The Indian Law Reports

FULL BENCH

Before Mehar Singh, C.J., R. S. Narula and Tek Chand, JJ.

PALA SINGH,—*Petitioner*

versus

THE STATE OF PUNJAB and another,—*Respondents.*

Civil Writ No. 877 of 1966.

March 19, 1968.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act L of 1948)—*S.* 14(1)—*Issue of notification by the State Government under—State Government—Whether acts judicially—Such action even if administrative—Right-holders of the land—Whether have a right of hearing—S.* 14(1)—*Whether* ultra vires.

Held, that before the issue of notification under section 14(1) of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act of 1948, the decision of the State Government, that there is fragmentation of holdings in a particular estate or estates and consolidation of holdings in the same is necessary for better cultivation, is not a judicial determination on these two matters. Nothing indicates in the section that State Government has to proceed in a judicial way to reach a decision on either or both of those two matters before it issues a notification under that provision. The matter of fragmentation can immediately be seen by the State Government from the annual record-of-rights and no further probe in the matter is ever called for. In so far as the question of better cultivation of lands is concerned, it inheres in the very fact of the consolidation of holdings of a rightholder in the estate or estates concerned, because to cultivate his total holding at one or two places is conducive to better cultivation than to cultivate his holding scattered in fragments. It follows that no judicial approach is necessary on the part of the State Government for the purpose of indicating its intention to prepare the scheme for consolidation of holding in an estate or estates and issuing a notification in that respect. When the State Government issues a notification indicating such intention in regard to an estate or estates, it does nothing that savours of any judicial act or approach. All that it does is to proceed on a basic subsisting situation and to proceed to indicate its intention by a notification to make a scheme for consolidation of holdings, the obvious consequence of which is better cultivation of lands. The action of the State Government in issuing notification under sub-section (1) of section 14 of the Act is not a quasi-judicial action, but it is purely one of an administrative nature.

(Para 5)

Held, that if an administrative action proceeds on quasi-judicial steps preceeding such action, such as, an inquiry into certain matters before an administrative action is taken, then those earlier steps alone are quasi-judicial in character necessitating hearing of the parties concerned or affected. In so far as sub-section (1) of section 14 of the Act is concerned, no such previous step of a quasi-judicial nature or character is required to be taken by the State Government before indication of its intention to form a scheme of consolidation of holdings by a notification in the gazette. Hence there is no question of any right of hearing of the right-holders as a necessary adjunct to the administrative action of the State Government in issuing the notification. (Para 6).

Held, that omission of the provision in section 14(1) of the Act to hear the right-holders before the issue of a notification does not render such an administrative action *ultra vires* on any ground whatsoever. The section is, therefore, not invalid or *ultra vires.* (Para 5)

Petition under Articles 226 *and* 227 *of the Constitution of India, praying that a writ of* Certiorari, Mandamus *or any other appropriate writ, order or direction be issued quashing the Consolidation scheme and the order passed by the respondent No. 1 refusing to grant the stay order.*

Case referred by the Hon'ble Mr. Justice R. S. Sarkaria,—vide *order, dated 25th August,* 1967 *to a Division Bench hearing Civil Writ No.* 1115 *of* 1967, *which has been admitted to a Division Bench and involves the same question of law. The Division Bench consisting of Hon'ble the Chief Justice Mr. Mehar Singh and the Hon'ble Mr Justice R. S. Narula, further referred the case on 6th February,* 1968 *to a Full Bench for decision of an important question of law involved in the case. The case was finally decided by a Full Bench consisting of Hon'ble the Chief Justice Mr. Mehar Singh, the Hon'ble Mr. Justice R. S. Narula and the Hon'ble Mr. Justice Tek Chand on* 19*th March,* 1968.

