
(1956) 10 AHC CK 0032

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 252 of 1956

Ch. Mukhtar Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-10-1956

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226, 31, 31(2)

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 14, 22(2), 30, 49

Citation : AIR 1957 All 297 : (1956) 26 AWR 643

Hon'ble Judges : Beg, J;Agarwala, J

Bench : Division Bench

Advocate : J.P. Goyal and Sri Sant Prekash, for the Appellant; A.G., Standing Counsel and K.B. Garg, for the Respondent

Final Decision : Allowed

Judgement

Agarwala, J.—This is a petition under Articles 226 and 227 of the Constitution of India by certain tenure-holders of village Goharpur in Pargana Shamli, district Muzaffarnagar. The relief claimed in the petition is that a Writ of certiorari be issued quashing the orders of the Assistant Director Consolidation of Holdings, the Settlement Officer Consolidation of Holdings, and the Consolidation Officer making certain allotments of consolidated holdings in exercise of the powers conferred upon them by the U. P. Consolidation of Holdings Act, 1954 (Act No. V of 1954), hereinafter referred to as the Consolidation of Holdings Act,

2. The petitioners are members of a registered co-operative society named The Goharpur Cooperative Agricultural Society Ltd. They are tenure-holders of land totalling about 100 acres. Tehsil Kairana in which the petitioners' village Goharpur is situated was put under the consolidation of holdings scheme some time in the year 1955. Originally the scheme affected 223 villages but later on by means of a notification dated May 23, 1955, the scheme was cancelled in respect of 14 villages and was to be put into effect in the remaining villages only including village Goharpur. The Asstt. Consolidation Officer prepared a statement

of proposals u/s 19 of the aforesaid Act on 31-5-1955. The applicants were allowed land in each block as below.

Block

Rental value before Consolidation

Rental value of allotted holding.

Rs. as. P. Rs. as. p.

A. 1103 0 5 1085 8 5

B. 218 6 1 223 8 10

Total 1321 6 6 1309 1 3

3. The difference of 12-5-3 represents the rateable contribution towards land reserved for objects of public utility. The petitioners objected against the proposals and the Consolidation Officer made certain alterations in the proposals by his order dated 11-7-1955. Against this order the petitioners appealed to the Settlement Officer, Muzaffarnagar, who dismissed the appeal by his order dated 23-8-1955. Against this order the petitioners went up in revision to the Assistant Director of Consolidation who dismissed the revision application by his order dated 10-12-1955.

4. The petitioners claim that all those orders should be quashed on the following grounds:--

(a) that the Consolidation of Holdings Act, is ultra vires inasmuch as (i) its procedural provisions are against the principles of natural justice, (ii) it infringes the fundamental rights of the petitioners under Article 14, (iii) that it expropriates property without compensation and thus violates the provisions of Article 31, and (iv) that it takes away the jurisdiction of the High Court and the Supreme Court; and

(b) that the orders passed by the officers in the course of the consolidation proceedings were against the principles of natural justice and contrary to the provisions of the aforesaid Act and were otherwise unjust.

5. The object of the U. P. Consolidation of Holdings Act is to allot a compact area in lieu of scattered holdings so that large scale cultivation be made possible and all its attendant advantages may accrue to tenure-holders. For instance, by the reduction of boundary lines saving of land and diminishing of boundary disputes is effected; time is saved in managing the fields; barriers such as fences, hedges or ditches can be erected to obtain privacy and prevent trespassing, thieving and gleaning; control of irrigation and drainage water can be made easier; and the control of pests, insects and disease can be made less difficult. The consolidation of holdings is intended to encourage the development of agriculture.

