

(1964) 09 P&H CK 0052
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1774 of 1962

Chaudhri Basti Ram and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 24-09-1964

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1964) 09 P&H CK 0052

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : D.S. Tewatia, for the Appellant; S.K. Kapur, Advocate General and Mr. N.N. Goswami, for the Respondent

Final Decision : Dismissed

Judgement

Shamsher Bahadur, J.—Although a large number of points had been raised in this petition under Article 226 of the Constitution of India, only two of these have been pressed, the others having become unarguable in view of the amendments made in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, by the Amending Act (Punjab Act No. 25 of 1962).

2. The petitioners are some of the residents and landholders of village Rupawas in Sirsa Tehsil of Hissar District, where consolidation operations were taken in hand in 1962. The scheme for consolidation, which was formulated on the 26th of July 1962, has been attacked by Mr. D.S. Tewatia, the learned counsel for the petitioners, on two grounds.

3. The first objection forms the subject-matter of paragraph 9 of the petition and may be briefly enunciated thus. The scheme which was published under the signatures of Shri Tarlochan singh, Consolidation Officer, is attacked on the ground that the appointment of this officer was notified for the first time on the 1st of September, 1962 and any step which he took earlier to this date is vitiated for want of jurisdiction. According to the written statement filed on behalf of the

State, the notification of Shri Tarlochan Singh's appointment as Consolidation Officer under sub-section (2) of section 4 of the Act was made on the 3rd of August 1962 with retrospective effect from the 1st of June 1962.

In other words the Consolidation Officer had taken charge of his appointment on the 1st of June 1962, though it came to be notified later on the 3rd of August, 1962. "Consolidation Officer" has been defined in clause (a) of section 2 of the Act to mean "an officer appointed as such u/s 14 by the State Government and includes any person authorised by the State Government to perform all or any of the functions of the Consolidation officer under this Act. It can acceptably be urged that the definition of "Consolidation Officer" permits the State Government to authorise a person to act as such even though his appointment has not been notified. The position taken by the Government in my opinion is reasonable and conforms to realities Consolidation Officers, and indeed all officers serving under Government, take charge of their appointments long before these are notified in the Official Gazette and even earlier than their powers are notified or gazetted. Such delayed notification or gazetting of powers does not per se invalidate the authority of the officers or the acts done by them after assuming charge of their respective offices.

4. The second ground on which the scheme is assailed is concerned with the validity and constitutionality of section 18 of the Act. which in the submission of the learned counsel gives unfettered power to the State Government to reserve land for "common purpose". "Common purpose" as defined in clause (bb) of section 2 of the Act means "any purpose in relation to any common need, convenience or benefit of the village" and includes inter alia "extension of the village Abadi. "Under clause (c) of section 28 of the Act a consolidation. Officer is permitted" 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." Mr. Tewatia vehemently contends that the authority gives an unfettered power to the Consolidation Officer to make unlimited reservations in the name of "common purpose". I may advert at once to the answer given to a similar contention by the Full Bench of Chief Justice. Grover and Sharma, JJ., in *Jit Singh v. The State of Punjab* (1964) 66 P.L.R. 792. Grover, J., speaking for the Court, observed thus at page 798.

8. Lastly. Mr. Gujral has contended that section 18(c) confers uncontrolled and arbitrary power on the consolidation authorities to reserve any area for common purposes and to invent new heads of common purpose. Section 18(c) itself lays down the conditions under which reservation can be made. Reference has already been made to rule 16 which has been framed under the Act in connection with reservation and also to the definition of "common purpose" contained in section 2(bb) as amended. There can be no doubt that if the land is reserved in any consolidation scheme not in conformity with the provisions of the Act and the rules but in violation of them, that scheme will certainly be open to challenge, but so long as the land has been reserved in accordance with the

aforesaid provisions, the landowners have no right to claim any compensation even if they are deprived of some portion of their holding for reasons which have already been stated.

It is the case of Mr. Tewatia that the Full Bench while dealing with the specific argument regarding the invention of new heads of common purpose has not taken into account the excessively disproportionate areas which may be reserved for particular purposes even if they fall within the definition of "common purpose." To my mind this argument is another way of presenting the same objection which has been answered by the Full Bench in paragraph 8 quoted above. It would be pertinent to point out the provisions of rule 16 of the Fast Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, whereby the requisite fetter is provided to the seemingly wide power vested in the consolidation authorities u/s 18(c) of the Act. Clause (i) of extension of Abadi for proprietors and non-proprietors u/s 18(c) of the Act shall be reserved after scrutinizing the demand of proprietors desirous of building houses and of non-proprietors including Harijan families working as agrarian labourers who are in need of a site for house. The object and purport as this rule seem to be that the appropriate authority has first to take into account the needs of the proprietors and non-proprietors in reference to the available area for extension of Abadi. It is particularly to be borne in mind that the second wing of this rule makes it clear that the proprietors have to pay for the reservation made for them, while non-proprietors have to be allotted sites without payment of compensation. The power is further controlled by confining the non-proprietors, in whose favour the allotment is to be made, to the class of agrarian labourers, though of course Harijan families are included amongst the non-proprietors as prospective beneficiaries under the rule. The Court has to ask itself whether these two qualifications do not provide sufficient control over the power of the consolidation Officer. It is not disputed that Harijan families deserve allotment without payment of compensation. It cannot also be disputed that agrarian labourers are the suitable objects of bounty in the interest of the larger economy of the State. Mr. Tewatia submits that the concept of an agrarian labourer may be extended to include persons who should not receive the benefit of the rule and further there is nothing to prevent the Consolidation Officer from allotting them areas far in excess of their requirements or needs. Now, these are matters which do not hit the validity, the vires or the propriety of the rules. In short, there is no reason to say that the decision of the Full Bench requires consideration as contended for by the learned counsel.

5. In this view of the matter, this petition must fail and is dismissed. In the circumstances I would make no order as to costs.