(1963) 05 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 859 of 1962

Jagir Singh and Others APPELLANT

Vs

The State of Punjab and Another RESPONDENT

Date of Decision : 07-05-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 54
Constitution of India, 1950 — Article 19, 19(1), 19(6), 226, 31
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 14, 14(1), 14(2), 15, 18
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Amendment Act, 1960 — Section 2(bb)
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 — Rule 16
Punjab Consolidation of Holdings Act, 1936 — Section 1, 1(2), 1(3), 10, 11
Punjab Municipal Act, 1911 — Section 14, 16

Citation : AIR 1964 P&H 90 : (1963) 2 ILR (P&H) 773 : (1963) 65 PLR 754

Hon'ble Judges : S.B. Capoor, J;P.C. Pandit, J

Bench : Division Bench

Advocate : M.R. Sharma, for the Appellant; H.S. Doabia, A.A.G., for the Respondent

Judgement

S.B. Capoor, J.—These are nine civil writ petitions Nos. 859 and 1666 of 1962, Nos. 201, 202, 214, 135, 319, 320 and 5 of 1963, under Article 226 of the Constitution which have been placed before this Division Bench either by orders of the admitting Bench or by orders of learned Single judges of this Court before whom some of them came up subsequent to their admission and the crucial point involved in all these petitions is common viz.

Whether the action of the State Government in'' ordering consolidation of holdings in various revenue estates under Sub-section (1) of Section 14 of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948), (hereinafter referred to as the Act) was legal and within the jurisdiction of the State Government or not?

2. One fact common to all these writ petitions is that consolidation of holding had hardly taken place in each of the revenue estates in which it is now challenged under the Act. It appears that at first consolidation of holdings was taking place under the aegis or co-operative consolidation societies formed according to the provisions of the Co-operative Societies Act, 1912. These societies worked purely on voluntary basis, that is, the membership of the co-operative consolidation society was voluntary and the society could not include the holdings for consolidation of those proprietors who did not join as members. All the same, every member on admission was required under the by-laws of the societies (see pp. 649 657 of Om Prakash''s Punjab Land Revenue Act, 1940 Ed. where the model by laws are reproduced) to sign the agreement binding him to the general principles of consolidation and to any method or arrangement of consolidation of holdings agreed to by two-thirds of the whole number of members in a general meeting and to give possession in accordance therewith not for any experimental period but as a, permanent arrangement subject however, to any future partition or rearrangement of the consolidated area approved by two-thirds of the whole number of members in a general meeting. There was a provision in the by-laws for arbitration in case any disputes arose concerning the business of the society.

The object of these societies was to promote the economic interests of its members and more particularly to secure beneficial rearrangement of holdings to (sic) loss and waste by fragmentation. In practice, however, it was found that on account of the consolidation of holdings being purely on voluntary basis the progress of this important agricultural reform in the Punjab was not so rapid as was desired and the Punjab Consolidation of Holdings Act, 1936, (Punjab Act No. IV of 1936) was enacted, one of the outstanding features of which was that if not less than two-thirds of the land-owners in an estate or a sub-division of an estate holding not less than three-fourths of the cultivated area made an application for the consolidation of their holdings, the application shall be deemed to be an application on behalf of all the landowners and that if any scheme '' of consolidation was confirmed by the same majority it shall become binding on all the landowners and their successors in interest (vide Statement of Objects and Reasons as published in Punjab Gazette, Part I, dated 16th October, 1936, pp. 1257-1258, and as embodied in Section 3 of Act IV of 1936) Sub-section (2) of Section 1 of this Act provided that it shall apply to all societies having as their object the consolidation of holdings and registered under the Co-operative Societies Act, 1912, though the Provincial Government was empowered to except any society or class of societies from the operation of all or any of the provisions of Act IV of 1936.

Finally, there was East Punjab Act L of 1948 which repealed Act IV of 1936 and made provision not only for the consolidation of holdings but also for prevention of fragmentation. One very important change in this Act was that the State Government was empowered of its-own motion to order consolidation of holdings in-any estate or group of estates or any part thereof and this was embodied in Sub-section (1) of Section-14 which is as follows:

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

* * *

3. In all the writ petitions except in C.W. 201 of 1963 it is common ground between the Petitioners and the Respondents that the previous consolidation of holdings in the estates concerned had been made by Co-operative Consolidation of Holdings Societies registered under the provisions of Co-operative Societies Act 1912. In writ petition No. 201 of 1963 though it was alleged that the consolidation of holdings in village Mangli Khurd to which this writ petition relates formerly took place under the provisions of Act IV of 1936, but it was stated in the return filed on be-half of the Respondents that the holdings in the village were consolidated under the Co-operative ''Societies Act 1912 and Mr. H.S. Wasu, on behalf of the Petitioners in this writ petition was not in a position to challenge this particular assertion as made in the return. The position, therefore, in all the writ petitions is that previously the consolidation of holdings was done by cooperative societies registered under the Co-operative Societies Act 1912 and the crucial question for determination is whether in that event reconsolidation of holdings could be ordered by the State Government in those estates under the Act of 1948.