6. The scheme of the Act is as follows :

1. When a notification is issued placing a certain village or larger area under consolidation operations the first step to be taken is to correct the record of rights and annual registers and to settle all disputes relating thereto. This is to be done by the Assistant Consolidation Officer. He is to prepare a statement showing the mistakes in the record of rights or annual registers and the number and nature of disputes pertaining to the records (Section 7). He then submits a report to the Settlement Officer (Consolidation) regarding the correctness of the existing maps and records (Section 8 (1)). Upon receipt of the report the Settlement Officer (Consolidation) "shall, after such enquiry as he may consider necessary, either direct the Assistant Consolidation Officer to proceed with the correction of maps and records or recommend to the State Government for revision of maps or records in accordance with the provisions of Chap. IV of the U. P. Land Revenue Act, 1901, Section 8 (2)". It will be seen that the making of the enquiry by the Settlement Officer (Consolidation) has been left to his discretion. This is important as it is alleged that this is against the principles of natural justice. When the Settlement Officer (Consolidation) directs the Assistant Consolidation Officer to proceed with the correction of maps of records the latter officer shall correct the entries in the annual registers in accordance with the procedure prescribed by the Rules (Section 8 (3)).

The Rules provide for full opportunity to each tenure holder to be heard in support of any objection he may file to the proposal of the Assistant Consolidation Officer. Any person aggrieved by the order of the Assistant Consolidation Officer may within 21 days of the order appeal to the Consolidation Officer whose decision shall except as otherwise provided by or under the Act, be final (Section 8 (4)). The annual register so prepared is then published in village (Section 9). If however the Settlement Officer (Consolidation) recommends to the State Government for revision of maps in accordance with the provisions of the U. P. Land Revenue Act the State Government will make the necessary notification in the official gazette (Section 10).

2. The second step is for the Assistant Consolidation Officer to prepare a map showing division or grouping of land in each village in distinct blocks which will not exceed three in number, and two lists, one showing the details of all plots of the village & the other, showing the details of the plots of each tenure-holder.

3. The third step to be taken is the preparation of a statement of the principles of consolidation. The Assistant Consolidation Officer shall prepare in respect of each village under consolidation operations a statement called the Statement of Principles to be followed in the scheme of consolidation. Section 14 provides as follows :

"14. Statement of Principles: 1. The Assistant Consolidation Officer shall prepare in respect of each village under consolidation operations, a statement (hereinafter called the Statement of Principles) setting forth in writing the principles to be followed in framing the consolidation scheme. The statement shall also show in broad outlines the proposed resurvey and layout of the village

including-

- (a) the existing and the proposed means of communications ;
- (b) the area proposed to be planted with trees or to be set apart for pasture, fisheries, manure pits, khaliyans, cremation ground and graveyards ;
- (c) the area to be set apart for abadi;
- (d) the location of works of public utility and other common use;
- (e) provisions for public conservancy ;
- (ee) the basis on which the tenure-holders will contribute towards land required for purposes of common utility and the extent to which vacant land may be utilised with a view to the said purpose; and
- (f) any other matter which may be prescribed.

2. The Assistant Consolidation Officer shall prepare the statement in consultation with the (Land Management Committee in the manner prescribed.

3. If there is a difference of opinion between the Assistant Consolidation Officer and the Land Management Committee in regard to any matter, it shall be referred to the Settlement Officer (Consolidation) whose decision shall be final."

Clause (ee) is important because it is said that this is ultra vires as it contravenes Article 31(2) of the Constitution.

Section 15 provides that the Assistant Consolidation Officer shall keep in view the following principles in preparing the Statement of Principles :

Section 15 (a) the allotment of plots shall be made on the rental value thereof.

(b) as far as possible, only those tenure-holders shall get land in any particular block who already hold land therein and the number of chacks to be allotted to each tenure-holder excluding area ear-marked for abadi and those reserved for public purpose shall not exceed the number of blocks in the village except with the permission of the Director of Consolidation of holdings ;

When the Statement of Principles is confirmed either with or without modification by the Consolidation Officer the "Statement of Proposals" for consolidation is then prepared by the Assistant Consolidation Officer showing the plots with details that are to be allotted to each tenure-holder and the Plots in lieu of which they are to be allotted. "The areas ear-marked for public purposes and the layout of such areas and the rental value thereof" (Section 19 (e)) shall be shown. The Statement of Proposals is to be in C. H. Form No. 23 prescribed by Rule 46.

