

CIVIL WRIT

Before Bhandari, C. J. and Khosla, J.

CH. KURE SINGH AND 28 OTHERS,—Petitioners.

versus

THE STATE OF PUNJAB THROUGH CHIEF SECRETARY
AND OTHERS,—Respondents.

Civil Writ No. 84 of 1955

Punjab Village Common Lands (Regulation) Act (I of 1954)—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Section 18—Whether intra vires—Constitution of India, Article 31.

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Sept., 1st

Held, that section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, No. L of 1948, and Punjab Act I of 1954, are *intra vires* the Constitution. Section 18 of Act L of 1948, read with Punjab Act I of 1954, empowers the Consolidation Officer to convert common land into proprietary land in exchange for other proprietary land which may be converted into common land and handed over to the Gram Panchayat for management. It also empowers him to appropriate land for the extension of the village *abadi*. There appears to be nothing unconstitutional in these provisions. The Consolidation Officer does not appropriate land. All he does is to parcel out the land in a way which promotes the economy of the village. If more land for *abadi* is required he is authorised to extend the village *abadi*. If the village common land is in an unsuitable locality he is authorised to change the location of the common land. His action, therefore, does not contravene the provisions of Article 31 of the Constitution.

S. Gursaran Singh and others v. Punjab State and others (1), referred to.

Petition under Article 226 of the Constitution of India Praying:—

- (a) that this Hon'ble Court may be pleased to hold that the Punjab Village Common Lands (Regulation) Act I of 1954, is in its entirety and sections 3 and 7 in particular are *ultra vires* of the Constitution of India so far as they violate the fundamental rights of the petitioner;

- (b) *that this Hon'ble Court may be pleased to hold that the provisions of Punjab Act L of 1948, are ultra vires of the Constitution in so far as they interfere with the fundamental rights of the petitioners;*
- (c) *that this Hon'ble Court may be pleased to issue a writ in the nature of mandamus or any other appropriate writ, direction or order as in the circumstances of the case it may deem fit, calling upon respondents Nos. 1 and 2 and their subordinate officers to effect partition of the agricultural and shamilat land belonging to the petitioners and other biswedars of the village hasab rasad khewat;*
- (d) *that this Hon'ble Court may be pleased to issue a writ of prohibition or any other appropriate writ, direction or order as in the circumstances of this case it may deem fit prohibiting respondents Nos. 1 and 2 and their subordinate officers from allotting or giving possession of the agricultural land or shamilat land of the petitioners either to the Village Panchayat or the non-proprietors residing in the village;*
- (e) *that this Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ, direction or order as in the circumstances of this case it may deem fit, commanding the respondents not to interfere in any way or manner with the proprietary rights of the petitioners in their agricultural and shamilat land;*
- (f) *that this Hon'ble Court may be pleased to issue an appropriate writ or direction or order to respondent No. 3, calling upon it not to interfere in any manner with the possession and proprietary rights of the petitioners and other biswedars in the village over their agricultural and shamilat land in the village;*
- (g) *that this Hon'ble Court may be pleased to issue any other appropriate writ, direction or order as it may deem fit, under the circumstances of the case;*

(h) that pending the disposal of this petition status quo ante be maintained and the possession of the petitioners over the land in dispute be not disturbed;

(i) that this Hon'ble Court may be pleased to award costs of this petition to the petitioners.

H. L. SARIN, for Petitioners.

S. M. SIKRI, Advocate-General, for Respondent.

JUDGMENT

KHOSLA, J. This petition under Article 226 of the Constitution came up in the original instance before Harnam Singh, J., sitting singly. Since the application sought to challenge the *vires* of section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, No. L of 1948, the matter was referred by him to a Division Bench. A reference to the petition shows that the *vires* of the Punjab Village Common Lands (Regulation) Act, No. I of 1954, was also challenged although Harnam Singh J. did not make any reference to it in his order.

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A scheme of consolidation in respect of the lands of Village Halalpur was sanctioned by the Consolidation Officer. In pursuance of this scheme it was proposed that—

- (a) 1,006 bighas and 5 biswas of *shamilat* land belonging to the petitioners and the other proprietors or *biswedars* of the village be set apart and vested in the Gram Panchayat for the common use of the villagers;
- (b) 11 acres of agricultural land belonging to *biswedars* should be used for providing housing accommodation for non-*biswedars*; and

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(c) 30 acres of agricultural land should also be handed over to the Gram Panchayat for the common use of the villagers.

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The Consolidation Officer purported to act under the provisions of section 18 of Act L of 1948, and also under the provisions of Punjab Act I of 1954. This action of the Consolidation Officer was challenged on the ground that private property was being taken possession of without paying adequate compensation to the owners and the conversion of village proprietary land to the use of non-proprietors was a violation of Article 31 of the Constitution.

The provisions of Act L of 1948, were considered by a Division Bench of this Court in *S. Gursaran Singh and others v. Punjab State and others* (1). This Court came to the conclusion that sections 15(1) and 34 of the Act were *intra vires* the constitution and valid in every respect. The provisions of section 18 were, however, not considered in that case. There is, however, no doubt that the provisions of the Act as a whole do not violate the Constitution and the Act makes provision for the payment of adequate compensation in every case. Kapur J. observed in that case—

“As I read section 15(1) it does make a provision for the payment of compensation to any owner who is allowed a holding of lesser market value than that of his original holding and also provides that the scheme should have a provision for the recovery of compensation from one owner for payment to another. Although the amount of compensation is not fixed — as indeed it could not

be—the principles on which and the manner in which the compensation is to be determined and given has been provided in section 34 (1) of the impugned Act which provides that compensation shall be assessed by the Consolidation Officer as far as practicable in accordance with the provisions of section 23(1) of the Land Acquisition Act, which section provides for what is to be taken into consideration for determining the compensation.”

