THE INDIAN LAW REPORTS

FULL BENCH

Before S. S. Dulat, Tek Chand and P. C. Pandit, JJ.

THE DIRECTOR OF CONSOLIDATION OF HOLDINGS AND ANOTHER,—*Appellant.*

versus

JOHRI MAL,—*Respondent*

Letters Patent Appeal No. 284 of 1958

1960

Nov., 8th

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948) as amended by Punjab Act 27 of 1960—Sections 36 and 42—Respective scope of—Order passed varying a scheme under section 42—Procedure prescribed by section 36—Whether necessary to be followed—Section 42—Whether empowers Director to interfere with rights of individuals without varying the scheme—'Scheme' and 'Order passed'—Meaning of.

Held (per Dulat and Pandit, JJ.)—

(1) That section 36 authorises the authority confirming a scheme to alter or revoke it, and, in that case, of course, the new scheme has to be published and confirmed once again in accordance with the ordinary procedure. This provision, however, does not touch the power of the State Government conferred on it by section 42 of the Act, for it is only when the authority confirming a scheme decides to vary or revoke it that recourse has to be had to section 36, while the power of the State Government under section 42 is wholly independent of the power of the authority confirming the scheme, and the only limitation prescribed in section 42 as contained in the proviso, is that before the State Government makes any order the parties interested in the matter are given notice to appear and opportunity to be heard.

(2) That if the scheme of consolidation is to be disturbed by the State Government, it is not necessary to proceed under section 36 of the Act. 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 objections 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, there is not much point in publishing the varied scheme, for the State Government is required to hear the interested parties before the variation is made.

Held, per Tek Chand, J.—

(1) That a scheme as confirmed is a formal and a written document containing all the major details of consolidation. Whenever a scheme is varied in a particular manner, the specific amendments to it have to be incorporated in it. This scheme may be likened to an Act of the Legislature or to the Statutory Rules which are published. If any variation is intended, then that is given effect to, by amending the *ipsissima verba* that is the actual words. The scheme, under the Consolidation Act, is not an airy, formless determination. It is couched in precise language and after due confirmation it is adopted as such. The language of the scheme, so long as it stands in its existing form, cannot be paraphrased, explained or otherwise altered, while still retaining its identity intact.

(2) That just as no piece of legislation and no part of statutory rules can be said to have been amended, so long as the *verba legis* are not substituted, re-arranged, omitted, or added to, similarly, a written scheme cannot be deemed to have been varied unless the language was suitably altered to give effect to the change. It will lead to inescapable confusion, if a scheme is deemed to have been notionally, or inferentially varied,

without bringing about a corresponding variation in the language, to indicate such an intention. The word "scheme" is not merely an idea, a proposal, or an intention unclothed in words. A statutory scheme must wear the garb of language. A scheme which is in the mind, and not committed to the paper, is non-existent. And surely, this could not be the intention of the Consolidation Act, which contemplates preparation of a scheme by the Consolidation Officer, the publication of the draft scheme, consideration of the objections in writing to it, further publication of the amended scheme by him and the final publication of the scheme as confirmed. Even section 36, which gives certain powers to vary or revoke a scheme by the authority confirming it, provides for preparation, publication and confirmation of the subsequent scheme in accordance with the provisions of this Act.

(3) That at all stages the scheme has to be published, and being incorporated in a specific written document, it does not suffer from volatility. Matters which are left out of a scheme being extraneous or otiose, cannot be treated as part of the specific scheme.

(4) That a scheme in its ordinary meaning is a conspectus, an exposition in outline. It is commonly understood as a planned or designed device to attain some end. The word is also used in the sense of a concise statement or a preparatory draft. The word 'scheme' whenever used in the Consolidation Act and particularly in section 42, is a technical term, which has a definite meaning assigned to it by the legislative draftsman. The expression "scheme of consolidation" must perforce be read in the sense of a written and published document which has been duly confirmed by the Settlement Officer (Consolidation). The term, as used in this context, cannot be stretched to mean anything done, or any action contemplated or taken, touching a consolidation.

