

(1989) 09 PAT CK 0017

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2502 of 1988

Kalika Kuar @ Kalika Singh

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 25-09-1989

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 10, 10(1), 10(2), 10(6), 10A
Bihar Land Reforms Act, 1950 — Section 12, 13, 35
Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 7 Rule 11(d), 9
Constitution of India, 1950 — Article 124, 13, 14, 19, 19(1)(f)
Contract Act, 1872 — Section 56
Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 148
Evidence Act, 1872 — Section 112, 4, 41, 42
Specific Relief Act, 1963 — Section 31
Transfer of Property Act, 1882 — Section 54

Citation : (1989) PLJR 1203

Hon'ble Judges : S.B. Sinha, J;S. Hoda, J;P.S. Mishra, J

Bench : Full Bench

Advocate : Vindhya Keshari Kumar and M/s Basudeo Prasad, Kamal Nayan Choubey, Sunil Kumar, Subhash Chandra Dubey, Arbind Nath Pandey and Mrs. Ranjana Sinha--Amicus Curiae, for the Appellant; Ram Balak Mahto and K.N.P. Singh, for the Respondent

Final Decision : Allowed

Judgement

P.S. Mishra, J.—Petitioner herein has moved this Court for a writ in the nature of certiorari for quashing the order dated 2.4.1987 passed by the Joint Director of Consolidation Bihar, Patna, dated 19.11.1984 of the Deputy Director of Consolidation, Muzaffarpur, and dated 21.8.1980 of the Consolidation Officer, Baruraj, on grounds, inter alia, that they are not competent to decide a pure question of title and that they have acted without jurisdiction in ignoring a Civil Courts' decree recognizing a gift with respect to land in dispute. Respondents were noticed to show cause and when after their appearance the case was heard by a Division Bench on 25.1.1989 and on 17.2.1989, it was referred to a Full

Bench and accordingly heard. Besides learned counsel for the parties, Mr. Basudeo Prasad and Mr. Kamal Nayan Choubey, learned Advocates have addressed the Court on the questions of law. Learned Advocate General has argued on behalf of the State.

2. The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (Bihar Act XXII of 1956) (hereinafter to be referred to as "the Act") received the assent of the President of India on the 6th September, 1956 and was published in the Bihar Gazette, of the 10th October, 1956. The Act which has purported to provide for the Consolidation of Holdings and Prevention of Fragmentation has defined a "holding" to mean a parcel or parcels of land held by a Raiyat and forming the subject matter of a separate tenancy, "land" to mean agricultural land including horticultural land, Kharaur land, land with bamboo clumps, pasture land, cultivable waste land, homesteads, tanks, wells and water-channels; and a "Raiyat" to mean a person who has acquired right to hold land for the purpose of cultivating it by himself or by members of his family or by hired servants or with the aid of partners including the successors-in-interest of persons who have acquired such a right, a village headman in respect of his private holding in the district of Santhal Parganas, a Mundari Khunt Kattidar and a Bhuinhar in the areas to which the Chota Nagpur Tenancy Act, 1908 applies. It has defined "Consolidation" to include rearrangement of parcels of land comprised in a holding or in different holdings for the purpose of rendering such holding or holdings more compact, and "fragment" to mean a piece of land being in area less than the standard area determined in section 30 thereof. Chapter II of the Act has dealt with consolidation of holdings. Section 3 thereof states that with the object of effecting consolidation of holdings for the purpose of better cultivation of lands in any area, the State Government may, after such enquiries as it may deem fit, by notification in the official Gazette, declare its intention to make a scheme for consolidation of holdings in that area and make publication of the notification by beat of drum in the villages comprised in the notified area, by copies of the notification hung up at the offices of all the Gram Panchayats, the police stations, the offices of the Anchal Adhikaris and the Village Cutcharies of the State Government. There has, however, been several amendments to the Act including in section 4, thereof which originally provided that during the period commencing from the date of the publication of the notification u/s 3 to the date when the scheme of the Consolidation came into operation u/s 14 in any notified area, no suit or other legal proceeding in respect of any land in such area would be entertained in any court and in calculating periods of limitation applicable to suits and proceedings, such periods would be excluded, and all suits and proceedings pending in any court, in respect of any land in such area would remain pending and would thereafter be dealt with in conformity with the provisions of the Act, but nothing would apply to any proceeding under Chapters XI and XII of the Code of Criminal Procedure, 1898 or to any suit or proceeding unless such suit or proceeding involved transfer of land from one person to another. Bihar Act 27 of 1975 and

Bihar Act 35 of 1982, however, have changed Section 4 substantially. It at present provides:--

4. Effect of notification u/s 3(1) of the Act:--

Upon the publication of the notification under sub-section (1) of section 3 in the official Gazettee the consequence, as hereinafter set forth shall, subject to the provisions of this Act, from the date specified in the notification till the close of the consolidation operation, ensue in the area to which the notification relates, namely:--

(a) the district or part thereof, as the case may be, shall be deemed to be under consolidation operations and the duty of preparing and maintaining the record-of-rights and the village map of each village shall be performed by the Director of Consolidation, who shall prepare or maintain them, as the case may be, in the manner prescribed;

(b) no suit or other legal proceedings in respect of any land in such areas shall be entertained in any court and in calculating period of limitation applicable to such suits and proceedings such period shall not be counted :

Provided that nothing in this clause shall apply to any proceedings u/s 48(E) of the Tenancy Act, 1885 (Act 8, 1885) and to the proceedings relating to the recording of the titles of Bataidars;

(c) every proceeding for the correction of record's and every suit and proceedings in respect of declaration of rights or interest in any land lying in the area or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any court or authority whether of the first instance or of appeal, reference or revision, shall on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending stand abated :

Provided that if the State Government empowers any other officer appointed under this Act to dispose of any proceeding relating to survey settlement operations under the provisions of Chapter X of the Bihar Tenancy Act, 1885 (Bihar Act VIII of 1885), or chapter 12 of the Chotanagpur Tenancy Act, 1908 (Bengal Act 6, 1908) or Santhal Parganas settlement Manual, 1872 (Manual 3, 1872) and transfer such proceeding to such officer for disposal, then the proceeding shall not abate or shall not be considered to have been abated :

Provided also that no such order shall be passed without giving to the parties notice by post or in any other manner that may be convenient and after giving them an opportunity of being heard:

Provided further that such abatement shall be without prejudice to the rights of the persons affected to agitate the right or interest in the said suits or proceeding before the appropriate consolidation authorities under and in accordance with the provisions of this Act and the rules made there under :

Provided that the State Government may, by notification in the official Gazette exempt any such proceeding, suit, appeal reference or revision or any class of them, if in its opinion their abatement is not in public interest, and is not necessary for the purposes of this Act.

Provided further that nothing in this section shall apply to any proceedings under (sections 144 of 148 of Chapter X of the Code of Criminal Procedure, 1973 (Act 2 of 1974) the Bihar Tenants Holdings (Maintenance of Records) Act, 1973 (Bihar Act 28 of 1973), section 48-E of the Bihar Tenancy Act, 1885 (Act VIII of 1885) and the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Act XII of 1962).

3. After providing for a bar to the suits or proceedings in any court and abatement of pending proceedings and suits in respect of declaration of rights of interests in any land lying in the area or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under the Act, as a first step in the execution of the scheme a provision has been made in section 8 of the Act for the preparation of up-to-date record of rights before consolidation.

4. Section 8 states that after the publication of a notification u/s 3 an up-to-date record of rights in respect of lands comprised in the notified area together with a map shall be prepared in accordance with the provisions of Chapter X of the Bihar Tenancy Act, 1885 (Act 8 of 1885) or as the case may be chapter XII of the Chotanagpur Tenancy Act, 1908 (Bengal Act 6 of 1908) or Santhal Parganas Settlement Regulation, 1872 (Regulation 3 of 1872) or the Bihar Tenants Holdings (Maintenance of Records) Act, 1973. Subsection (2) of section 8 of the Act, after some amendments, provides that where in respect of lands comprised in the notified area map and record of rights have been prepared and preliminary or finally published under the provisions of Chapters X and XII of the Bihar Tenancy Act and the Chotanagpur Tenancy Act respectively, as the case may be, or Santhal Parganas Regulation within twenty years preceding the date of the publication of the notification u/s 3 of the Act, such map and record of rights shall be deemed to be up-to-date map and record of rights prepared under subsection (1). Section 9 of the Act, which also has undergone some amendments, provides for preparation of a register in the prescribed form and states in subsection (1):--

When the record of rights and map have been or are deemed to have been brought up-to-date there shall be determined, the valuation of each plot after taking into consideration the opinion of the Village Advisory Committee, of such raiyats as may be available and after taking in to consideration its productivity, location and availability of irrigation facilities, if any.

5. By an amendment, section 9A has been introduced which provides for preparation of statement of principles.

6. Section 10 is a comprehensive provision about publication of register of lands

and statement of principles and objections thereon, which states as follows:--

(1) The registers prepared under subsection (2) of section 9 and the statement of principles prepared u/s 9A shall be published in the manner prescribed and shall remain published for not less than 30 days.

(2) Any person may, within 45 days of the date of the publication of the subsection (1) file before the Assistant Consolidation Officer objection in respect thereof, disputing the correctness and nature of entries in the records or in the statement of principles.

(3) The Assistant Consolidation Officer shall, after hearing the persons interested and after such enquiries as may be necessary, decide the objection, settle the disputes or correct the mistake, as far as may be, by way of compromise between the parties appearing before him and pass orders on the basis of such compromise.

(4) All cases which are not disposed of by the Assistant Consolidation Officer under Sub-section (3), all cases relating to valuation of plots and all cases relating to valuation of structures, trees, bamboo-clumps, well or other improvements for calculating the amount thereof, and its apportionment amongst co-owners, if there be more owners than one, shall be forwarded by the Assistant Consolidation Officer to the Consolidation Officer who shall dispose of the same in the manner prescribed.

(5) Where objections have been filed against the statement of principles under sub-section (2) of section 10 the Assistant Consolidation Officer, after affording opportunity of being heard to the parties concerned and after taking into consideration the view of the Village Advisory Committee, shall submit his report to the Consolidation Officer who shall dispose of the objections in the manner prescribed.

(6) Any person aggrieved by an order of the Assistant Consolidation Officer or Consolidation Officer under sub-sections (3), (4) or (5) may, within 30 days of such order, file an appeal before the Assistant Director of Consolidation, whose decision; except as otherwise provided by or under this Act, shall be final.

(7) The Consolidation Officer shall and the Assistant Director of Consolidation may, where necessary, before deciding an objection or an appeal, make local inspection of the unit, after giving due notice to the parties concerned and the Village Advisory Committee.

7. Section 10A states that no question in respect of any entry made in the map or register prepared u/s 9A relating to the Consolidation area which might or ought to have been raised u/s 10 but has not been raised, shall not be raised or heard at any subsequent stage of the consolidation proceeding.

8. Section 10B , however, has recognized certain matters relating changes and transfers affecting rights or interests, records in the register of lands published

under sub-section (1) of section 10 of the Act for which cause of action had not arisen when proceedings under sections 8 and 9 were started or were in progress and states that all matters concerning such changes and transfers may be raised before the Consolidation Officer within 30 days of the cause of action, but not later than the date of notification u/s 26A or under subsection (1) of section 4A , which sections provide for the closure of the consolidation operations by issuing a notification in the official gazette and the cancellation of the notification u/s 3 in respect of the whole or part of the area specified in the notification.

9. Section 10C has envisaged a re-publication of the register of lands in certain cases and section 10D has empowered the Deputy Director of Consolidation, for reasons to be recorded in writing to order for the re-publication of the register of lands or the statement of principles or both to give to any person opportunity to file before the Assistant Consolidation Officer objections, notwithstanding the provisions u/s 10A , on being satisfied that in the register of lands published under sub-section (1) or corrected under sub-sections (3), (4) and (5) or (6) of section 10 , a substantial number of raiyats or under-raiyats, for sufficient and unavoidable reasons, could not avail of the opportunity to place their claims under sub-section (2) of section 10 of the Act.

10. Section 10 has then reiterated the bar to objections in the following words--

The provisions of sub-sections (2), (3), (4), (5), (6) and (7) of section 10 shall mutatis mutandis apply to the objections or any matter raised under sections 10C and 10D but the dispute which has been decided earlier in accordance with the provisions of sub-sections (3), (4) or (5) or (6) of section 10 shall not be re-opened on republication of the register of lands or the statement of principles or both.

11. Section 11 of the Act, which also has undergone certain amendments, is a provision for preparation of the draft scheme for consolidation.

12. Section 12 of the Act, after some amendments, provides for the publication of the draft scheme and giving a general notice so that all the raiyats may obtain relevant extract of the scheme free of cost and for filing of objection, if any, subject to the provisions contained in section 10A , by any person whose right or interest is substantially prejudiced or affected by the draft consolidation scheme or who disputed the propriety or correctness of the entry in the draft consolidation scheme or the extract furnished there from.

13. Section 12A is a provision for the disposal of objections u/s 12 and appeal against the order disposing of the objections and the disposal of the appeal followed by section 12B , which on demand and satisfaction that material injustice is likely to be caused to the raiyats or under-raiyats in giving effect to the draft consolidation scheme, has empowered the Consolidation Officer or the Assistant Director of Consolidation, as the case may be, for getting a fresh draft consolidation scheme prepared.

14. Section 13 of the Act provides for the confirmation of the draft consolidation scheme and its publication. It states besides other things that the "draft consolidation scheme so confirmed shall be published in the unit, and except as otherwise provided by or under this Act, shall be final." Confirmation of the scheme as provided in section 15 of the Act, has to be followed by a certificate of transfer.

15. A brief examination of the language of section 13 at this stage may be helpful. Subsection (1) of section 15 the Act has remained unchanged which runs as follows :--

The Consolidation Officer shall grant to every raiyat to whom a holding has been allotted in pursuance of a scheme of consolidation a certificate in the prescribed form containing the prescribed particulars. Such certificate shall be conclusive proof of the title of such raiyat to such holding and he shall be liable for payment of such rent as may be specified in the certificate,

Sub-section (2) of this section was originally worded thus--

A similar certificate of transfer shall be granted to every under-raiyat having a right of occupancy in any land allotted to him in pursuance of the scheme and the certificate shall be conclusive proof of the title of such under-raiyat to such land and he shall be liable to payment of such rent and to such person as may be specified in the certificate.

This, however, has been amended by Bihar Act 27 of 1975 and at present reads, thus--

A similar certificate of transfer shall be granted to every under-raiyat, whether having a right of occupancy or not in any land allotted to him in pursuance of the scheme and the certificate shall be conclusive proof of the title of such under raiyat to such land and he shall be liable to payment of such rent and to such person as may be specified in the certificate.

16. A certificate of transfer in the hands of a raiyat or an under-raiyat has been made conclusive proof of the title of such raiyat. Words "title" and "conclusive proof" are noticed nowhere except sub-sec. (b) of sec. 4 in the Act until section 15 is reached. Section 16, however, has recognized the effect of the confirmation of the scheme in the following words--

When certificates of transfer have been granted to the raiyats and under-raiyats u/s 15, the scheme confirmed u/s 13 shall, in supersession of up-to date record-of-right prepared u/s 8, shall be deemed to be the record of rights prepared and finally published under Chapter X of the Bihar Tenancy Act, 1885 (VIII of 1885), or as the case may be Chapter XII of the Chotanagpur Tenancy Act, 1908 (Bengal Act VI of 1908), or the Santhal Parganas Settlement Regulation, 1872 (Reg. III of 1872)"

And section 17 has recognized a raiyat's right to be the same in the land allotted

to him in pursuance of the scheme of consolidation as he had in his original holding.

17. There is a comprehensive revisional power recognized in the Director of Consolidation in section 35 of the Act. This states :--

The Director of Consolidation may of his own motion or on the application of any party or on reference being made by any subordinate authority, call for and examine the record of any case decided or proceedings taken by such authority for the purpose of satisfying himself as to the regularity of the proceeding or as to the correctness, legality or propriety of any order passed by such authority in the case or proceedings, and may after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit.

Thereafter section 36 says, no appeal or revision shall lie from any order passed under this Act, as provided in the Act from any order passed under the Act, and section 37 reads--

No civil court shall entertain any suit or application to vary or set aside any decision or order given or passed under this Act with respect to any other matter for which a proceeding could or ought to have been taken under this Act.

(above is a quotation from the authentic English translation published by the Superintendent, Secretariat Press, Bihar, Patna which evidently is a tardy reproduction of the translation of the Hindi legislation) which reads--

18. It is noticeable that section 15(1) of the Act which has remained unchanged, contains the expression "title", which expression figured in section 37 as it was originally enacted. Section 37 of the Act before amendment provided, thus--

No Civil Court shall entertain any suit or application to vary or set aside any decision or order given or passed under this Act, unless such decision or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto.

By the amendment by Act 27 of 1975, adjudication in respect of title, subject to the meaning that this word may get for the purpose of the Act, has not been left for the courts to decide, in case a decision is taken in course of the consolidation proceeding.

19. I have prospected a little into the provisions of the Act to understand whether the adjudication of disputes with respect to land defined in the Act is for the limited purpose of the consolidation only or not and whether various authorities empowered to decide inch disputes by one or the other provision of the Act are courts/tribunals/authorities of limited jurisdiction or not. I have done so also for knowing, whether the Act has created a parallel adjudicatory mechanism to the civil courts or not.

20. I shall dilate into this aspect of the matter a bit later, because according to

me certain historic imperatives have to be recalled and certain laws relating to the lands in the State have to be noticed. Ever since the British Crown established its rule in the country, originally as a part of the State of Bengal and later a combine of the States of Bihar and Orissa and finally as the State of Bihar as an entity. three different land cultures have flourished in the State. They are located in well defined geographical contours and are easily identifiable as areas now under the Bihar Tenancy Act, the Chotanagpur Tenancy Act and the Santhal Parganas Settlement Regulations. A proprietor stood above a Thikedar or a tenure holder, who stood above a tenant or a raiyat who was ordinarily a tiller of the soil having horticulture or agriculture upon a parcel or parcels of land. Raiyats in course of time engaged or hired labourers who in due time became occupancy raiyats from share croppers or cultivators for fixed rent paid in kind or cash, without, however, displacing the raiyats, intermediaries or proprietors. Types of rights and interests in the land were statutorily recognized and a peculiar land ownership mechanism existed with the tiller at the bottom and the proprietor at the top with intermediaries in between having their distinct but interdependent rights and interests in the land.

21. The Bihar Land Reforms Act, 1932 (sic) came to remove in one sweep proprietors and intermediaries who operated between the State and the raiyat. It abolished every intermediary interest between the State on the one hand and the Raiyat on the other hand, but at the same time recognized the existence of Bakasht of the intermediary in the shape of homestead or agricultural or horticultural holdings in Khas possession of the intermediaries. Intermediaries were recognized as tenants under the State for such lands in their Khas possession and, thus, they also became raiyats like any other raiyats under them.

22. Independent India, however, would not afford such a system except at the risk of denying social and economic equality or any semblance thereof to men and women engaged in agriculture and horticulture.

23. Definition of "Raiyat" in section 2(14) of the Act meaning primarily a person who has acquired a right to hold lands for the purpose of cultivating it by himself or by members of his family or by hind servants or with the aid of partners including the successor-in-interest or persons who bare acquired such a right as also a village headman in respect of private holding, if any, in the district of Santhal Parganas, a Mundari Khutkattidar or Bhuinhar in the area to which the Chotanagpur Tenancy Act applies has got all essential aids in different provisions of the Bihar Tenancy Act, Chotanagpur Tenancy Act and the Santhal Parganas Tenancy Regulations including Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949.

24. Abolition of intermediary interests in the land, however, was no end to the malady of a marginal cultivator or a tiller who still suffered the indignity of living in abject poverty. A law for the said reason was enacted popularly known as the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 or Ceiling Act, in short. This game with a promise to fix ceiling upon

the area of land in the hands of a tenant or a raiyat who was called a landholder and created a fiction of a family as the landholder, thus, clubbing the lands of the husband with that of the wife or vice versa and denying any separate unit for a dependant except marginally acknowledging some area for them. Share cropping or Bataidari, however, existed in different forms and the Tenancy Acts were amended several times to accommodate their interests and give to them some sort of a right in the land under their cultivation. The Act which intended to consolidate holdings of land in possession of a Raiyat had to take notice of the existence of three different types of laws in the State covered by the aforementioned three tenancy laws and the Land Reforms laws, particularly the Ceiling Act and Section 48B of the Bihar Tenancy Act which recognized the rights of a Bataidar or an under-Raiyat.

25. Ceiling Act and the Consolidation Act were/are so much interdependent or one may say Consolidation Act is so much dependent upon the fixation of ceiling area and distribution of surplus lands acquired from the landholders that any consolidation may not be final and run the risk of being re-opened depending upon the fixation of ceiling area in the hands of each landholder, transferees or successors-in-interest.

26. Both the Ceiling Act and the Consolidation Act have to achieve on the one hand a fair and equitable distribution of lands for agricultural and horticultural purposes with no one getting unreasonably large area in Khas possession and no one deprived of the maximum utilization of land belonging to him. Both the laws, however, exclude the jurisdiction of courts, Ceiling Act, completely in the process of determination of the matters concerning ceiling area, and Consolidation Act as stated therein. They create for the limited purposes envisaged therein a hierarchy of officers who apparently act to decide issues for the limited purposes, but their adjudication becomes final.

27. The Constitution of India has firmly established separation of the Judiciary and the Executive by recognizing in Article 32 in Part III of the Constitution of India a right to move the Supreme Court for the enforcement of the fundamental rights and in Article 226 of the Constitution of India a right to move the High Court for the enforcement of the fundamental rights and other constitutional and statutory rights. It has also recognized the existence of a subordinate judiciary as a mechanism fully separated and controlled by the High Courts in Articles 233 to 236 of the Constitution of India, yet since there has been no strict and rigid separation of the Judiciary from the Executive, notwithstanding one of the directive principles of the State policy as stated in Article 50 in Part IV of the Constitution of India in the following words--"the State shall take steps to separate the judiciary from the Executive in the public service of the State", laws like the Ceiling Act and the Consolidation Act created such adjudicatory schemes in which the civil courts were given no role to play.

28. In Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another, , Bhagwati, J., as he then was, has said--

Now the independence of the judiciary is a fighting faith of our Constitution and hovering over all these provisions like a brooding omnipresence is Article 50 which lays down, as a Directive Principle of State Policy, that the State shall take steps to separate the judiciary from the executive in the public service of the State. This provision, occurring in a chapter which has been described by Granville Austin as "the conscience of the Constitution" and which embodies the social philosophy of the Constitution and its basic underpinnings and values, plainly reveals, without any scope for doubt or debate, the intent of the Constitution-makers to immunize the judiciary from any form of executive control or interference.

Indeed a right to raise a dispute as to a right or interest and claim adjudication by a body completely independent of executive control or any other influence has a foundation deep into the conscience of the people not only in India but everywhere, where the welfare of the people is the primary duty of the sovereign, whether a king or a President.

29. Privy Council in the *Bribery Commissioner vs. Pedrick Ranasinghe* (1965 Appeal Cases 172) had the occasion to deal with a case where certain persons were appointed to constitute a Bribery Tribunal under the Constitution Amendment Act in Ceylon. It has said--

The Constitution is contained in Ceylon (Constitution) Orders in Council, 1946 and 1947. Viscount Radcliffe in *Attorney-General of Ceylon Vs. de Livers* said of the Constitution, "although there are many variations in matters of detail, its general conceptions are seen at once to be those of a parliamentary democracy founded on the pattern of the constitutional system of the United Kingdom.

The Constitution does not specifically deal with the judicial system which was established in Ceylon by the Charter of Justice of 1833 and is dealt with in certain Ordinances, the principal being the Courts Ordinance, cap. 6. The power and jurisdiction of the courts are therefore not expressly protected by the Constitution. But the importance of securing the independence of judges and of maintaining the dividing line between the judiciary and the executive was appreciated by those who framed the Constitution."