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When the holdings in a village are consolidated the entire land is thrown into one hotch-potch and is then parcelled out to the various owners in proportion to their original holdings. If any land is needed for the common use of the villagers every proprietor makes a proportionate contribution and his final holdings are, therefore, decreased by the extent of his share in the land so set apart. There is no difficulty about a case in which the entire land is parcelled out to the various proprietors. If a proprietor is assigned a smaller area than he held originally he is paid compensation and if anyone is allotted a larger area he has to pay compensation. But the difficulty arises where a deduction is made on account of land reserved for common use and the question here arises whether the proprietors should be paid compensation in accordance with the terms of section 34 of the Act.

Now, if village land is taken from the proprietors and set apart for their common use it cannot be said that any private property has been appropriated by the State because every proprietor has a right to use the common land and has a proprietary interest in it. Therefore, although exclusive possession of a small portion of the land is denied to every proprietor he still remains owner of the

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entire area and can enjoy it all although his enjoyment of the common land will not be of the same type as his enjoyment of the land which he holds as an exclusive owner. It may be argued that his user of the common land is adequate compensation to him, but quite apart from that the action of the Consolidation Officer in reserving a part of the proprietary land for the use of the village as a whole cannot be said to violate the provisions of Article 31 of the Constitution because it will be exempted by Sub-section (2A) introduced by the Fourth Amendment to the Constitution. In this case no private property is acquired by the State or by a corporation controlled by the State.

Section 18 of Act L of 1948, is in the following terms:—

“18. 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 Shiwalik mountain range within the Province 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”.

Punjab Act I of 1954, gives certain powers to the Village Panchayat with regard to the management of common land. Section 18 of Act L of 1948, read with Punjab Act I of 1954, empowers the Consolidation Officer to convert common land into proprietary land in exchange for other proprietary land which may be converted into common land and handed over to the Gram Panchayat for management. It also empowers him to appropriate land for the extension of the village *abadi*. There appears to be nothing unconstitutional in these provisions. The Consolidation Officer does not appropriate land. All he does is to parcel out the land in a way which promotes the economy of the village. If more land for *abadi* is required he is authorised to extend the village *abadi*. If the village common land is in an unsuitable locality he is authorised to change the location of the common land. His action, therefore, does not contravene the provisions of Article 31 of the Constitution.

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What the petitioners seemed to resent most was the handing over of 11 acres of proprietary land to the *non-biswedars* of the village. It was contended that this amounted to appropriation of private property. The learned counsel for the petitioners, however, appeared to disregard the true nature of the economy of an Indian village and the pattern of village life. The village common land or *shamilat deh* comprises not only the uncultivated pasture lands but also the *abadi deh*, the *gora-deh* which is the vacant space reserved for the extension of village dwellings and such amenities as a well, a pond etc. All the inhabitants of the village, whether they are proprietors or non-proprietors, have an interest in *shamilat-deh*. The site of a house occupied by a non-proprietor does not belong to him in the same sense as the site of

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a house occupied by a proprietor belongs to him but even a non-proprietor cannot be ejected from the village. His son inherits the site after his death and in some parts of the Punjab he can even sell the site. The non-proprietors are entitled to make use of the pasture lands and the other features of the village which are included in the term "*shamilat deh*". The non-proprietor, therefore, has a vested interest in *shamilat-deh* and he plays an important part in village economy. Therefore, where residential sites are provided to non-proprietors it cannot be said that the land of the proprietors is being appropriated for a use which is not the use of the entire village. The granting of land to non-proprietors for building residential houses amounts to no more than the extension of the *abadi-deh* and in many cases such extension will be made from *gora-deh*. When the land of the village comes under a consolidation scheme it may not be feasible to build houses on the *gora-deh* and it may be better both from the point of view of convenience and health to provide extra houses from a portion of the proprietary land, and in such a case it may well be that the *gora-deh* is converted into proprietary land to equalise matters. It is, however, immaterial whether such an exchange of *gora-deh* for proprietary land takes place or not, for it seems to me that non-proprietors are as much entitled to residential sites in the village as proprietors and to provide them with houses is a part of the scheme of the whole village. This land will retain the character of *shamilat-deh* or village common land, at least to the same extent as the land which is under the houses of the proprietors. Therefore, I cannot accept the argument that the reserving of 11 acres of land for the houses of non-*biswedars* amounts to a contravention of the Constitution or that it can be considered as an appropriation of private property by the State.

I would, therefore, hold that section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, No. L of 1948, and Punjab Act I of 1954 are *intra vires* the Constitution. The order of the Consolidation Officer whereby he reserved 11 acres of proprietary land for the use of *non-biswedars* was necessary in order to give effect to the provisions of Act L of 1948. This order does not amount to appropriation and is, therefore, valid in every respect.

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For these reasons I would dismiss this petition but in the circumstances of the case make no orders as to costs.

There are some other petitions in which the same point arises although the facts are not identical. These petitions must also fail on the same grounds on which Civil Writ Application No. 84 of 1955, is being dismissed. These petitions are Nos. 48, 51, 71, 75, 102, 103 and 106 of 1955. These petitions will also be dismissed but there will be no orders as to costs.

BHANDARI, C.J. I agree.

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Before Bhandari, C. J. and Khosla, J.

S. AKHTYAR SINGH,—*Petitioner.*

versus

THE INSPECTOR-GENERAL OF POLICE, PUNJAB,—
Respondent.

Civil Writ No. 33 of 1955

Constitution of India, Article 226—Constitution whether retrospective—Cause of action accruing before Constitution came into force—Petition under Article 226, whether maintainable—Inordinate delay in moving under Article 226—Effect of—Whether disentitles a person to a remedy under Article 226.

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