(5) That section 42, as amended, contemplates variation of the actual scheme as published and confirmed. If the Director of Holdings, passes an order purporting to interfere with the rights of an individual, which is in contravention of the scheme, but leaves the scheme intact, that order cannot be supported under section 42 as amended. So long as he does not order variation in the scheme itself, no order affecting an individual, can be deemed to be tantamount to variation of the scheme. "Scheme of Consolidation", is not a nebulous or notional project, without a definite shape or form, which has the elastic quality of expansion or contraction, according to the caprice of a departmental head. On the other hand, it is a specific and a definite plan in writing, prepared to accomplish a known statutory purpose, and it cannot be capriciously stretched or shrunk without changing the scheme. Section 42 of the Act does not empower the Director to interfere with the rights of an individual without varying the scheme.

(6) That the connotation of the words "order passed" cannot be strained, so as to imply 'a system devised', or, 'a plan drafted', or a 'scheme made' or, 'an action proposed or taken', or an 'intention signified'. The term "order passed" is understood in a well-defined sense and is not a loose expression of general import. In the amended section 42, the words "order passed" and "scheme prepared or confirmed" or "repartition made" have been juxtaposed, and these three terms have to be understood, as having three distinct intendments, separate from one another.

(7) That in its general sense 'order' is a mandate, precept, command or direction authoritatively given and made in writing, but not included in a 'judgment' or 'decree'. 'Order', therefore, can neither be a suggestion, request or recommendation. In this context, 'order' follows an adjudication or a determination.

(8) That the word 'passed' has several shades of meaning. An order is passed when a claim is adjudicated. Passing in this sense means when

an authorised person pronounces, utters, or renders a decision.

(9) That an inaction, on the part of the Consolidation Officer, or, an omission to disturb such persons while in the enjoyment of their rights, which they have all along exercised in the past, cannot by any stretch of language be deemed to be "any order passed".

Case referred by Hon'ble Mr. Justice Bishan Narain and Hon'ble Mr. Justice I. D. Dua on 26th May, 1960 for decision to a Full Bench owing to the fact that L.P.A. No. 375 of 1959 in which the similar question of law was involved, was admitted to the hearing of the Full Bench. The case was finally decided by a Full Bench consisting of Hon'ble Mr. Justice S. S. Dulat, Hon'ble Mr. Justice Tek Chand and Hon'ble Mr. Justice P. C. Pandit, on 8th November, 1960.

Appeal under clause 10 of the Letters Patent from the order of Hon'ble Mr. Justice A. N. Grover, passed in Civil Writ No. 728 of 1957, dated 21st May, 1958.

S. M. SIKRI, ADVOCATE-GENERAL AND N. L. SALUJA, ADVOCATE, for the Appellants.

RAJINDAR SACHAR, ADVOCATE, for the Respondent.

JUDGMENT

TEK CHAND, J.—This Letters Patent Appeal from the judgment of Grover, J., dated the 21st May, 1958, has been referred to a Full Bench by the order of the Bench consisting of Bishan Narain and I. D. Dua, JJ. The petitioner in this case, Johri Mal, had moved this Court under Articles 226 and 227 of the Constitution of India and had prayed for the issuance of a writ of *certiorari* or *mandamus* against the orders of the respondents restraining them from interfering with the petitioner's property and it was also prayed that the order of the Director, respondent No. 1, dated the 8th March, 1957, be quashed. Tek Chand, J.

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The petitioner alleged that he is a proprietor in *Khasra* No. 3942 in village Kheowara, tehsil Sonepat, district Rohtak, which had been in the proprietary possession of his family for about 60 years, and that about 12 years ago a house had been constructed in this *Khasra* number costing about Rs. 4,000. On the 21st May, 1953, the petitioner had built a permanent *gher* (enclosure) in this *Khasra* at an approximate cost of Rs. 2,000 with the permission of the revenue authorities. In 1954, this village was brought under consolidation scheme. According to para No. 7 of the scheme, it was provided that the owners of the permanent *ghers* would be permitted to retain them and there would be no change of proprietors in respect to the *Khasra* numbers in which *ghers* have been built. Consequently, *Khasra* No. 3942 was allowed to remain with the petitioner and it has been in his occupation for many years. The scheme was confirmed on the 20th September, 1957, and was duly published in accordance with the provisions of section 20 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (Act L of 1948). The Director of Consolidation of Holdings, Jullundur (respondent No. 1) on 8th March, 1957, passed an order under section 42 of the Act, that *Khasra* No. 3942 would not remain reserved for the petitioner but would be reserved for extension of *abadi* for non-proprietors. The consolidation records were directed to be changed to this extent. The petition then goes on to say, that against the above-mentioned order of respondent No. 1, he applied to the State of Punjab (respondent No. 2), but his application was rejected by order, dated the 4th July, 1957, which states; "Government do not see any justification to interfere in this matter". The petitioner submits that these orders of the respondents are *ultra vires*,