The Privy Council has pronounced that the law which provided that appointments could be made of persons who were not judicial officers to constitute the Tribunal was ultra vires and so were the orders passed by persons who constituted the Tribunal without being judicial officers.

30. In *Don John Francis Douglas Liyanage & ors. Vrs. The Queen* (1967 Appeal Cases 259) the Privy Council has once again dealt with the issue of severance of powers between Legislature, Executive and Judiciary. This is a case where an issue, whether the criminal law (special provisions, Act no. 1 of 1962) purported ex post facto to create new offences after the acts complained of had been committed and to alter the rule of evidence and criminal procedure obtaining under the general law at the time when offences were committed in a context

where the intention was manifest to do away with the prohibition under the general law of certain kinds of evidence and further to impose enhanced punishment was involved. In it a question arose whether there was any interference with the exercise by Judges of their judicial power by such appointment by nomination to sit to decide the cases.

31. The said case is an apt illustration of the norms of British justice originally not extended to the colonies but when realized, applied with the same sense of responsibility to them also.

The Privy Council has said--

as has been indicated already, legislation and homines which (sic) is thus directed to the course of particular proceedings may not always amount to an interference with the functions of the judiciary. But in the present case their Lordships have no doubt that there was such interference; that it was not only the likely but the intended-effect of the impugned enactments; and that it is fatal to their validity. The true nature and purpose of these enactments are revealed by their conjoint impact on the specific proceedings in respect of which they were designed, and they take their colour, in particular, from the alterations they purported to make as to their ultimate objective, the punishment of those convicted. These alterations constituted a grave and deliberate incursion into the judicial sphere.

32. There are some co-relations of the directive principles of State policy in Article 50 of the Constitution of India and Articles 13 and 14 of the Constitution of India. Any person aggrieved by encroachment or invasion of his right can always raise a dispute as to interests in a land in a court of law. Specific Relief Act read with the provisions in the CPC and various provisions of the Tenancy laws of the State give to all such persons claiming inheritance, transfer, bequeath, surrender, assignment etc., a right to institute a suit/proceeding in a court of competent jurisdiction. Thus any person's right to seek independent adjudication in a court of law has been recognized by laws under Article 13 of the Constitution. This is a right extended to every person even against the actions of the State. When, however, laws are made creating a mechanism to adjudicate such disputes keeping adjudications by authorities appointed to decide such disputes immune from any judicial review problems arise. It is one thing to say that some sort of judicial review is always available because any order passed by any of the authorities under the Act can always be impugned before the High Court either under Article 226 of the Constitution of India or 227 thereof; and another as noticed by this Court and the Supreme Court in several cases that at least at some stage of a legal proceeding independent and qualified judicial adjudicatory mechanism is made available. However, since this question has to be viewed with more comprehension it is necessary first to examine whether the State Legislature is competent to make such a law which bars a court's jurisdiction or not and whether the authorities under the Act are a court or not. Any examination of a law shall always take one to the constitutional promise of

equality before law and equal protection of law and omnipresent Article 14 of the Constitution shall provide necessary guidance.

33. Items 18 and 65 of the State List delineate the legislative power of the State with respect to land including rights in or over land and jurisdiction and powers of the courts except the High Court and the Supreme Court.

34. In *Brij Bhukan Kalwar and others vs. S.D.O. Siwan and others* (A.I.R. 1955 Patna 1) a Special Bench of this Court considered the validity of certain provisions of the Bihar Act 31 of 1950, also known as Bihar Land Encroachment Act. The Special Bench had the advantage of relying upon Articles 19(1)(f) of the Constitution of India besides other provisions thereof (Article 19 (1) (f) has since been repealed). It has said that the words of item no. 18 read with item no. 65 are comprehensive enough to include the remedial as well as procedural provisions concerned with reliefs in respect of several rights and remedies enumerated in item no. 18; and item no. 18 is wide enough to include rights in land such as rights like full ownership or lease-hold or of such right and rights over the land which include easement and other collateral rights of different nature. It has also said that a rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as a rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for reliefs and for defence with alike protection and without discrimination. The Special Bench has declared, "if the Act is constitutional and valid and if it cannot be regarded as repugnant to the provisions of the existing law, then certainly it was open to the legislature to insert the section in the Act which lays down that no suit shall lie in any Civil Court in respect of any proceedings under this Act. In the CPC we have got S. 41 which lays down that in the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed by or under any other law for the time being in force."

35. In the case of *The State of Bombay vs. Narottamdas Jethubhai and another* (A.I.R. 1951 SC 69) also a question had arisen how expressly or impliedly jurisdiction of the civil court can be barred. It is after reference to section 9 of the Code of Civil Procedure, which states, "The Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred" that the Supreme Court has said :

This section obviously postulates among other things the barring of the jurisdiction of the civil courts by Legislatures with respect to particular classes of suits of a civil nature, and the statute-book abounds in instances in which the jurisdiction of the civil Court is barred under Acts passed by the Central and Provincial Legislatures. There are also many Acts providing that any suit or proceeding concerning the subject-matters of those Acts shall be triable by the Court or Courts specified therein. Such provisions are to be found in a number of

Acts enacted both prior to and after the enactment of the Government of India Act, 1935, and there can be no doubt that the British Parliament while enacting that Act was fully aware of the existing legislative practice obtaining in this country as well as of the fact that the provisions in question were sometimes necessary and therefore it empowered the Central and Provincial Legislatures to make them under Entry 53 of List I and Entry 2 of List II, respectively. This, in my opinion, is the true meaning of these entries, and it also explains why a separate entry was necessary enabling the two Legislatures to legislate with regard to the power and jurisdiction of the Courts in respect of the subject matters mentioned in the three legislative Lists.

A Presidential reference with respect to the Special Courts Bill 1978 has been answered by the Supreme Court in its judgment reported in AIR 1979 SC 478. Speaking on the subject, the Supreme Court has said--"Though the Parliament's legislative competence to create Special Courts, for the purpose in the instant case of trying criminal cases, cannot be denied for reasons set out above, it is necessary to advert to an offshoot of the argument to the effect that, in any event, Parliament has no power to create a court outside the hierarchy of Courts recognized by the Constitution. It was suggested during the course of arguments on the question of legislative competence that the Constitution contains a complete code of judicial system which provides for the Supreme Court at the apex and for the High Courts, the District Courts and subordinate courts next in order of priority. Article 124 provides that there shall be a Supreme Court of India, Article 214 that there shall be a High Court for each State, Art. 231 (1) that Parliament may by law establish a common High Court for two or more States or for two or more States and a union territory while Chap. VI of Part VI of the Constitution provides by Arts 233 and 234, for the District Courts and courts subordinate thereto. To complete the picture, Art. 236 (a) defines a "district judge" to include the judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency Magistrate, additional chief presidency Magistrate, sessions, additional sessions judge and assistant sessions judge. Finally, Art. 237 empowers the Governor to apply the provisions of Chap. VI and any rules made there under to any class or classes of Magistrates. The Constitution having provided so completely, and copiously for a hierarchy of Courts, it is urged that it is impermissible to the Parliament to create a court or a class of courts which does not fall within or fit in that scheme. An important limb of this argument which requires serious consideration is that the creation of a trial court which is not subject to the control and superintendence of the High Court is detrimental to the constitutional concept of judicial independence, particularly when the Bill empowers the Central Government by Cl. 5 to designate the Special Court in which a prosecution shall be instituted or to which a pending prosecution shall be transferred. It is true that the Special Courts created by the Bill will not have the constitutional status which High Courts have because such courts are not High Courts as envisaged by the Constitution. Indeed, there can but be one High

Court only for each State, though two or more States or two or more States and a union territory can have a common High Court. It is also true to say that the Special Courts are not District Courts within the meaning of Art. 235, with the result that the control over them will not be vested in any High Court. But we do not accept that by reason of these considerations, the creation of Special Courts is calculated to damage or destroy the constitutional safeguards of judicial independence. Our reasons for this view will become clearer after we deal with the questions arising under Arts. 14 and 21 but suffice it to say at this stage that the provision in Cl. 10(1) of the Bill for an appeal to the Supreme Court from every judgment and order of a Special Court and the provision for transfer of a case from one Special Court to another (which the Bill does not contain but without which, as we will show, the Bill will be invalid) are or will be enough to ensure the independence of Special Courts. Coupled with that will be the consideration, as we will in course of our judgment point out that only sitting judges of the High Courts shall have to be appointed to the Special Courts. A sitting judge of the High Court, though appointed to the Special Court, will carry with him his constitutional status, rights, privileges and obligations. There is no reason to apprehend that the mere change of venue will affect his sense of independence or lay him open to the influence of the executive. One may also not be unmindful of the benign presence of Art. 226 of the Constitution which may in appropriate cases be invoked to ensure justice".

Speaking as to the violation of Article 14 of the Constitution, the Supreme Court, while disposing of the reference, noticed the law stated in the case of *Maganlal Chhagganlal (P) Ltd. Vrs. Municipal Corporation of Greater Bombay* (A.I.R. 1974 S.C. 2009) and reiterated--

whenever a special machinery is devised by the legislature entrusting the power of determination of disputes to an authority set up by the legislature in substitution of regular courts of law, one should not react adversely against the establishment of such an authority merely because of a certain predilection for the prevailing system of administration of justice by courts of law. In the context of the need for speedy and expeditious recovery of public premises for utilization for important public uses, where delatoriness of the procedure may defeat the very object of recovery, the special procedure prescribed by the two Acts was held not to be really and substantially more drastic and prejudicial than the ordinary procedure of a civil court. The special procedure prescribed by the two Acts, it was observed, was not so substantially and qualitatively disparate as to attract the vice of discrimination.

36. Brother S.B. Sinha, J., has made his own research in the case of *K.P. Verma Vrs. State of Bihar* (1988 P.L.J.R. 1036). He has spoken for the Division Bench, "It is now well settled (sic) the judicial review is a basic feature of the Constitution" and has referred to a judgment by me in a Division Bench in *Awadhesh Kumar Singh vs. State of Bihar* (1988 P.L.J.R. 269) and concurred with the view that unless judicially trained independent persons of proven integrity

are appointed to adjudicate and judicial review is left untrammelled, the litigant public would carry a feeling that the decision making process might be affected by reason of dependence upon the executive.

37. I shall refer to the said judgment also while considering, whether the different authorities under the Act, namely, the Assistant Consolidation Officer, the Consolidation Officer, the Dy. Director or Director are courts or not. I may, however, conclude my discussions on the question of the legislative competence in making special provisions and creating a special adjudicatory mechanism before proceeding further.

38. Authorities aforementioned and the provisions under the Constitution of India establish beyond any shadow of doubt that civil courts' jurisdiction can be barred by a legislation, if it is not constitutionally invalid or bad for want of legislative competence, that an independent adjudicatory mechanism can be provided for matters within the competence of the law making authority and that a legislature while providing for a mechanism different from a regular court of law cannot altogether deny to a litigant a judicial review independent of any executive control or interference, otherwise it shall be hit by discrimination/arbitrariness, and thus by Article 14 of the Constitution of India.

39. Brother S.B. Sinha, J., has again a march over me on the question, whether the authorities under the Consolidation Act are courts or not. His judgment in *Ram Singhashan Pathak vs. K.P. Sinha* (A.I.R. 1989 Patna 39) is available on the subject.

40. I do not, however, propose to adopt a short-cut and propose to discuss in brief some of the provisions of the Act and the case law, why the authorities under the Act be deemed to be courts. Act 27 of 1975 has introduced sections 37A and 37B in the Act. They state that notwithstanding anything to the contrary contained in any other law for the time being in force, the Director of Consolidation, the Dy. Director of Consolidation, the Assistant Director of Consolidation, the Consolidation Officer and the Assistant Consolidation Officer shall be deemed to be courts of competent jurisdiction while hearing objections or appeals or deciding objections under the Act and that they shall have all such powers, rights and privileges while hearing any matter in dispute as are vested in a civil court in respect of enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise and issuing a commission to examine witnesses, compelling any person for production of any document, and punishing a person guilty of contempt. It would have been difficult to sustain the vires of the law empowering the consolidation authorities to decide issues as to rights and interests in the land with any sort of finality had they be not deemed to be courts. Sections 37A and 37B of the Act evidently make them courts within the meaning of the provisions of the Evidence Act as also within the meaning of the provisions of the Contempt of Courts Act, which together make them a court subordinate to the High Court, otherwise their contempt cannot be taken notice of by the High Court.

41. The Commissioner who has been authorized to take evidence has been held to be a court in *Jyoti Narayan vs. Brijnandan Sinha* (AIR 1954 Pat. 289). The Rent Controller has similarly been held to be a court (See AIR 1976 Andh. Pra. 270). The Election Tribunal similarly has been held to be a court (See 1967 All. LJ 5). I am tempted, however, to refer to a judgment of the Supreme Court in *Shri Virindar Kumar Satyawadi Vs. The State of Punjab*, and yet another judgment of the Supreme Court in *Nathu Vs. State of Uttar Pradesh*, . In *Virindar Kumar Satyawadi*'s case it is observed--

There has been considerable discussion in the Courts in England and Australia as to what are the essential characteristics of a Court as distinguished from a tribunal exercising quasi-judicial functions. Vide 1931 AC 275 (A);--"*R.V. London Country Council*, 1931-2 KB 215(B);--"*Cooper v. Wilson*", 1937-2 KB 309(C);--"*Huddart Paikar and Co., v. Moorehead*, (1909) 8 CIR 330 (D); and "*Rola Co., v. The Commonwealth*, (1944) 69 CIR 185 (E). In this Court, the question was considered in some fullness in *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, .

It is unnecessary to traverse the same ground once again. It may be stated broadly that what, distinguishes a Court from a quasi Judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it.

And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court.

42. In *Brajnandan Sinha Vs. Jyoti Narain*, , the Supreme Court has said that in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement.

43. The law, which has crystallized by now, takes finally to the test as to whether the dispute, which is to be decided by it, is in the nature of a civil dispute or not and the procedure for determining such dispute is a judicial procedure or not and if these two are satisfied, whether the decision given by it has got a binding effect or not (See *The Sitamarhi Central Co-operative Bank Ltd. Vs. Thakur Jugal Kishore Sinha*, ; and *S.K. Sarkar, Member, Board of Revenue, U.P., Lucknow Vs. Vinay Chandra Misra*,).

44. Brother S.B. Sinha, J., has taken notice of the abovementioned case in his judgment in K.P. Verma's case (supra) as also in Ram Singhasan Pathak's case (supra). He has also taken notice of the "deemed court" provisions in sections 37A and 37B of the Act in Ram Singhasan Pathak's case (supra) and the effect of the legal fiction in the words of Lord Asquith in East End Dwellings Co. Ltd., vs. Finsbury Borough Council (1952 A.C. 109 at page 132)--

If you are bidden to treat an imaginary state of affairs so real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

45. "Court" is defined in the Evidence Act to include all Judges and Magistrates and all persons except Arbitrators legally authorized to take evidence "Deemed" always means to be treated as if it were. Lord Asquith has been quoted with approval by the Supreme Court in The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others, ; Commissioner of Income Tax vs. S. Teja Singh (AIR 1959 SC 3(sic)2) and The Additional Income Tax Officer, Salem Vs. E. Alfred, . "Deemed" has been read by the Privy Council, Allahabad High Court and Supreme Court to mean--"when a person is "deemed to be" something the only meaning possible is that whereas he is not in reality that something, the Act requires him to be treated as if he were (See 1920 P.C. 54; 1981 All. L.J. 649; 1988 Lab. I.C. 275 and K. Kamaraja Nadar Vs. Kunju Thevar and Others,).

46. The consolidation authorities under the Act, therefore, are "deemed courts" meaning thereby that by a fiction of law they have to be treated as courts of law. They also appeal to exercise judicial power. "Judicial power" has always been understood as the authority vested in courts and Judges as distinguished from, Executive and legislative power. Attempts to define or identify a "Judge" or a "Court" and to suggest that a Judge and a court are something independent and different from executive and legislature has until now alluded even (sic) in veterans. Yet it has by now come to stabilize that office which is laid to the administration of justice has to be given such independence that it does not in any manner get influenced by irrelevant or extraneous considerations. It is, however, conceded that creation of deemed courts or tribunals with limited or even extensive power to adjudicate and finally decide cases may be created and they can exercise their jurisdiction so long they function within their limits and their acts are scrutinized by the High Court and/or the Supreme Court. In such a situation there is no transgression of constitutional limitation. As in England, in India also an extensive supplement net work of adjudicatory bodies has grown up side by side with the traditional courts of law. A close relationship between the two systems, both because under the ordinary law the tribunals are subject to control by the courts and also because the legislature has in the majority of

cases provided a right of appeal from the tribunals to the courts on any question of law has until now maintained the balance between them. They have stood side by side and strengthened the judicial system. Courts in India have recognized that when any new scheme of social welfare or regulation is introduced, new ad hoc tribunals are set up, rather than recognizing those already existing. In course of time, thus, acts done by administrative tribunals have been recognized as quasi judicial or judicial, because they too have been deciding cases finally, recording findings on facts and in substance discharging the same functions as the courts of law. Yet in Britain as well as in India it has been emphasized that courts and tribunals must be kept free from political influence; and in order to make their independence a reality members of tribunals be independent persons and not civil servants.

47. The Act, however, has left no doubt to the fact that the Consolidation Officer, Assistant Consolidation Officer, Deputy Director of Consolidation or Director of Consolidation are civil servants appointed by the State Government to exercise all such powers and discharge all functions which are assigned to them for the purposes of the Act. It is obvious that they cannot be independent of the executive control or the political Government. They no doubt function as courts and their decisions have a finality atleast for the purposes of the Act, yet they do not appear to have any judicial training, except that when called upon by the State Government, they may sit to adjudicate all questions concerning the land under the Act.

48. I have already noticed that there is hardly anything to suggest that the legislature had no competence to frame this Act or that merely because courts' jurisdiction has been ousted, the power vested in the authorities under the Act conflicts with any basic feature of the Constitution. I am aware of the authorities and the rules of interpretation of statutes that constitutionality of an Act should be tried to be upheld, that if need be the provisions of the Act should be either read down or read up to uphold the constitutionality, that, if necessary, if a particular provision of law requires restructuring or filling in any omission, it should be done in the interest of the constitutionality of the Act. I am not entering into any detailed discussion of this aspect for the simple reason that before any attempts to apply any such principle is made, it is necessary to know what is the extent of or limitation on exercise of jurisdiction of the consolidation authorities and whether any role is left for the courts after the consolidation authorities decide disputes, by the Act or not.

49. I may straightway refer to a Special Bench judgment of this Court which has stated in no uncertain terms that creation of special forum for adjudication of rights of parties in the land by the consolidation authorities is not unconstitutional and also that u/s 4(c) of the Act suits with respect to right and title in land and certain other dependent reliefs abate.

50. In *Ramkrit Singh & others vs. The State of Bihar & others* (1979 B.B.C.J. 259 :1979 PLJR 161), the Special Bench has considered the attack on the vires

of the Act and more particularly sections 12A , 37 and 4(c) thereof on the ground that the Act and the aforesaid sections were discriminatory, that under the scheme of the Act, the Assistant Director of Consolidation was entitled to finally determine the question of title and that their determination in that regard could not be challenged in a civil court even though the said officers had no judicial training and were illequipped to decide cases which involved intricate questions of fact and law and whenever consolidation proceedings commenced the raiyat and under-raiyat had/have no option but to have their title determined by untrained hands.

51. S. Sarwar Ali, Acting C.J. speaking for the court answered the contentions stating that the mere fact that law created special forum would not make the law suffer from the vice of discrimination and added--

The view of the legislature appear to be that the scheme of consolidation would be inordinately delayed, if not set at naught, if ordinary Civil Courts are to decide the questions of title relating to lands which are subject matter of the consolidation proceeding. It cannot be said that this view is unreasonable. It is well known that civil litigation, at least in this State, usually takes such a long time and that the litigants, feel completely exasperated. In such a situation to invest authorities under the Act with the power to determine question of title could not be said to be either unreasonable or having no nexus with the object sought to be achieved, namely, speedy consolidation of agricultural lands.

52. On the question of vires of section 4(c) in particular Special Bench accepted the contention on behalf of the State that the abatement when read with the qualifying words, so far as rights and interests in the lands are concerned, saved the constitutionality of the Act and particularly section 4 (c) and concluded--

The opening words of section 4 state clearly that the consequence as mentioned therein shall ensue "from the date specified in the notification till the close of the consolidation operation". The consolidation operation closes by issue of notifications envisaged in section 26A of the Act. The language being clear and explicit effect has to be given to the words used. When the section says that the ensuing consequences are till the close of the consolidation operating, we cannot nullify the words aforesaid by saying that the consequences are for all times to come. It is obvious, therefore, that on the close of consolidation operation in a village or area the abated suits would revive. But the revival of those suits would not create any problems as suits will have to be decided in conformity with the decisions arrived at in the consolidation proceeding in so far as the rights or interest in any land covered by the consolidation proceedings is concerned. If this interpretation is accepted it would be seen that the suggested harshness or injustice disappears. In the illustration already given, if a party succeeds in establishing its title, after the close of the consolidation proceedings, it would be open to it not only to have its title declared accordingly but also to have a decree for mesne profits.

53. A Full Bench of this Court again came close to deciding the limitation of the consolidation courts' jurisdiction but left the same undecided. In *Sheoratan Chamar and others vs. Ram Marat Singh alias Kishori Raman Singh and others* (1985 P.L.J.R. 86), Sandhawalia, C.J referred to the law laid down by the Supreme Court in *Gorakh Nath Dube Vs. Hari Narain Singh and Others*, and also noticed that the Bihar Act which came in force in 1956, has undergone a structural change by a number of subsequent amendments, but recorded--

As the exhaustive provisions of the 40 sections of this Act would indicate, it was intended to be a self-contained Code for the purpose of consolidation of all agricultural lands within the State. The bar of jurisdiction of Civil Courts u/s 37 of the Act would show that the Legislature clearly requires that with respect to any matter for which a proceeding could or ought to have been taken under this Act, the same alone provides the forum and further, all decisions or orders, given or passed under this Act, are immune from interference by the Civil Court.

54. A Bench of this Court in *Nagendra Pd., & ors. vs. Lakshman Goswami & ors.* (1984 BBCJ 3(sic)6) was faced with a question, whether a Magistrate exercising powers u/s 145 of the Code of Criminal procedure could ignore the order of the Consolidation authorities and decide the dispute of Possession with reference to other evidence on the record or not. Speaking for the Court N.P. Singh, J., took notice of sections 39 and 37 of the Act, which together state that the provisions of the Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force; and that a civil court shall not entertain any suit or application to vary or to set aside any order given or passed under the Act. The Court has stated--

On a plain reading, section 39 gives an overriding effect to the provision of the Act. Now, in face of section 37 and 39 the decision of the Consolidation Officer in accordance with the provisions of the Act cannot be challenged in any Civil Court and in that sense it is final. It is well known that so far as the final order in a proceeding u/s 145 of the Code is concerned, it is subject to any decision by a Civil Court. It has been pointed out on several occasions that a proceeding u/s 145 of the Code does not purport to decide the right, title and interest of the parties to the dispute, the main object of the proceeding being to decide the dispute so far as the criminal court is concerned, with the sole purpose to maintain peace. Whereas, the orders passed and decision taken in a consolidation proceeding are not to be challenged in a Civil Court. In such a situation, in my view, it is difficult to hold that the Magistrate while deciding a proceeding u/s 145 of the Code can ignore the binding orders passed in a consolidation proceeding.

