) for which Mr. Gopal Singh contends would make the operation of the section unconstitutional. In a situation of this kind the principle to be applied is clear. The principle is that if two constructions of a statute are possible, one of which would make it *intra vires* and the other *ultra vires*, the Court must lean to that construction

- A which would make the operation of the section *intra vires*. The reason is that no intention can be imputed to the Legislature that it would exceed its own jurisdiction. It is a well-established rule that a statute has to be so read so as to make it valid; it has to be construed *ut res magis valeat quam pareat*. Applying the principle to the present case, it is manifest that s. 18(c) must be read in a restricted sense and the authority of the Consolidation Officer to reserve land for the common purpose under s. 18(c) of the Act must be restricted in the manner indicated above, and it must be held that the Consolidation Officer has power under the section to take the land out of the common pool of the village only according to the rateable share from the proprietors and other right-holders for any common purpose including the extension of the village abadi. It is also clear that the power of the State Government to make reservation of land for common purposes under s. 42 is co-terminus with the power of the Consolidation Officer under s. 18(c) and it follows therefore that the order of the Director dated March 8, 1957 is illegal and *ultra vires* and must be quashed by grant of a writ in the nature of *certiorari* under Art. 226 of the Constitution.
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E For these reasons we set aside the order of the Punjab High Court dated November 8, 1960 and direct that a writ in the nature of *certiorari* should be issued to quash the order of the Director of Consolidation of Holdings, Punjab dated March 8, 1957 with regard to khasra No. 3942 reserving it for extension of abadi for non-proprietors. The appeal is accordingly allowed, but there will be no order as to costs.

Y.P.

Appeal allowed.