without jurisdiction and illegal. The above named two orders, it is submitted, should, therefore, be quashed.

The State of Punjab (respondent No. 2) filed a written statement which was signed by respondent No. 1 as Director, Consolidation of Holdings, Punjab. He also swore to an affidavit that the statements of facts made in the written statement were true. In the written statement it was mentioned *inter alia,* that the petitioner had only one-half share in the *Khasra* number in question, and no *pacca* house existed there. It was admitted that the *Khasra* number was surrounded by a boundary wall and the approximate cost of the wall was Rs. 500, and that it was constructed after notification under section 19 of the Act. The permission of the revenue authorities was given on the 23rd May, 1953, for constructing the enclosure (*gher*). The impugned order was passed by respondent No. 1, under a legal authority conferred by section 42 of the Act, and this order was in accordance with law. It was also admitted, that the petitioner was not heard when his application was rejected on the 4th July, 1957, by the Government, as the parties with their counsel were heard by the Director of Consolidation of Holdings, Punjab, when orders under section 42 had been passed in the previous case. It was maintained that the provisions of even a confirmed scheme were liable to amendment and variation at any time under section 42 of the Consolidation Act. It was lastly submitted that the area in question had been reserved for extension of *abadi* of proprietors and non-proprietors which was a common purpose, and if the area was not allotted to its original owners during repartition, they would be duly compensated in the form of land. It was prayed that the writ petition should be dismissed.

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The learned Single Judge allowed the petition on the ground that the Director had no authority to make an order which is contrary to the scheme without amending the same. The scheme could have been ordered to be amended under section 36 of the Act, but no such order was ever made. No objections were ever filed to the scheme as confirmed. The learned Single Judge relied upon another decision of his in Civil Writ No. 51 of 1957, decided by him on the 6th December, 1957, wherein he had held that it was not open to the Director under section 42 of the Act to make such orders, which were contrary to the scheme as confirmed, unless the scheme was first ordered to be amended in accordance with the procedure provided in the Act. The learned Single Judge, therefore, concluded that the Director had exceeded his powers under the statute, and therefore, quashed his order. It is this matter which is now in appeal before us, under the Letters Patent.

The Consolidation Act was passed to provide for the compulsory consolidation of agricultural holdings and for preventing the fragmentation of agricultural holdings in this State. Chapter III of the Act deals with consolidation of holdings and it is provided by section 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. The Consolidation Officer is required to obtain advice of the landowners and of the non-proprietors and of the Gram Panchayat, and he shall then 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 holdings.

As mentioned in section 16, the Consolidation Officer may provide for the distribution of land held under occupancy tenure as between such occupancy tenant and his landlords.

Under section 19, the Consolidation Officer shall cause to be published the draft scheme of consolidation, and 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 objections 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. Then the scheme as confirmed shall be published.

Section 21 relates to repartition to be carried out by the Consolidation Officer in accordance with the scheme as confirmed under section 20 and the boundaries of the holdings as demarcated are required to be shown on the *shajra* which shall be published. Any person aggrieved by the repartition may file written objections before the Consolidation Officer, who may deal with them. An appeal is provided from the order of Consolidation Officer to the Settlement Officer (Consolidation). A person aggrieved by the order of Settlement Officer (Consolidation) may appeal to the State

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Government, which shall be final. A new record-of-rights has then to be prepared.

Section 23 deals with the right to possession of new holdings.