This is the law stated by a Bench of this Court in *Bijali Thakur and other vs Rameshwar Thakur & ors.* (1977 BBCJ 701) C.S.S. Sinha, J., following the decision in *Anandi Prasad and another vs. Nandan Das & others* (1986 BLJR 33) has referred to the two questions referred to before him, (1) whether section 37 of the Act is a bar to the maintainability of the suit giving rise to the appeal? and

(2) whether the Civil Court can adjudicate upon the title of the parties and give its declaration in favour of the person whose title and interest were not recognized by the authorities under the Act? and has stated--

This substantial question of law has to be answered in the affirmative. The Act makes provisions for preparation of draft scheme, its publication, disposal of objections and after other formalities, for confirmation of the scheme and u/s 16 of the Act, confirmed scheme is to be treated as finally published record of rights. There is provision for appeal against the order of Assistant Consolidation Officer in sub-section (6) of section 10 of the Act. Section 35 of the Act makes provision for revision and reference by the Director of Consolidation. Then follows section 36 of the Act which lays down that "except as provided in this Act, no appeal or revision shall lie from any order passed under this Act". Section 37 of the Act provides : "No Civil Court shall entertain any suit or application to vary or set aside any decision or order given or passed under this Act with respect to any other matter for which a proceeding could or ought to have been taken under this Act". Section 37A of the Act provides, inter alia, that "the authorities under the Act shall be deemed to be Courts of competent jurisdiction while hearing objections or appeals or deciding disputes under this Act" and they have been given certain powers of the Civil Courts u/s 37B of the Act. Section 39 of the Act lays down that "the provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

The competency of the proceedings before the consolidation authorities in respect of the suit land is not under dispute. It is also undisputed that both the parties put forward their respective claims in respect of the suit land and, ultimately, the decision of the consolidation authorities went against the plaintiff's and the suit land was recorded in the names of the defendants and in their possession. In such a situation, allowing the relief in the instant suit will amount to varying or setting aside the decision or order given by the Consolidation Officer under the Act and the mischief of section 37 of the Act will be attracted. In *Bijali Thakur and other; V. Rameshwar Thakur and others* a Division Bench of this Court has held that the Act is a self contained Act with regard to determination of all matters which may or ought to be raised before the prescribed authority, decision of authorities on such matters are final and the Civil Court has no jurisdiction to interfere with anything done by the authorities in accordance with the provisions of the Act".

55. In this connection it is also relevant to take notice of a judgment of the Supreme Court in *Zafar Khan and Others Vs. Board of Revenue, U.P. and Others*, . The appellants of the said case had claimed to be the Khudkasht holders of the Zamindars of the disputed plots of lands involved in dispute and filed a suit for, possession u/s 180 of the U.P. Tenancy Act, 1939 against the respondents who were in actual physical possession and cultivating the land. The suit ended in a decree in favour of the appellants and in execution of the decree, the appellants asserted that they obtained actual and physical possession from

the respondents. Their claim was that on the advent of U.P. Zamindari Abolition and Land Reforms Act, 1960 they had acquired Bhumidars in respect of the plots of land in dispute. The respondents made an application u/s 232 of the said Act against the appellants alleging that they were in actual and physical possession during the cut off year, but they were subsequently dispossessed. The Assistant Collector, who heard the said application, rejected the same, holding that the respondents were not in possession through the entire year but only for a part of the year and they had not acquired the status of Adhivasis and were not entitled to regain possession. The respondents carried the matter in appeal to the Additional Collector, who held that the respondents had acquired the status of adhivasis and were entitled to regain possession and accordingly allowed the appeal. In compliance with the said order, the respondents regained actual and physical possession of the land. The appellants carried the matter to the Board of Revenue which allowed the appeal holding that once the village in which the plots involved in the dispute were situated had been put into consolidation and a notification u/s 4 of the U.P. Consolidation Act had been issued, the Additional Collector should have stayed the appeal under the law as it then stood and not heard the appeal on merits and allowed the same. The Board of Revenue remitted the appeal to the Additional Commissioner to retain it on its file and stayed further hearing of the appeal. There were other proceedings also between the parties, but the appellants were unsuccessful in getting any relief. They accordingly moved the High Court under Article 226 of the Constitution. The High Court dismissed the writ application. There was yet another round of litigation and again a writ petition, which was dismissed with costs followed by a special appeal to a Division Bench of the Allahabad High Court. One of the questions before the Division Bench was, whether the suit was barred u/s 49 of the U.P. Consolidation of Holdings Act, 1953 or not. Section 49 of the U.P. Consolidation of Holdings Act provides thus--"Notwithstanding anything contained in any other law for the time being in force, the declaration and adjudication of rights of tenure-holders in respect of land lying in an area, for which a notification has been issued under sub-section (2) of Section 4 or adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under the Act, shall be done in accordance with the provisions of the Act and no civil or revenue Court shall entertain any suit or proceeding with respect to any other matters for which a proceeding could or ought to have been taken under the Act.

The Supreme Court has answered the said contention, saying that the admitted facts are that the authority under the 1953 Act allotted the plots in question to the respondents. It may be that the decision may appear to be erroneous inasmuch as it was founded on the decision of the Additional Commissioner in favour of the respondents which was reversed by the Board of Revenue. The question is once the allotment under 1953 Act became final, would a suit lie before the civil or revenue Court with respect to rights in land or with respect to any other matter for which a proceeding could or ought to have been taken

under the 1953 Act? When the village in which the plots in dispute are situated was put into consolidation was not made clear to us. But the statutory authorities and the High Court while dismissing the appeal of the appellants had noticed that the village was put into consolidation several years before the suit from which the present appeal arises was filed and village was denotified in the year 1958. Once the village was denotified, the allotment made under the 1953 Act became final. The final allotment cannot be questioned by the suit before civil or revenue court in view of the bar enacted in Sec. 49.

56. There are several other cases taking the aforementioned stand that the adjudication with respect to rights and interests in the land by the Consolidation Authorities cannot be questioned in a civil court. What matters, however, are covered by the Consolidation Act and what is the extent or the nature of the rights and interests that can be brought before a civil court, notwithstanding any bar to the jurisdiction of the civil court enacted by section 37 of the Act of the provisions in section 4 of the Act has not received definite answer in any case.

57. It is well recognized that the courts adhere firmly to the wide meaning of jurisdiction" since this is the sheet anchor of power to correct abuses. In the case of tribunal or authority of limited jurisdiction, it is all the more necessary to know the limits on jurisdiction so that any transgression or departure be not allowed. A quest, therefore, to understand the limitation on the jurisdiction of the authorities under the Act is relevant in this respect.

58. In *Ram Adhar Singh Vs. Ramroop Singh and Others*, , the Supreme Court declared that an appeal pending before it stood abated in view of the amendment of section 5 of the U.P. Consolidation of Holdings Act, 1953. The appeal pending before the Supreme Court was one with respect to the right of possession in the Land. *Run Adhar Singh's* case, however, was distinguished by the Supreme Court in *Gorakh Nath Dube Vs. Hari Narain Singh and Others*, . The Supreme Court has said--

Ram Adhar Singh Vs. Ramroop Singh and Others, was relied upon by the Respondents before us. But this was a case in which the question considered and decided by this Court was whether a suit for possession of agricultural land u/s 209 of U.P. Zamindari & Land Reforms Act, would abate when Section 5 of the Act does not mention suit for possession. It was held there that the language of Section 5 of the Act, after its amendment, was wide enough to cover suits for possession involving declaration of rights and interests in land which can be the subject matter of decisions in consolidation proceedings. The whole object of this provision of the Act was to remove from the jurisdiction of ordinary civil and revenue courts, for the duration of consolidation operations, all disputes which could be decided in the course of consolidation proceedings before special courts governed by special procedure. Such adjudication by consolidation authorities were considered more suitable, just and efficacious for speedy decisions which had to be taken in order to enable consolidation operations to be finalized within a reasonable time.

After, thus, distinguishing Ram Adhar Singh's case (supra) the Supreme Court has stated that there was no decision of the court directly on the question, whether the suit for cancellation of a sale deed, which was pending on the date of notification u/s 4 would abate u/s 5(2) of the U.P. Act. It however, took notice of a decision of a Division Bench of the Allahabad High Court in Jagarnath Shukla v. Sita Ram Pande (1969 All. L.J. 708). The question before the Supreme Court was, whether the plaintiff's claim tout the sale of his half share by his uncle was invalid, imperative and void. Noticing the preponderating weight of the decision of the Allahabad High Court in support of the view that question relating to the validity of the sale deeds, gift deeds and wills could be gone into in proceedings before the consolidation authorities, because such questions naturally and necessarily arose and had to be decided in the course of adjudications on rights or interests in land which are the subject matter of consolidation proceedings, the Court has stated the law in these words--

We think that a distinction can be made between cases where a document is wholly or partially invalid so that it can be disregarded by any court or authority and one where it has to be actually set side before it can cease to have legal effect. An alienation made in excess of power to transfer would be, to the extent of the excess of power, invalid. An adjudication on the effect of such a purported alienation would be necessarily implied in the decision of a dispute involving conflicting claims to rights or interests in land which are the subject matter of consolidation proceedings. The existence and quantum of rights claimed or denied will have to be declared by the consolidation authorities which would be deemed to be invested with jurisdiction, by the necessary implication of their statutory powers to adjudicate upon such rights and interests in land, to declare such documents effective or ineffective, but, where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation it could be urged that the consolidation authorities have no power to cancel the deed, and, therefore, it must be held to be binding on them so long as it is not cancelled by a court having the power to cancel it. In the case before us, the plaintiff's claim is that the sale of his half share by his uncle was invalid, inoperative, and void, such a claim could be adjudicated upon by consolidation courts.

After stating the law, as above, the Supreme Court has said--

We find ourselves in agreement with the view expressed by the Division Bench of the Allahabad High Court in Jagarnath Shukla's case, 1969 All. L.J. 768 (supra) that it is the substance of the claim and not its form which is decisive.

59. In Suba Singh Vs. Mahendra Singh and Others, a question arose, whether when after finalization of a consolidation proceeding a certain person died before taking possession and one of his heirs applied for mutation to the Consolidation Officer and the claim was decided in his favour, but when he filed a suit for partition against other heirs on the basis of title by inheritance the suit was barred by section 49 of the U.P. Consolidation of Holdings Act or not. The

Supreme Court answered the said question in the following words--

The whole question in the present appeal turns on the ambit and limit of the Civil Courts' jurisdiction in the light of Section 49 . It is well settled that the exclusion of the jurisdiction of the civil court cannot be easily inferred and any provision which takes it away must be construed strictly. We must have this principle in mind when interpreting Section 49 . Analytically examined, it is clear that the two inhibitory clauses of Section 49 , are not identical in their scope and effect. The first clause is confined to matters "arising out of consolidation proceedings" under the Act, while the second clause is limited to matters "in regard to which a suit or application could be filed under the provisions of this Act."

In the present case, the question that had arisen was as to who were the heirs of Jagram. This question was not covered by the first clause, for two reasons. Firstly, it was not a matter arising out of consolidation proceedings but one arising from a vis major i.e., the death of Jagram. The words "out of" in clause 1, must be given their full restrictive effect. They can not be loosely interpreted and equated with "during". The Legislature appears to have advisedly used these words to restrict the operation of this clause to those matters which are directly connected with the consolidation proceedings and which, but for such proceedings, would not have arisen. Secondly, the question of inheritance to the estate of Jagram arose after the consolidation operations had been substantially completed.

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It was thus abundantly clear that an application for mutation on the basis of inheritance when the cause of action arose, after the finalization and publication of the scheme u/s 23 , is not a matter in regard to which an application could be filed "under the provisions of this Act" within the meaning of clause 2 of Section 49 . Thus, the other limb of Section 49 , also is not attracted. The result is that the plea of bar of the civil courts' jurisdiction to investigate and adjudicate upon the title to the land or the sonship of the plaintiff has no substance. Nothing done in consolidation proceedings is undone by that suit. To urge that the formal notification u/s 52 not having been published the court had no jurisdiction is to misread Section 49 and to exalt a ritual into a legal reality".

60. Soon thereafter, it appears that in *Chattar Singh and others v. Thakur Prasad Singh* (A.I.R. 1975 SC 1499), the law laid down in *Ram Adhar Singh's* case (supra) was once more reiterated and the Supreme Court stated--

During the pendency of the appeal in this Court, a notification has been issued under S. 4 of Act. By virtue of the operation of section (2)(a) of the said Act, there is a statutory abatement of the suit and other proceedings pending therefrom. This Court has in *Ram Adhar Singh Vs. Ramroop Singh and Others*, held that even appeals pending before this Court will abate consequent on the above statutory provision. The appellants have moved in C.M.P. No. 19 of 1975 for passing an order of abatement under S.5 of the U.P. Consolidation of Holding Act.

Counsel for the respondent faced with the decision of this Court and the clear statutory provision agrees that the stand taken by the appellants is correct. We therefore hold that the suit and the appeal stand abated. It is open to the parties to work out their rights before the appropriate; Consolidation Authorities. With this direction, the appeal is disposed of as abated. Parties will bear their costs throughout.

It appears that there were many serious attempts of the courts to settle the issues as to when a dispute, as to right and interest in the land shall go to the Consolidation authorities and when a court can entertain the suit. I may state here about a few.

In *Rama Shanker v. 3rd Additional District Judge* (A.I.R. 1983 Allahabad 152), the law has been noticed in the following words--

Learned counsel next submitted that the suit was barred by Section 49 of U.P. Consolidation of Holding Act and hence the compromise cannot be recorded. This submission again is totally without any merit. The plaintiff's sought the cancellation of the sale deed on the ground of fraud. Such a relief could be granted only by the Civil Court and not by the Revenue Court. I do not agree with the learned counsel that before Civil Court could assume jurisdiction there must be some material on the record establishing fraud. As there was no such material, the compromise could not be recorded. I cannot agree. The question is whether on the plaint allegations the court had jurisdiction to take cognizance of the suit. On the plaint in the present case the court clearly had jurisdiction to try the suit.

61. The Orissa High Court has been facing cases after cases on the subject with respect to the Consolidation Act of the State of Orissa. D.B. Mohapatra, J., in *Siba Prasad Sashoson v. Kali Charan Dash* (A.I.R. 1984 Orissa 108) has stated the law in the following words:--

It is not in dispute that the properties in respect of which the suit has been held by the trial Court to have stated come within the notification issued by the State Government under Sec. 3(1) of the Act. The question whether a suit pending in the Civil Court either at the stage of trial or appeal or revision abates under Sec. 4(4) of the Act has been the subject-matter of consideration in a large number of decisions of this Court. Shortly put, the ratio in the decided cases has been that if the subject matter involved in the suit is available to be dealt with by the authorities under the spatial Act and the reliefs sought in the suit can be granted by the said authorities the suit pending in the Civil Court shall abate. In the first case mentioned above the Division Bench took the view that if a suit abates, then the Consolidation Authorities must have jurisdiction to go into the question involved or conversely, if a matter can be gone into by the Consolidation Authorities then a suit in respect of that matter must abate under Sec. 4(4) . The test to be applied in determining the question whether a suit shall abate or not is whether the parties can get the real and effective relief from the Consolidation

Authorities. In all these decisions emphasis has been given on the real and effective relief sought in the suit.

62. In *Iswar Dehury v. Suchi Dei and others* (A.I.R. 1986 Orissa 131), S.C. Mohapatra, J., has stated the law in the following words:--

Normally, the suit is to be tried and judgment is to be pronounced on all issues of fact and law as is provided under Order 14 Rule 2 Civil. P.C. Section 4(4) of the Act is a departure from the normal procedure where without trial of the suit, the Court is to consider whether the suit has abated and on the passing of an order to that effected the suit shall stand abated Section 51(2) of the Act, however, does not provide for an order to be passed as is the case under Sec 4(4) . This is a provision relating to exclusion of jurisdiction of Civil Court. Exclusion of jurisdiction of a Civil Court is not to be readily inferred, where some preconditions are to be satisfied for exclusion of the jurisdiction, Civil Court is to examine, whether the precondition provided under the statute is satisfied.

Sec. 51 of the Act does not bar all suits relating to land in a consolidation area. It bars the suits in respect of any matter which an officer or authority empowered under the Act can decide. In other words, suits for reliefs in respect of any land in a consolidation area would be barred in case, relief prayed for in the suit can be granted by the officers or authorities under the Act. As the bar of suits under Sec. 51(2) depends upon the relief to be granted, attempt might be made ingeniously in drafting the plaint in a manner which would order the real relief claimed. Courts are to guard against such camouflage. Merely because the suit relates to homestead and relief for possession is prayed for, it cannot be said that the suit is barred. The provisions of the Act and the nature of the homestead are to be carefully scrutinized to examine if the relief of recovery of possession of homestead in question can be granted by an officer or authority under the Act. It is only in cases where the court comes to the conclusion that such relief can be granted by the officers or authorities under the Act, it would answer the issue against the plaintiff. Each case would depend on its own facts. In case the Civil Court comes to the conclusion that there is no provision under the Act which authorizes, the officers or authorities to grant the relief, there would be no scope for bar of the suit under Sec. 51(2) of the Act. Where a special statute does not authorize an officer or authority created under the Act to exercise any power or to grant any relief, judicial pronouncement cannot authorize such officer or authority to exercise such power or grant such relief unless in exercise of the powers specifically vested on such creatures of the statute it becomes incidental to grant the relief.

63. Coming to the Act, two cases decided by the Supreme Court about the effect of the notification u/s 3(1) of the Act, as provided u/s 4 of the Act, may at this stage be referred to. In *Satyanarayan Prasad Sah and Others Vs. State of Bihar and Another*, constitutional validity of section 4 of the Act was questioned as being violative of Articles 14 and 19 of the Constitution. The said challenge was repelled and the law laid down in *Ram Adhar Singh and Chattar Singh's* case

(supra) was affirmed In Mostt Bibi Ra(sic) Khatoon r. Karkoo Gope (1982 P.L.J.R. (sic)9) (S.C.). The effect of abatement was considered and the law has been stated in the following words:--

Accordingly, both on principle and precedent it is crystal clear that where a notification is issued bringing the land involved in a dispute in the civil proceeding under a scheme of consolidation, the proceedings pending in the civil court either in the trial court, appeal or revision, shall abate as a consequence ensuing upon the issue of a notification and the effect of the abatement would come to a naught. Therefore, the order of the High Court impugned in this appeal is legal and valid so far as it not only directed abatement of the appeal pending before the High Court but also abating the judgments and decrees of the trial court and the first appellate court because the entire civil proceeding came to naught.

64. Our Courts" attempt to notice the restriction on the jurisdiction of the Consolidation authorities is no less involving. Some of such cases have already been noticed by me earlier.

65. In Ramkrit Singh & other"s case (supra), the Court has said :--

Controversy in a suit may relate to right and title in land and certain reliefs dependant on the determination of the aforesaid title. Only in such a situation in my opinion, the suit abates not only in relation to ancillary or dependant reliefs. But the position is different where independent relief or reliefs, unconnected with the declaration and determination of title to land are involved in a suit. In such a situation the suit does not abate in relation to such controversies.

The said observation were applied in the case of Bhagwan Das v. Gulab Singh (1982 B.B.C.J. 548) by B.P. Jha, J., (as he then was) in a case in which the suit property was claimed by the plaintiff"s on the basis of a transfer by the decree holder in an auction sale. He affirmed the order of the lower appellate court which held that section 4(c) of the Act would not apply in respect of a case of delivery of possession and mesne profits. In Rameshwar Thakur v. Smt. Bhagwati Devi (1982 B.B.C.J. 155 : 1982 PLJR 167), this court considered whether an order holding that the suit was not maintainable for the reason of the bar u/s 4(b) of the Act read with section 37 therefore, was a decree or not and held that the same was a decree within the ambit of Order VII rule 11(d) of the CPC and, therefore, was appealable. Although it is not so stated, but it appears that the court took notice of the (sic) that the question as to whether the suit was maintainable or not had to be decided after adjudicating as to the nature of the suit and if it was a suit raising a pure question of title, the bar u/s 4(b) read with section 37 of the Act could not be applied.

66. In Tarkeshwar Upadhyaya & anr. V. Mahesh Kahar & ors. (1982 B.B.C.J. 11), S. Narain, J., has held that a suit for cancellation of a deed of gift on the ground that the same was void, abated u/s 4(c) of the Act.

67 Similar view has been expressed in several other cases. To refer to a few, are the cases in *Bettiah Estate v. Pushpa Devi & others* (1986 P.L.J.R. 222), in which it was held that only such land which had nexus to agriculture, would be covered by the Act; *Chaturbhuj Prasad Singh v. Saryu Prasad Singh* (1985 B.B.C.J. 383) in which it was held that a partition suit with regard to agricultural land situated within the area covered by notification issued u/s 3 of the Act would abate and the suit would proceed with regard to the non-agricultural and even agricultural land which do not relate to the area covered by the notification; and the case of *Bishwanath Rai and others v. Dulbin Indrasani Devi & others* (1988 P.L.J.R. 808), in which it was held that the lands with buildings in the town of Dumraon within municipal limit has nothing to do with the agriculture and as such the provision of the Act would not be attracted to such land.

68. I, however, propose to make a particular reference to a Division Bench judgment of this Court in *Narendra Kumar Verma & others v. State of Bihar* (1980 B.B.C.J. 252). It was with respect to a suit concerning the Bakasht Jote lands of the ex-landlords of Barari which fell to the share of one Shashi Mohan Thakur at a family partition of the ex-landlords. The lands being Bakasht were deemed to be settled with the ex-proprietor u/s 6 of the Land Reforms Act. The State Government, however, initiated proceedings for consolidation of holdings under the Act. The consolidation proceedings were completed and a notice to that effect was finally published on 19.1.65. In the consolidation proceedings, however, the suit lands were recorded as Bihar Sarkar. The ex-proprietors, however, transferred the lands to Narendra Kumar Verma and others by a registered sale deed dated 8.9.1976. When the agents of the Government of the State threatened them of dispossession they filed a title suit. There a plea was raised that the suit was barred u/s 37 of the Act. This Court took notice of the prayer in the plaint--

(a) The court be pleased to hold and declare that the plaintiff's have got indivisible right, title in the land in suit and the defendant has got absolutely no manner of right, title in the same as the suit land was Nagdi occupancy jote land of the plaintiff's vendor Shree Shashi Mohan Thakur.