4. Various submissions were made lay the learned Counsel for the Petitioners in that, behalf. Firstly, it was pointed out that any order made of its own accord by the State Government for the consolidation of holdings would necessarily mean interference with the fundamental lights of citizens of India under sub-clause (f) of Clause (1) of Article 19 of the Constitution to accquire hold and dispose of property. Such restrict ions could he justified only under clause (5) of that Article, that is, if the restrictions imposed by the statute were reasonable in the interest of the general "public. Sub-section (1) of Section 14 of the Act did not specifically confer on the Government the power to consolidate holdings in an estate where consolidation had already taken place and it would be a most unreasonable interference with the fundamental rights of citizens under sub-clause (f) of clause (1) of Article 19 of the Constitution if the State Government proceed- ed to order consolidation again and again in the same estate.

Secondly it was submitted that Chapter II of the Act conferred ample power on the State Government to prevent fragmentation of holdings in any estate in which consolidation had already taken place. It was not, therefore, open to the State Government to refrain from exercising its powers under Chapter II and insist on ordering reconsolidation of holdings in exercise of its powers under Sub-section (1) of Section 14. Thirdly it was stated that the exercise of its powers under Sub-section (1) of Section 14 by the State Government was a quasi-judicial act so that before ordering consolidation of holdings in any estate it was necessary for it to give notice of its intention to the land-owners and others in that estate in order to give them an opportunity to show that actually reconsolidation of holdings was not necessary. In as much as before issuing the impugned notification under which reconsolidation of holdings is being made in the estates to which these writ petitions relate, the State Government made 110 such enquiry, the notification made by it under Sub-section (1) of Section 14 was liable to be struck down.

Lastly it was submitted that the State Government in issuing the impugned notification was acting mala fide because there was no necessity for reconsolidation and its real object is to deprive the village proprietors of some of their land in order to provide more land for the use of the Gram Panchayats and for extension of abadi sites to be made available to the non-proprietors.

5. These contentions will now be considered in some detail. As regards No. 1, there is no doubt that any scheme of consolidation of holdings involving necessarily their rearrangement and amalgamation with a view to reducing their number involves some interference with the fundamental rights of citizens to hold property. In this connection learned Counsel for the Petitioners referred to the observations of Sarkar, J. speaking for the majority of the learned Judges of the Supreme Court in Roop Chand v. State of Punjabi Writ Petn. No. 77 of 1957, D/- 10-10-1962 (reported in AIR 1963 SC 1503). The statute under consideration was Punjab Act L of 1948 and it was observed in the penultimate paragraph that that contention that an order made u/s 42 of the Act by the State Government in revision did not affect fundamental rights, was not correct. The object of the scheme of consolidation was to give a person affected by it right in the land allotted to him under the repartition made pursuant to the scheme in the place of his rights in the land which were pooled and which he previously-held, and his original rights to the lands came to an end and rights to the substituted land arose in consequence of the scheme of consolidation being put into force. At the same time, Section 15 of the Act lays down that the scheme prepared by the Consolidation Officer shall provide for the payment of compensation to any owner who is allotted a holding of less market value than that of his original holding for the recovery of compensation from any owner who was allotted a holding of greater value than that of his original holding.

There has been a series of decisions by this a Court in which the challenge to the validity of the Act of its being ultra vires of Articles 19 and 31 of the Constitution has been repelled vide Kure Singh v. State of Punjab AIR 1956 Punj 88; Jagat Singh v. State of Punjab 64 Pun LR 241 : AIR 1962 Punj 221 (FB) and Bhikan v. Punjabi State 65 Pun LR 368 : AIR 1963 Punj 255 (FB). The Act is designed as a measure of agricultural reform and the benefits which such a legislation confers on agricultural economy have been comprehensively stated by their Lordships of their Supreme Court in Attar Singh v. State of U.P. AIR 1959 SC 564 at p. 565 in which case they bad, before them for consideration the very similar provisions of

U.P. Consolidation of Holdings Act, 1954. It is, therefore, too late in the day to challenge the validity of Sub-section (1) of Section 14 of East Punjab Act L of 1948 or of East; Punjab Act L of 1948 on the ground of their being ultra vires of the Constitution.