Under section 36, a scheme which has been confirmed, is liable to 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.

Section 42, which has an important bearing, is reproduced below :—

> "42. 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 considerations."

By section 5 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) (Second Amendment and Validation) Act, No. 27 of 1960, section 42, as reproduced above was amended as under :—

> "5. 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."

Section 6 of the amending Act validates orders passed under section 42 before the commencement of the amending Act and it runs as under :—

"6. *Validation.* Notwithstanding anything to the contrary contained in any judgment, decree or order of any court,—

(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 confirmed or repartition made by any officer under that Act,

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

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under section 42 of the principal Act, the State Government or such authority had no power to pass such order."

The amending Act became Law on the 23rd July, 1960.

In this Letters Patent Appeal, filed on behalf of the Director of Consolidation of Holdings and the State of Punjab, Mr. Sikri, the learned Advocate-General, has contended that the powers of the Director under section 42 of the Act as amended, are very wide and the impugned order was validly passed in the exercise of these powers. According to him, section 42, as amended, is all embracing, and makes inviolate, any order passed under these provisions. According to him, plenary powers have been conferred upon the State Government in respect of "any order passed, scheme prepared or confirmed or repartition made by any officer under this Act," which are now liable to be varied or reversed. On the strength of the above language, it is argued that the impugned order was validly passed whereby the scheme as confirmed had been varied. It was further contended, that the respondent had in the exercise of these powers varied a previous order passed in the petitioner's favour. It was conceded by the Advocate-General that no question of repartition arose in this case as proceedings of repartition had yet to be commenced.

Mr. Rajindar Sachar, learned counsel for the petitioner-respondent, maintained, that the impugned order was beyond the scope of section 42, in so far as, the Director of Consolidation of Holdings by his order, dated the 8th March, 1957, did not vary either "any order passed" or, "scheme prepared or confirmed". Mr. Sachar has drawn

our attention to para 7 of the scheme as confirmed, the relevant portion of which may be translated as follows :—

> "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 up to one *bigha* for extension of the *abadi*. In the case of such persons or right-holders who have constructed houses or enclosures, etc., within the *shamilat* area they would keep them in their possession but adjustment would be made out of their *khewat land*.....".

Mr. Rajinder Sachar argues that para 7 of the scheme, the relevant portion of which has been reproduced above, is still in tact, and no part of the scheme as confirmed, has been disturbed or varied by respondent No. 1. According to Mr. Sachar, the impugned order of respondent No. 1 in so far as he deprives the petitioner of his right over *Khasra* No. 3942, does not amount to varying "the scheme prepared or confirmed." According to the Advocate-General, on the other hand, the scheme in effect stands varied, in so far as it affects the interests of the petitioner, even if the language of para 7 of the scheme is left intact. This argument of the learned Advocate-General does not commend itself to me. The Director, Consolidation, in his order does not advert to the scheme as such. All that he says is—

> "So far as *Khasra* No. 3942 is concerned I quite agree with the Settlement Officer that there is no reason why it should

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have remained reserved for Shri Johri specially. It is ordered under section 42 of the Act that this *Khasra* No. 3942 shall not remain reserved for Shri Johri, but shall be reserved for area for extension of *abadi* for non-proprietors."

He is certainly not expressly referring to the scheme. If it was his intention to vary the scheme, he should have at least indicated in what manner the scheme was to be varied. A scheme as confirmed is a formal and a written document containing all the major details of consolidation. Whenever a scheme is varied in a particular manner, the specific amendments to it have to be incorporated in it. This scheme may be likened to an Act of the Legislature or to the Statutory Rules which are published. If any variation is intended, then that is given effect to, by amending the *ipsissima verba* that is the actual words. The scheme, under the Consolidation Act, is not an airy, formless determination. It is couched in precise language and after due confirmation it is adopted as such. The language of the scheme, so long as it stands in its existing form, cannot be paraphrased, explained or otherwise altered, while still retaining its identity intact. The scheme in this case, as in all such cases, is a written document. So long as the scheme is left unaltered and untouched, by the respondent, such order, as he has passed in this case, in respect of the petitioner re. *Khasra* No. 3942, cannot be treated as a variation of the "scheme prepared or confirmed". Just as no piece of legislation and no part of statutory rules can be said to have been amended, so long as the *verba legis* are not substituted, re-arranged, omitted, or added to, similarly, a written scheme cannot be deemed to have been varied unless the language