(b) On the above adjudication it be declared that the suit land has been wrongly recorded as Bihar Sarkar in the Survey made under the Consolidation Act and the survey entry in respect of the land in suit is wrong, null and void and without jurisdiction and not binding on the plaintiff.

and in the words of the Division Bench--

The substance of prayer at paragraph (a) was that the plaintiff's sought adjudication of their right and title in the suit lands as Nagdi occupancy jote of the plaintiff's vendor Shashi Mohan Thakur. The second prayer in substance was that the entry in the record of rights had been wrongly made as Bihar Sarkar and that it was wrong, null and void and without jurisdiction and not binding on the plaintiff's. Section 37 of the Act even before amendment or after placed no bar

upon a civil court to adjudicate pure question of title. The bar was only to entertainment of a suit or application to vary or set aside decision of order under the Act. It is obvious, therefore, that any order passed in terms of the Consolidation Act cannot be varied or set aside by Civil Court, but it does not deprive a Civil Court of the jurisdiction to decide question of title for all times. The scheme of the Act is that while the consolidation proceedings are in operation no court should decide any question in relation to title. The scheme is contained in section 4 of the Act. Section 4(1)(b) of the Act prohibits courts from entertaining any suit or legal proceeding while the consolidation proceedings are in progress. Suits instituted prior to the initiation of consolidation proceeding shall abate in terms of section 4(c) of the Act. It is now well established that abatement of the suit or appeal subsists only till the consolidation proceedings are in progress. The notification by State Government in official gazette stating that the consolidation operation have been closed, thereafter suits or appeals which had abated during the consolidation proceedings may be revived. In *Ram Krit Singh and others Versus the State of Bihar and others* a Full Bench of this Court, to which I was a party laid down that on the close of consolidation operations in a village or area the abated suits would revive. It is thus obvious that the jurisdiction of civil courts to adjudicate questions of title remains in abeyance during the consolidation operations. It does not annihilate that power of civil courts for all times. I have, therefore, no hesitation in holding that after the consolidation proceedings have come to a close, the jurisdiction of civil courts to adjudicate upon pure questions of title is not barred by section 37 of the Act. That is the position in law before the amendment of section 37 or after. The amendment, therefore, makes little difference in power of civil courts to adjudicate upon questions of title. The idea that courts are not debarred from adjudicating questions of title after the close of consolidation proceedings is implicit in the words of section 37 (before amendment) itself. The second part of the section quoted above lays down that if the decision of the consolidation authorities has decided questions relating to title to lands or to some interest in land as between the parties having conflicting claims the jurisdiction of civil courts will not be barred. It would be curious situation that while civil suits would not be barred if the consolidation authorities have decided a question relating to title but it would be barred if no question of title has been decided by them. I see no warrant for this interpretation in regard to the content of section 37 of the Act before the amendment of 1975. If a question of title has not been decided by the consolidation authorities a citizen must have some forum for getting judicial verdict in regard to his title. In my view, a pure suit for title is not barred by section 37 of the Act. The clause "unless such decision or order has decided a question relating to land or to some interest in land as between parties having conflicting claims thereto" is not to be found in section 37 after the amendment, but that makes no difference so far as the power of courts to adjudicate pure questions of title is concerned. What will be the result of the suit is a different question and has no relevance to the maintainability of the suit. In my view, therefore, the court blow was clearly in error in rejecting the plaintiff's plaint as

being barred by section 37 of the Act. The plaintiff's wanted adjudication of their title. They did not seek to vary or set aside the order of the consolidation authorities. The plaintiff could not be denied their right to have their title adjudicated.

The Court rejected the argument that such a title suit, in which the jurisdiction might result in nullifying the order passed under the Consolidation proceeding, would be barred.

69. What may be derived from the discussions above can be summarized thus--

(1) Not all questions of title in respect of the land can be decided by the consolidation authorities. Exceptions to their jurisdiction are issues which require adjudication independent of any right or interest in the land, although as a result of adjudication of such independent issue, the right or interest in the land may stand nullified or varied.

(2) "Consolidation Authorities" are deemed courts of limited jurisdiction confined to the matters relating to the land;

(3) Some types of suits may be entertained by the court notwithstanding the bar u/s 4(b) of the Act even during the pendency of the consolidation proceedings; and

(4) pending suits with respect to cancellation of documents etc., including suits raising issues independent of the right and interest in the land which are not incidental to the claims of right and interest in the land, may not abate.

70. I shall advert to the Act later to consider specifically the provisions in sections 4, 15 and 37 of the Act, but before doing so, I am tempted to refer to a Full Bench judgment of this Court and two judgments of the House of Lords of England.

71. A Full Bench of this Court in *Patna Municipal Corporation v. Ram Bachanlal* (1961 B.L.J.R. 3) has considered in some details the question as to whether the Civil court or the High Court can enquire into the correctness of the decision of a Tribunal or administrative authority of limited jurisdiction or not? The Full Bench has said that the first principle which must be kept in view is that the Civil Court is a court of plenary jurisdiction and is competent u/s 9 of the CPC to try all suits of a civil nature excepting suits which their cognizance is either expressly or impliedly barred. The full Bench has referred to a large number of authorities deciding the question and concluded that even if jurisdiction is so excluded, the civil courts have jurisdiction to examine the cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principle of judicial procedure or that a local authority and administrative authority or tribunal of limited jurisdiction assumed jurisdiction to do anything or to pass any order by arriving at a wrong decision on facts which facts have been referred to various decisions as preliminary or collateral facts or as jurisdictional facts and held that the civil court or the High

Court, in exercise of its power to issue an appropriate writ in suitable cases, can investigate the correctness of the decision of the inferior tribunal of limited jurisdiction relating to such facts. This statement of law by the Full Bench is based on the basic concept that exercise of limited jurisdiction inflicted by such objections which relate to the incompetency of the judge or Authorities concerned or the nature of the subject matter or the absence or some essential preliminary facts as to the jurisdiction or by any one of them is null and void. IT is possible upon this, thus to say that it is fundamental principles of judicial procedure are ignored and questions of title are allowed be decided ignoring the rules of evidence and procedure for determination of issue, vital to the adjudication before the Consolidation authorities, the rule of law is the first victim and administration of justice shall become a false promise. This approach can be found reiterated in *Anisminic Ltd., v. The Foreign Compensation Commission* and another (1969 Vol. 1 All E.R. 208). The House of Lords has at great length gone into this aspect, and in the words of Lord Morris of Borth-y-Gest it has said--

I return, then, to the question as to how the appellants can justify the calling in question by them of the determination of the commission. The answer is that they boldly say that what looks like a determination was in fact no determination but was a mere nullity. That which they say, should be disregarded as being null and void, is a determination explained in a carefully reasoned document nearly ten pages in length which is signed by the Chairman of the commission. There is no question here of a sham or spurious or merely purported determination. Why, then, is it said to be null and void? The answer given is that it contains errors in law which have caused the commission to exceed their jurisdiction. When analyzed, this really means that it is contended that, when the commission considered the meaning of certain words in art. 4 of the Order in Council, they gave them a wrong construction with the consequence that they had no jurisdiction to disallow the claim of the appellants. It is not suggested that the commission were not acting within their jurisdiction when they entertained the application of the appellants and gave it their consideration nor when they heard argument and submissions for four days in regard to it. The moment when it is said that they strayed outside their allotted jurisdiction must, therefore, have been at the moment when they gave their "determination". The control which is exercised by the High Court over inferior tribunals (a categorizing but not a derogatory description) is of a supervisory but not of an appellate nature. It enables the High Court to correct errors of law if they are revealed on the face of the record. The control cannot, however, be exercised if there is some provision (such as a "no certiorari" clause) which prohibits removal to the High Court. But it is well settled that even such a clause is of no avail if the inferior tribunal acts without jurisdiction or exceeds the limit of its jurisdiction.

In all cases similar to the present one it becomes necessary, therefore, to ascertain what was the question submitted for the determination of a tribunal. What were its terms, of reference? What was its remit? What were the questions

left to it or sent to it for its decision? What were the limits of its duties and power? Were there any conditions precedent which had to be satisfied before its functions began? If there were, was it or was it not left to the tribunal itself to decide whether or not the conditions precedent were satisfied? If Parliament has enacted that provided a certain powers, it is clear that the tribunal will not have those powers unless the situation exists. The decided cases illustrated the infinite variety of the situations which may exist and the variations of statutory wording which have called for consideration. Most of the cases depend, therefore, on an examination of their own particular facts and of particular sets of words. It is, however abundantly clear that questions of law as well as of fact can be remitted for the determination of a tribunal. If a tribunal, while acting within its jurisdiction, makes an error of law which it reveals on the face of its recorded determination then the court, in the exercise of its supervisory function, may correct the error unless there is some provision preventing a review by a court of law. If a particular issue is left to a tribunal to decide then even where it is shown (in cases where it is possible to show) that in deciding the issue left to it the tribunal has come to a wrong conclusion that does not involve that the tribunal has gone outside its jurisdiction. It follows that, if any errors of law are made in deciding matters which are left to a tribunal for its decision, such errors will be errors within its jurisdiction. If issues of law as well as of fact are referred to a tribunal for its determination, then its determination cannot be asserted to be wrong if Parliament has enacted that the determination is not to be called in question in any court of law.

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If, therefore, a tribunal while within the area of its jurisdiction committed some error of law and if such error was made apparent in the determination itself (or, as it is often expressed, on the face of the record) then the superior court can correct that error unless it was forbidden to do so. It would be so forbidden if the determination was "not to be called in question in any court of law". If so forbidden it could not then even hear argument which suggested that error of law had been made. It could, however, still consider whether the determination was within "the area of the inferior jurisdiction.

The above view has been reiterated by the House of Lords in *O'Reilly v. Mackman* and others (1982) 3 All. E.R. 1124) thus--

It was this provision that provided the occasion for the landmark decision of this House in *Anisminic Ltd. v. Foreign Compensation Commission* (1969) 1 All. E.R. 208, 1969) 2 A.C. 147, and particularly the leading speech of Lord Reid, which has liberated English Public law from the fetters that the courts had therefore imposed on themselves so far as determinations of inferior courts and statutory tribunals were concerned, by drawing esoteric distinctions between errors of law committed by them within their jurisdiction. The breakthrough that *Anisminic* made was the recognition by the majority of this House that if a tribunal whose jurisdiction was limited by statute or subordinate legislation mistook the law

applicable to the facts as it had found them, it must have asked itself the wrong question, i.e., one into which it was not empowered to inquire and so had no jurisdiction to determine. Its purported "determination", not being a "determination" within the meaning of the empowering legislation, was accordingly a nullity.

72. The characteristic attribute of a judicial act or decision is that it binds, whether it be a right or wrong. An error of law or fact committed by a judicial or quasi Judicial body cannot, in general, be impeached otherwise than on appeal unless the erroneous determination relates to a matter on which the jurisdiction of that body depends. These principles govern not only the findings of inferior courts *stricto sensu* but also the findings of administrative bodies which are held to be acting in a judicial capacity. Such bodies are deemed to have been invested with power to err within the limits of their jurisdiction; and provided that they keep within those limits of their jurisdiction; their decisions must be accepted as valid unless set aside on appeal. Even the doctrine of *res judicata* is applied to such decisions. What does then "jurisdiction" mean? It means authority to decide. Whenever a judicial or quasi judicial tribunal is empowered or required to enquire into a question of law or fact for the purpose of giving a decision on it, its finding thereon become final until reversed on appeal. Where a quasi judicial authority has jurisdiction to decide a matter, it does not lose its jurisdiction by coming to a wrong conclusion whether it is wrong in law or in fact. The question, whether a tribunal has jurisdiction depends not on the truth or falsehood of the facts into which it has to enquire, or upon the correctness of its findings on these facts, but upon their nature, and it is determinable at the commencement, not at the conclusion of the enquiry. Such jurisdiction may depend upon the fulfillment of some condition precedent or upon the existence of some facts. Such a fact is collateral to the actual matter which the deemed court or the tribunal has to try. This determination, whether it exists or not is logically prior to the determination of the actual question. A decision as to the collateral fact, thus, is necessary before jurisdiction to decide such questions, which fall for decision by the authority concerned, are decided.

73. An examination of the scheme of the law in the Act clearly shows that consolidation authorities have not been vested with the power to determine finally the preliminary facts on which further exercise of their jurisdiction depends. Yet it is a law under which the consolidation authorities may be required to take notice of such collateral facts and decide, whether to enter into such questions which are unconnected with the matter or are collateral to the matter as to the rights and interests in the land, and their jurisdiction will depend not on a wrong decision with regard to a collateral fact but a right decision. Once it is shown that a wrong decision has been taken as to such collateral facts by them and by so wrongly deciding the jurisdictional fact they have assumed jurisdiction, the adjudication on the issues falling within their jurisdiction, shall also become without jurisdiction.

74. In *Smt. Ujjam Bai Vs. State of Uttar Pradesh*, such a question had arisen and the Supreme Court has expressed--

When a statute prescribes a manner or form in which a duty is to be performed or a power exercised, it seldom lays down that will be the legal consequences of failure to observe its prescriptions. The courts must, therefore, formulate their own criteria for determining whether the procedural rules are to be regarded as mandatory in which case, disobedience will render void or voidable what has been done or as directory in which case disobedience will be treated as a mere irregularity not affecting the validity of what has been done. A quasi judicial authority is under an obligation to act judicially. Suppose, it does not so act and passes an order in violation of the principles of natural justice. What is the position then? There are some decisions, particularly with regard to customs authorities, where it has been held that an order of a quasi-judicial authority given in violation of the principles of natural justice is really an order without jurisdiction and if the order threatens or violates a fundamental right, an application under Art. 32 may lie. (See *Sinha Govindji v. Deputy Controller of Imports and Exports, Madras S.C. Petns. 307 and 308 of 1960*), D/23.3.1961 (SC). These decisions stand in a class by themselves and really proceed on the footing that the order passed was procedurally ultra vires and therefore without jurisdiction.

Ujjam Bai's case is an authority supporting the aforementioned conclusions that a tribunal may lack jurisdiction if it is improperly constituted, or if it fails to observe certain essential preliminaries to the enquiry, but it does not exceed its jurisdiction by basing its decision upon an incorrect determination of any question that it is empowered or required to determine. The strength of this theory of jurisdiction lies in its logical consistency.

75. In this Act one may take notice of the fact that jurisdiction to decide disputes or objections is given to the Assistant Consolidation officer in section 10 of the Act. These provisions operate after the preparation of the registers under sub-section (2) of section 9 and the statement of principles prepared u/s 9A . Preparation of registers of lands has been made dependent upon the record of rights and map, as provided in section 8 of the Act in accordance with the provisions of Chapter X of the Bihar Tenancy Act or as the case may be Chapter XII of the Chotanagpur Tenancy Act or Santhal Parganas Settlement Regulations or the Bihar Tenants Holdings (Maintenance of Records) Act, 1973. After grant of the certificate of transfer to the Raiyats and under-Raiyats u/s 15 of the Act, section 16 of the Act thereof has provided that the scheme confirmed u/s 13 , which obviously is done after the disposal of the objections and appeals etc., would be deemed to be the record of rights prepared and finally published under Chapter X of the Bihar Tenancy Act or as the case may be Chapter XII of the Chotanagpur Tenancy Act or Santhal Parganas Settlement Regulations in supersession of the up-to-date record of right prepared u/s 8 of the Act.

76. A Full Bench of this Court in *Nand Kumar Rai and others v. State of Bihar* and

others (A.I.R. 1974 Patna 164 : 1974 PLJR 27 (FB) has considered a case in which the plaintiff-petitioners instituted title suit in the court of Munsiff II at Buxar for declaration of title and confirmation of possession or in the alternative for recovery of possession in respect of the suit lands and also prayed for permanent injunction to restrain the defendants from interfering with their possession. Their case was that defendants had no Sikmi right over any portion of the suit land and that by bringing the survey staff in their collusion, the defendants got the name of defendant no. 2 recorded as Sikmidar to lay a false claim. During the pendency of the said suit, Bihar Act 6 of 1970 was enacted replacing section 109 of the Bihar Tenancy Act by section 2 of the Amending Act, section 3 of which provided that all suits of the nature referred to in sub-section (1) of section 109 would stand transferred to the Collector of the District, in which such court is situated, and the Collector would dispose them off. The defendants, accordingly, filed a petition before the learned Munsif for transfer of the suit to the Collector. The learned Munsif rejected the objections and the attempt to drop all references in the body of the plaint with respect to the survey entry relating to the schedules and held that in view of the provisions contained in the amending Act, the suit was beyond the jurisdiction of the learned Munsif and stood transferred to the Collector. Constitutional validity of the said amending Act was questioned before this Court and several contentions were raised, including contentions that it was discriminatory and void as being violative of Article 14 of the Constitution of India that unguided uncontrolled and arbitrary powers had been vested in the Revenue courts which were presided over by Executive Officers directly under the control of the State Government, that it was against the directive principles engrafted in Article 50 of the Constitution of India and that no procedure was prescribed in the matter of conduct and trial of suits and disposal of appeals.

77. Untwalia, C.J. (as he then was) observed that the main point for the consideration however, was, whether the impugned Act 6 of 1970 stood the test of equal protection of laws guaranteed under Article 14 of the Constitution of India or not and other points were really part and parcel of or subsidiary to the main point, that is to say the alleged violation of Article 14 of the Constitution. He then traced the relevant history of some of the provisions of the Bihar Tenancy Act beginning from Bengal Tenancy Act, 1885, and noticed that the entry in the record of rights was given only presumptive evidentiary value, it was rebuttable and it could be shown in any civil court that the entry did not correctly record the facts. Untwalia, C.J. referred to an earlier amendment by Bihar Act 3 of 1965 which read-"subject to the provisions of section 109A, a Civil Court shall not entertain any application or suit concerning the preparation or publication of record of rights or settlement of rent or preparation of Settlement Rent Roll or for alteration of any entry in any such record or roll for the determination of incidents of any tenancy" and a judgment of this Court in Chhatri Mehta v. State of Bihar (1967 B.L.J.R. 236), in which the said provision had been interpreted. Narasimham, C.J. who has delivered the judgment of the Court in the case of

Chhatri Mehta, has said :--

All suits and proceedings which under the unamended Act could be instituted either in the Civil Court or Revenue Court at the choice of the party were now required to be filed only in the Revenue Court. But the suits which even prior to the amendment could be heard only by the Civil Court were not intended to be dealt with by the Amending Act. The legislature could not possibly have intended that a Revenue Court was competent to decide questions of title between parties. Thus under no principle of interpretation can section 11 be so construed as to enlarge the jurisdiction of the Revenue Court and to confer on it powers to hear regular title suits. It is well known that the entry in the record-of-rights neither creates title nor extinguishes title, and though, as the law stood prior to 1964, a suit in the Civil Court for mere correction of an entry in the Settlement Record-of-Rights was maintainable, such suit was not ordinarily instituted unless there was a cloud cast on the title of the plaintiff or apprehension of dispossession or interference with possession. In such instances the main relief, as in this case, was always for declaration of title and confirmation of possession or recovery of possession. Such a suit was not barred by Section 109 of the Act, as amended, and on the same line of reasoning Section 11 of the Amending Act 1964 could not possibly apply to such suits. It is also difficult to imagine how the legislature could have thought of transferring regular title suits from ordinary civil courts to Revenue Officers merely because one of the reliefs asked for in the suits was for correction of an entry in the Settlement Record-of-Rights. It is well known that Civil Courts are better qualified to decide questions of title to immovable property than Revenue Officers.

Untwalia, C.J. has then taken notice of the impugned amendment which read as follows :--

Bar of Jurisdiction to Civil Courts.--

(1) Subject to the provisions of Section 109-A, a Civil Court shall not entertain any application or suit--

(a) concerning the preparation or publication of record-of-rights or settlement of rent or preparation of Settlement Rent Rolls;

(b) for alteration of any entry in any such record or roll;

(c) for the determination of incidents of any tenancy; or

(d) for declaration of title to or recovery of possession of or confirmation of possession over any holding or tenancy or part thereof in which correctness of any entry in any such record or roll is expressly or impliedly challenged or in which determination of incidents of any tenancy is involved.

(2) Suit for declaration of title to or recovery of possession of or confirmation of possession over any holding or tenancy or part thereof, in which correctness of any entry in any record-of-rights or settlement Rent Roll is expressly or impliedly

challenged or in which determination of incidents of any tenancy is involved may be instituted before the Collector or any Revenue Officer specially empowered by the State Government by notification in this behalf who shall dispose of the suit in the prescribed manner.

(3) An appeal against the decision under sub-section (2) shall lie,

(a) if the decision is by an officer other than the Collector of the district or to any other officer as may be specially empowered by the State Government by notification in this behalf, whose decision thereon shall be final; or

(b) if the decision is by the Collector of a district, to the Commissioner of the Division whose decision thereon shall be final.

(4) Every appeal under sub-section (3) shall be presented within ninety days from the date of the decision under sub-section (2).

Untwalia C.J. also took notice of section 3 of the amending Act which read as follows :--

Transfer of certain applications and suits pending in Civil Courts.--(1) Notwithstanding anything contained in the Bihar Tenancy Act, 1885 (Bihar Act VIII of 1885) or any other law for the time being in force all applications and suits of the nature referred to in sub-section (1) of section 109 of the said Act as amended by this Act, pending in a Civil Court immediately before the commencement of this Act shall, on such commencement, stand transferred to the Collector of the district in which such court is situated and the Collector shall either dispose them of himself or transfer them to any Revenue Officer competent to hear on application or suit of such nature under sub-section (2) of the said section 109:

Provided that an appeal against or proceedings in execution of any judgment, decree or order of a Civil Court passed in any such suit before the commencement of this Act shall be disposed of as if this Act had not been enacted.

(2) The Collector or the Revenue Officer shall dispose of the suit transferred to him under sub-section (1) in the prescribed manner;

(3) An appeal against the decision under sub-section (2) shall

(a) if the declaration is by an officer other than the Collector of a district to the Collector of the district or to any other officer as may be specially empowered by the State Government by notification in this behalf, whose decision thereon shall be final; or

(b) if the decision is by the Collector of a district, to the Commissioner of the Division whose decision shall thereon be final.

(4) Every appeal under sub-section (3) shall be presented within ninety days from the date of the decision under sub-section (2)."

Untawalia, C.J. has said :--

It is difficult to conceive how complicated title suits would be speedily and summarily disposed of by Revenue Courts and how the under-raiyats would be benefited thereby. I can take judicial notice of the fact that a large number of title suits have been filed throughout the State of Bihar wherever Revisional Survey operations have taken place. I am also aware that the number of Civil Courts is too small to dispose of such large number of title suits. I am, however, also aware of the fact that the number of Revenue Courts is also not sufficient rather too small to dispose of such a large number of complicated title suits. They will be simply unable to decide them unless they technically choose to literally dispose of the suits by any means; no Court by a judicial approach will be able to dispose of such a large number of suits. I am, however, not concerned with the wisdom behind this legislation. I am concerned merely with its constitutional validity. In procedural matter suits of lighter vein have been allowed to be brought to the High Court and complicated suits are to be finally disposed of by the Revenue authorities. I also do not see any justification for making a distinction between title suits for declaration of title and possession and suits of other types such as partition or mortgage suits.

Untwalia, C.J. has observed that section 109 of the Bihar Tenancy Act barred only a suit for title or possession but not a defence in which there could be necessity of challenging the correctness of the survey entry. To illustrate, he has stated--

Supposing a person has got his name entered as an under-raiyat in the Survey record-of-rights, but actually he is not able to get possession and cultivate the land. In such a case, if he files a suit for possession, it would be open to the defendant to resist the suit by pleading that the survey entry is wrong. I have already stated that an entry in the record-of-rights neither creates nor extinguishes rights nor does an omission of entry affects the rights of the parties--vide *Mohendra Nath Biswas v. Shyam Lal Banerjee*, 19 Cal. L.J. 308 (A.I.R. 1914 Cal. 617). Irrespective of the entry in the record-of-rights, the owner of the land remains the owner, the person in possession remains to be so unless ousted in due course of law. Will it then be reasonable to say that a person must go to the Revenue Court if he wants to challenge the entry seeking declaration of title and possession when he is at liberty to challenge the entry in the Civil Court as a defendant? Many under-raiyats may be in the position of plaintiff's or defendants. Is it, therefore, correct to say that there is a rational nexus between the classification made and the avowed object of the impugned Act? The law of rebuttal of presumption engrafted in sub-section (3) of Section 103-B is still intact. Will it, therefore, be not discriminatory to the title holders of the lands to ask them to go to the same Revenue Court for rebutting the presumption of the correctness of the entry? Or is it not fair to allow them to establish their title and possession in a Civil Court? To my mind, the answers suggested in the question themselves are all against the validity of the impugned legislation.

Nand Kumar Rai's case (supra), thus, gives a clear vision of the consequences of the confirmed scheme to be treated as finally published record-of-rights, correctness or otherwise of the record-of-rights prepared and finally published under Chapter X of the Bihar Tenancy Act or as the case may be Chapter XII of the Chotanagpur Tenancy Act or Santhal Parganas Settlement Regulations always be a question in a duly constituted title suit before the civil court of competent jurisdiction. Section 37 of the Act in such a situation shall not inhabit the civil courts' jurisdiction to decide the issues of title and in that also whether the survey entry is correct or not. All that is done or envisaged in course of the consolidation proceedings in view of the provision in section 16 of the Act finally merges into the record of right, correctness or otherwise of which can always be questioned before a civil court of competent jurisdiction.