6. It is correct that Sub-section (1) of Section 14 does not specifically say that consolidation of holdings may be ordered by the State Government in an estate where it has already taken place. According to the learned Counsel for the Petitioners, inasmuch as the statute involves interference with the fundamental rights of citizens, the reasonable interpretation will be that the State Government cannot order consolidation of holdings in an estate again and again. Reference in this connection is made to the interpretation of the term "reasonable restriction" in Article 19(6) of the Constitution as made by The Supreme Court in Chintamanrao v. State of Madhya Pradesh AIR 1951 SC 118 where it was observed that the phrase "reasonable restriction" in Article 19(6) of the Constitution connotes that the limitation imposed on a person in the enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interests of the public. Legislation which arbitrarily or excessively invades the rights cannot be said to, contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality. To the same effect is Dwarka Prasad v. State of U.P. AIR 1954 SC 224 at p. 227.

It is pointed out on behalf of the Petitioners that tenure holders of agricultural land will have no incentive left for improving their lands or adopting better methods of cultivation if by repeated orders made by the State Government for consolidation of holdings they are liable to lose their, lands and get other lands in lieu thereof every few years. There is some force in this argument, but in none of the cases before us was the previous consolidation of holdings made under East Punjab Act L of 1948. As already shown, consolidation of holdings was previously done by co-operative societies functioning under the Cooperative Societies Act, 1912, and the basis of their working was entirely different from the mode of consolidation under East Punjab Act L of 1948 as much as under the former Act consolidation was purely voluntary on the part of the right-holders affected. There is no warrant for holding that consolidation of holdings made by co-operative societies under the Co-operative Societies Act, 1912, was to be immutable or sacrosanct for ever and as a matter of fact under the model by-laws, as mentioned above, every member joining or on being admitted to the society had to sign a statement that even after the possessions had been transferred according to the approved scheme, he would submit to any future partition or rearrangement of the consolidated area approved by two-thirds of the whole number of members of the general meeting. Thus even the by-laws contemplated reconsolidation if necessary.

In each of these writ petitions, there has been an interval of 15 to 20 years between the original consolidation of holdings and the reconsolidation proceedings which are now being impugned, and, in the nature of things, during all this time there must have been cases of succession, partitions and alienations by which some of the holdings and originally consolidated must have been sub-divided. In the circumstances, it appears to me to be futile to say that in many cases necessity would not arise for ordering fresh consolidation under the Act, and as a matter of fact the returns to most of the writ petitions mention that since the previous consolidation of holdings there have been a lot of fragmentation due to inheritance alienations of lands, etc., making thereby fresh consolidation of holdings necessary. I am not therefore impressed with the argument that the reasonable interpretation of Sub-section (1) of Section 14 of the Act must be that reconsolidation of holdings under the Act cannot be ordered in any estate in which it has already taken place under the Co-operative Societies Act, 1912. I find support for this view from certain observations made by Tek Chand, J., in 65 Pun LR 368 at P. 377 : (AIR 1963 Punj 255 (FB) at p. 262). The learned judge in his judgment, which considered exhaustively various provisions of the Act and with which Dua, J., generally agreed, ob-served as follows:

The principal object of the Act is to consolidate the scattered areas belonging to individual owners and to avoid fragmentation. After this object is achieved and repartition is effected and possession accordingly changed, and also the land for common purposes of the village is reserved, the Act achieves its object and the cycle is completed. The right-holders thenceforward are entitled to exercise the various rights of ownership. If, in future, in consequence of transfers or succession, the areas consolidated become disintegrated into small fragments, it is open to the Government to start consolidation of holdings de novo by declaring its intention to make a scheme as contemplated by Section 14 and then let the matter run the whole course of process and procedure provided by the Act.

As a matter of fact Mr. H.S. Doabia on behalf of the State maintained that even if the former consolidation of holdings had taken place under the provisions of Sub-section (1) of Section 14 of the Act it would be open to the State Government to order reconsolidation, and some indication as to the correctness of this view is found in Section 14 of the Act which lays down that possession by the tenure-holders of their holdings as brought about by the repartition in pursuance of the scheme of holdings shall remain undisturbed until a fresh scheme is brought into force. In this connection the learned Counsel for the Petitioners have referred to the interpretation placed by the majority of the learned Judges constituting the Full Bench in 65 Pun LR 368 : (AIR 1963 Punj 255) on Section 36 of the Act. This Section is as follows:

36. A scheme for the consolidation of holdings confirmed under this Act may, at any lime, be varied or revoked by the authority which confines 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.