Persons affected by the Statement of Proposals may file objections within 15 days of the publication (Section 20). The Assistant Consolidation Officer shall submit his report on the objections to the Consolidation Officer who shall dispose of the objections in the manner prescribed. Against the order of the

Consolidation Officer an appeal may be filed to the Settlement Officer (Consolidation) whose decision shall be final (Section 21). If the objection relates to title in the land then it shall be referred to the Civil Judge having jurisdiction in the matter who shall refer it to the arbitrator.

The arbitrator's decision shall be final (Section 22). Pending proceedings relating to title shall be stayed meanwhile. When all these objections are disposed of the Settlement Officer . (Consolidation) shall confirm the statement with or without modification.

4. The last step is to put the allotment scheme into force. This is done by fixing a date for coming into operation of the scheme. (Section 24). Thereafter an allotment order is issued in the prescribed form and manner showing the new fields allotted to each tenure-holder in accordance with the consolidation scheme (Section 25). Rule 52 prescribes the manner and the form of the allotment order. The order shall show several matters and also "the details of the area ear-marked for public purposes". The form to be used for this purpose is C. H. Form 25. It consists of two parts: part I contains the details of the holding allotted to each tenure-holder, and part II contains the area ear-marked for public purposes.

The tenure-holders shall be entitled to possession of the land allotted to them on or after the date to be fixed by the Director of Consolidation (Section 26) and new revenue records shall be prepared (Section 27). Section 28 deals with delivery of possession. It runs :

"The Assistant Consolidation Officer shall if necessary, put the person or persons including the Land Management Committee to whom chaks or lands have been allotted in actual physical possession of the holding or lands allotted to them....."

The Land Management Committee mentioned in this section is the Land Management Committee as defined in Section 121 of the U. P. Zamindari Abolition and Land Reforms Act, 1950, and includes a sub-committee thereof constituted u/s 148 of that Act. The Land Management Committee is to be put in possession of the land ear-marked for public purposes and mentioned in Part II of C. H. Form 25. Section 30 then provides :

"With effect from the date on which a tenure-holder in pursuance of the provisions of Section 26 enters into possession of the plots allotted to him his rights, title, interest and liabilities in his original holding shall be extinguished and he shall have the same rights, title, interest and liabilities subject to modification, if any, specified in the final consolidation scheme in the plots allotted to him u/s 25".

The proceedings before the arbitrator shall be governed by the Arbitration Act, 1940. The arbitrator shall be appointed by the State Government from amongst Civil Judicial Officers or Assistant Collectors of the first class of not less than 5 years standing,

Section 49 bars recourse to civil or revenue Courts with respect to any matter arising out of consolidation proceedings.

This in short is the procedure for consolidation of holdings.

7. The first ground on which the legality of the Consolidation of Holdings Act is challenged is that its procedural provisions are against the principles of natural justice. In this connection it is pointed out that the Act does not make an enquiry compulsory in several matters e.g., when the report of the Assistant Consolidation Officer is considered by the Settlement Officer (Consolidation) he is not bound to make an enquiry but he is merely empowered to make such enquiry "as he may consider necessary". It is also pointed out that the Act does not provide for an appeal against the decision of an arbitrator.

8. The principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial or quasi-judicial authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice. These principles are now well-settled and are four in number:

1. That every person whose civil rights are affected must have a reasonable notice of the case he has to meet.

2. That he must have reasonable opportunity of being heard in his defence.

3. That the hearing must be by an impartial tribunal, i.e., a person who is neither directly nor indirectly a party to the case "Nemo debet esse judex in propria causa." From *Unitted Breweries Co. v. Bath Justices* (1826) A C 586 (A) or who has an interest in the litigation *R. v. L. C. C.*, (1895) 71 L T 638 (B), is already biased against the party concerned: 1926 AO 586 (A).

4. That the authority must act in good faith, and not arbitrarily but reasonably: 1911 AC 179.

9. Under the Indian Law the principles of natural justice so far as I can see can be invoked generally in three classes of cases :

(a) when it is alleged that a certain person or class of persons have been unreasonably discriminated against, and that the law violates the provisions of Article 14, or that the restrictions imposed upon, the freedoms guaranteed under Article 19 are unreasonable.