B. S. Wasu, Advocate, for the Petitioner.

D. S. Chahal and Narotam Singh, Advocates, for Respondent No. 2.

JUDGMENT

Mehar Singh, C. J.—This judgment will dispose of four petitions (Nos. 877 and 892 of 1966, and Nos. 1115 and 1879 of 1967) under Articles 226 and 227 of the Constitution by various petitioners. These petitions have been taken together because there is one common question raised with regard to the validity and *vires* of sub-section (1) of section 14 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948).

The particular sub-section reads—

"14. (1) With the object of consolidating holdings in any estate or group of estates or any part thereof for the purpose of better cultivation of lands therein the State Government may of its own motion or on application made in this behalf declare by notification and by publication in the prescribed manner in the estate or estates concerned its intention to make a scheme for the consolidation of holdings in such estate or estates or part thereof as may be specified."

(2) In the village of the petitioner in each one of these petitions notification for consolidation of holdings under sub-section (1) of section 14 has been issued. In *Jagir Singh and others* v. *The State of Punjab and others* (1), a Division Bench consisting of Capoor and Pandit JJ. held that the State Government in making such a notification acts in a purely administrative capacity and so the question of hearing the rightholders of the particular village with regard to which such a notification has been issued cannot possibly arise. Subsequent to the decision in *Jagir Singh's case*, some petitions were admitted in which the validity and the *vires* of sub-section (1) of section 14 was challenged. Some of those petitions came for hearing before a Bench consisting of Harbans Singh and Mahajan, JJ., and myself in *Gurdial Singh* v. *The State of Punjab* (2), but the cases considered at that time were disposed of on different grounds and this matter was not decided. It has been raised in these four petitions again and because this was a matter before a larger Bench on the earlier occasion and because in *Jagir Singh's case* a Division Bench has given answer on this question against the petitioners, so this Bench was constituted to hear these petitions.

(3) In *Roop Chand* v. *The State of Punjab* (3) their Lordships held, as appears from paragraph 21 of the report, that in consequence of consolidation of holdings under the provisions of the Act a rightholder's original right to his land may disappear with the inevitable result that an order in consequence of which that happens affects his right to property illegally, in other words, such an order affects his fundamental right to hold property. This their Lordships observed in answer to an argument that the petition before them was not competent under Article 32 of the Constitution as the impugned

(1) I.L.R. (1963) 2 Punj. 773=1963 P.L.R. 754.
(2) 1967 P.L.R. 689.
(3) 1963 P.L.R. 576 (S.C.).

order did not affect the fundamental right of the petitioner in that case. Although there is no particular reference in this connection to Article 19 (1) (f) of the Constitution, but as the observation of their Lordships has specific reference to the holding of the rightholder before consolidation and the holding being taken away from him in consequence of consolidation in substitution for another holding that he may be given, it is immediately clear that the observation can only possibly have reference to Article 19(1)(f) and no other Article. *In Jagat Singh and others* v. *The State of Punjab and others* (4), a Full Bench of this Court held that East Punjab Act 50 of 1948 being a legislation of agrarian reforms is a valid piece of legislation and not unconstitutional being immune from attack by virtue of Article 31-A of the Constitution. This decision of the Full Bench of this Court was maintained and approved by their Lordships of the Supreme Court in *Ranjit Singh* v. *The State of Punjab* (5). The provisions of the Act have thus been held to be within the scope of Article 31-A of the Constitution and hence immune from attack under Article 19, and same would be the position with regard to Articles 14 and 31, as is clear from Article 31A (1). The observations of their Lordships in *Roop Chand's case* have to be considered along with the later decision in *Ranjit Singh's case*, of which the consequence is that an argument under Article 19 (1) (f) or Article 14 of the Constitution against the constitutional *vires* of sub-section (1) of section 14 of the Act is not available to the petitioners in these petitions.