While interpreting the phrase "at any time" in this provision it was held that in the context it cannot be construed as unlimited in point of duration, unregulated in point of intermittency, and unguided in point of frequency, and that the power to vary or revoke a scheme "at any time" must be read to mean "during the consolidation proceedings", and not after the new record of rights comes into force. Reliance was also placed on Writ Petn. No. 77 of 3957, decided by the Supreme Court on 10-10-1962, (reported in AIR 1963 SC 1503), in which it has been held by the majority of the learned Judges that if once a delegate of the State Government has exercised the delegated powers of the State Government u/s 41 of the Act to hear an appeal, the State Government itself in its power of revision u/s 42 cannot set aside the order so made in appeal. It was sought to be argued by way of somewhat remote analogy that if once the consolidation of holdings is made under the provisions of the Act (50 of 1948) reconsolidation cannot be ordered by a fresh notification under Sub-section (1) of Section 14. However, so far as the present petitions are concerned, it is unnecessary to pronounce on the question whether it would be open to the State Government to order reconsolidation of holdings in an estate where consolidation of holdings has already taken place under the provisions of the Act, because, as already pointed out, the previous consolidation had been made by the co-operative societies functioning, under the Cooperative Societies Act, 1912.

7. The next important contention on behalf of the Petitioners is based on Chapter II of the Act. The arguments in this connection must be noticed in detail as the principal attack against the reconsolidation of holdings hinged on the provisions of this chapter. The preamble to the Act originally stood as follows:

An Act to provide for the compulsory consolidation of agricultural holdings.

But by a subsequent amendment effected by Punjab Act No. 27 of 1960 the following words were added:

and for the assignment or reservation of land for common purposes of the village.

Consolidation of Holdings" is defined in clause (b) of Section 2 as meaning "the amalgamation and the re-distribution of all or any of the lands in an estate or sub-division of an estate so as to reduce the number of plots in the holdings." "fragment" is defined in clause (c) as meaning "a plot of land of less extent than the appropriate standard area determined under this Act." under clause (i) "standard area" in respect of any class of land means the area which the State Government may from time to time determine u/s 5 as the minimum area necessary for profitable cultivation in any particular notified area and includes a standard area revised under the said section.

Chapter II of the Act contains provisions for the determination of standard areas and treatment of fragments. u/s 3, the State Government may specify any estate or sub-division of an estate as a notified area for the purposes of this chapter, and u/s 4, it may, after such inquiry as it deems fit provisionally settle for any class of land in any notified area the minimum area that can be cultivated profitably as a separate plot. The minimum areas so provisionally settled have to be notified and objections invited thereto, and u/s 5, after considering the objections, the State Government shall determine the standard area for each class of land in such notified area u/s 6, all fragments in the local area shall be-entered as such in the record of rights, and notice of every such entry shall be given in the prescribed manner. u/s 7, no person shall transfer any fragment in respect f which a notice has been given unless it becomes merged in a contiguous survey number or recognised sub-division of a survey number. u/s 8, no land in any notified area shall be transferred or partitioned so as to create a fragment u/s 9, the transfer or partition of any land contrary to the provisions of the Act shall be void u/s 10, any owner of a fragment who intends to sell it shall make an application in this behalf to the Collector for determination of its market price and the Collector shall, after hearing the Applicant and the owners of the contiguous-survey numbers or recognised sub-divisions of survey numbers, determine the market price.

Under Section 11, the owner who intends to sell the fragment shall in the first instance offer it to the owners of contiguous survey numbers are recognised sub-divisions of survey numbers, and in case of their refusal to purchase for the price as determined u/s 10, transfer it to the Government for the purpose of the State on payment of that price. Section 12 provided that, when a decree is transferred to the Collector u/s 54 of the Code of Civil Procedure, 1908, for the partition of an undivided estate Assessed to the payment of revenue to the Government in any notified area for which standard areas have been fixed, or for the separate possession of a share of such an estate, no such partition or separation shall be made so as to create a fragment. u/s 13, which is the last Section in this chapter, the State Government or any local authority is not to acquire land so as to leave a fragment.

Now, it is quite correct to say, as maintained by the learned Counsel for the Petitioners, that before consolidation of holdings under the Act is ordered in any estate it would be desirable for the State Government to take action under Chapter II also and, in any event, when consolidation of holdings has been made it would be appropriate to prevent future fragmentation by bringing the provisions of Chapter II into operation. It is, however, necessary to keep in mind Sub-section (3) of Section 1 of the Act which provides that while Section 1 will come into force at once, the remaining provisions of the Act shall come into force in such area and from such date as the State Government may by notification appoint in this behalf, and different dates may be appointed for the coming into force of different provisions of the Act. It is common ground that so far as Chapter II is concerned, it has not been brought into force anywhere in the Punjab. Whether it should have been So brought into force or not in any area in which the remaining chapters of the Act have been brought into force is surely a matter for the administrative decision of the Government and not for judicial determination by the Courts. As laid down in Kishori Lal v. State AIR 1957 Punj 244 at p. 252 the question of power of the legislature but not the question of policy underlying the law is within the ambit of a Court making a judicial enquiry.