77A. As noticed hereinbefore, the Special Bench in Ram Krit Singh's case did not consider the question as to whether the consolidation authorities are courts of limited jurisdiction or not and thus it made an observation that the Civil Court while disposing of the suits after revival thereof at the end of the consolidation proceedings, would merely pass a decree in terms of the decision of the consolidation authorities. The said observations must be held to have been rendered per incuriam inasmuch as in the cases where the jurisdiction of the Civil Court is not barred in terms of Section 4(b) or Section 37 of the Act, the Civil Court cannot pass a decree only in terms of the decision of the consolidation authorities after revival of the suit. The said observations, therefore, are not binding upon this Court.

In such a situation the Civil Court will have jurisdiction to decide suits relating to such matter in respect whereof its jurisdiction is not barred either in terms of Section 4B or Section 37 of the said Act.

78. Certificate of transfer, however, has been treated separately in section 15 of the Act. Sub-Section (2) of Section 15, which has been introduced by Act 27 of 1975, it appears, has ignored the exception enumerated in section 4 of the Act. Section 48B of the Bihar Tenancy Act deals in particular, with the right of possession of the under-raiyat. Procedure prescribed therein shows that Bataidars can always agitate their claim of Bataidari rights before the Collector under the said Act. Section 4 has specifically provided that nothing, as in clause (b) or clause (c) of section 4 shall apply to any proceedings u/s 48E of the Tenancy Act, 1885 and to the proceedings relating to the recording of title of Bataidars. How, then, there can be any final adjudication of the question, whether a certain under-raiyat has got right of occupancy or not by the Consolidation authorities? If there can be no such adjudication by them, how can a certificate of transfer be granted with an entry that a certain under-raiyat has got right of occupancy or title to any land under the scheme. Sub-section (2) of section 15 of the Act, which states about grant of a certificate of transfer to every under-raiyat whether having a right of occupancy or not, has used the words, "the certificate shall be conclusive proof of the title of such under-raiyat

to such land". The right of an under-raiyat, having occupancy right or having no occupancy right, however, would be governed under the provisions of Bihar Tenancy Act. However, a decision with regard to his occupancy right, is evidently excluded from the jurisdiction of the Consolidation authorities by expressly providing in section 4 of the Act about the proceedings u/s 48E of the Act and proceedings relating to the title of the Bataidars. Sub-section (2) of section 15 of the Act has, thus, imagined a jurisdiction which the Act has nowhere contemplated to be adjudicated upon by the Consolidation authorities between the raiyat on the one hand and the under-raiyat on the other hand.

79. Both in sub-sections (1) and (2) of section 15 of the Act the legislature has used the expression "conclusive proof". "Conclusive proof" has been defined in section 4 of the Evidence Act to mean that when one fact is declared by the Act to be conclusive proof of another, the court shall on proof of the one fact, regard the other as proved and shall not allow the evidence to be given for the purpose of disproving it.

80. Law is divided in two broad categories of substantive law and procedural law. Broadly stated whereas the substantive law defined for duties and liabilities, the procedural law deals with application of substantive law in particular cases. The law of evidence is a part of the law of procedure, as it deals with the question as to what facts may and what may not prove, what sort of evidence may or may not be given. Use of the certificate of transfer in any proceeding, in which title is in dispute, if what is provided in section 15 of the Act is valid, shall be as conclusive or irrebuttable evidence or presumption in favour of the certificate holder.

81. It is not possible to equate the words "conclusive proof of title" in section 15 of the Act as a rule of substantive law. In *Izhar Ahmad Khan & ors. v. Union of India and others* (A.I.R. 1962 SC 1052), a detailed study of the question as to what may constitute an irrebuttable presumption as a rule of substantive law and what may constitute irrebuttable presumption as a rule of procedural law has been made, the Supreme Court has taken notice of the study of this branch of law in England, quoted from, "A history of English Law" by Holdsworth, Wingmore on Evidence, Phipson on Evidence, Stephen's Digest of the law of Evidence", the Dicey's Conflict of Laws and Thayer's A preliminary Treatise on Evidence at the Common Law", as well as case laws and pointed out--

Thus the rule of rebuttable presumption adds statutory force to the natural and inherent probative value of fact A in relation to the proof of the existence of fact B and in adding this statutory value to the probative force of fact A, the rule, it is conceded, makes a provision within the scope and function of the law of evidence. If that is so, how does it make a difference in principle if the rule adds conclusive strength of the probative value of the said fact A in relation to the proof of the existence of fact B? If it extend to the category of facts in respect of which an irrebuttable presumption is prescribed by a rule of evidence, the position is that the inherent probative value of fact A in that behalf is very great

and it is very likely that when it is proved in a judicial proceeding, the judicial mind would normally attach great importance to it in relation to the proof of fact B. The rule steps in with regard to such facts and provides that the judicial mind should attach to the said fact conclusiveness in the matter of its probative value. It would be noticed that as in the case of rebuttable presumption, so in the case of an irrebuttable presumption, the rule purports to assist the judicial mind in appreciating the existence of facts. In one case the probative value is statutorily strengthened but yet left open to rebuttal, in the other case, it is statutorily strengthened and placed beyond the pale of rebuttal. Considered from this point of view, it seems rather difficult to accept the theory that whereas a rebuttable presumption is within the domain of the law of evidence, irrebuttable presumption is outside the domain of that law and forms part of the substantive law.

Having so stated in the law, the Supreme Court has then pointed out--

In deciding the question as to whether a rule about irrebuttable presumption is a rule of evidence or not, it seems to us that the proper approach to adopt would be to consider whether fact A from the proof of which a presumption is required to be drawn about the existence of fact B, is inherently relevant in the matter of proving fact B and has inherently any probative or persuasive value in that behalf or not. If fact A is inherently relevant in proving the existence of fact B and to any rational mind it would bear a probative or persuasive value in the matter of proving the existence of fact B, then a rule prescribing either a rebuttable presumption or an irrebuttable presumption in that behalf would be a rule of evidence. On the other hand, if fact A is inherently not relevant in proving the existence of fact B or has no probative value in that behalf and yet a rule is made prescribing for a rebuttable or an irrebuttable presumption in that connection, that rule would be a rule of substantive law and not a rule of evidence. Therefore, in dealing with the question as to whether a given rule prescribing a conclusive presumption is a rule of evidence or not, we cannot adopt the view that all rules prescribing irrebuttable presumption are rules of substantive law. We can answer the question only after examining the rule and its impact on the proof of facts A and B. If this is the proper test, it would become necessary to enquire whether obtaining a passport from a foreign Government is or is not inherently relevant in proving the voluntary acquisition of the citizenship of that foreign State.

Similar view has been expressed by the Supreme Court in *Raja Anand Brahma Shah v. The State of Uttar Pradesh* (A.I.R. 1967 SC 1031) and in *Lilavati Bai Vs. The State of Bombay*, .

82. In *Smt. Somavanti and Others Vs. The State of Punjab and Others*, it has been pointed out that there is no difference between the expression "conclusive proof" and "conclusive evidence". It has said--

A distinction is sought to be made between "conclusive proof" and "conclusive

evidence" and it is contended that where a law declares that a fact shall be conclusive proof of another, the Court is precluded from considering other evidence once such fact is established. Therefore, where the law makes a fact conclusive proof of another the fact stands proved and the Court must proceed on that basis. But, the argument proceeds, where the law does not go that far and makes a fact only "conclusive evidence" as to the existence of another fact, other evidence as to the existence of the other fact is not shut out. In support of the argument reliance is placed on S. 4 of the Evidence Act which in its third paragraph defines "conclusive proof.

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This paragraph thus provides that further evidence is barred where under the Evidence Act one fact is regarded as proof of another. But it says nothing about what other laws may provide. There are number of laws which make certain facts conclusive evidence of other facts.

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Since evidence means and includes all statements which the Court permits or requires to be made, when the law says that particular kind of evidence would be conclusive as to the existence of particular fact it implies that that fact can be proved either by that evidence or by some other evidence which the Court permits or requires to be advanced. Where such other evidence is adduced it would be open to the Court to consider whether, upon that evidence, the fact exists or not. Where, on the other hand, evidence which is made conclusive is adduced, the Court has no option but to hold that the fact exists. If that were not so, it would be meaningless to call a particular piece of evidence as conclusive evidence. Once the law says that certain evidence is conclusive, it shuts out any other evidence which would detract from the conclusiveness of that evidence. In substance, therefore, there is no difference between conclusive evidence and conclusive proof. Statutes may use the expression "conclusive proof" where the object is to make a fact non justiciable. But the legislature may use some other expression such as "conclusive evidence" for achieving the same result. There is thus no difference between the effect of the expression "conclusive evidence" from that of "conclusive proof", the aim of both being to give finality to the establishment of the existence of a fact from the proof of another.

83. Conclusive proof of a fact is one thing and conclusive proof of existence of a right is another thing. I have already noticed that plaintiff questioning the correctness of the record of right, notwithstanding whether the same has been prepared in accordance with the orders passed by the Consolidation authorities, shall be maintainable and the bar u/s 37 of the Act shall not apply in such a situation. Use of the certificate in a suit for declaration of title and confirmation of possession or recovery of possession shall, therefore, be only for the purposes of establishing before the Court by irrebuttable evidence that the certificate

holder has got title to the land. The question, however, is can a certificate of such nature be a document of title or not. Answer to it is obviously not.

84. I have already noticed that conclusive proof by dint of the provisions in section 15 of the Act shall be of the fact that the certificate holder has established his right or interest in the land before the Consolidation authorities. Will it then exclude the possibility of any evidence of rebuttal of the correctness of the certificate based on the findings of rights and interests in the land by the Consolidation authorities? Legislature's attempt is obvious. It has intended to make the certificate of transfer a document conclusive and final so that no dispute is allowed to be raised with respect to the title of the certificate holder. Word "title" I have already noticed, has occurred only in section 15 of the Act and in the proviso to section 4 while talking about recording of the title of Bataidars. Proceedings which could be taken before the Consolidation authorities under the Act are objections in respect of the registers prepared under sub-section (2) of section 9 and the statements of principles prepared u/s 9A of the Act, besides partition of joint holdings contemplated in section 8A and matters connected thereto and rights and liabilities of a Raiyat as recorded in the rights of lands prepared u/s 9 or secured in the lands allotted, subject to the deductions, if any, made on account of the contribution to public purposes under the Act. In other words, the nature of the interests or rights of the Raiyat when recorded shall remain the same as before the proceeding had started or corrected in course of the proceedings either u/s 10 or section 12 of the Act.

85. The jurisdiction of the consolidation authorities, begins with the preparation of up-to-date record of rights before consolidation to transfer all the rights and to interests of the raiyats recorded in such record of rights to a new holding or holdings with all the in cumbrances and substitute the record of rights prepared before consolidation by the record of rights prepared in accordance with the Act as stated in section 16 of the Act. The result of such consolidation and in such a situation be that as in the case of record and rights, the presumption of correctness shall be available in the new holdings.

86. In *Baikunthi Devi and Others Vs. Mahendra Nath and Another*, , the Supreme Court considered a case in which one Jeewa Ram, who had a half share in a tract of land Ac. 6-00 in extent with a small house thereon, had entered into an agreement to sell his share for a consideration of Rs. 3,000/- to respondent no 1. The said agreement was sought to be enforced by a suit for specific performance although by that time Jeewa Ram had passed away and his daughter (appellant no 1) became his legal heir. The demand for specific performance was made by the plaintiff first respondent, who incidentally happened to be nephew of the late Jeewa Ram. The suit was filed after the consolidation proceedings had come to a close, as a result of which proceeding the land which was the subject matter of the agreement to sell, less a tiny bit of Ac. 0.06 was included in the chak allotted to Jeewa Ram and the first respondent. It was argued before Supreme Court that on account of the consolidation proceedings even though the same land had

been allotted in the new chak, there was nevertheless a loss of identity. This argument, however, was not accepted by the Supreme Court.

87. In *Piarey Lal Vs. Hori Lal*, , however, the Supreme Court considered a similar contention with a little variation in a suit for specific performance of agreement for the sale for six plots of land, in which suit the defendant denied the execution of the agreement for sale and pleaded that as new plot had been allotted as a result of the consolidation of his holding under the U.P. Act, he could not perform the agreement for sale. The Supreme Court considered various provisions of the U.P. Act and has said.

It would thus appear that while clause (a) deals with the rights, title, interests and liabilities of the tenure-holder entering into possession of the "chak" as well as of the former tenure-holder of the plots comprising the "chak" in their respective original holdings, and provides that their rights, title, interests and liabilities shall "cause", clause (b) provides that the tenure-holder entering into possession of the "chak" shall have, in that "chak", the same rights, title, interests and liabilities "as he had in the original holdings". The expression "chak" has been defined in Section 3 (1-a) of the Act to mean "the parcel of land allotted to a tenure-holder on consolidation". The two clauses therefore are quite simple and clear, and do not raise any real problem of interpretation, but the question is whether there is justification for the argument in the facts and circumstances of this case, that the expression "liabilities" would cover the liability of the seller (i.e., the defendant), under the aforesaid agreement for the sale of his original holding?

As is obvious, clause (a) of Section 30 does not bear on that question controversy because it only provides for the cessation of the rights, title, interests and liabilities both of the tenure-holder to whom the "chak" has been allotted and the former tenure-holder of the plots comprising the "chak" in their respective "original holdings". There is no controversy that this was so in the present case. It is also nobody's case that the rights, title and interests of the tenure-holder entering into possession of his "chak" have any bearing on the controversy relating to the specific performance of the agreement for sale, for all that has been urged before us is that the defendant, as the tenure-holder of the new holding or "chak", had the same "liabilities" in that "chak" as he had in the original holding. What therefore remains for consideration is whether, on the defendant's entering into possession of his new land or "chak", there was the same liability "in" the new land as "in" the original holding. It has therefore to be examined whether, by virtue of the agreement for sale, any liability accrued "in" the original holding?

88. The Supreme Court however, took notice of section 54 of the Transfer of Property Act and held that a contract for sale of land created no interest of the plaintiff in the holding of the defendant as the tenure-holder; and thus, when he lost that property as a result of the scheme of consolidation and his rights, title and interest ceased in that property by virtue of clause (a) of section 30 of the

U.P., Act, the agreement for sale became void within the meaning of section 56 of the Contract Act.

89. I have endeavored in the instant case to understand the meaning of the expression "title" in section 15 of the Act and its effect when the certificate of transfer has been made conclusive proof on title of the Raiyat in the new holding only to somehow understand the limits to which such certificate of transfer can be put to use. This attempt shall remain inconclusive under scheme of section 4 of the Act in particular is also taken into consideration.

90. An examination of section 4(e) and (c) of the Act makes it clear that both for the purposes of holding that the suit is not maintainable or that the suit abated, the existence and quantum of rights claimed or denied will have to be examined by the Court. A Court shall refuse to entertain a suit or record abatement only when the court will find that the rights, claimed or denied, will have to be declared by the consolidation authorities, who will be deemed to be vested with such jurisdiction by necessary implication of their statutory powers to adjudicate upon such rights and interests in the land. For instance, to declare a document effective or ineffective and in a case where there is a document, the legal effect of which can only be taken away by setting it aside or being cancelled to hold that the consolidation authorities are not vested with the jurisdiction to decide the validity or otherwise of such a document. Thus any adjudication of the controversy as the quantum and the nature of the right or interest claimed in the land will first be determined as a preliminary fact or jurisdictional fact by the Court. If the finding with respect to the preliminary or jurisdictional fact is in favour of the jurisdiction of the Consolidation authorities, the court shall record the order of abatement in a pending suit or refuse to entertain a suit until consolidation proceedings were completed. In other words, civil courts' plenary jurisdiction will become barred under clause (b) of section 4 of the Act shall stand suspended until the disposal of the consolidation proceedings or cancellation thereof for the purposes of section 4(c) of the Act, only when it is found by it that the question raised before the court were such that they could be decided by the consolidation authorities under the Act. In other words it is always necessary to bear in mind the limited jurisdiction of the consolidation authorities and allow only such proceedings to proceed in their deemed courts which can be decided by them. Adjudication of any controversy or issue, which in its nature is one which will have to be decided before any question as to right and interest in the land will arise evidently will not be within the jurisdiction of the consolidation authorities.

91. A question of inheritance in dispute, may have a direct bearing on the question of right and interest in the land. "X" or "Y", who may be claiming by inheritance a particular estate or property, may as a result of the adjudication of question as to whether "X" or "Y" was the heir or the legal representative of the deceased holder of the property, when deciding will automatically extend such right or interest which past holder had in the property in favour of one or the

other.

92. A closer look to the scheme of the law reveals that jurisdiction of a civil court to decide a question as to right and interest in the land is put under suspension for the period for which the consolidation scheme is in operation and for the land falling in the area of the operation of the scheme. One cannot deny to a litigant a right to institute a civil suit with respect to properties including land falling in the area of the operation of the consolidation scheme as well as falling beyond the area of the operation of the scheme. The civil court may have to refuse entertaining a suit with respect to the land falling in the area of the operation of the scheme and continue the proceeding in the suit with respect to the land and other properties falling beyond the area of the consolidation scheme. One can easily think of the civil court deciding the question of inheritance of the right of the plaintiff of the suit as a donee, a transferee, a co-sharer, a co-tenant or a person in adverse possession in respect of the properties and the land falling within its jurisdiction and the consolidation authorities investigating and deciding the same rights in respect of the lands falling within their jurisdiction. If their decisions on such questions conflict and section 15 is allowed to extend its conclusive proof of title, even with respect to the land about which consolidation authorities can decide, the result would be that the successful plaintiff in the civil court, who established his title to the property or land claimed by the defendant, would lose the land falling within the consolidation area, on account of a decision on the question of title by the consolidation authorities. It cannot be suggested that the law makers intended, in the event of such a conflict, to give primacy to the orders of the revenue authorities over the orders of the civil courts.

93. Mitakshra law includes a minor or even a child in the womb as a co-sharer and a land holder with other male holders of the property governed by the Mitakshra School of Hindu Law. Their rights cannot be destroyed by acts of those who represent them, except and to the extent recognized by the textual Hindu law and the Hindu Succession Act. Entry in the record of rights and exercise of possession by a co-sharer in the absence of the other co-sharer do not destroy the right of the absentee co-sharer/unless and until it is shown that such entry has been made and such possession has been exercised with this intention to deny the rights and interests of the co-sharer concerned.

94. In my considered opinion, therefore, in the field of procedural law, a certificate of transfer of the nature as envisaged in the Act, cannot be made un rebuttable for the cases in which pure questions of title, which are for the reasons either of error of jurisdiction committed by the Consolidation authorities or ignorance of the parties contesting u/s 10 or 12 of the Act are decided by the consolidation authorities. Use of the expression "conclusive proof of the title" of such raiyat or under-raiyat in section 15(1) and (2) of the Act is somewhat inconsistent with the scheme of transfer of the holding or holdings to the raiyats after consolidation. The certificate of transfer can do no more than as the other

provisions of the Act, clearly establish that the rights and interest in the holding or holdings which the raiyat or the under-raiyat possessed or claimed is recorded in the record of rights prepared in accordance with the provisions of Chapter X of the Bihar Tenancy Act or as the case may be Chapter XII of the Chotanagpur Tenancy Act or the Santhal Parganas Settlement Regulation or the Bihar Tenants Holdings (Maintenance of Record) Act, are transferred to the new holding or holdings and accordingly deemed to be recorded and finally published as provided in section 16 of the Act. Section 15 of the Act therefore, shall not survive the test of reasonableness, as adjudications by consolidation officers cannot be placed beyond the judicial scrutiny of the civil Courts. Neither section 4 (b) nor action 4 (c) of the Act or even section 37 of the Act, intend to do away with the jurisdiction of the Civil Courts with respect to the pure questions of title.

95. There is some scope for thinking that while considering, whether a certain suit be entertained or not or a certain pending suit be kept in abeyance until the disposal of the consolidation proceedings or not, the Civil Court shall look into the jurisdictional facts to find out whether the matter in issue before the court is exclusive to the jurisdiction of the consolidation authorities or not, there is no such provision in the Act under which the consolidation authorities proceeding under the Act are required to decide whether certain issues raised are falling exclusively within their jurisdiction or not. Once the register of lands and statements of principles are prepared and published, as required u/s 10(1) of the Act, objections are invited and on such objections, they proceed to decide all such issues which relate to the land under consolidation. They are not required to test whether a certain question is pure question of title which question they cannot decide. It is, however, an established principle of law that a Tribunal or court of limited jurisdiction has to exercise jurisdiction only when such preliminary facts exist and confine to the limits to which their jurisdiction extends.

96. The Act has contemplated adjudication up to reference or revision by the Director of Consolidation. Consolidation authorities are also made deemed courts. They (consolidation authorities) are, however, chosen by the State Government without their being anything in the Act suggesting that they, who are required to act judicially, must have some sort of judicial training. There is, thus no pretention in the Act that the deemed courts of consolidation authorities are a mechanism created in lieu of the Civil Courts. In such a situation, it is difficult to hold that anything done by them shall be final and conclusive as to the title of any person to a property including the land. It shall indeed be in tune with the scheme of the Act that any person intending to raise a pure question of title may file a suit before a Civil Court of competent jurisdiction which shall decide either to proceed or to hold that the issues raised in the suit fell within the jurisdiction of the consolidation authorities or not. When it is so decided by the Civil Court that the issues raised in the suit could be decided by the consolidation authorities, the suit shall not be entertained during the period the consolidation proceedings are pending. After the disposal of the consolidation proceedings finally or cancellation of the scheme in the area however, it shall be open to the

person concerned to file a suit questioning the validity of the record of rights and raising other issues for declaration of title and recovery of possession etc. While deciding such a suit, the Civil Court shall have jurisdiction to test the correctness or otherwise of the record of rights which evidently shall include the correctness or otherwise of the certificate of transfer u/s 15 of the Act. The observations in Ramkrit's case (supra), that on the close of consolidation in a village or area the abated suits would revive, but the revival of those suits would not create any problems as suits will have to be decided in conformity with the decisions arrived at in consolidation proceedings in so far as the rights or interest in any land covered by the consolidation proceedings is concerned have to be read along with the observations in the same judgment :--

whereas section 15 makes the certificates issued under the said sections as conclusive, the effect of the confirmed scheme being treated as finally published record of rights is that the same has only a presumptive value. In my view, there is no conflict. Section 15 only relates to proof of title and that is conclusive. But in respect of matters not covered by section 15 , the confirmed scheme shall have only a presumptive value. In any event, even if there be a conflict, section 15 being clear and explicit, has to prevail.

97. These observations in Ramkrit's case are not in conflict with the view that I have taken with respect to the vires of section 15 of the Act as also the scope of a suit that may be filed by any person questioning the validity of any entry in the record of right.

98. My above view is supported by a judgment of this Court in Narendra Kumar's case (supra). Abated suits u/s 4(c) , after cancellation of or completion of the consolidation scheme shall in the same manner proceed and the jurisdiction of the civil court shall not be affected by the bar of jurisdiction provided u/s 37 of the Act for the reason that the validity or otherwise of the record of right when considered will no doubt take into account certain orders that may have been passed in course of the consolidation proceedings. It will not be a suit to vary or set aside any decision or order given or passed under the Consolidation Act. In other words what may be taken into consideration by the civil court after the disposal of the consolidation scheme or its cancellation will be the record of right as a piece of evidence as any other evidence with rebutted presumption of its correctness.

99. Since I am of the view that adjudication by the Consolidation authorities as deemed courts is only for the limited purposes of consolidation and transfer of the rights and interests as recorded in the record of rights before the consolidation proceedings to new holding or holdings after consolidation, their knowledge of revenue law and the law of evidence and the civil procedure need not be equal to that of a judicial officer, yet since some sort of adjudication of rights and interests are inquired to be done, it is desirable that they have the judicial training and at least at the level of the appellate or revisional authority, a better judicial approach is made available to the litigants than presently made

available to them. It is possible to extend the reasoning's in the judgment of my brother S.B. Sinha, J., in the case of K.P. Verma (supra) and hold that when the legislature has made the Consolidation authorities deemed courts and applied the provisions of the Evidence Act and the CPC to the consolidation proceedings, they must be men of the requisite calibre and independence, able to determine the complicated questions of rights and interest in the land. This will be in tune with the authorities of the Supreme Court in *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, and other cases.