(b) when a rule or regulation or order made in the exercise of a statutory power is attacked on the ground that it is unreasonable, and

(c) when the procedure adopted by judicial or quasi-judicial authority not being one prescribed by law is challenged on the ground that it is unfair and, unjust.

10. Of those the first case alone implies a restriction on the power of the Legislature. The other two are restrictions on subordinate legislative or

administrative or judicial or quasi-judicial bodies. Under the Indian constitution, except as provided in Article 14 of the Constitution there is no general limitation on the power of the Legislature that it will not enact a law contrary to the principles of natural justice. If a certain procedure is prescribed by law then unless it contravenes the provisions of Article 14, it cannot be challenged as invalid upon any supposed principles of natural justice. In this respect it departs from the American Constitution under which the Union and the State Legislatures are forbidden to enact laws affecting the life, liberty or property of individuals except in accordance with the due process of law. Due process of law includes principles of natural Justice, vide *Joint Anti-Fascist Refugee Committee v. McGrath* 1951 Law Ed 817 (D).

11. The doctrine of due process has not been adopted by the *A.K. Gopalan Vs. The State of Madras*, , save in certain cases where its principles have been expressly enacted in the Constitution.

12. Further it may be observed that the Act does not violate any of the accepted principles of natural justice. The order of the Consolidation Officer upon receipt of the report of the Assistant Consolidation Officer directing him to proceed with the correction of maps and records or recommending to the State Government to have the maps and records corrected under the regular procedure as provided by the U. P. Land Revenue Act, is merely a preliminary proceeding and does not affect anybody's rights. The parties are fully heard later when the Assistant Consolidation Officer proceeds to decide whether there are any mistakes in the village maps and records. No principle of natural justice requires an enquiry to be held in all cases at a preliminary stage when an enquiry is to be held at a subsequent stage. Again, there is no principle of natural justice violated when the order of a particular or quasi-judicial authority is made final and no appeal is provided therefrom: vide *John Y. McKane v P.H. Durston* (1894) 38 LEd 867 (F).

13. The objections raised by the petitioners on the ground of opportunity of being heard not being given and appeal not being provided for can no doubt be legitimately considered in connection , with their second attack on the validity of the Act and the rules, namely that they are violative of the provisions of Article 14 of the Constitution. The contention of the petitioner is that where proceedings relating to consolidation of holdings are not taking place, a dispute about the rights of tenure-holders has to be decided in accordance with the general provisions of law contained in the U. P. Land Revenue Act or the U. P. Abolition of Zamindari and Land Reforms Act, but a dispute about the rights of tenure-holders in these areas where consolidation proceedings are taking place ore to be decided according to the very straight provisions of the Consolidation of Holdings Act and the rules made thereunder. The differential treatment consists in

(a) no opportunity being provided for hearing under the Act and the rules, (to) no appeal being provided from the decision of the arbitrator,

(c) the procedure provided under the Arbitration Act has been made to apply to

the proceedings of the arbitrator, the word "arbitrator" being a misnomer because he is not to arbitrate with the consent of the parties,

(d) time for filing objections is curtailed to an unreasonable extent, namely to 15 days or 21 days,

(e) recourse to civil Courts is absolutely forbidden.

(f) special Courts are set up to decide the disputes.

14. In my opinion the contention of the petitioners in this respect is untenable.

15. Article 14 of the Constitution provides for equality before the law or equal protection of the laws to every person. The Article does not prevent the State from making different laws for different classes of persons. It only requires that the classification be not arbitrary but must be based on real and substantial differences having a reasonable relation to the object of a particular legislation. Where a class of persons have been subjected to differential treatment whether in the substantive law or in the rules of procedure what one has to see is whether the classification is founded on an intelligible differentia which distinguished those for whom a special legislation has been made from others who are governed by the ordinary law and, secondly, Whether the differential treatment has a reasonable relation to the object sought to be achieved by the enactment (vide Das J., in *The State of West Bengal Vs. Anwar Ali Sarkar*, .