Whether the enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve the desired result whether, in short, the legislative discretion, within its prescribed limits, should be exercised in a particular manner, are matters for the judgment of the legislature, and the earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance." The State may be faced with a number of administrative difficulties before it can bring into force Chapter II of the Act and it is neither possible for the Courts to envisage these difficulties not desirable, for them to question the administrative discretion of the State Government. Possibly as suggested by Mr. S.P. Sinha on behalf of the Petitioners in Civil Writ No. 202 of 1963 after the earlier consolidation of holdings, further fragmentation could have been better checked by bringing into force Chapter II of the Act, rather than making the impugned notification No. 8479-A dated the 12th June 1962 for initiating fresh consolidation- operations. But it is not the function of the Courts to offer counsels of perfection to the executive Government. All that need be said in this connection is that it is not essential that Chapter II of the Act be brought into force in any particular area before the State Government takes steps for ordering consolidation of holdings under Chapter III.

8. The third main submission is that before the State Government can issue a notification under Sub-section (1) of Section 14, it is necessary for it to notify as well as to hear objections of the tenure holders concerned to its proposal. Now there is nothing in Sub-section (1) of Section 14 to support this argument and there is not even a suggestion anywhere in the Act that when the State Government chooses of its own motion to make a declaration of its intention to make a scheme for the consoldation of holdings in any estate it may consult the right-holders in that estate. Moreover, Sub-section (2) of Section 14 says that after the notification is published the State Government may appoint a Consolidation Officer, who shall after obtaining in the prescribed manner the advice of the landowners of the estate or estates concerned, and'' of the non-proprietors and the Gram Panchayat, if any, constituted in such estate or estates under the Gram Panchayat Act, (No. IV of 1953) prepares a scheme for the consolidation of holdings in such estate or estates or part thereof as the case may be. It is thus clear that the advice is to be obtained only in connection with the preparation of the scheme.

It was pointed out by the learned Counsel for the Petitioners that u/s 19 the Consolidation officer is required to publish the draft scheme and that any person likely to be affected by such scheme may prefer objections thereto These objections are to be considered by the Consolidation Officer who is to submit the scheme with such amendments as he considers to be necessary, together with his remarks off the objections, to the Settlement Officer (Consolidation). The scheme as amended is again to be published and the Settlement Officer (Consolidation) appointed, u/s 20 is to consider the objections to the scheme or to the amended draft scheme. After the scheme has been confirmed the Consolidation Officer is required u/s 21 to obtain the advice of the landowners concerned before carrying out repartition in accordance with the scheme. Any person aggrieved by the repartition is given an opportunity to file written objections, the decision on which may be appealed against to the, Settlement Officer (Consolidation). A further appeal is provided to the State Government and reference has already been made to Sections 36 and 42 which confer further powers of varying the scheme or the repartition, as the case may be.

The argument based on these various provisions of the Act is that the powers conferred by them are of a quasi-judicial nature and reference, in this connection has been made particularly to, the view of the Full Bench in 65 Pun LR 368: (AIR 1963 Punj 255), so far as the powers u/s 36 of the Act are concerned. It is maintained that if the steps subsequent to the framing of the draft scheme are, quasi-judicial in nature, it would be only reasonable to hold that the initial steps i.e., the making of the notification under Sub-section (1) of Section 14 should also be pre-ceded by a quasi-judicial inquiry.

9. I, however, do not consider that the argument by analogy can avail the Petitioners. It , has ''already been pointed out that the purely voluntary nature of the consolidation of holdings by the co-operative societies registered under the Co-operative Societies Act, 1912, was not found adequate to the needs of the situation and it was considered necessary by Act No. 4 of 1936 to provide (vide Sub-section (2) of Section 3 of that Act) application for consolidation of holdings by 2/3rd of the landowners, provided they represented 3/4th area of the village, was to be deemed to be an application on behalf of all the landowners'' in the estate or sub-division of the estate, and thus a sufficient majority to justify the application. But even this was not found satisfactory as would be apparent from the statement of objects and reasons appended to the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Pill (vide East Punjab Government Gazette Extraordinary dated the 18th October 1948 at p. 602). As held in M.K. Ranganathan v. Govt. of Madras (S) AIR 1955 SC 604 at p. 608 the statement of objects and reasons is certainly not admissible as an aid to the construction of a statute. But it can be referred to for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which he sought to remedy. It was observed in the Statement of Objects and Reasons that the Punjab Consolidation of Holdings Act, 1936 was a defective legislation inasmuch as it did not give sufficient power to Government to undertake compulsory consolidation of holdings, and it was further observed that the new Bill was designed to consolidate holdings in estates compulsorily and, to avoid fragmentation of holdings. it would, therefore, appear that Sub-section (1) of Section 14 of the new Act advisedly did not make any provision for consultation with the tenure holders concerned before the State Government made the notification for consolidation of holdings in that estate. There is, therefore, no force in the contention that such an inquiry should have been held before making