was suitably altered to give effect to the change. It will lead to inescapable confusion, if a scheme is deemed to have been notionally, or inferentially varied, without bringing about a corresponding variation in the language, to indicate such an intention. The word "scheme" is not merely an idea, a proposal, or an intention unclothed in words. A statutory scheme must wear the garb of language. A scheme which is in the mind, and not committed to the paper, is non-existent. And surely, this could not be the intention of the Consolidation Act, which contemplates preparation of a scheme by the Consolidation Officer, the publication of the draft scheme, consideration of the objections in writing to it, further publication of the amended scheme by him and the final publication of the scheme as confirmed. Even section 36, which gives certain powers to vary or revoke a scheme by the authority confirming it, provides for preparation, publication and confirmation of the subsequent scheme in accordance with the provisions of this Act.

The word "scheme" has not been defined in the Consolidation Act or in any other analogous legislative enactment or statutory rule. The relevant provisions of the Consolidation Act, nevertheless, give a very clear indication of what a "scheme" is. There are several stages through which a consolidation scheme passes; the first is the preparatory stage. Then it enters the amending stage when objections are considered, and finally it emerges, as a scheme confirmed by the Settlement Officer (Consolidation). Even on reaching the last phase it is liable to be varied or revoked by the authority confirming it. The Act contemplates the various phases of the scheme from its preparation to its confirmation. At all stages the scheme has to be

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published, and being incorporated in a specific written document, it does not suffer from volatility. Matters which are left out of a scheme being extraneous or otiose, cannot be treated as part of the specific scheme.

There are a number of words in the English language susceptible of a variety of meanings. It will not be correct to open the dictionary and give to the word any elastic or general meaning regardless of the statutory context in which that word has been used.

A scheme in its ordinary meaning is a conspectus, an exposition in outline. It is commonly understood as a planned or designed device to attain some end. The word is also used in the sense of a concise statement or a preparatory draft.

According to Black's Law Dictionary "in English Law, a scheme is a document containing provisions for regulating the amendment or distribution of property, or for making an arrangement between persons having conflicting rights."

Under the company law, a Company Judge, may sanction a scheme of reconstruction or of arrangement. Such a scheme is in the form of a writing embodying particular matters.

The words used in a statute are to be construed as symbols for understanding the intention of the framers, being the index of their minds. This is especially true of words used to convey a particular purpose. It is the context in which they are used, which supplies the key to their understanding. Justice Holmes said:—

> "a word generally has several meanings, even in the dictionary. You have to

consider the sentence in which it stands to decide which of those meanings it bears in the particular case, and very likely will see that it there has a shade of significance more refined than given in the word-book." [*vide* Theory of Legal Interpretation, 12 Harv. L.R. 417 (1889)].

Justice Holmes, delivering the opinion of the Supreme Court in *Towne* v. *Eisner* (1), said :—

> "words do not always mean the same thing. A "word" is not crystal, transparent and unchanged; it is the skin of living thought and may vary greatly in color and content, according to the circumstances and the time in which it is used."

Justice Learned Hand said in *Commissioner* v. *National Carbide Company* (2):—

> "Words are chameleons which reflect the color of their environment."

Again, Blackburn, J. in *Allgood* v. *Blake* (3), remarked:—

> "the meaning of words varies according to the circumstances of and concerning which they are used."

The word 'scheme' whenever used in the Consolidation Act and particularly in section 42, is a technical term, which has a definite meaning assigned to it by the legislative draftsmen. The expression "scheme of consolidation" must perforce

(1) 245 U.S. 418 (425).
(2) 167 F2d. 304, 306 (1948).
(3) (1873)L.R. 8 Ex. 160, 162.