100. I am, however, abstaining from making any specific order for the reason that the respondent-State may exercise its discretion and decide to introduce at least one judicial review in course of the consolidation proceedings before the scheme is made final with respect to every case that is filed and decided in course of the proceedings.

101. My conclusions, therefore, are that :

(1) all suits of civil nature, including suits in respect of any land in the area notified u/s 3 of the Act can be filed, notwithstanding, the bar u/s 4(b) of the Act, before a civil court of competent jurisdiction, which on examination of jurisdictional facts, may hold that the suit is not maintainable until notification is cancelled or consolidation scheme is completed. When such order is passed by the court, the parties concerned may raise their dispute in respect of any land in such area before the consolidation authorities.

(2) pending suits shall not abate unless specific order of abatement is made by the civil court of competent jurisdiction. The suit shall revive and proceed in accordance with law in the event of cancellation of the consolidation scheme or its completion. The civil court shall, while making the order of abatement, see that no question of pure title, except in respect for declaration of rights or interests in any land lying in the area or such incidental questions which arise from the claim of the rights or interests is involved in the suit. If any question of pure title other than claims in respect of the declaration of rights or interests in the land or incidental thereto is involved, the suit shall not abate.

(3) The consolidation authorities shall be required to decide preliminary/collateral/jurisdictional facts before assuming jurisdiction. It shall be open to a party to the proceeding or any person affected by the decision on the jurisdictional facts to file a suit before a civil court of competent jurisdiction questioning the correctness of such findings of fact recorded by the consolidation authorities. Such a suit shall be maintainable, notwithstanding the bar u/s 4(b) of the Act;

(4) a pending suit abated u/s 4(c) of the Act or a suit not entertained under 4(b) of the Act may proceed or be entertained, as the case may be, after the completion of the consolidation scheme and notification u/s 26A of the Act or cancellation thereof, which suit shall be decided by the civil court of competent jurisdiction in accordance with law;

(5) the bar u/s 37 of the Act shall not apply to any suit questioning the jurisdiction of the consolidation authorities, the abated suit u/s 4(c) and the suit not entrained u/s 4(b) when revived or filed after completion of the consolidation scheme or its cancellation. Section 15(1) and 15(2) of the Act are ultra vires Articles 13 and 14 of the Constitution, in so far as they declare certificate of transfer to be conclusive proof of the Raiyat to the transferee holding or that of the under-raiyat therein;

(6) The certificate of transfer shall have use only with respect to the rights presumed to exist u/s 16 of the Act as to be the rights under record of rights prepared and finally published under Chapter X of the Bihar Tenancy Act, 1885 or as the case may be Chapter XII of the Chotanagpur Tenancy Act, 1908 or the Santhal Parganas Settlement Regulation 1872: and

(7) Consolidation authorities are deemed courts of limited jurisdiction. Any decision by them except on questions relevant to the record of rights, correctness whereof can be questioned on the grounds of wrong decision by them on pure questions of title, shall neither be binding nor available as evidence of title in a court of law.

102. Coming to the facts of this case, I find that there is little controversy as to the question that the petitioner has raised. The consolidation authorities could not finally decide as to whether a civil court decree was valid or not. In this view of the matter, the consolidation authorities had no jurisdiction to pass an order contrary to or inconsistent with a civil court's decree which has not been set aside by a higher court. The parties challenging a civil court decree must, therefore, approach civil court itself, if it is permissible in law to get a declaration that the decree passed in the earlier suit was not binding upon him. In this view of the matter, the impugned orders passed by the consolidation authorities must be quashed.

103. In the result, with the declarations, directions and observations, as above, this application is allowed. There shall, however be no order as to costs.

S.B. Sinha, J.,--Brother, P.S. Mishra has dealt with the issues involved in the writ application in great detail, but in view of the importance of the questions involved, I consider it necessary to state my views on the issues separately.

However, my Endeavour would be to base my decision on the main issues on additional reasoning's and rely on decisions other than those relied upon by Brother Mishra.

104. In this writ application, the principal questions which arise for consideration are follows :--

A. Whether despite statutory bar with regard to the maintainability of suit and/or continuation thereof as contained in Section 4(b) , Section 37 and Section a(c) of the said Act, the Civil Court will have any jurisdiction to entertain a suit for any purpose whatsoever?

B. Whether the provisions of the Bihar Consolidation of Holding and Prevention of Fragmentation Act is ultra vires the Constitution, inter alia, on the ground that the lis with regard to title is to be decided by Executive Authorities and not by the Judicial Authorities?

C. Whether Section 15 of the said Act is ultra vires the Constitution?

Re:--Question A : Brother Mishra has held that despite statutory bar contained in Section 4(b) and Section 37 of the Act, the jurisdiction of the suit is not completely ousted. It has further been held that even if a suit abates in terms of the Section 4(c) of the said Act, upon conclusion of the Consolidation proceedings the same revives and the civil court would be competent to exercise its jurisdiction after revival of the suit Inter alia in a case, where the jurisdiction of the consolidation authorities is in question or where a pure question of title arises.

105. It is now well settled that the courts dislike attempt by Parliament to oust or curtail their jurisdiction. In *Scott Vrs. Avery*, 1856 (5) HCM page 811, Lord Campbell, CJ attributed the origin of sentiment to the contest for fees between the early common-law courts.

However, Romer, LJ held :--

The proper tribunals for the determination of legal disputes in this country are the courts and they are only tribunals which, by training and experience and assisted by properly qualified advocate are fit for the task. The courts jealously uphold and safeguard the prima facie privilege of every man to resort to them for the determination and enforcement of his legal rights.

See *Lee vs. Showman's Guild of Great Britain* reported in 1952 (2) Q.B. 324 at page 354.

106. It is also well know that a statute in derogation to common law right is to be strictly interpreted.

The right of a litigant to get his grievances ventilated in an ordinary civil court in respect of the civil dispute is a common law right.

108. In terms of Section 9 of the Code of Civil Procedure, a Civil Court has jurisdiction to decide all disputes of civil nature except where its jurisdiction is ousted either expressly or by necessary implication.

109 By reason of various statutes, the legislature had expressly excluded the jurisdiction of civil court from adjudicating various matters and courts have also by interpreting the provisions of various statutes held that the jurisdiction of civil court is barred by necessary implication. The precedent on this point is legion Reference in this connection may be made to AIR 1940 Privy Council 105 (*Secretary of State vs Mask & Co.*), AIR 1983 S.C., page 1547 (*Firm Seth Radha Kishan (deceased) represented by Hari Kishan and others vs. Administrator Municipal Committee, Ludhiana*), 1987 P.L.J.R. 354 (*Paritosh Maity vs. Ghasiram*

Maity).

110. It is also well known that if the jurisdiction of the court is excluded for particular period, the jurisdiction of civil court revives upon expiry of the said period. See in Nand Kishore vs. Ram Kishan & another, reported in 1967 S.C. 1196 at page 1200.

A Full Bench of the Calcutta High Court in AIR 1963 Cal 225(Sri Krishnamoni Dasi vs Baso Mandal & others), Laik J., (as his Lordship then was) laid down the following tests or fundamental principles which should be borne in mind in deciding cases, where the question of exclusive jurisdiction of a tribunal is raised :--

(1) The general law of the country is not altered by special legislation made without particular reference to it, though a statute passed for a particular purpose must, so far as that purpose extends, override general enactments.

(2) If there is manifest absence of jurisdiction in the tribunal which makes a determination the civil courts will have jurisdiction to adjudicate upon the matter.

(3) It is for the Courts of general civil jurisdiction to determine what is the scope of the authority given to statutory tribunal and to investigate the question as to whether a special or subordinate tribunal has acted within the limits of jurisdiction.

(4) Even where jurisdiction is given to the statutory tribunal to determine certain facts so as to give itself jurisdiction, it will be for the Court of general jurisdiction to adjudicate as to what are the powers which the statute has given to such an authority or tribunal.

(5) No tribunal of special jurisdiction can finally decide upon its own jurisdiction or give itself jurisdiction by a wrong decision on a matter collateral to the merits of the case upon which the limits of its jurisdiction depend.

(6) No tribunal of inferior jurisdiction can establish its jurisdiction by proceeding on an assumed fact which is not a fact.

(7) A statutory tribunal must act within the scope of its power given to it or limited by the statute.

(8) If the tribunal acts within the scope of its powers and commits an error the Civil Courts can not correct it i.e., its orders, whether right or wrong--cannot be challenged except in a manner and to the extent prescribed by the statute.

(9) The special tribunal might be invested by the legislature with exclusive jurisdiction to determine within its own authority certain matters and where it is so invested, the jurisdiction of the Civil Court must be deemed to have been taken away to that extent.

(10) A statute conferring jurisdiction under certain particular conditions, cannot be taken to confer jurisdiction also in cases which do not fall within the ambit of

the conditions laid down, merely on the basis of analogy.

(11) The confiscatory rights of a special tribunal whose adjudication was declared to be conclusive, could not have immunity from the Civil Courts and at the same time disregard the provisions of the Act under which the tribunal was formed. In other words, the jurisdiction of the tribunal is statutory and the tribunal, however admirable its intention is not entitled to go outside the provisions and in any effect to legislate for itself.

Willies, J., In *Woolverhampton New Water Works Company vs. Hawkes Ford* reported in 1959 6(CB) N.S., page 336 at page 356 laid down the tests whereby the ouster of the jurisdiction of a Civil Court may be inferred :

There are three classes of cases in which a liability might be established, founded upon statute. One is where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy; there, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class.

111. The aforementioned decision has been followed by the Supreme Court in various decisions e.g., in *Bata Shoe Co. Ltd. Vs. City of Jabalpur Corporation*, , AIR 1983 S.C. 603 at page 607 (*Titaghar Paper Mill Co. Ltd., vs. State of Orissa*) and *Raja Ram Kumar Bhargava (Dead) by Lrs. Vs. Union of India (UOI)*, .

112. In *Pyx Granite Company Ltd., vs. Ministry of Housing and Local Government* reported in 1959 Vol. III, All England Law Reports, page 1 : 1960 Appeal Cases page 260 at page 286, Viscount Simonds, J., said:

It is a principle that the jurisdiction of the courts should not be whittled down that the subject's recourse to Her Majesty's courts for the determination of his rights is not to be excluded except by clear words.

113. However, in the aforementioned case, the House of Lords observed :--

Where a statute creates a new right which has no existence apart from the statute creating it and the statute creating the right at the same time prescribes a particular method of enforcing it, then in the words of Lord Watson in *Barraclough vs. Brown* (1897 AC at page 622), the right and the remedy are given *uno flatu*, and the one cannot be dissociated from the other. As Lord Herschell put it in the same case (1(sic)87) A.C., at page 620, the party asserting the right cannot claim to recover by virtue of the statute, and at the

same time insist upon doing so by means other than those prescribed by the statute which alone confers the right.

114. There are various other authorities wherefrom, it can be inferred that the courts have gone to great lengths to find implied limitation which water down the literal meaning of ouster clause and where the courts had come to the conclusion that even clear words, constituting an ouster clause may not be enough. See Francis Bennion's Statutory Interpretation at page 7488.

115. In *Madhav Rao Scindia vs. Union of India*, reported in AIR 1971 S.C. 530 at page 576, it was held as follows--

To accede to the claim that the jurisdiction of the Court is barred in respect of whatever the executive asserts is valid is plainly to subvert the Rule of Law. It is therefore within the province of the Court alone to determine what the dispute brought before it is, and to determine whether the jurisdiction of the Court is, because it falls within one of the two limbs of Article 363 , excluded qua that dispute.

116. In order to test the scope and object of the Act vis-a-vis the provisions contained in Sections 4(b) , 4(c) and 37 , before us, the learned counsel appearing on behalf of the parties have raised several new contentions which were not raised earlier in any decided case.

117. In various judgments some of which have been rendered by me, it was held that the said Act is a complete Code by itself whereby the jurisdiction of the Civil Court have been ousted and by reason of the provisions of the said Act, a forum has been provided for to adjudicate all types of disputes including the disputes with regard to the title of a person over a land.

In those decisions, the questions which have been raised before us, were not raised, nor had I any opportunity to consider the scope, effect and purport of the said Act in great details.

118. Strangely enough, the legislature, at the time of enactment of the said Act had the interest of under-raiyats or the tillers of the land as also prescribing of a ceiling limits for the raiyats uppermost in its mind as is evident from the statements and objects of the aforementioned Act.

The bill as it originally stood did not contain any definition of "landless laborers". However, the said definition was inserted in Chapter II on the basis of report of the Select Committee on the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1955 (See the Bihar Gazette Extraordinary dated 31st March, 1956).

However, there has been a deviation from the said objects and reasons of the said Act as the interest of under-raiyats was sought to be protected by amending Bihar Tenancy Act, 1885 by inserting Sections 48E to Section 48F therein and by amending and inserting various other provisions contained therein by Act No. 19

of 1955. The said amendments were made in Chapter-7 of Bihar Tenancy Act, 1885 which deals with the cases of under-raiyats i.e., actual tiller of the land.

119. So far as a ceiling area of agricultural land to be held and possessed by a raiyat or his family is concerned, the legislature provided for the same by enacting Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961.

120. The Legislature of Bihar has made some provisions with regard to distribution of the agricultural land to the landless labourers by reason of the aforementioned Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 and provided some protection to such landless persons under Bihar public Land Encroachment Act, 1956.

So far as homestead lands are concerned, the landless persons have been made "privileged persons" under the provisions of Bihar Privileged Persons Homestead Tenancy Act.

121. So far as the bar of jurisdiction of the Civil Court is concerned, initially the provisions contained in Section 37 thereof was different which reads as follows :--

No Civil Court shall entertain any suit or application to vary or set aside any decision or order given or passed under this Act, unless such decision or order has decided a question relating to title to land or to some interests in land as between parties having conflicting claims thereto.

122. From a reading of the aforementioned provisions, it would be clear that the legislature at that point of time did not contemplate that the jurisdiction of the civil Court would be ousted in terms of the provisions of the said Act, in a case Where a question of title had been or has to be decided by the authorities under the said Act.

123. However, by reason of an Amending Act, being Act No. 27 of 1975 a change in the said provision was brought in aspect of ouster of the jurisdiction of the Civil Court, inter alia by inserting Section 4(b) , 4(c) of the said Act, and by amending Section 37 (old) thereof, which now reads as follows :--

(Section 37 (New):

No civil court shall entertain any suit or application to vary or set aside any decision or order given or passed under this Act with respect to any other matter for which a proceeding could or ought to have been taken under this Act.

124. Before dealing with the point in details, it attracts our immediate notice that although, the jurisdiction of the civil court is sought to be ousted in terms of Section 4(b) read with Section 37 of the said Act and abatement of suit is sought to be effected in relation to pending suits in respect of the lands for which a notification has been published under sub-section (1) of Section 3 of the said Act, in terms of Section 4(c) thereof but however, thereby, the proceeding under Sections 48E of the Bihar Tenancy Act, Bihar Tenant Holdings (Maintenance of

Records) Act, 1973 and Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 have not been affected and the proceedings under the said Acts have been kept out of the purview of Section 4 thereof.

It is thus, possible that the decision of the authorities under the provisions of the aforementioned Acts, while deciding the title of a Bataidar or fixing a ceiling limit of a land holder may come in conflict with the decision of the consolidation authorities in a proceedings under the said Act.

There may also be cases, when a Comprehensive suit has been filed relating to a land within the meaning of the said Act and other properties, or there may be a suit where the properties in dispute lie within an area where the consolidation proceedings have started as also in an area where consolidation proceedings have not so started.

125. Various other peculiar situations may arise, but it is not necessary for us to take into consideration all such situations in this case, nor it is possible to do so.

126. Suffice it to say, that no machinery has been provided for in the said Act to resolve the conflict in the decisions which may be arrived at by different authorities under the different Acts as also by the civil courts in respect of self some land or in respect of different parcels of the disputed land or subordinate interest in such land claimed by other persons.

127. The provisions of the said Act, in opinion, will have to be construed *inter alia* keeping in view the aforementioned anomalies.

In this connection, notice may be taken to the provision of Sub-Section (2) of Section 31 of the said Act, which reads at follows :--

No decree or order shall be passed by any court in respect of any consolidation holding so as to create or leave a fragment.

128. Thus, sub-section (2) of Section 31 of the Act, by necessary implication while upholding the jurisdiction of the civil court, merely creates a statutory embargo so that the such scheme framed under the Act may not be disturbed. It may be mentioned here that the Ceiling Law also is enacted in order to prevent fragmentation of land.

If it is held that the legislature in its wisdom thought it fit that the proprietary rights prepared by the consolidation authorities or the scheme framed by them would be final and would not be called in question in any suit or to any proceedings under the provisions of any Act whatsoever, the aforementioned provisions contained in Section 31(2) of the Act would become otiose.

It is a well settled principle of law that no word far less any provision of statute should be considered as a surplusage.

130. Another question which also vexes us at this moment is that by reason of

Section 4 (b) of the Act, the jurisdiction of the civil court is ousted only during a limited period i.e., from the date of publication of the notification published under sub-section (1) of Section 3 of the Act, in the official gazette till the closure of the consolidation operation.

131. In terms of Sections 4(b) of the said Act, a civil suit must be held to be maintainable after closure of the consolidation proceedings for the simple reason that therein a provision has been made for exclusion of the period in the matter of computation of a period of limitation, during which the consolidation proceeding were in force.

Here again a direct conflict in between the said provision and Section 37 of the Act may be noticed. If the intention of the legislature was to make the orders of consolidation authorities absolutely final and binding upon all concerned persons, the question of making any provision with regard to the exclusion of the period during which the consolidation proceedings were continuing for the purpose of computing the period of limitation for instituting a suit for other proceeding would not have ever arisen.

132. The provisions of the said Act are such which in different situations give rise to problems which may be difficult to resolve.

133. It is, therefore clear that there occurs a conflict in Section 31(2) of the Act and Section 4(b) on the one hand and Section 37 thereof on the other. By interpretation of the said Act as a whole only, this conflict can be resolved.

134. In terms of Section 4(b) of the said Act, thus a civil court's jurisdiction is ousted for a limited period and the period during which the consolidation proceedings continued, such period shall not be counted for calculating the period of limitation whereas in terms of Section 37 of the said Act a wider bar in the matter of exercise of Jurisdiction by the civil court is sought to be created.

135. Before embarking upon the aforementioned question any further, some other case laws relating to ouster of the jurisdiction of the civil court u/s 9 of the CPC may be taken into consideration.

136. In *Raleigh Investment Co. Limited vs. Governor General in Council* reported AIR 1946 Privy Council 78, it was held by the privy council that Income Tax Act contains machinery which enables an assesses effectively to raise in the courts the question whether a particular provision of the Income Tax Act bearing on the assessment made is or is not ultravires. The privy council further pointed out that "the presence of such machinery, though by no means conclusive, matches with a construction of the section which denies an alternative jurisdiction to enquire into the same subject matter".

137. This decision of the privy council was expressly dissented from by the Supreme Court in the case of *K.S. Venkataraman and Co. Vs. State of Madras*, wherein the Supreme Court while considering the section 18-A of the Madras General Sales Tax Act, 1939 held that the same does not create a bar to the

maintainability of the suit. In that decision it was held by the Supreme Court that :--

If a statute imposes a liability and creates an effective machinery for deciding questions of law or fact arising in regard to that liability by necessary implication. But an authority created by a statute cannot question the vires of the statute or any of the provisions thereof where under it functions.

It was further held that "if such authority acts on the basis of a provision of the statute, which is ultra vires, to that extent it would be acting outside the Act. In that event, a suit to question the validity of such an order made outside the Act would certainly lie in a civil court".

In that decision it was further held :

a plain meaning should be given to the words "under this Act" which refers both the" procedure and substantial part of the Act.

138. Similarly in *Dhulabhai vs. State of M.P.* reported in AIR 1069 S.C. 78, the Supreme Court laid down the following propositions :--

(1) "Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to what the civil court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principle of judicial procedure".

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right or liability shall be determined by the tribunals constituted, and whether remedies normally associated with actions in civil courts are prescribed by the statute or not"

(3) "Challenge to the provisions of the particular Act as ultra vires cannot be brought before tribunals constituted under that Act. Even the High Court cannot go into that question on revision or reference from the decision of the tribunals."

(4) "When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act, but that is not a compulsory remedy to replace a suit."

(5) "Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies."

(6) "Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry."

(7) "An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply."

141. It is now well known that a court of limited jurisdiction must confine itself within the four corners of the statute. The jurisdiction of the consolidation authorities being limited, in the event of exercise of jurisdiction by them beyond the scope and purview of the said Act, the same would be wholly illegal.

142. It will not be out of place to consider the precedents with regard to the jurisdiction of the civil court in deciding the pure question of title vis-?-vis the jurisdiction of revenue authority.

143. In terms of Section 87(cc) of the Chotanagpur Tenancy Act, 1908 the revenue authorities were conferred with the jurisdiction to decide a question of title. The said Act provides for an appeal. Despite the same a full Bench of this court, in the case of Paritosh Maity and another vs. Ghasiram Maity and others and Radhagobinda Jew and others vs. Pano Mahto and others reported in 1987 P.L.J.R. 354, categorically held that the jurisdiction of the civil court is not ousted in a suit for declaration of title, recovery or confirmation of possession. In various decisions the Supreme Court held that Section 35 of the Bihar Land Reforms Act, 1950 creates a bar with regard to the exercise of the jurisdiction by the civil court in relation to the matter which falls for determination under the said Act. Section 35 of the Bihar Land Reforms Act reads as follows :--

Section 35 : "No suit shall be brought in any civil court in respect of any entry in or omission from a Compensation Assessment roll or in respect of any order passed under Chapters II to IV or concerning any matter which is or has already been the subject of any application made or proceedings taken under the said Chapters.

Despite a clear ouster of jurisdiction of the civil courts, the Supreme Court in Gurucharan Singh Vs. Kamla Singh and Others, held that there is nothing in Section 35 of the Bihar Land Reforms Act, depriving the civil court of its jurisdiction to decide question of declaration of title and consequential relief of possession.

144. In this State of Gujarat vs. Patil Raghav Nath and others, reported in 1969 Vol. IV S.C.C. 187, the Supreme Court, while considering the provision of Sections 63 and 216 of the Bombay Land Revenue Code, 1897 held that the Commissioner could not have gone into the question of title while deciding the

revision application under the said Act.

145. Similarly, the Public Land Encroachments Act enacted by various States contained a provision barring the jurisdiction of the civil court. In the case of Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, , the Supreme Court held that despite existence of the provision with regard to the bar of jurisdiction of the Civil Court, the executive authorities dealing with the matter under the Andhra Pradesh Public Land Encroachment Act cannot decide complicated questions of title. The aforementioned decision has been followed by this court in Maheshwari Devi vs. State reported in 1983 B.L.J. 1051.

146. Under the Labour Laws, the competent authorities were conferred with power to grant relief in respect of payment of wages, minimum wages, bonus etc., but it has been held in various decisions that while adjudicating upon a dispute under those Acts, the authorities can at decide a complicated question.

Similarly, in Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another, it was held that in determining the scope of these incidental questions care must be taken to see that under the guise of deciding incidental matters the limited jurisdiction is not unreasonably or unduly extended.

In other words, a complicated question has been held to be beyond the purview of investigation by the executive authorities under the Labour Laws. Reference in this connection may also be made in the case of Ranchi District Cadre Co-operative Society Limited vs. Presiding Officer reported in 1988 P.L.J.R. 59.