the impugned, notifications. While it is correct that Notification No. 8479-A, dated the 12th June, 1962, copy of which forms Annexure ''A'' to some of the writ petitions, merely stated that with the object of consolidating holdings. in the estates mentioned in the notification for the purpose of better cultivation of land therein, the Government declared of its own motion its intention to make a scheme for the consolidation of holdings in such estates, and there was nothing in the notifications to indicate that any inquiry had been made by Government before making them, yet for the reasons given above it must be held that it was not incumbent on Government to make any such inquiry.

Mr. M.K. Sharma, counsel for the Petitioners in Petn. No. 5 of 1963 Bakhshish Singh v. State of Punjab pointed out to paragraph 9, in which the Respondents were expressly called upon to swear affidavit setting out the conditions and circumstances under which they had introduced consolidation in the village concerned (Giaspura, Tehsil and District Ludhiana) oven though the land had already been consolidated. But since it was not incumbent upon the State to make any such inquiry, it could not be required to disclose if any inquiry by it had actually been made or not.

10. There remains the argument that the two "Notifications are liable to be struck down on ac- count of being mala fide. Now, in none of these petitions is there any specific allegation as to which particular officer of the State Government has acted mala fide, and the allegations of mala fide are of course strongly denied by the State ,in the returns furnished to each of the writ petitions. It is in the nature of things impossible to come to any firm conclusion about the mala fides merely on the basis of a vague and general allegation. All that is said is that there was no actual need for consolidation of holdings in any of their estates and the notification was issued with the ulterior motive of providing free land to the non-proprietors and for enhancing the income of the Panchayats. In Civil Writs Nos. 859 of 1962 and 5 and 201 of 1963, there is no allegation that since prior consolidation of holdings which took place sometimes in the 40s'' there has been no further fragmentation.

In Civil Writs Nos. 135, 214, 319 and 320 of 1963 while it is alleged by the Petitioners that no fragmentation of any consequence has taken place since the prior consolidation, the positive reply to the corresponding paragraph in the written statement to each of these petitions is that during the interval there has been a lot of fragmentation due to inheritance and alienation of land by sales etc. On this disputed question of fact it is very unlikely that the State to which the revenue records are available will make an incorrect statement.

M.B.S. Jawanda on behalf of the Petitioners in Civil Writ No. 1666 of 1962 had in fact made a categorical statement in paragraph 2 of his petition that during the 20 years elapsing after the previous consolidation, no further division had taken place in the village. The State of Punjab and others (Respondents 1 to 4) pointed out that prior to the consolidation operations under the impugned notification there were 1960 blocks, or as they are technically known "tacks" while under the proposed consolidation scheme there are only 432 "tacks". Mr. Jawanda then referred to a counter affidavit filed by Bahadur Singh, one of the Petitioners, to the effect that previously there were 325 blocks and in this connection Annexure ''B'' was filed, which is a extract from the Khatauni papers according to the consolidation of holdings done in the year 1940-41. But this document is entirely useless to show as to what was the number of blocks in the year 1962.

It is, therefore, safe to conclude that in the estates with which we are concerned in these writ petitions, there had been further sub-division and, fragmentation, of holdings after the previous consolidation made by the co-operative societies under the Co-operative Societies Act, 1912, and in the circumstances I do not see how it can be argued that the reconsolidation operations are not actually necessary for the purpose of consolidation of. holdings, or that Government is actuated by any object extraneous to that appearing in the impugned notifications viz., the consolidation of holdings and: better cultivation of lands in those estates.

11. Mr. M.R. Sharma, on behalf of the Petitioners in Civil Writs 859 of 196 and No. 5 of 1963, attempted to argue that even though no dishonest motive can be imputed to the authorities, the impugned notifications having apparently been made without any inquiry must be held to be mala fide in the sense that the necessary care and caution was not exercised before making the notifications. In this connection he relied on at passage in Luchhman Singh v. I.G. of Police AIR 1956 Pepsu 19 at p. 20 which is to the following effect:

Even though no dishonest motive can be imputed, the order may yet be mala fide if it is bad for want of necessary care and caution, or is passed for some purpose other than the one for which it could have been made.