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be read in the sense of a written and published document which has been duly confirmed by the Settlement Commissioner (Consolidation). The term, as used in this context, cannot be stretched to mean anything done, or any action contemplated or taken, touching a consolidation. To my mind section 42, as amended, contemplates variation of the actual scheme as published and confirmed. If the Director of Holdings, passes an order purporting to interfere with the rights of an individual, which is in contravention of the scheme, but leaves the scheme intact, that order cannot be supported under section 42, as amended. So long as he does not order variation in the scheme itself, no order affecting an individual, can be deemed to be tantamount to variation of the scheme. "Scheme of Consolidation", to my mind, is not a nebulous or notional project, without a definite shape or form, which has the elastic quality of expansion or contraction, according to the caprice of a departmental head. On the other hand, it is a specific and a definite plan in writing, prepared to accomplish a known statutory purpose, and it cannot be capriciously stretched or shrunk without changing the scheme. Section 42, of the Act, does not empower the Director to interfere with the rights of an individual without varying the scheme. But what he has done in this case is that he has left the scheme unimpaired though he had the power to alter it; and on the other hand he has interfered with the rights of an individual which section 42 does not permit him to touch.

In the next place, justification for the impugned order of the Director of Consolidation, was sought by the learned Advocate-General, on the plea, that the Director had the power to vary "any order passed" by any officer under the Consolidation Act.

But the question is, what is meant by the expression "the order passed" which was being interfered with? There is no specific order of any kind passed by any officer relating to the petitioner alone or along with others. In other words, there was no order passed by any officer concerning the petitioner, which the Director of Holdings purported to reverse. All that we have on the record is that under para 7 of the scheme, the proprietary possession of those who had constructed their *ghers* is not to be disturbed and the petitioner happens to be one of such persons. The connotation of the words "order passed" cannot be strained, so as to imply 'a system devised', or, 'a plan drafted', or a 'scheme made' or, 'an action proposed or taken', or an 'intention signified'. The term "order passed", is understood in a well defined sense and is not a loose expression of general import. In the amended section 42, the words "order passed" and "scheme prepared or confirmed" or "repartition made" have been juxtaposed, and these three terms, have to be understood, as having three distinct intendments, separate from one another. The word "order" in the judicial sense and as used in the statute, signifies a command or direction authoritatively given. As a noun, 'order' is synonymous with 'decision'. This is the most frequent use of the word in the law. Usually, it is understood as a direction of a Judge or Court entered in writing, but not falling within the narrow ambit of a 'judgment' or 'decree'. In its general sense therefore, 'order' is a mandate, precept, command or direction authoritatively given and made in writing, but not included in a 'judgment' or 'decree'. 'Order', therefore, can neither be a suggestion, request or recommendation. In this context, 'order' follows an adjudication or a determination. An 'order' is passed when an issue properly

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before a Court or an authority is determined. As it has to be a permanent record of such a determination, being open to review, appeal, revocation or modification, it is formulated in writing. It is a decision made during the progress of a proceeding. It may be a final, or an interlocutory order.

The word 'passed' has several shades of meaning. An order is passed when a claim is adjudicated. Passing in this sense means; when an authorized person pronounces, utters, or, renders a decision. In this case, the record is completely silent as to any order having been passed, which the Director in the exercise of powers under section 42, had varied. In fact, there is no such order in existence, and in the circumstances of the case, there could not be any. There was nothing that the petitioner did not already possess, or own, which had been given to him, under any order of a Consolidation Officer. All that happened in this case was, that he, along with several others, similarly situated, were not to be disturbed from the possession of their respective *ghers* and their proprietary rights over them, were not being interfered with. An inaction, on the part of the Consolidation Officer, or, an omission to disturb such persons while in the enjoyment of their rights, which they have all along exercised in the past, cannot by any stretch of language be deemed to be "any order passed". No doubt, their proprietary possession not having been interfered with was recognized, and this recognition, was expressly indicated in para 7 of the scheme. The continuance of the enjoyment of the proprietary possession in respect of the *ghers,* was not in consequence of "any order passed". On the other hand, if the possession of such right holders had been disturbed, an order for their dispossession or ejectment might

have been passed. In this case, when Johri Mal continued to remain in proprietary possession of his *gher* no order need have been passed. That is the reason why there is no such order. All that the State Government or its nominee in the exercise of the powers under section 42, could do, was to vary "either an order passed" or "scheme prepared or confirmed". But where no order had been passed, the Director could not vary what was non-existent. It has already been stressed by me that "scheme prepared or confirmed" is not the same thing as "order passed", for according to the intention of the legislature itself, they are separate and distinguishable matters.