(4) It is in the wake of this position with regard to the provisions of the Act that the learned counsel for the petitioners have urged only one argument in these cases. The argument has two aspects. It is first said that the power of the State Government to issue notification under sub-section (1) of section 14 is of a judicial nature, and when it issues a notification under that provision indicating its intention of making a scheme for consolidation of holdings in an estate or estates, it takes a judicial action. Not being a Court, what it thus does is quasi-judicial action. No provision is made in the Act for hearing of the rightholders in the estate or estates concerned before the State Government takes such judicial action under sub-section (1) of section 14 of the Act and hence the sub-section is *ultra vires*. Reliance in this respect is placed upon *State of Madhya Pradesh* v. *Champalal* (6). It is next urged that, even if action of the State Government

(4) I.L.R. (1962) 1 Punj. 685=A.I.R. 1962 Punj. 221.
(5) A.I.R. 1965 S.C. 632.
(6) A.I.R. 1965 S.C. 124.

under sub-section (1) of section 14 is not quasi-judicial but is administrative, as it involves civil consequences and no right of hearing is given to the rightholders thus affected by the civil consequences, so the provision is *ultra vires*. In this respect reliance is placed on *State of Orissa* v. *Dr. (Miss) Binapani Dei* (7). What the learned counsel have urged is that whether the action of the State Government in issuing notification under sub-section (1) of section 14 is quasi-judicial or administrative, in either case hearing of the rightholders of the estate or estates concerned was imperative, and, no provision having been made with regard to it, the sub-section is *ultra vires* and not valid.

(5) The preamble of the Act says that, among other things, it is an Act to provide for compulsory consolidation of agricultural holdings and for preventing the fragmentation of such holdings, and sub-section (1) of section 14 says that the State Government may issue a notification for consolidation of holdings in an estate or estates for the purpose of better cultivation of lands. The learned counsel for the petitioners urge that before the State Government can issue a notification under that provision, it has to arrive at a finding that there is fragmentation of holdings in a particular estate or estates, and consolidation of holdings in the same is necessary for better cultivation of lands therein. The learned counsel presses that the decision of the State Government on those two matters is a judicial determination, and hence its action in the wake of it is quasi-judicial. There is nothing in the language of sub-section (1) of section 14 of the Act which justifies any such interpretation of that provision. Nothing indicates in it that the State Government has to proceed in a judicial way to reach a decision on either or both of those two matters before it issues a notification under that provision. The matter of fragmentation can immediately be seen by the State Government from the annual record-of-rights and no further probe in the matter is ever called for. In so far as the question of better cultivation of lands is concerned, it inheres in the very fact of the consolidation of holdings of a rightholder in the estate or estates concerned, because to cultivate his total holding at one or two places is conducive to better cultivation than to cultivate his holding scattered in fragments. It follows that no judicial approach is necessary on the part of the State Government for the purpose of indicating its intention to prepare the scheme for consolidation of holdings in an estate or estates and

(7) A.I.R. 1967 S.C. 1269.