I, however, do not think that the, learned Judge in that case meant to lay down any such extreme proposition that any order which is made, without the necessary care and caution is a mala fide order, because that would be imputing mala fides to any order which the appellate authority chooses to upset a proposition which is untenable on the face of it. So far as a purely administrative order is concerned, such as a notification under Sub-section (1) of Section 14 of the Act, the question of mala fides of the authority making it does not arise.

Mr. Doabia contends that the question of mala fides does not arise and in this connection he referred to Joginder Singh v. State Civil Writ No. 127 of 1961 decided by a Full Bench of this Court on 9-1-1963 and which is reported as 1963 Doabia''s Election Cases 56 : AIR 1963 Punj 280. There the Court had before it for consideration the provisions of Sections 14 and 16 of the Punjab Municipal Act, 1911. Section 14 conferred on the State Government the power that any time, for any reason which it may deem to affect the public interests, or at the request of a majority of the electors, by notification, direct that the seat, of any specified members, whether elected or appointed, shall be vacated on a given date, and in such case, such seat shall be vacated accordingly. Dulat, J. speaking for the Court held that action taken by the State Government u/s 14 was not judicial or quasi-judicial so that no question of the observance of any rule of natural ''justice or of mala fides could arise. On the other hand Section 16 of that Act which also gave the State Government the power to remove any member of the municipal committee under certain circumstances had a proviso to the effect that before the State Government took action under this Section the reasons for his proposed removal shall be communicated to the member concerned and he shall be given an opportunity of tendering an explanation in writing. It was held that if the State Government had taken action not in the public interest but because of some extraneous considerations, its order could have been struck down on the ground of being mala fide.

12. Holding, as I do, that the State Government making a notification under Sub-section (1) of Section 14 of the Act No. 50 of 1948, acts in a purely administrative capacity, the question of its being actuated by mala fides is really irrelevant, but as the learned Counsel for the Petitioners have argued the point at considerable length, some brief observations may be made. It is said that the real object of the State Government in ordering reconsolidation was to deprive the proprietors in, the estates concerned of some of their lands with a view to provide for extension of Abadi for the use of non-proprietors AS well as for enhancing the income of the Gram Panchayats. In the returns furnished by the State to most of these writ Potions it is admitted that some move area of land '' under the draft scheme is made available for allotment to the Gram Panchayats for common purpose of the village and for extension of the Abadi for the use of the non-proprietors. Now these are not objects extraneous to the Act. Section 18 of the Act so far as it is material is an follows:

18. Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the consolidation Officer to direct:

(a) that any land specifically assigned for any common purpose shall cease to be so assigned and to assign any other land in its place;

* * * *

(c) that if in any area under consolidation no land is reserved for any common purpose including extension of the village abadi, or if the land so reserved is inadequate to assign other land for such purpose.

The term "common purpose" as it stood in the Act before its amendment by Punjab Act 27 of 1960 was defined as follows in clause (bb) of Section 2:

''common purpose'' means any purpose in relation to any common need, convenience or benefit of the village.

Rule 16, as inserted by Punjab Government notification No. 933-D-56/369 (CH dated the 3rd March 1956, in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, provided that the area may be reserved for the common purpose of extension of abadi for proprietors and non-proprietors u/s 18(c) of the Act and divided into plots of suitable sizes, and such plots in the case of non-proprietors including Harijan families shall be allotted without payment of compensation. In AIR 1956 Punj 88 a Division Bench of this Court held that.

the non-proprietor has a vested interest in Shamilat-deh and he plays an important part in the village economy. Therefore, where residential sites are provided to non-proprietors it cannot be said that the land of the proprietors is being appropriated for & use which is not the use of the entire village.

The argument that such a reservation amounts to a contravention of the Constitution or that it can be considered as an appropriate of private property by the State was repelled. By notification No. 459-D-57/7131 dated the 9th April, 1957, a new sub-rule was inserted in Rule 16 as under:

16(ii) In an estate or estates where during consolidation proceedings there is no Shamilat deh land or such land is considered inadequate, land shall be reserved for the village Panchayat, and for other common purposes, u/s 18(c) of the Act, out of the common pool of the village at a scale prescribed by Government from time to-time. Proprietary rights in respect of land, so reserved (except the area reserved for the extension of abadi of proprietors and non-proprietors) shall vest in the proprietary body of the estate or estates concerned, and it shall be entered in the column of ownership of record of rights as (jumla malikan wa digar haqdaran arazi hasab rasad raqba). The management of such land shall be done by the Panchayat of the estate or estates concerned on behalf of the village proprietary body and the Panchayat shall have the right to utilise the income derived from the land so reserved for the common needs and benefits of the estate or estates concerned.