16. Now the differentiation of tenure-holders where consolidation proceedings are taking place from tenure-holders who are not subjected to such proceedings is based upon an intelligible differentia. Where an area is declared to be under consolidation proceedings it is necessary, that the proceedings should terminate within a reasonable time. There may be hundreds of cases relating to title, boundaries and possession over the holdings or plots contained in those holdings. If the tenure-holders were left to the process of the ordinary law nobody can say when the litigation would terminate and when matters of dispute would be finally decided after having passed through the stages of original appellate and revisional Courts. It is well known that the ordinary procedure takes a long time to come to an end. If this were to be permitted, consolidation proceedings might be held up for an indefinite period, It is therefore necessary that such cases be treated differently from cases where consolidation proceedings are not taking place.

17. The differences that have been pointed out in the Consolidation of Holdings Act relate to (i) the period during which objections can be made, (ii) the provision for special Courts and officers to dispose of these objections and bar of recourse to ordinary Courts, and (iii) the curtailment of the right of appeal and of revision All this is done in the interests of speedy disposal of disputes. The time allowed for filing objections and appeals though curtailed is not unreasonably shortened. In this connection we have to remember that the Consolidation Officers are within " easy reach and certain matters are decided in the village

itself where consolidation proceedings are being held.

18. The contention that the Act and the Rules made thereunder do not provide for an opportunity to be heard is baseless. As pointed out already only at the stage of a preliminary enquiry a hearing is not made absolutely necessary in some instances, but this is immaterial as full opportunity of being heard is provided for when the rights are to be determined and decided. The appointment of Special Officers to decide disputes is also intended to facilitate matters and ensure speedy decision by officers specially acquainted with the nature of the work entrusted to them. Questions of title have been left to be decided by an arbitrator. The arbitrator is appointed by the State Government from amongst civil Judicial officers or assistant "collectors of the first class of not less than 5 years standing. The arbitrator therefore comes from a class who can efficiently deal with question of title raised by tenure-holders. His proceedings are to be governed by the Arbitration Act which provides for appeals in restricted cases. An appeal or revision are both provided for from the decisions of the officers deciding questions other than questions of title under the Act. The bar to the civil Court's jurisdiction in Section 49 cannot be said to be unreasonable. If recourse were allowed to a party to agitate a matter in a civil Court, it would defeat the very object of the Act because consolidation proceedings will be held up till the matter is finally disposed of by the original civil Court and the second appellate and the revisional Courts. No support can be derived by the petitioners from the decision of this Court in *Brigade Commander, Meerut Sub-Area and Another Vs. Ganga Prasad and Another*, , as the facts of that case were entirely different from the facts of the present case.

19. The third ground of attack on the validity of the Act and Rules is that they take away the property of tenure-holders for public purposes without payment of compensation. In this connection it is pointed out that Clause (ee) of Section 14 (1) quoted above and the rules made under the Act authorize the taking away of land from a tenure-holder for public purposes without compensation. The phrase "common utility" in Clause (ee) of Section 14 (1) is sought to be interpreted as meaning "public utility." On behalf of the State the phrase "common utility" is interpreted as meaning "utility of tenure-holders only and not of the public in general."

In support of the former interpretation, the petitioners' learned counsel refers to Sections 15 (b) and 19 (e) and C. H. Forms 21, 23, 24 and 25 as showing that the areas ear-marked for "common utility" are included in areas ear-marked for "public purposes". It is urged that neither the Act nor the Rules make any separate provisions for areas ear-marked for "common utility" in the allotment. In the alternative it is urged that even if the phrase "common utility" does not mean "public utility" but simply means utility which is common to the tenure-holders between whom the land is consolidated, even so since one tenure-holder is deprived of his land by virtue of Section 30 and his land is allotted to the Land Management Committee u/s 28, he is deprived of his property without

compensation and therefore the provisions of the Act violate the fundamental right guaranteed under Article 31 of the Constitution.