It was finally contended on behalf of the State that the three terms "any order passed", "scheme prepared or confirmed", and "repartition made" are mutually exhaustive of every thing that could be done under the Act. That, to my mind, is not so. A number of steps not taken, or, matters left undisturbed, or, actions taken fall outside the scope of these three terms. The order of the Director which seems to have been made on some report of the Settlement Officer, dated 12th December, 1956, on the application of one Molar is in the nature of a *coram non judice,* and is completely without jurisdiction. I find myself in agreement with the learned Single Judge, that the Director had exceeded his powers under the statute, and his order ought to be quashed. I am, therefore, of the view, that this appeal deserves to be dismissed and I would, therefore, order accordingly.

DULAT, J.—For the consolidation of land holdings, in village Kheowara, a scheme was prepared by the Consolidation Officer under section 14 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, and the

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scheme was confirmed by the Settlement Officer acting under section 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, Johri Mal, had made a *gher* in *Khasra* No. 3942, and, under the scheme, this was to remain with him. Later on, however, the Director of Consolidation, to whom the powers of the State Government under section 42 of the Act had been delegated, considered this matter and he formed the opinion that this particular piece of land, that is, *Khasra* No. 3942, be reserved for the extension of *abadi* for non-proprietors, and he, therefore, ordered that instead of being reserved for Johri Mal, as mentioned in the scheme, this piece of land should be kept for the non-proprietors. Aggrieved with this decision, Johri Mal moved this Court for a writ under Article 226 of the Constitution. The petition was heard by Grover, J., sitting alone, and he allowed the petition, holding that the Director of Consolidation had no authority to make any order contrary to the scheme without amending the scheme, and, since an amendment of the scheme could be made only under section 36 of the Act, which had not been made, the order of the Director was without jurisdiction. The view of this Court at that time was that section 42 of the Consolidation Act did not authorise the State Government, to make any alteration in a scheme of consolidation. Section 42 of the Act, as it then stood, ran thus—

> "42. 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."

The view adopted was that the words "the legality or propriety of any order passed by any officer under this Act" did not include a scheme of consolidation prepared or confirmed under the Act, and it was this interpretation of section 42, which perhaps weighed with Grover, J., to some extent. He, in any case, held quite clearly that the Director of Consolidation, or, in other words, the State Government was not competent to make any order contrary to a scheme of consolidation unless and until the scheme itself was amended in accordance with section 36 of the Act. On this view of the matter, the writ petition was, as I have mentioned, allowed and the order of the Director quashed. Against this order, the Director of Consolidation of Holdings appealed under clause 10 of the Letters Patent. This appeal came up, in the first instance, before a Division Bench consisting of Bishan Narain and Dua, JJ., and they referred it for decision to a larger Bench, and Letters Patent Appeal No. 284 of 1958, is thus before us.

Mr. Sikri's argument in support of the present appeal is short, and it is that section 36 of the Consolidation Act, has nothing to do with the powers of the State Government under section 42 of the Act, and that section, that is, section 42, has now been amended by Punjab Act 27 of 1960, so as to authorise the State Government to interfere with a scheme of consolidation or a repartition made under the Act, and the amendment has been made retrospective with effect from the date of the Act itself. 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.

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scheme prepared or confirmed or repartition made by any officer under this Act", and has further directed that the new words "shall be deemed always to have been substituted". It is, in the circumstances, no longer arguable that the Director of Consolidation, acting under section 42 of the Act, was not competent to disturb a scheme of consolidation.

Regarding section 36, the position is, to my mind clear. That section says—

> "36. 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."