The Full Bench in Munsha Singh v. State of Punjab 62 Pun LR 1 : AIR 1960 Punj 317 held that reservation of land in consolidation proceedings, for extension of abadi and giving it to non-proprietors, did not go beyond the scope of Section 13(c) or any other provision of the Act. But the majority of the judges constituting the Full Bench were of the opinion that assigning the land to the Panchayat that its income be Used for some common purpose was beyond the scope of the Act. The Legislature promptly stepped in and rectified the situation by amending.

(i) the preamble of the Act by the addition I of the words "and for the assignment or reservation of land for common purposes'' of the village"; and

(2) the definition of "common purpose" in clause "(bb) by adding the words'' "and include the following purposes:

(i) extension of the village Abadi; and

(ii) providing income for the Panchayat of the village concerned for the benefit of the village community.

The vires of the Act as amended by Act No. 27 of 1960 were further considered by the Full Bench in 64 Pun LR 241 : (AIR 1962 Punj 221) and it was held that the legislation being a measure designed to promote agrarian reform was not ultra vires the Constitution. Having regard therefore, to the law as amended by the various authorities quoted above, it is futile to argue that even if the objects of ordering reconsolidation are to provide land for extension of the village Abadi for use of the non-proprietors or for enhancing the income of the Gram Panchayat, such objects are ulterior to the Act. The attack to the impugned notifications on the ground of mala fides, therefore, fails.

13. There remain to be considered some minor points which were urged in certain of the writ petitions only. Thus, on behalf of the Petitioners in Civil Writ No. 5 of 1963, it was pointed out that their village Giaspura was 3 or 4 furlongs from the octroi post of Ludhiana, and that the land in this village being suburban was worth Rs. 20,000/- per acre and the authorities merely wanted to deprive the proprietors of some of their lands with a view to benefit the Panchayats Harijans and non-proprietors. The reply by the State after of course denying any ulterior motive, was that the land which was of high value in the village has been kept intact in the scheme and will be allotted to the same owners during consolidation. The right-holders who were adversely affected by the draft scheme have ample opportunities to seek redress under Sections 19, 20, 21, 36 and 42 of the Act, reference to which has already been made.

Mr. Jawanda on behalf of the Petitioners in Civil Writ No. 1666 of 1962, referred to the allegation in paragraph 5 of his petition to the effect that there were about 700 valuable trees in the holdings of the Petitioners and other landowners, while the consolidation authorities had not (sic) valued only 100 of them and had not valued other trees. In the return filed on behalf of the Respondents this assertion was not admitted, and it was stated that 514 fruit and other ordinary trees had been valued at the time of publication of the scheme leaving only small ordinary trees as advised by the right-holders pre-sent at the time of publication of the scheme. some other grievances of individual right-holders were also mentioned, but as already stated the Act contains ample provision for representation by the aggrieved right-holders to the appropriate authorities, and for rectification of these grievances at, various stages.

Mr. B.S. Jawanda on the basis of Krishan Khanna v. State of Punjab 63 Pun LR 593 at p. 598 : AIR 1962 Punj 32 at p. 36 pointed out that although where facts were disputed, the High Court would be reluctant in proceedings under Article 226 of the Constitution to give any decision with regard to them, but where it is possible to arrive at a conclusion on '' documents and other material, the genuineness and authority of which cannot be doubted, there can be no bar to determining a question of fact for the purpose of granting relief. In the case argued by him, however, there is so much dispute as to matters of fact hinging on what is stated in the revenue records and what may exist at the spot, that it would be quite inappropriate to go into the disputed questions of fact as regards the individual right-holders, particularly when the Act itself provides ample machinery for the redress of those grievances, to which recourse has not been taken by the Petitioners.

14. Finally Mr. M.R. Sharma, learned Counsel for tho Petitioners in Civil Writs Nos. 859 of 1962 and 5 of 1963 put forward the objection that the levy of consolidation fee by the State Government in respect of reconsolidation operations was illegal. The matter is not touched at all in writ petition No. 859 of 1962, and the question of fees is referred to only incidentally in writ petition No. 5 of 1963, the allegation in paragraph 4 being that the land-owners are required to pay consolidation fee at the rate of Rs. 1/2/- per bigha which is many times more than in the year 1940. In the corresponding paragraph of the return it is admitted that consolidation fee was being charged at Rs. 5/- per acre according to rules. The question of the fee being ultra vires is thus not really being raised even in this petition and it would not be fair to the Respondents to permit it to be raised in the course of arguments.

15. Having regard to the circumstances in each of these writ petitions, J can find no justification for interference under Article 226 of the Constitution and I would dismiss each of them. But as the principal legal point involved was one of first impression, I would leave the catties to bear their own costs. The stay orders made in each case are vacated.

P.C. Pandit, J.

16. I agree.