issuing a notification in that respect. When the State Government issues a notification indicating such intention in regard to an estate or estates, it does nothing that savours of any judicial act or approach. All that it does is to proceed on a basic subsisting situation and to proceed to indicate its intention by a notification to make a scheme for consolidation of holdings, the obvious consequence of which is better cultivation of lands. So the approach of the learned counsel for the petitioners is not correct that the action of the State Government in issuing a notification under sub-section (1) of section 14 indicating its intention to make a scheme for consolidation of holdings in an estate or estates is of a judicial or quasi-judicial character. In *Champalal's case* the impugned statute provided for clearance of kans weeds from certain areas of Bhopal in Madhya Pradesh State, and according to sub-section (4) of section 4 and sub-section (1)(b) of section 6 of the impugned statute the owner of the land concerned was open to dispossession by the authorities under the statute. Sub-section (1) of section 4 of that statute provided that 'if the Government is of opinion that any area is infested with kans, it may, by notification, declare such area, giving full particulars thereof, to be a kans area for the purpose of this Act. Their Lordships struck down sub-section (1) of section 4 of that statute, read with sub-section (4) of that section and sub-section (1)(b) of section 6 of the same, for the reason that even when the owner of the land concerned was being deprived of possession there was no right of hearing given to him. However, earlier to this approach their Lordships had, on the facts of that case, come to the conclusion that the land to which the petition related had once been, some ten years earlier, cleared of kans weeds and though in the subsequent ten years weeds might have grown again, but the owners should have been provided with an opportunity to show that that had not happened. It is immediately evident that that case has no concern whatsoever with the present cases under East Punjab Act 50 of 1948. Under the provisions of this statute the rightholders in an estate or estates in which consolidation goes on are not deprived of possession of their holdings until they are provided with substituted holdings in consequence of repartition. On appreciation of this, it has been urged by the learned counsel for the petitioners that in the case of East Punjab Act 50 of 1948, sections 30 and 30A, as soon as a notification under sub-section (1) of section 14 is issued and during the pendency of the consolidation proceedings the rightholders in the estate or estates concerned cannot alienate or dispose of their holdings or remove trees from the same and set up buildings or structures upon the same without the sanction of the Consolidation Officer. It

is said that this is a restriction on the fundamental right of the rightholders to dispose of their property, and hence it is a case parallel to *Champalal's case* because of which sub-section (1) of section 14 should be struck down as no opportunity of hearing before a notification under that provision is issued is given to the rightholders in the estate or estates concerned. It has already been pointed out that no argument under Article 19(1)(f) of the Constitution or under Article 14 is available to the petitioners, because the provisions of the Act fall within the scope of Article 31-A of the Constitution. So on this consideration *Champalal's case* cannot be considered as anywise parallel to the cases of the present petitioners. The learned counsel for the petitioners have further urged that though an argument in relation to either Article 19(1)(f) or Article 14 of the Constitution may not be available to the petitioners, but the grievance of the petitioners is that at no stage have they any right to question whether the consolidation of holdings should or should not take place in the estate or estates concerned. In *Champalal's case* their Lordships observed that if, when the owners were to be deprived of the possession of the land for clearance of kans weeds, they had been given a right of hearing, the provisions of the statute impugned in that case would not have been struck down. In the present cases under the provisions of East Punjab Act 50 of 1948 while there is restriction on the transfer of holdings or dealing with the holdings by removal of trees or erection of buildings, but that restriction is eased by obtaining sanction of the Consolidation Officer. When an approach in this respect is made to the Consolidation Officer obviously the person making the approach is then heard by the Consolidation Officer, and if he does not obtain relief from him, he at least can approach the State Government under section 42 of the Act and have a hearing there also. So that the very basis on which in *Champalal's case* the impugned statute was struck down does not exist in the case of East Punjab Act 50 of 1948. The action of the State Government under sub-section (1) of section 14 in pursuant to a statute of which the validity has already been sustained by the Supreme Court. The learned counsel for the respondents rightly points out that if sub-section (1) of section 14 is struck down as invalid and *ultra vires*, the whole structure of the statute crumbles down. The notification is issued by the State Government under that provision pursuant to the objects of the statute of which as stated, the constitutional validity has been upheld, and as by the issue of such a notification no immediate consequence follows, so there is no cause for grievance in this respect by any rightholder. By such a notification the State Government does no more than indicate its