20. Clause (ee) was added in Section 14 by the U. P. Act No; 27 of 1954. In Clause (d) of the same section we find the words "public utility and other common use". In Clause (e) the words "public conservancy" occur. "Public" has reference to the public at large and is opposed to private. The word "common" is a word of double meaning. It means "Public" as opposed to "private" and also as "belonging or relating equally or similarly to more than one" (Webster's International Dictionary). In this latter sense it is not opposed to private and simply, means a thing shared by more persons than one.

The phrase "common use" in Clause (d) of Section 14 in the phrase "the location of works of public Utility and other common use" undoubtedly means "public use". Does the phrase "common utility" in Clause (ee) mean "public utility" or utility of the tenure-holders whose lands are consolidated ? This can be determined only when we read the provisions of the other sections of the Act. In Section 15 (b) where areas ear-marked for abadi and those reserved for public purposes are set but, nothing is said with regard to areas reserved for purposes of "common utility".

In Section 19 dealing with the preparation of the statement of Proposals where Clause (e) speaks of areas ear-marked for "public purposes" and the layout of such areas and the rental value thereof, there is no mention of areas ear-marked for purposes of "common utility". These omissions may be due to the fact that these sections stand as they were in the Act as it was originally enacted and no consequential amendments were made therein along with the introduction of Clause (ee) in Section 14 by Act 27 of 1954.

21. But the fact that no consequential amendments made in Sections 15 and 19 shows that the Legislature considered that "common utility" was the same as "public purposes". Again, the rules framed by Government under the provisions of Section 54 of the Act make no distinction between land contributed towards purposes of common utility and other land reserved for public purposes: see Rules 45 and 52 and C. H. Forms 22 and 23 which provide for ""deductions, if any, to be made for public purposes" and C. H. Form 25 Part II which contains the "area ear-marked for public purpose" that has to come out of the land that would have been allotted to a tenure-holder on the basis of rental value.

Land contributed by each tenure-holder for purposes of "common utility" as provided in Section 14 (ee) and C. H. Form 21 part II para 17, are treated, as one with land ear-marked for public purposes in Rules 45 and 52 and C. H. Forms 22, 23 and 25. Again, all this land which is reserved for "public use or utility" and that which is contributed for "common utility" is to be handed over to the Land Management Committee u/s 28 of the Act and u/s 30 all rights in such lands belonging to the tenure-holder are extinguished upon the Consolidation scheme being enforced.

22. It is therefore, clear that the phrase "common utility" in Clause (ee) of Section 14 was intended to mean "public utility" and not merely the utility of those tenure-holders who contributed their land for such purposes or even of the villagers merely. No compensation is paid to the tenure-holders for taking away such land from them.

23. It was urged that the tenure-holders get compensation in the shape of common benefits which they derive from the use of the land set apart for public purposes. This argument cannot be accepted, for every taking of land for a public purpose confers some benefit upon every member of the public including those from whom land is taken away and yet Article 31 of the Constitution provides for compensation to be paid. It is obvious therefore that the benefit which may be conferred upon those from whom land is taken away along with other members of the public cannot be considered to be compensation within the meaning of Art, 31 of the Constitution.

Such benefit which the persons deprived of their property derive being a benefit which they derive not in their private capacity but as members of the public is not the sort of compensation contemplated by Article 31.

24. On behalf of the State reliance was placed on a decision of the Punjab High Court in *Kure Singh and Others Vs. State of Punjab and Others*, In that case the validity of Section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948) was considered. That section provided :

"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 Province shall be assigned for any common purpose;

(c) that if on 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".

It will be observed that the power conferred on the Consolidation Officer by Section 18 referred merely to assigning of land of Individual tenure-holders for the common purpose of the village. There was no power conferred on the Consolidation Officer to take an individual tenure-holder's land for public purposes. The expression "public purpose" or "public use" is not confined to the use by the villagers only. The word "public" is wide enough to include every member of the public whether a resident of the village or not.