147. The learned Advocate General, however, has placed great reliance upon decision of the Supreme Court in the case of Ram Singh and Others Vs. Gram Panchayat Mehal Kalan and Others, . In that case Supreme Court was considering the provisions of Punjab Village Common Lands (Regulation) Act.

Under the said Act, if a land fell within the Category of "Shamlat deh", only the revenue courts could exercise jurisdiction in relation thereto and jurisdiction of the civil court was expressly barred in all such matters u/s 13 of the said Act.

Section 13 of the said Act was in the following terms: "Bar of jurisdiction of Civil Courts.-No civil court shall have jurisdiction--

(a) to entertain or adjudicate upon any question whether any property or any right to or interest to any property is or is not shamlat deb vested nor deemed to have been vested in a panchayat under this Act; or

(b) to question the legality of any act, on taken by the Commissioner or the Collector or the Panchayat under this Act; or

(c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine.

In the case before the Supreme Court in terms of the provisions of the said Act any person claiming right, title and interest in relation to a land which have

vested or deemed to have vested under the Act or claiming that any land so vested in a Panchayat was required to submit to the Collector within such time as may be prescribed a statement of his claim in writing that the Collector has no jurisdiction to decide such claim in such manner as may be prescribed in Section 12 of the said Act, provide for an appeal and such orders could not have been called in question in any court by way of appeal or revision or in any original suit, application or execution proceeding.

As noticed hereinbefore under the provisions of the Act, the civil court jurisdiction with regard to declaration of title, was also barred.

146. From time immemorial it has been considered by the courts of India as also by the privy council that the jurisdiction of the revenue authorities in the matter of preparation of records of right is limited although tenancy laws provide for institution of suits and in some cases a second appeal up to the High Court.

Although not stated so specifically in the said decisions but there was no doubt that the revenue courts manned by personnel drafted from the executive side and not trained in law or equipped with the experience of deciding complicated questions of title would not be able to decide so.

We can take judicial notice of the fact that in a suit for declaration of title, various intricate questions of law arise for consideration which some time puzzle the experienced minds of Judges of the High Court and Supreme Court leading to various conflicting decisions.

147. The full Bench decision of this Court in Nana Kumar Rai vs. State reported in A.I.R., 1974 Patna 164: 1974 PLJR 27 which has been already referred to and discussed in details by Brother P.S. Mishra, has to be considered in this light. In the said decisions, it has been held that the record of rights is not a document of title and as such while preparing a record of rights, the revenue authority cannot have any final say with regard to the question of title. Such question of title may incidentally have to be decided by the authorities concerned for the purpose of making entries in the record of rights with regard to the respective rights of various claimants in the land in question but thereby title of the claimants cannot be finally adjudicated which in a given case, has to be decided ultimately by the civil court. The decision in Nand Kumar Rai's case with utmost respect to the Hon'ble Judge, in my opinion, was not considered by the Special Bench in the case of Ram Krit Singh and others vs. State of Bihar, reported, in 1979 B.B.C.J., 259 : 1979 PLJR 161 from this angle.

I shall deal with the said Special Bench decision in Ram Krit Singh's case at a later stage.

148. I am, however, not unmindful of the provisions as contained in Section 10(6) and Section 12A of the Act, whereby the decision of the appellate authority in appeal preferred u/s 10(6) and Section 12A(2) , subject to the provisions of the said Act, have been made final.

However, the finality attached with the orders passed under the said Act have to be given a restricted meaning. The finality clause as has been held by the Supreme Court in Venkataraman & Co., vs. State of Madras reported in A.I.R., 1966 S.C. 1093 must be construed in such a manner so as that order passed by the appellate authority u/s 10 and Section 12A becomes final when the same are passed within the scope, ambit and purport of the Act and in accordance with the provisions of the said Act.

149. In R. vs. Hallstrom and another, ex-parte W, Ackner LJ reported is 1985 (3) All E.R. 775, while considering the jurisdiction of the mental health review tribunal constituted under Mental Health Act, 1983 it was held as follows--

I accept the submission of counsel as amicus that, as the opening words of s. 72 make clear, the jurisdiction given to the tribunal is limited to entertaining applications made by a person who is liable to be detained under the Act. The tribunal's powers are thus confined to granting or refusing relief to persons liable to be detained. It has no power to consider the validity of the admission which gave rise to the liability to be detained. The tribunal cannot, in my judgment, be used where it is sought to challenge the underlying validity of the admission, as a route to the High Court. Counsel for the doctors seeks to rely on s 66(1)(b) to get over this difficulty. That sub-section provides that where a patient is admitted to a hospital in pursuance of an application for admission for treatment an application may be made to a mental health review tribunal within the relevant period. However, s 77, which deals with general provisions concerning tribunal applications, provides by sub-s (1) that no application shall be made to a mental health review tribunal by or in respect of a patient, except in such cases and at such times as are expressly provided by the Act. The 66(1)(b) case must be a person who is liable to be detained under the Act because he has been admitted in pursuance of an application made under s. 53 and that requires the fulfillment of the conditions specified in that section. Such an applicant, being admitted to the hospital in pursuance of a s. 3 application has thereby acquired the liability to be detained. That a s. 66(1) (b) patient is necessarily a person liable to be detained is recognized by S. 6(4) of the Act, which deals with the effect of an application for admission and provides:

Where a patient is admitted to a hospital in pursuance of an application for admission for treatment, any previous application under this Part of this Act by virtue of which he was liable to be detained in a hospital or subject to guardianship shall cease to have effect.

It follows that the applicant was not entitled to seek from the mental health review tribunal a decision as to the vires of her admission. It has no jurisdiction to entertain such an application.

I obtain some comfort in concluding that Parliament did not intend by s. 139 to bar the court's supervisory jurisdiction, because, had it done so, there would indeed have been no remedy to quash a compulsory admission to hospital made

as a result of a reasonable misconstruction of a public official's powers. This would have disclosed a serious inadequacy in the powers of the courts to protect the citizen from an actual or potential loss of liberty arising out of a serious error of law.

Neill LJ, agreed with the aforementioned view and stated the law thus :--

It is to be remembered that proceedings for judicial review may be directed at the decision itself rather than at the parties who made it and in the absence of any personal claim such as a claim for damages I do not consider that the doctors are being made "liable to" any proceedings by reason of the application for judicial review which the applicant wishes to institute.

150. In *Jetha Bai and Sons, Jew Town, Cochin and Others Vs. Sunderdas Rathenai and Others*, , it was held that force underlying the words "shall be final" have to be read in the context of the Act.

The majority view in that case was that there was no conflict in its decision in the case of *Aundal Ammal Vs. Sadasivan Pillai*, and in the case of *Shyamaraju Hegde Vs. U. Venkatesha Bhat and Ors*, , as the words of finality in the Kerala Buildings (Lease and Rent) Control Act and the Karnataka Rent Control Act present distinctly different perspectives.

151. In *R. v. Medical Appeal Tribunal, ex Gclmore* reported in 1957 Vol. 1 Q.B. 574 at 583, Denning, L.J., held that the word "final" is not enough. That means only "without recourse to appeal". It does not mean "without recourse to certiorari". It makes the decision final on the facts, but not final on the law". Reference in this connection may also be made to *Pyx Granite Co. Ltd., v. Ministry of Housing and Local Government* reported in 1960 AC 260 : 1959 Vol. III All ER 1 and *R. v. Crown Court at Knightsbridge, ex-P International Sporting Club (London) Ltd.*, reported in 1981 Vol. III ER 417 at page 424.

152. In *Halsbury's Laws of England 1st Edn. vol. I: Administrative Law*, the law has been stated in the following term :

The original jurisdiction of the superior courts may be indirectly ousted where a statute creates a new legal right or obligation and prescribes a specific method for its enforcement. Whether this method is by way of proceedings before an inferior court or tribunal or by way of complaint or appeal to an administrative authority.

If recourse to the prescribed procedure is held to be mandatory, a superior court will not permit a party to raise the relevant issues before it in declaratory or other proceeding instead of before the designated body. On the other hand, the court, may decline to regard to its original jurisdiction as having been excluded if the statute in question encroaches on existing legal rights, or if the issue is whether the circumstances fall outside the ambit of the prescribed procedure, or if the prescribed alternative remedy is inadequate, or if the interests of justice otherwise call for its intervention. If the body vested with exclusive original

jurisdiction has purported to determine the matter, the validity of its decision can be impugned before a superior court exercising its supervisory jurisdiction in an appropriate form of proceedings, and if the court declares that decision to be invalid, it may be prepared to declare what was the correct decision, if such a decision is implicit in the finding of invalidity.

153. What is true for exercise of jurisdiction by a writ court may also be true for exercise of the jurisdiction by a civil court to a limited extent in such a matter, but certainly subject to bar of its jurisdiction under any statute.

154. The reasons for my saying so is that unless the jurisdiction of the civil court is completely ousted either expressly or by necessary implication, as has been held in various decisions as mentioned hereinbefore and as has been referred to by Brother P.S. Mishra, the decision of the tribunal having a limited jurisdiction can always be, challenged on certain grounds before the correct courts which have co-plenary jurisdiction.

155. It is now well settled that the jurisdiction of the consolidation authorities is limited and is not plenary one inasmuch as it cannot try all types of suits relating to the land.

156. Reference in this connection may be made to *Gorakh Nath Dube Vs. Hari Narain Singh and Others*, , *Suba Singh Vs. Mahendra Singh and Others*, , AIR 1985 Patna 26 : 1985 PLJR (NOC) 57 (*Bibi Jaitun v. Urmila Kaur*), 1985 Patna 179 : 1985 PLJR 86 (*Sheoratan Chamar v. Ram Murat Singh*), 1989 PLJR 579 (*Anwal Ali v. Amirul Haque*), 1982 PLJR 59 (S.C.) (*Mst. Bibi Rahmani Khatoon and others v. Karkoo Gope and others*) and 1980 BBCJ 252 page 254 (*Narendra Kumar Verma and others v. State of Bihar through the Collector, Bhagalpur*).

157. How the jurisdiction of an authority exercising the limited jurisdiction is to be ascertained has been dealt with in details by Brother P.S. Mishra.

158. I may, however, add that in *R. v. Belton* reported in 1841 Q.B., 66 Lord Denman said that the question of jurisdiction is determinable at the commencement, not at the conclusion of the enquiry.

In *Union of India (UOI) Vs. Tarachand Gupta and Bros*, , wherein the Supreme Court followed the decision of House of Lords in *Anisminac Ltd., v. Roreigh Compensation Commission* reported in (1969) 1 All ER 208 and *R. v. Fulham* 1953 Vol. II All ER 4, it was held as follows:--

The principle thus is that exclusion of the jurisdiction of the civil courts is not to be readily inferred. Such exclusion, however, is inferred where the statute gives finality to the order of the tribunal on which it confers jurisdiction and provides for adequate remedy to do what the courts would normally do in such a proceeding before it. Even where a statute gives finality, such a provision does not exclude cases where the provisions of the particular statute have not been complied with or the tribunal has not acted in conformity with the fundamental principles of judicial procedure. The word "jurisdiction" has both a narrow and a

wider meaning. In the sense of the former, it means the authority to embark upon an enquiry; in the sense of the latter it is used in several aspects, one of such aspects being that the decision of the tribunal is in non-compliance with the provisions of the Act. Accordingly, a determination by a tribunal of question other than the one which the statute directs it to decide would be a decision not under the provisions of the Act, and therefore, in excess of its jurisdiction.

159. In that case the Supreme Court following the judgment of the privy council in *Mask and company's case* (supra) held that the provisions for excluding the jurisdiction of civil court were not applicable.

As I have indicated herein before that the jurisdiction of the consolidation authorities is not a wide one to as to enable them to determine all questions relating to title of land and for all purposes.

160. The aforementioned decision has been followed by the Supreme Court again in *Noor Mohd. Khan Ghouse Khan Soudagar and another v. Fakirappa Bharmappa Machenahalli and others* reported in AIR 1978 S.C. 1217. In that case also the Supreme Court held that the applicability of Karnataka Land Reforms Act, 1961 whereby a bar of jurisdiction of the civil court has been created, may require to be considered by the civil court as to whether the Act itself is applicable or not.

161. In such a situation it may be held that the questions which cannot be decided by consolidation authorities including a pure question of title can be decided by the civil court.

162. Unless restricted meaning is assigned to section 37 of the said Act, no meaning can be attributed to section 4(b) , 4(c) and 31(2) thereof and the said provisions would become otiose. The very fact that section 4(b) postulates that in calculating period of limitation applicable to such suit or proceeding the period during which the consolidation proceedings are carried out shall not be taken into consideration and farther in view of the fact that u/s 4(c) of the said Act the suit abates only for the said period and revives after the completion of the consolidation proceeding are pointers to the fact that the jurisdiction of the civil court is not completely ousted.

163. It is now well settled that the abatement of suit under the said Act is not automatic but requires a Judicial order passed in this regard after taking into consideration the facts and circumstances of the case.

Reference in this connection may be made to in the case of *Awadh Roy Versus Mewalal Roy* reported in 1989 BLJ 154.

164. Unfortunately in *Ram Krit Singh's case* (supra) the Special Bench did not consider the case from these angles and held that after revival of suit u/s 4(c) of the said Act, the court is to pass a decree in accordance with the decision of the consolidation authorities.

165. As pointed out hereinbefore, in terms of Section 4(f) of the said Act, all

suits do not abate nor the entire suit abates. The Court may after taking into consideration the pleadings of the parties come to the conclusion that the suit has not abated or has partially abated.

The very fact that the suit revives after the closure of the consolidation proceedings goes to show that the jurisdiction of civil court also revives. Revival of such suits, in my opinion, is not for the purposes of passing a decree in terms of the decision of the consolidation authority. Had that been the intention of the legislature the same could have been so expressly stated in a clear language by the legislature itself. In absence of such a provisions, it cannot be held that the revival of suit does not have any effective meaning and the civil courts are required only to follow the decision of the consolidation authority. Further the very fact that the courts and other authorities have been prohibited from a leaving of fragment also goes to show that the jurisdiction of other authorities are not completely ousted in all matters.

166. It is now a well settled principle of law that while interpreting statute, the same has to be read as a whole. Section 37 of the said Act, therefore, in my opinion cannot be read in isolation and has to be considered in the background of the well known limited jurisdiction of the revenue and executive authorities. However, I hasten to add that there may be statutes which may contain a provision barring the jurisdiction of the civil court completely and the special tribunal constituted there under may try suits relating to declaration of title or possession also. But the same depends upon the phraseology used in the statute itself.

The value of record of rights, the limited jurisdiction of consolidation authorities and bar of jurisdiction of the civil court u/s 4(b) of the Act for a limited period as also the abatement of the pending of the suit in terms of section 4(c) and revival of the suit after completion of consolidation proceeding and other provisions including sub-section (2) of Sec. 31 of the Act point out to the conclusion that the civil court's jurisdiction is not completely ousted and in any event a pure question of title can always be decided by the civil court.

167. From various decisions as referred to hereinbefore it is clear that the jurisdiction of the consolidation authorities are not unlimited. The distinction between statutory tribunal of limited jurisdiction and a court having unlimited jurisdiction or plenary jurisdiction is well known.

So far as the court of unlimited jurisdiction is concerned, its judgment cannot be disobeyed on the ground of nullity unless it is set aside whereas a judgment or order passed by a tribunal of limited jurisdiction may be ignored on the ground of nullity and can be challenged in a collateral proceedings.

Reference in this connection may be made in the case of Isaack V. Robertson reported in 1984 Vol. 3, All ER 140, wherein Lord Diplock stated the law in the following terms :--

Their Lordships would, however, take this opportunity to point out that in relation to orders of a court of unlimited jurisdiction it is misleading to seek to draw distinctions between orders that are "void" in the sense that they can be ignored with impunity by those persons to whom they are addressed, and orders that are "voidable" and may be enforced unless and until they are set aside. Dicta that refer to the possibility of there being such a distinction between orders to which the descriptions "void" and "voidable" respectively have been applied can be found in the opinions given by the judicial committee of privy council in *Marsh V. Marsh* (1945) AC 271 at 284 and *MacFoy V. United Africa Co. Ltd.*, (1961) 3 All ER 1169 : (1962) AC 152, but in neither of those appeals nor in any other case to which counsel has been able to refer their Lordships has any order of a court of unlimited jurisdiction been held to fall in a category of court orders that can simply be ignored because they are void ipso facto without there being any need for proceedings to have them set aside. The cases that are referred to in whose dicta do not support the proposition that there is any category of orders of a court of unlimited jurisdiction of this kind; what they do support is the quite different proposition that there is a category of orders of such a court which a person affected by the order is entitled to apply to have set aside *ex debito justitiae* in the exercise of the inherent jurisdiction of the court without his needing to have recourse to the rules that deal expressly with proceedings to set aside orders for irregularity and give to the judge a discretion as to the order he will make. The judges in the cases that have drawn the distinction between the two types of orders have cautiously refrained from seeking to lay down a comprehensive definition of defects that bring an order into the category that attracts *ex debito justitiae* the right to have it set aside, save that specifically it includes orders that have been obtained in breach of rules of natural justice.

The contrasting legal concepts of voidness and void ability form part of the English law of contract. They are inapplicable to orders made by a court of unlimited jurisdiction in the course of contentious litigation. Such an order is either irregular or regular. If it is irregular it can be set aside by the court that made it on application to that court; if it is regular it can only be set aside by an appellate court on appeal if there is one to which an appeal lies.

168. In the case of *Sayed Mohamed Baguir El-Edroos v. State of Gujarat* reported in AIR 1981 S.C. 2016, the Supreme Court while considering the provisions of Bombay Personal Inams Abolition Act (42 of 1933), relying upon the decisions of *Mask and Company's case* (supra) and *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, held that adequate remedy is not available to the plaintiff on reference made to the Government. It was further held that even where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find out the adequacy of the sufficiency of the remedies provided may be relevant.

169. However, it may be borne in mind that erroneous decision of a matter which is within the jurisdiction of the said tribunal would not bring the case within the

purview of the aforementioned rule. A decision of statutory authority in respect of any matter covered by an Act which is a complete Code by itself and whereby the jurisdiction of all authorities including the civil court are completely ousted, the order passed by such authority shall be final.

The construction of such provisions would, however, depend upon the facts of each case as also public policy involved in the matter.

170. In *Express Newspaper Pvt. Ltd., v. Union of India* reported in 1986 Vol. I, S.C.C. 133 the Supreme Court while considering the provisions of the Delhi Development Act quoted with approval S.W.R. Wade's Administrative Law with regard to error of jurisdiction and inter alia held that fraud on power or malafide exercise of power or exercise of jurisdiction in bad faith vitiate the order.

171. In such cases obviously the order passed by the authority having limited jurisdiction would be open to question before the civil court or in a petition under Articles 226 and 227 of the Constitution.

However, where a fraud has been exercised by one party on the other preventing the latter from taking part in the proceeding is reflected in a decision of Supreme Court in *Karbalai Begum Vs. Mohd. Sayeed and Another*, . In the said decision the Supreme Court while considering the bar of jurisdiction of the civil court created u/s 49 of the U.P. Consolidation of Holdings Act (Act 5 of 1954) held that where a party has been prohibited by practising fraud by another to participate in the consolidation proceeding, the jurisdiction of the civil court in such matter is not barred.

172. A Constitution Bench of the Supreme Court in *H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another*, , stated the law thus :--

It is the duty of the court to determine in what particular meaning and particular shade of meaning the word or expression was used by the Constitution makers and in discharging the duty the Court will take into account the context in which it occurs, the object to serve which it was used, its collocation, the general community with the concept or object it as intended to articulate and a host of other considerations. Above all, the court will avoid repugnancy with accepted norms of justice and reason. The expression "provision of the Constitution relating to" in Article 363 means provisions having a dominant and immediate connection with" it does not mean merely having a reference to. A wide meaning of the expression may exclude disputes from the jurisdiction of the Courts in respect of rights or obligations, however indirect or tenuous the connection between the constitutional provision and the covenant may be.

173. Jurisdiction to try a proceeding is barred under the first limb of Article 363 if the dispute arises out of the provision of a covenant; it is barred under the second limb of Article 363 if the Court holds that the dispute is with respect of a right arising out of a provision of the Constitution relating to a covenant. A

dispute that an order of an executive body is unauthorized, or a legislative body is unauthorized, or a legislative measure is ultra vires, is not one arising out of any covenant under the first limb of Article 363, merely because the order of the measure violates the rights of the citizen which, but for the act of measure, were not in question. The dispute in such a case relates to the validity of the acts or the vires of the measure. Exclusion of the Court's jurisdiction by the terms of the relevant words in the second limb lies in a narrow field. If the constitutional provision relating to a covenant is the source of the right claimed to accrue, or liability claimed to arise, then clearly under the second limb the jurisdiction of the Court to entertain a dispute arising with respect to the right or obligation is barred. We need in the present case express no opinion on the question Whether a dispute that an executive act or legislative measure operating upon a right accounting or liability arising out of a provision is invalid falls within the second limb of Article 363."

In *Andhra Industrial Works Vs. Chief Controller of Imports and Others*, it was held that the Supreme Court may exercise its jurisdiction under Article 32 of the Constitution inter alia on the ground that where the statute concerned it intra vires but the impugned action is without jurisdiction on account of basic defect in the constitution of the authority or tribunal or owing to absence of a preliminary jurisdictional fact i.e., a condition precedent to the exercise of jurisdiction or where the impugned action is based on a misconstruction of the intra vires statute or is so contrary to the established procedure or rules of natural justice that it results in violation of a fundamental right.

174. It is, therefore clear that in case where the authorities do not act in accordance with the mandatory provisions of the law or decide an issue in violation of the principles of natural justice or fair play or order passed by such authority are without jurisdiction in absence of the jurisdictional facts which is a condition precedent for exercise of the jurisdiction, the jurisdiction of the civil court shall not be barred.

175. This court in *Lakshman Mahto v. State of Bihar and others* reported in 1989 BLJR 192 held that the scope, object and proceedings u/s 10(2) and the scope and object u/s 12(2) are different and as such at the stage where the scheme drawn by the authorities is to be finalized in terms of sections 12 and 12A of the Act, no rights as provided u/s 10 of the Act may be entertained. Such is the scope and purport of section 10A of the Act also. Therefore, in a case where title in respect of land devolved upon a person after the finalization of the proceedings u/s 10 of the Act or when the consolidation scheme prepared under the statute reaches its finality, evidently the consolidation authority except the revisional authority in some cases may not have a jurisdiction to decide such a question so as to reopen the entire matter and in such a case the jurisdiction of the civil court will not be barred. Reference in this connection may be made in the case of *Commissioner of Income Tax, Bombay City Vs. Bombay Burmah Trading Corpn., Bombay*, wherein it has been held that a decision of the

consolidation authorities in a mutation proceedings will not bar the jurisdiction of the civil court to entertain a suit.

176. It is also a trite law that where a court is incompetent to grant relief, normally the proper construction of the statute would be that it is incompetent to deal with the matter.

Reference in this connection may be made in the case of Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others, .

In that case, it was also held that where the lis pending before the Registrar, Co-operative Society is not a "dispute" within the meaning of Gujarat State Co-operative Societies Act and such question of jurisdiction shall be considered by the Registrar; this means, it is incumbent on the Registrar to decide the same as a preliminary issue and when this preliminary issue found in the negative he will have no further jurisdiction to deal with the matter.

177. Further as noticed hereinbefore the proceedings under certain statutes are not barred, nor do they abate upon publication of a notification under sub-section (1) of section 3 of the said Act The proceedings under such Acts which do not abate are mentioned in the proviso to section 4(c) of the Act as also the last proviso to section 4 thereof. It is thus, possible that there may be conflict in decisions of the authorities under the said Acts and the consolidation authorities. A decision of such an authority may also be passed after the conclusion of the consolidation proceeding or vice versa. The jurisdiction of the civil court in relation to a decision under such statutes particularly to decide the question of title may not be barred. In such a case naturally when a suit is filed by any person with regard to a matter out of conflict in the decisions of various statutory authorities the same will have to be finally resolved by another court including the civil court where a question of title in relation to the land arises.