intention to frame a scheme for consolidation of holdings in an estate or estates, and, subsequently, during the course of consolidation proceedings and in consequence of repartition a rightholder may retain his previous holding or may lose that by obtaining another holding in lieu of it. After the issue of the notification, all the other provisions of the statute clearly show that at every stage the right-holders are consulted for any step taken towards consolidation of holdings or given a right of hearing in the shape of objections or appeals or an application under section 42 of the Act where their holdings are affected by repartition in consequence of consolidation. Should a rightholder, in consequence of repartition, come to lose possession of his original holding, he, according to section 21 of the Act, has first a right of hearing on objections before the Consolidation Officer, then an appeal from the order of the Consolidation Officer, and a second appeal thereafter. After that he still has a right under section 42 of the Act to approach the State Government for redress. So that he has four opportunities of hearing before he parts with possession of his original holding. There was no such opportunity in *Champalal's case,* and the judgment is clear that had there been any such opportunity the impugned statute in that case would not have been struck down. So *Champalal's case* does not advance the argument on the side of the petitioners. Thus the action of the State Government in issuing notification under sub-section (1) of section 14 of the Act is not a quasi-judicial action, but it is purely one of an administrative nature. What distinguishes a judicial as against an administrative action is the judicial approach to the matter. Where the requirement of law is that there must be a judicial approach, the action is judicial or quasi-judicial, and otherwise it is administrative. It has already been shown that neither in the language of sub-section (1) of section 14, nor on the consideration of any argument has it been shown that the State Government has to make a judicial approach when it indicates its intention to form a scheme of consolidation of holdings for a particular estate or estates. The omission of the provision to hear the rightholders before the issue of such a notification does not render such an administrative action *ultra vires* on any ground whatsoever. So the first approach on the side of the petitioners does not prevail and sub-section (1) of section 14 is not invalid or *ultra vires* because before the issue of the notification under it an opportunity for hearing to the rightholders with regard to the issue of such notification has not been provided for.

(6) The action of the State Government in issuing notification under sub-section (1) of section 14 is an administrative action. The

learned counsel for the petitioners, however, press that it has civil consequences and so, as observed by their Lordships in *Dr. (Miss) Binapani Dei's case* that 'the order is administrative in character, but even an administrative order which involves civil consequences .....must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence', the impugned provision can only be sustained if there was a provision for hearing of the rightholders concerned affected by such civil consequences. *Dr. (Miss) Binapani Dei's* case was a case in which the question of the age of the respondent was to be decided on material placed before the authority concerned, and it was in that context that their Lordships made the observation. Now, if an administrative action proceeds on quasi-judicial steps preceding such action, such as an inquiry into certain matters before an administrative action is taken, then those earlier steps alone are quasi-judicial in character necessitating hearing of the parties concerned or affected, and this is the manner in which I understand the observation of their Lordships. In so far as sub-section (1) of section 14 is concerned, no such previous step of a quasi-judicial nature or character is required to be taken by the State Government before indication of its intention to form a scheme of consolidation of holdings by a notification in the gazette. So *Dr. (Miss) Binapani Dei's case* too has no bearing so far as the provisions of sub-section (1) of section 14 of the Act are concerned. The action of the State Government in issuing notification under that provision is purely an administrative action. So there is no question of any right of hearing as a necessary adjunct to it. Its absence does not invalidate the provision.

(7) In Civil Writ petitions Nos. 877 and 892 of 1966 the only other point raised is that the charge of fee for consolidation of holdings according to section 28 of the Act is not valid not being in the nature of a fee but a tax, but there is no substance in this contention which has already been overruled in *Hari Singh and others* v. *State of Punjab and others* (8). In Civil Writ petition No. 1115 of 1967 the additional question raised is that the provision in the scheme for change of possessions in consequence of repartition is not valid being contrary to section 23 of the Act. This is also covered by the decision in *Hari Singh's case* in which it was held

(8) I.L.R. (1967) 1 Punj. 577.