The use of the words "public purpose" In the Act which we are considering is, therefore wider, than the phrase "common purpose" used in the Punjab Act. The

learned Judges of the Punjab High Court first considered the case where land of certain tenure-holders is consolidated and parcelled out amongst them and some land is kept common for their common purposes and observed that this process did not involve deprivation of land because "although exclusive possession of a small portion of the land is denied to every proprietor he still remains owner of the entire area and can enjoy it 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",

Then the learned Judges considered the case where land belonging to individual tenure-holders is taken away for the purposes of the entire village community and their Lordships observed that having regard to the nature of the economy of the Indian villages and pattern of village life this process also does not involve the taking away of property within the meaning of Article 31, because

"the 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."

It will be observed that the learned Judges of the Punjab High Court had not to consider the case of land taken away for "public purposes". Under the present Act and the rules made thereunder land taken away for "common utility" is mixed up with land set apart for public purposes and the rights of the proprietors are extinguished in the land so reserved for common utility and the whole area taken away for common utility and reserved for public purposes is treated as for public purposes.

It may be that the Legislature intended that what they have denoted as lands reserved for public purposes or public utility were, really intended by them to be for "village purposes" and "village Utility", but we are not entitled to speculate when the words used by the Legislature do not indicate that any such restricted meaning was intended.

25. It was contended on behalf of the State that Clause (ee) in Section 14 of the Act merely deprives a tenure-holder of certain property but it is not an acquisition by the State within the meaning of Clause (2) of Article 31 and that where this is so Clause (24) of Article 31 introduced by the Constitution Fourth Amendment Act, 1955, saves the impugned provision from being rendered unconstitutional.

It was conceded that after the decisions of the Supreme Court in *The State of West Bengal Vs. Subodh Gopal Bose and Others*, and *Dwarkanadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, deprivation of property would also amount to acquisition of property within the meaning of Clause (2) of Article 31, but it was urged that Clause (2A) of Article 31 introduced by the Constitution Fourth Amendment Act, 1955, was retrospective in operation and therefore applied to Clause (ee) of Section 14 of the Consolidation of Holdings Act, 1954. Clause (2A) of Article 31 introduced by

the Fourth Amendment to the Constitution runs as follows :

"Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property".

26. In my opinion the contention of the learned Advocate General is not sound for two reasons. First, because the clause quoted above cannot be construed as being retrospective in operation so as to affect Clause (ee) of Section 14 of the Consolidation of Holdings Act, 1954. The Constitution Fourth Amendment Act while amending Article 31 made the amendment in the following words :

"2. Amendment of Article 31. In Article 31 of the Constitution for Clause (2) the following clauses shall be substituted namely".

27. Then follow Clauses (2) and (2A). The language in which the amendment was made does not show that it was intended to operate retrospectively. On the other hand the same Act while amending Article 31A used the following expression :

"3. Amendment of Article 31A. In Article 31A. of the Constitution, (a) for Clause (1) the following clause shall be, and shall be deemed always to have been substituted, namely....."

If it was intended that the amendment of Article 31 was to be retrospective there would have been no difficulty in using the expression "and shall be deemed always to have been" in Section 2 of the Constitution Fourth Amendment Act as was used on Section 3 of that Act,

28. It was urged that the language of the new Clause (2A) shows that it was retrospective. It was urged that the phrase "it shall not be deemed to provide for the compulsory acquisition or requisition of property" etc., means that the Courts were directed to construe a provision in the manner indicated in Clause (2A) even in pending cases or whether the case comes before them after Clause (2A) has begun to operate. This interpretation would be against all recognised canons of interpretation. An Act or amendment dealing with substantive rights operates *prima facie* prospectively only and does not affect past transactions.

29. Secondly, Clause (ee) of Section 14 of the Consolidation of Holdings Act read with Section 30 of the Act does not merely deprive a tenure-holder of his property but adds to the rights of the State and as such is an acquisition by the State and in substance, though not in form a transfer of the tenure-holder's rights to the State and therefore does not fall under Clause (2A) at all. It should be noted that the State is the owner of the land in the village and a tenure-holder merely has the rights of a tenure-holder, i.e., of occupation, under the conditions prescribed in the Zamindari Abolition and Land Reforms Act.