178. It is now well known that a statute has to be interpreted with reference to its language, background, context and purpose. Taking this into consideration, the provisions of the said Act in its entirety and further taking into consideration the fact that its jurisdiction of the consolidation authorities, is limited, in my opinion, it would be unsafe to hold that the consolidation authorities can exercise their jurisdiction in relation to all types of the claim of the parties to the lis.

179. P.S. Mishra, J., has referred to the decisions in details wherein the difference between the tribunal and the Court has been pointed out. The word "court" may have a different meaning in different contexts and as contemplated under different statutes.

180. Suffice it to say that when an enactment by implication imports any principle or rule relating to jurisdiction, evidence or procedure (whether statutory or non-statutory) which prevails in the territory to which the enactment extends and is relevant to the operation of the enactment in that territory unless a contrary intention appears.

The usual rules relating to evidence are by implication imported whenever it is necessary to establish something referred to in an enactment See Bennion on Statutory Interpretation at page 700).

181. In my opinion, therefore, the jurisdiction of the civil court will not be barred in the matters as enumerated hereinbefore.

182. Recently this Court in the case of Anwar Ali v. Amirul Haque reported in 1989 P.L.J.R. 579, following the decisions of the Orissa High Court in the case of Duruju Mallik v. Krupasindhu Swain reported in AIR 1985 Orissa 202 and in the case of Rahas Bewa v. Kanduri Charan Sutar reported in AIR 1982 Orissa 48, held that a suit for permanent injunction cannot be said to have abated in terms of Section 4(c) of the Act.

183. Similarly, in my opinion, a suit for rectification of a document in terms of Section 31 of the Specific Relief Act will not be barred nor such a suit shall abate, although the deed in question may relate to an interest in the land in respect whereof a notification under the said Act has been issued.

184. So far as right of an under raiyat who does not acquire an occupancy status is concerned, it may be stated that the matter has been considered by me in great details in Upendra Mandel and others versus the State of Bihar and others reported in 1989 B.L.J.R., 186 wherein the scope, ambit and jurisdiction of the court to decide a matter u/s 48 of the Bihar Tenancy Act has been discussed and inter alia it was held that the matter relating to eviction of under-raiyats who does not have an occupancy right is also to be dealt with under the said Act itself as even the under-raiyats having no occupancy right can only be evicted if one or the other factors enumerated u/s 44 of Bihar Tenancy Act is attracted whereas under raiyat who has acquired the status of an occupancy raiyat can be evicted on the grounds enumerated in Section 25 thereof.

185. The Special Bench in Ramkrit Singh's case (supra) was considering a question as to whether the provisions of Sections 4(c) , 12A and 37 of the said Act are ultra vires the Constitution or not.

The special bench in that case did not address itself to the question as to whether the consolidation authorities exercise a limited jurisdiction or not.

186. I have no doubt in my mind that if the consolidation authorities exercise a limited jurisdiction as it cannot try the suit of all nature and further its decision may come in conflict with the decisions of some other statutory authorities, the logical corollary thereof would be that the jurisdiction of the civil court is not barred for all purposes.

187. If this reasoning is accepted then the observations of the Special Bench in Ramkrit Singh's case to the effect

In my view both the contentions of the learned Advocate-General are fit to be accepted. The opening words of section 4 state clearly that the consequence, as

main tinted therein, shall ensue "from the date specified in the notification till the close of the consolidation operation". The consolidation operation closes by issue of notifications envisaged in section 26A of the Act. The language being clear and explicit effect has to be given to the words used. When the section says that the ensuing consequences are till the close of the consolidation operation, we cannot nullify the words aforesaid by saying that the consequences are for all times to come. It is obvious, therefore, that on the close of consolidation operation in a village or area the abated suits would revive. But the revival of those suits would not create any problems as suits will have to be decided in conformity with the decisions arrived at in the consolidation proceedings in so far as the rights or interest in any land covered. If this interpretation is accepted, it would be seen that the suggested harshness or injustices disappeared. In the illustration already given, if a party succeeds in establishing its title, after the close of the consolidation proceedings, it would be open to it not only to have its title declared accordingly but also to have a decree for mesne profits.

(under lining mine).

Must be held to have been rendered "per incuriam" inasmuch as in that case the Special Bench did not consider the scope, effect and purport of the provisions of section 4(b) , 4(c) and 37 from the aforementioned angle.

188. In Ramkrit Singh's case, the Special Bench also did not consider the earlier Full Bench decision of this Court in the case of Brij Bhukan v. S.D.O. Siwan reported in AIR 1955 Patna page 1, nor did it take into consideration the Full Bench decision in the case of Patna Municipal Corporation vs. Ram Bachan reported in 1961 BLJR, page 3.

189. The Supreme Court in the case of Municipal Corporation of Delhi vs. Gurnam Kaur reported in 1969 Vol. 1, S.C.C. 101, held as follows:--

Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a payment squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th edn. explains the

concept of subsilentio at p. 153 in these words :

A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specified outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.

In *Gerard V. Wharthonthris Ltd. (k).*, the only point argued was on the question of priority of the claimant's debt, and on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of appeal in *Lancaster Motor Co. (London) Ltd., V Bremith Ltd.*, the court held itself not bound by its previous decision. Sir Wilfrid Greene, M. R., said that he could not help thinking that the point now raised had been deliberately passed subsilentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority.

190. Reference in the connection may also be made to *Ashville Investments Ltd., v. Elmer Contractors Ltd.*, reported in 1988 Vol. 2, All England Law Reports, page 577, wherein it has been held as follows.

In these circumstances I think that it is necessary carefully to consider the role of precedent and the doctrine of stare decisis in a case such as this, in which a question of construction is not in truth the, fundamental issue between the parties. In my opinion, the doctrine of precedent only involves this: that when a case has been decided in a court it is only the legal principle or principles on which that court has so decided that bind courts of concurrent or lower jurisdictions and require them to follow and adopt them when they are relevant to the decision in later cases before those courts. The ratio decidendi of a prior case, the reason why it was decided as it was, is in my view only to be

understood in this somewhat limited sense.

191. Reference in this connection may also be made to Smt. Pratibha v. State of Bihar reported in 1988 PLJR 646.

192. In the case of Sarda Mossarrat v. Hindustan Steel Ltd., Bhilai Steel Plant and others reported in 1989 Vol. 1, S.C.C. 272, it was held as follows :--

Since this special aspect was not debated before the Constitution Bench, it would not be proper to shut out the petitioner from raising the plea by recourse to the argument that the point was concluded in Hari Singh's case regardless of whether the matter was debated or not. Accordingly we will deal with this point in the light of the submissions urged before us bearing in mind that the Constitution Bench has categorically observed that the Parliament has legislative competence to enact the Act, albeit in the absence of any debate on this point.

193. Recently, the Supreme Court in Union of India v. Raghubir Singh reported in 1989 (2) Supreme Court Cases page 754 held as follows:--

But like all principles evolved by man for the regulation of the social order, the doctrine of binding precedent is circumscribed in its governance by perceptible limitation, limitations arising by reference to the need for re-adjustment in a changing society a re-adjustment of legal norms demanded by a changed social context. This need for adopting the law to new urges in society brings home the truth of the Holmesian aphorism that "the life of the law has not been logic it has been experience and again when he declared in another study that "the law is forever adopting new principles from life at one end", and "sloughing off" old ones at the other. Examining the conceptual limitations of what Holmes had said, Julius Stone elaborates that it is by the introduction of new extra-legal propositions emerging from experience to (sic) premises, or by experience-guided choice between competing legal propositions, rather than by the operation of logic upon existing legal propositions, that the growth of law tends to be determined. Legal compulsions cannot be limited by existing legal propositions, because there will always be, beyond the frontiers of the existing law, new areas inviting judicial scrutiny and judicial choice-making which could well affect the validity of existing legal dogma. The search for solutions responsible to a changed social era involves a search not only among competing propositions of law, or competing versions of a legal proposition or the modalities of an indeterminacy such as "fairness" or "reasonableness", but also among propositions from outside the ruling law, corresponding to the empirical knowledge or accepted values of present time and place, relevant to the dispensing of justice within the new parameters.

It was further held that revision by the Supreme Court of its earlier decisions would be justified if there were compelling and substantial reason to do so. The earlier decision may be reconsidered for instance (1) when an earlier relevant statutory provision have not been brought to the notice of the Court, or (2) if a vital point was not considered.

RE:QUESTTON B :

194. The vires of the Act has been challenged only on the ground that the tribunal is manned by Executive Officers and not by the Judicial officers. According to learned counsel for the petitioners as also Shri Basudeo Prasad who assisted this court as amicus curiae, the provision of the said Act violate the directive principles of the State as contained under Article 50 of the Constitution. There cannot be any doubt that Article 50 of the Constitution is the conscience of the Constitution as has been held by the Supreme Court in AIR 1977 S.C. 61 & as referred to in details by Brother P.S. Mishra.

195. The object of separation of judiciary from the executive and the history behind the same has been stated in details by Durga Das Basu in his commentary on the Constitution of India, (Silver Jubilee edition), 6th edition Vol. 1 at pages 128-129 of the said book. It is, thus not necessary to reproduce the same.

196. It may further be mentioned that the Supreme Court again in the case of S.P. Gupta v. President of India and others, commonly known as "Judges Transfer Case" reported in AIR 1982 S.C. 149 followed the decision of the Supreme Court in 1977 S.C. 2324, and again reiterated the necessity of an independent judiciary.

197. In the case of His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, , the Supreme Court held as follows :--

The basic structure may be said to consist of the following features:--

- (1) Supremacy of the Constitution;
- (2) Republican and Democratic forms of Government;
- (3) Secular character of the Constitution;
- (4) Separation of powers between the legislature, the executive and the judiciary;
- (5) Federal character of the Constitution.

198. In the consolidation proceedings after coming into force of the Bihar Land Reforms Act, the State itself is interested in a vast area of lands. In many cases, therefore, a raiyat or under-raiyat will have to fight with the State itself in respect of title or possession of the lands brought within the purview of consolidation operations under the provisions of the said Act. In such a case it would have been better if at any stage of the proceeding the services of the judicial officer would have been requisitioned so as to clear from the minds of the litigant the likelihood of bias in the authorities under the said Act. Unfortunately, the State despite observations to the aforementioned effect by two Special Benches in Ramkrit Singh's case reported in 1979 BBCJ 259:1979 PUR 161 and in Nand Kumar's case reported is in 1974 Patna 164 : 1974 PLJR 27 had not taken any steps in this direction. Judicial notice can be taken of fact that the consolidation authorities had been deciding the cases throwing all norms and

procedures to the winds. They have also not been following the procedural laws embodied in the Evidence Act nor have they been complying with the requirements of natural justice and fair play. There is no gainsaying that the authorities under the said Act are wholly inequipped to deal with the complicated questions of title.

Observation of the Full Court in Nand Kumar's case appears to be apposite in this regard where Untwalia, CJ, expressed his anguish in the following terms :--

It is difficult to conceive how complicated title suits would be speedily and summarily disposed of by Revenue Courts and how the under raiyats would be benefited thereby. I can take judicial notice of the fact that a large number of title suits have been filed throughout the State of Bihar wherever Revisional Survey operations have taken place. I am also aware that the number of Civil Courts is too small to dispose of such large number of title suits. I am, however, also aware of the fact that the number of Revenue Courts is also not sufficient, rather too small to dispose of such a large number of complicated title suits. They will be simply unable to decide them unless they technically choose to literally dispose of the suits by any means; no Court by a judicial approach will be able to dispose of such a large number of suits.

199. It is true that a directive principle cannot be enforced in a court of law. However judicial activism in this regard must be in consonance with the philosophies of the present day relating to independence of judiciary when more and more impediments are sought to be created in the function of law courts.

200. It is inconceivable that while even during the British days, the executive authorities were debarred from conducting criminal cases at they were the prosecutors, they are permitted to do so now.

201. The Supreme Court recently in a number of decisions held that a directive principle can be read as a part of Article 14 of the Constitution of India in an appropriate case.

202. As noticed hereinbefore, in Keshavanand Bharti's case, separation of power of legislature, executive and judiciary have been held to be a basic feature of the Constitution. Similarly, judicial review has also been held to be a basic feature of the Constitution.

203. It is true, that in a given case, the decision of the consolidation authorities can be successfully challenged before this Court by filing a writ application under Articles 226 and 227 of the Constitution.

204. It is also true, that the scope of judicial review has been extended to a large extent. The High Courts and the Supreme Court in their anxiety to do justice to an aggrieved party, have been interfering with the administrative and quasi-judicial order more frequently than it used to do. However, that is no solace as in such cases, the High Court and the Supreme Court cannot review the finding of facts.

205. It is now well known, that in order to uphold the constitutionality of a provision, an Act may have to be lead down. Reference in this connection may be made to in Kedar Nath Singh v. State of Bihar, reported in AIR 1962 S.C. 955 at page 969, All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others, and in Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others, .

206. However, the decisions of the privy council referred to by Sri Basudeo Prasad in the Bribery Commissioner v. Pedrick Ranasinghe, reported in 1965 Appeal Cases page 172 equivalent to 1964 (2) All England Law Reports page 785 and in Don John Francis Douglas Liyanage & ors v. the Queen, reported in 1967 Appeal Cases 259 at 283, may not be fully applicable to the facts of the case. Constitution of Ceylon is an unitary one whereas, the Constitution of India is not unitary but federal in character. The privy council in the aforementioned cases came to the conclusion as referred to by brother Mishra in the light of the nature of the Constitution of Ceylon.

207. However, in India, the legislagive functions between the State and the Parliament are distinct and separate except those in the concurrent list.

208. It is well known that the entries in the legislative list must receive liberal construction.

Reference in this connection may be made to in M/s Ujagar Prints v. Union of India, reported in AIR 1989 S.C. 516.

209. However, in view of the fact, that it has been held that the consolidation authorities exercise a limited jurisdiction and not a plenary jurisdiction, it is not necessary to hold that the provisions of the said Act are ultra vires of the Constitution in this case. However, I associate myself with the pious wish as expressed by S. Sarwar Ali, Acting C.J., in Ram Krit Singh's case and reiterated by Brother Mishra in his judgment.

RE : QUESTION C :

210. Sub-section (1) and (2) of Section 15 of the Act provide that a certificate granted by the Consolidation officer to a raiyat or an under raiyat, as the case may be, shall be conclusive proof of the title of such under raiyat to such land. This however, is subject to the condition that a raiyat shall have the same right in the land allotted to him in pursuance of the scheme of consolidation as he had in the original holding. Then again by reason of Section 18 of the Act encumbrances attached to the original land are transferred to the new land.

211. There cannot be any doubt whatsoever that the Parliament/Legislature has the requisite legislative competence to lay down a procedure for evidence which includes matter relating to conclusive proof. However, there are well known exceptions to a finality of proof given by the legislature in providing for a conclusive proof.

Thus, despite a existence of provision of conclusive proof, the same can inter alia be questioned;

(a) Where the provision is beyond the legislative competence or otherwise or unconstitutional (See 1975 S.C. 1069 at 1079-80)

(b) In a case of nullity

(c) Where it imposes any unreasonable restriction of a fundamental right (see 1964 S.C. 1279)

(d) Basic defect in constitution of tribunal (see 1963 S.C. 976 at page 980).

(e) On the ground that the order was obtained on fraud, coercion etc (see 1965 S.C. 1623, followed in 1975 S.C. 972).

(f) On the ground of colourable exercise of power (see 1963 S.C. 51).

In any event by providing for a conclusive proof in respect of a substantive right, the right of judicial review can not be excluded.

212. I have pointed out while deciding the questions (a) and (b), the situations when the question of title of a raiyat or under raiyat in a case of grant of certificate to them under subsections (1) and (2) of the Section 15 of the Act, may be questioned. In this connection, it may be mentioned that Bihar Tenancy Act as also the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 also deal with the cases of raiyats and under raiyats. It is possible that at different points of time, the authorities under the different Acts may come to different conclusions in relation to the self same land or right therein. In view of the fact that like section 39 of the said Act, a non-obstante clause occurs in the Bihar Land Reforms (Fixation of Ceiling & Acquisition of Surplus Land) Act and as the said Act is a later Act: in case of conflict the later Act shall prevail over the former Act. How then the conclusiveness of title in relation to a land for which a certificate has been granted to a raiyat or an under raiyat, can be said to be valid. If a person has a right to obtain declaration of his right from a particular forum in view of the fact that his right is created for the first time by reason of such a statute, he cannot be deprived of the said right because his and necessary right have been granted by a certificate u/s 15 of the said Act.

213. The Parliament, as noted hereinbefore, is entitled to lay down that a particular fact would be presumed to be correct or shall be conclusive and final. However, the same pertains to the rule of evidence.

214. Once, however, a conclusiveness is attached with regard to the title of a person, the same by necessary implication would take away the right of even the superior courts to interfere with such orders.

215. In view of Articles 226 and 227 of the Constitution of India, the power of this Court to exercise of its writ jurisdiction over an order passed by an inferior

tribunal, cannot be taken away unless the provisions of the Constitution itself is amended.

216. If, merely by grant of a certificate in terms of Section 15 of the said Act, the title of a person in whose favour such a certificate is granted, becomes conclusive, the adjudicatory power of courts would itself be taken away.

217. It is now well known that the right of judicial review is a basic structure of the Constitution.

218. Thus, there cannot be any doubt whatsoever that the Section 15 insofar as it seeks to take away the adjudicatory power of other courts including this Court must be held to be ultra vires the Constitution.

219. As noticed hereinbefore, that in several cases, it has been held that the right of the superior court to issue a writ of certiorari, cannot be excluded.

220. Section 15 of the said Act is evidently subject to Sections 17 and 18 thereof. The consolidation authorities while preparing the record of rights and statement of principles may also have to decide the right or interest of such persons who claim a right subordinate to that of raiyat like a mortgagee, temporary lessee including under raiyats, a person claiming easement etc. The cases involving such subordinate rights of land or encumbrances may also fall for decision before the other authority. Further as enumerated hereinbefore that the question of title may arise by reason of any subsequent events. A certificate of transfer may also be held to become invalid for different reasons. If this proposition of law is accepted how then such certificate can be said to be conclusive proof of the title?

221. In terms of the provisions of the Evidence Act, conclusive proof is defined in Section 4 of the Evidence Act. However, except the provisions as contained in Section 41 and 112 of the Evidence Act, there is no other provision therein wherein a fact attains finality by way of conclusive proof. Section 42 of the Evidence Act postulates that the judgment other than those referred to in Section 42 shall be relevant but shall not be conclusive proof of that which they state.

222. True it is that while the Parliament/Legislature intends that a particular fact will be conclusive, it cannot be reopened. A provision relating to conclusiveness of a title is a matter of substantive right and not a procedural right. (See 1945 (1) Ch. D. page 5 in Vol. V.

Thus a title which is adjudicated by a statutory tribunal of inferior jurisdiction cannot become conclusive, when a right to declare title of a person is still retained by other authorities of competent jurisdiction or by court of superior jurisdiction.

223. What then could not be done directly is sought to be done indirectly.

224. Article 300A of the Constitution provides that "No person shall be deprived

from his property save by authority of law.

If thus a certificate granted u/s 15 of the Act becomes conclusive so as to mean that it cannot be reopened by any authority in any proceeding whatsoever despite the fact that certificate has been prepared on the basis of orders which are either without jurisdiction or a nullity or becomes invalid or wrong, owing to certain subsequent event or absence of the jurisdictional facts, the same, in my opinion, would be violative of Article 300A of the Constitution. I however, with utmost respect agree with Brother Mishra, when he held that Section 15 of the Act is also ultra vires Article 14 of the Constitution.

225. Now the facts of the present case may be considered : The petitioner has prayed for issuance of a writ of certiorary for quashing an order dated 2.4.1987 passed by the Joint Director of Consolidation in Revision Case No. 158/85 as contained in Annexure-3 to the writ application, the order dated 19.11.1984 passed by the Deputy Director of Consolidation in appeal Case No. 2(sic)8/80 as contained in Annexure-2 to the writ application and the order dated 21.8.1980 passed by the Consolidation Officer in Consolidation Case No. 20/75 as contained in Annexure-1 to the writ application.

226. According to the petitioner, the plot in question was recorded in the name of Ram Ugrah Kuer, the grand father of the petitioner who died leaving behind four sons namely Bhuneshwar alias Kuer, Dip Narain Dipu Kuer, Bishun Kuer and Sanful Kuer. Bhuneshwar Kuer died leaving behind his widow Mst. Pavitar Kuer, who also died leaving behind a daughter Yasoda Kuer. Dipu Kuer died leaving behind his son the petitioner. Bishun Kuer and Sanful Kuer died issueless.

227. According to the petitioner, there had been a partition by metes and bounds between Bishun Kuer and Dipu Kuer, as a result whereof Bishun Kuer was allotted C.S.P. No. 267 and other plots whereas Dipu Kuer was allotted C.S.P. No. 265 of village Balbulwa, P.S. Baruraj, district Muzaffarpur. The aforementioned C.S.P. No. 265 corresponds to revisional survey plot no. 693 measuring an area of 45 decimals.

228. According to the petitioner, he having inherited the said property from his father Dipu Kuer, came in possession thereof and had been paying rent to the State of Bihar. In the revisional survey settlement operations the disputed land was recorded in the name of Ramayan Singh who allegedly has no connection with the said land. In the proceeding u/s 10(2) of the Act, the petitioner as also Yasoda Devi and Sankar Singh heirs and legal representatives of the aforementioned Ramayan Singh filed objections in the aforementioned consolidation proceeding being Consolidation Case No. 20/75.

229. Before the Consolidation Authorities, the case of the respondent nos. 5 and 6 was that a registered deed of gift dated 15.4.1959 was executed by Pavitar Kuer but by mistake of the scribe C.S.P. No. 267 was mentioned instead of C.S.P. No. 265.

230. In relation to the aforementioned matter, a title suit being Title Suit No. 115/65 and the said dispute was referred to an arbitrator. The arbitrator submitted an award, on the basis of which a decree dated 28.5.1965 was passed, whereby and hereunder C.S.P. No. 267 was allotted to the respondent nos. 5 and 6.

231. From a perusal of the impugned orders, it is evident that the respondent nos. 2, 3 and 5 despite the decree passed in the aforementioned Title Suit No. 115/65 and despite the fact that in the deed of gift dated 15.4.1959, plot no. C.S.P. 267 measuring an area 10 Kathas were mentioned, proceeded on the basis that as the boundary in relation to the land which was the subject matter of the aforementioned gift tallied with the boundary of C. S. P. No. 265, the said land belonged to the respondent nos. 5 and 6.

232. From the facts aforementioned, it is clear that the respondent nos. 2, 3 and 4 in sum and substance passed a decree for rectification of an instrument which can only be done by a civil court in terms of Section 31 of the Specific Relief Act, 1963.

233. The rectification of a document is not and cannot be matter within the jurisdiction of the Consolidation Authorities. In any event as a decree has already been passed against the respondent nos. 5 and 6 in the aforementioned Title Suit No. 115/65 by the court of Munsif, Muzaffarpur, the self same subject matter could not have been reagitated and the Consolidation Authorities could not pass orders contrary to and inconsistent with the said decree.

234. In this view of the matter, in my opinion, the petition is fit to be allowed and the impugned orders as contained in Annexures 1, 2 and 3 are liable to be set aside. In the result, this writ petition is allowed and the impugned order as contained in Annexures 1, 2 and 3 to the writ application are quashed. Let a writ of certiorari be issued accordingly. However, in the facts and circumstances of this case there will be no order as to costs.

S. Hoda, J.-I entirely agree with the judgement of P.S. Mishra, J.