that when the repartition is complete according to section 21, it is thereafter that under section 23 the question of exchange of possessions arises and before that stage the scheme cannot provide exchange of possessions by a certain date or by a certain harvest, because that can only be done according to sub-section (1) of section 23 by the agreement of all the owners and tenants affected by the repartition. So para 10 of the scheme of consolidation in Civil Writ petition No. 1115 of 1967 cannot be sustained and is quashed. In Civil Writ petition No. 1879 of 1967 three additional matters have been urged. One is that an area of 84 Kanals and 11 Marlas, equal to 36 standard Kanals and 10 standard Marlas, has been reserved for the income of the Panchayat, but that must now be disposed of according to the decision of their Lordships of the Supreme Court in *Bhagat Ram* v. *State of Punjab* (9) and to that extent the scheme must be amended. The other matter that is raised is that another area of 81 Kanals has been shown as left over being excess or *bachat* and has been shown in the revenue records as owned by *'Jumla mushtarqa malkan'* that is to say, jointly owned by all the rightholders, and that this is not permissible in view of a decision by a Division Bench consisting of Capoor and Dua JJ. in *Savinder Singh Sodhi* v. *The State of Punjab* (10), in which case the learned Judges accepted the argument that such an area could not be shown jointly in the names of the rightholders of the estate or estates concerned and that it was to be shown by making specification of shares of the rightholders according to the area held by each of the co-sharers. So, in this respect, this direction has to be complied with. The last additional matter that is raised in this petition is that in the village of the petitioners consolidation had already been done under the provisions of the Punjab Consolidation of Holdings Act, 1936 (Punjab Act 4 of 1936), sometime in the year 1944-45. The notification under sub-section (1) of section 14 of East Punjab Act 50 of 1948 in regard to this village was issued by the State Government sometime in 1962. This was something like seventeen years after the first consolidation under the provisions of Punjab Act 4 of 1936. It has been urged on the side of the petitioners in this petition that in fact after the first consolidation, according to the provisions of Punjab Act 4 of 1936, there had been no fragmentation of holdings in their village and thus in view of the decision in *Som Das* v. *The State of Punjab* (11) the State

(9) 1967 P.L.R. 287 S.C.

(10) C.W. 2105 of 1964 decided on 10th February, 1965.

(11) 1966 P.L.R. 813.

Government had no power to issue such a notification and to have consolidation of holdings in the village a second time under the provisions of the Act. *Som Das's case* has no bearing to the facts of this petition because in that case the total estate of the village was the ownership of one person and the question of fragmentation could, therefore, not arise. Consequently the learned Judges held that the provisions of the Act were not attracted to such an estate. It is nobody's case that the petitioners' village, the whole of it, is the ownership of one person. The learned counsel for the petitioners says that the State has filed no return in this petition denying the allegation of the petitioners that there is no fragmentation of holdings in the village, but it is inconceivable that there should be no fragmentation after the lapse of seventeen years. However, leaving this aside, in spite of the State not having filed any return in reply to this petition of the petitioners, the notification under sub-section (1) of section 14 having been issued on June 6, 1962, the petitioners filed their petition under Articles 226 and 227 of the Constitution on August 26, 1967, which is a couple of months over five years from the date of the notification. If the truth was that there was no fragmentation of holdings in the village and thus no occasion for consolidation of the same, it is inconceivable that the rightholders of the village should have allowed the consolidation proceedings to continue in the village for a period of five years. It is admitted by the petitioners in paragraph 4 of the petition that the scheme had been confirmed under section 23 of the Act by September 28, 1962. It is extraordinary that for a period of five years the rightholders did not move to have the notification under sub-section (1) of section 14 and the scheme of consolidation quashed. This circumstance by itself negatives the claim of the petitioners that their village was not a case of fragmentation of holdings. So there is no substance in this allegation on the side of the petitioners in Civil Writ petition No. 1879 of 1967.

(8) The result in that Civil Writ Petitions Nos. 877 and 892 of 1966 are dismissed, and in the remaining two petitions (Civil Writs Nos. 1115 and 1879 of 1967) the schemes of consolidation of holdings shall be adjusted and brought in line with the directions as above, otherwise those petitions in other respects also stand dismissed. In the circumstances of these cases, the parties in each case are left to their own costs.

R. S. NARULA, J.—I entirely agree.

TEK CHAND, J.—I agree.

K.S.K.