In other words, before land is taken away from a tenure-holder for public purposes the position is that the State possesses not the entire bundle of rights which go to form absolute ownership but those rights minus the rights of the tenure-holder, when " land is taken away from a tenure-holder under Clause (ee) of Section 14 of the Act and his rights are extinguished u/s 30 of the Act, the result is that the State comes to own the full rights of an absolute owner of the property and its rights are enlarged. This is therefore not a simple case of deprivation of a person of his property but it is a case in which the rights of the State are enlarged and the State acquires a right to possession over the property in place of the right of possession enjoyed by the tenure-holder.

30. In my opinion Clause (2A) introduced by the Fourth Amendment in Article 31 does not help the State and save the impugned provisions of the Act and the rules from being declared null and void. It -is settled law that if an amendment is not retrospective in its operation, it cannot revalidate an unconstitutional law "and render valid that which was invalid when it was enacted: see Cooley's Constitutional Limitations, Vol. I page 384.

31. It was pointed out by the learned Advocate General that the above objection was not raised before any of the officers dealing with the consolidation proceedings. This indeed is true, but as the objection relates to the constitutional invalidity of a provision of the Act and the rules and affects the petitioners' fundamental right, an objection can be raised for the first time in this Court, as was pointed out by Mahajan C. J., in Behram Khurshed Pesikaka Vs. The State of Bombay,

"these fundamental rights have not been put in the Constitution merely for individual benefit though ultimately they come into operation in considering individual rights. They have been put there as a matter of public policy and the doctrine of waiver can have no application to provisions of law which have been enacted as a matter of constitutional policy".

32. The applicants were therefore entitled to raise the question for the first time in this Court.

33. In my opinion, therefore, Clause (ee) of Section 14 of the Act and the rules made thereunder, under which a tenure-holder is deprived of his land for public purposes are invalid as they contravene the provisions of Article 31. As the other provisions of the Act and the rules are severable, they are not necessarily struck down and are valid.

34. The argument that the Act was invalid because it took away the jurisdiction of the High Court and the Supreme Court by the provisions that appeals and revisions in pending proceedings relating to title to tenure shall be stayed during consolidation proceedings and the decision of the Consolidation Officer shall be final is without substance. The provisions do not take away the jurisdiction of the High Court or the Supreme Court. All that happens is that the pending proceedings are indefinitely stayed and the decision arrived at in the

consolidation proceedings is made final. The constitutional provision relating to the jurisdiction of the High Court and Supreme Court is not thereby affected. Their powers remain intact. They may not interfere with the decision arrived at in consolidation proceedings but their Jurisdiction is thereby not affected.

35. The last argument advanced on behalf of the petitioners that the order passed by the officers in the course of consolidation proceedings were against the principles of natural justice and contrary to the provisions of the aforesaid Act has been, on scrutiny, found to be unsupportable. No provision of the Act has been violated and no rule of natural justice has been contravened.

36. Having regard however, to my finding that the Clause (ee) of Section 14 of the Act and the rules providing for taking away of a tenure-holder's land for public purposes without payment of compensation and having regard to the fact that in the present case such land has been taken away from the petitioners for public purposes without compensation, the orders complained of by the Petitioners must be held to be invalid.

37. I would, therefore, quash the order of the Assistant Consolidation Officer dated 31-5-1955, the order of the Consolidation Officer dated 11-7-1955, the order of the Settlement Officer, Muzaffarnagar, dated 23-8-1955 and the order of the Assistant Director of Consolidation dated 10-12-1955.

(38) As however the ground on which I would set aside these orders and held Clause (ee) of Section 14 of the Act and certain rules to be invalid was not taken before the officers concerned and was not even specifically pleaded in the petition, I would direct the parties to bear their own costs of this petition.

BY THE COURT:

The order of the Assistant Consolidation Officer dated 31-5-1956 the order of the Consolidation Officer dated 11-7-1955, the order of the Settlement Officer, Muzaffarnagar, dated 23-8-1955 & the order of the Assistant Director of Consolidation dated 10-12-1955 are quashed. We make no order as to costs.