It is apparent that this section authorises the authority confirming a scheme to alter or revoke it, and, in that case, of course, the new scheme has to be published and confirmed once again in accordance with the ordinary procedure. This provision, however, does not touch the power of the State Government conferred on it by section 42 of the Act, for it is only when the authority confirming a scheme decides to vary or revoke it that recourse has to be had to section 36, while the power of the State Government under section 42 is wholly independent of the power of the authority confirming the scheme, and the only limitation prescribed in section 42, as contained in the proviso, is that before the State Government makes any order the parties interested in the

matter are given notice to appear and opportunity to be heard. There is, therefore, no force in the contention that a scheme of consolidation cannot be varied even by the State Government except in accordance with section 36 of the Act, and the recent amendment of section 42 leaves no room for doubt about that matter. I am, in the circumstances, unable to accept Mr. Sachar's main argument that, if the scheme of consolidation was to be disturbed even by the State Government, it was necessary to proceed under section 36 of the Act. The reason for these two different provisions in sections 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 objections 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, there is not much point in publishing the varied scheme, for the State Government is required to hear the interested parties before the variation is made.

Mr. Sachar's next contention is that in the present case the scheme of consolidation has not in fact been varied, for the scheme in general stands intact, and the Director of Consolidation or the State Government has merely made an order touching a particular individual in respect of a particular piece of land, and this cannot be called an order varying the scheme. I am unable to see much point in this contention. There is no doubt that a scheme of consolidation was prepared and confirmed, and equally no doubt that the Director of Consolidation considered that scheme and concerning a part of that scheme he made an order, and that order is that in spite of the scheme the

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particular *gher* in *Khasra* No. 3942, will not be retained by Johri Mal, but will be reserved for the extension of the *abadi*. It is, to my mind, impossible to accept the suggestion that the scheme of consolidation has not been varied although, of course, the variation is only in respect of a small part of the scheme. Nor can it be seriously urged that the order of the Director is not in reference to the scheme of consolidation, and section 42 of the Act clearly empowers the State Government to make any order in reference to a confirmed scheme. Further, it is clear that, when preparing the scheme, the Consolidation Officer could have provided in it that this land, *Khasra* No. 3942, be reserved for the extension of the *abadi*, and, in spite of this, the scheme could have provided that the other *ghers* in the occupation of different owners will be retained by them. Section 17 of the Act is clear about that, and it is, therefore, not readily understandable why the State Government, acting under section 42 of the Act, could not have made a similar order. I am, in the circumstances, wholly unable to agree that the Director of Consolidation, acting as the State Government, exceeded his powers when he made the order that is being impugned.

On the merits, the order of the Director is not being questioned before us, nor was it so questioned before the learned Single Judge. I would, therefore, allow this appeal and reverse the order of the learned Single Judge and dismiss the writ petition, but, in view of all the circumstances, leave the parties to their own costs throughout.

Pandit, J.

PANDIT, J.—I agree with my brother, Dulat, J., that this appeal should be allowed and the parties be left to bear their own costs throughout. I am unable to accept the suggestion that if the impugned order had expressly stated that para 7 of the

scheme was varied to the extent that the order impliedly varied it, the order would have been competent. What has not been expressly stated is still, implicit in the order and if it is otherwise valid, it cannot be disturbed for lack of expression alone. A reading of the whole order leaves no doubt that the scheme has been varied in one particular and this the State Government was under the amended Act competent to do.

ORDER BY THE COURT

The appeal (Letters Patent Appeal No. 284 of 1958) is allowed and the writ petition (Civil Writ No. 728 of 1957) is dismissed and the parties left to their own costs throughout.

R. S.

CRIMINAL ORIGINAL

Before Tek Chand, J.

COURT ON BEHALF OF THE STATE,—*Petitioner*

versus

RADHA KRISHNA KHANNA AND OTHER,—*Respondents.*

Criminal Original No. 18 of 1960

Contempt of Court—What constitutes—Nature of the offence—Power to punish for contempt—Whether inheres in the Court—How and when to be exercised—"Clear and present danger test rule"—Whether applicable in India—Affidavit filed in answer to contempt petition—Allegations in—Whether can amount to contempt—Fair criticism—How far to be allowed.

1960

Nov., 9th

Held, that a reflection on the Court imputing unfairness or ignorance is regarded as a contempt. The acts constituting contempt no doubt cover a wide range. Some are usually committed in the course of adjudication of a