(2012) 09 P&H CK 0377

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 17775 of 2010

Khushi Ram and Others APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 06-09-2012

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 14(1), 42

Punjab Village Common Lands (Regulation) Act, 1961 — Section 10A, 13A, 15(2)(f), 2(d), 5

Citation : (2012) 4 RCR(Civil) 404

Hon'ble Judges : Jasbir Singh, Acting C.J.;Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : Ashish Aggarwal, with Mr. Kulwant Singh, for the Appellant; B.S. Rana, Addl. A.G., Haryana, for the Respondent Nos. 1 to 3, Mr. Vipul Aggarwal, Advocate, for the Respondent Nos. 4 to 6, Mr. Jitender Kumar Sehrawat, Advocate, for Mr. N.S. Shekhawat, Advocate, for the Respondent No. 12, Mr. Ritesh Khatri, Advocate, for the Respondent No. 16, Mr. Shailendra Jain, Advocate, for the Respondent Nos. 17 and 24, Mr. De-vender Punia, Advocate, for the Respondent Nos. 18, 19 and 21, Mr. Sachin Mittal, Advocate, for the Respondent No. 22 and Mr. Kuldip Singh, Advocate, for Mr. G.S. Hooda, Advocate, for the Respondent No. 27, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—The facts of this case, to be narrated and discussed hereinafter, open the pandora box and put a question mark on the act and conduct, efficiency and integrity of the office of Director Consolidation of the State of Haryana exercising powers u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act. 1948 [for short "the Act"]. The petitioners have preferred this petition in public interest seeking a writ in the nature of certiorari for quashing as many as 20 orders (Annexures P-7 to P-26) passed by the Director Consolidation and Consolidation Officer by which valuable prime land of various Gram Panchayats in District Gurgaon (impleaded as respondent Nos. 4 to 10) has been exchanged with the land belonging to various companies and individual persons (impleaded as respondent Nos. 11 to 26) while exercising powers u/s 42 of the Act on the ground that the exchange of Shamilat Deh land of the Gram Panchayat could only be effected in terms of Section 5-A of the Punjab Village Common Lands (Regulation) Act, 1961 (as application to Haryana) [for short "1961 Act"] and Rule 5 of the Punjab Village Common Lands (Regulation) Rules. 1964 (as applicable to Haryana) [for short "1964 Rules"].

2. In order to demonstrate their grievance, the petitioners have highlighted the case of village Behrampur where a suit u/s 13-A of the 1961 Act was filed by the proprietors before the Assistant Collector 1st Grade, Gurgaon claiming title of land measuring 7420 kanals 6 marlas. The Assistant Collector 1st Grade, Gurgaon, decreed the suit on 20.06.1988 (Annexure P-1) holding that out of the total land measuring 1586 Bighas 15 Biswas. 917 Bighas 5 Biswas of land does not vest in the Gram Panchayat Behrampur and falls to the share of proprietors and other co-owners.

3. Gram Panchayat, Behrampur challenged the order Annexure P-1 by way of appeal before the Collector which was dismissed on 13.12.1988. Gram Panchayat, Behrampur filed revision petition in the Court of Commissioner, Ambala Division, Ambala. During its pendency, as some of the proprietors had sold the land involved in that case to some builders/property dealers, they were allowed to be impleaded as parties by the Commissioner and an order dated 21.07.1989 was passed which reads as under :-

Presented today by Sh. S.D. Chaudhary, Legal Officer, Panchayat, Gurgaon. I have heard him. The operation of the order of A.C. 1st Grade, Gurgaon dated 20.6.88 and of Collector, Gurgaon, dated 13.12.1988 is hereby stayed till further orders. No further action will be taken by the respondents to change its nature in any way till further orders.

4. The revision petition of the Gram Panchayat Behrampur was ultimately allowed by the Commissioner, Gurgaon Division, Gurgaon vide his order dated 23.07.1992 (Annexure P-3) and orders of the Assistant Collector 1st Grade and the Collector were set aside. The subsequent purchasers from the proprietors challenged the order dated 23.07.1992 (Annexure P-3) of the Commissioner by way of M/s Bhanot Leasing Limited and thers Vs. Commissioner, Gurgaon Division, Gurgaon and others, wherein petitioner No. 12, namely, Shankar Lal Sharma, sold the land measuring 44 kanals 16 marlas to a company M/s B & B Mercantile Pvt. Ltd. who filed an application u/s 42 of the Act before the Director Consolidation, Haryana (respondent No. 2) and was allowed vide order dated 29.07.2009 (Annexure P-5).

5. Though in para No. 9 of the writ petition it is mentioned that CWP No. 11821 of 1992 is pending in this Court in which arguments were heard and the judgment was reserved, but during the course of hearing, it was brought to our notice that CWP No. 11821 of 1992 titled as ''M/s Bhanot Leasing Ltd. And others

v. The Commissioner, Gurgaon Division, Gurgaon and others'', CWP No. 2069 of 1992 titled as ''M/s. Decent Towers (P) Limited & others v. State of Haryana and others'' and CWP No. 10381 of 1989 titled as ''Gram Panchayat, Rithoj v. Commissioner, (Appeals) Ambala Division and others'' were decided by a Division Bench of this Court on 06.10.2010 and order dated 23.07.1992 (Annexure P-3) passed by the Commissioner, Gurgaon Division, Gurgaon in CWP No. 10381 of 1989 was upheld and CWP Nos. 2069 & 11821 of 1992 were dismissed.

6. Similarly, during the course of hearing, it has been brought to our notice that CWP No. 15130 of 2009 filed by the Gram Panchayat Behrampur against the order dated 29.07.2009 (Annexure P-5) passed by the Director, Consolidation, Haryana (respondent No. 2) on an application filed u/s 42 of the Act was allowed by the learned Single Judge on 28.02.2011 and the order Annexure P-5 has been set aside.

7. By giving the facts of a particular case pertaining to Gram Panchayat Behrampur, the petitioners in this Public Interest Litigation, have highlighted a mammoth fraud played upon the law by the authorities prescribed under the Act while passing numerous orders in utter violation of their jurisdiction.

8. The petitioners have sought for quashing of 20 orders (Annexures P-7 to P-26), after impleading respective Gram Panchayats and the subsequent purchasers, and have demonstrated by way of a chart the area involved in the orders of exchange having been passed by respondent No. 2. The chart reproduced in the writ petition in para No. 20 is reproduced as under :-

9. The basic argument of counsel for the petitioners has already been noticed in the opening paragraph of this order, but it is pertinent to mention that after notice of motion, the order dated 28.10.2010 was passed by this Court making the alienations, during the pendency of this writ petition, subject to the final order or interim order to be passed in this writ petition.

10. Curiously enough, despite repeated notices, respondent Nos. 11 to 26 evaded service. Consequently, order dated 28.10.2010 was modified by this Court and directed the respondents not to create any third party right on the land in dispute and were also restrained from changing its nature. Thereafter, notices were tried to be served through the Deputy Commissioner, Gurgaon upon respondent Nos. 11 to 26, but they still played hide and seek with the Court and hence, on 03.08.2012, it was ordered that the construction, if any, going on over the property in dispute shall be stopped at once. After this order, service upon the private respondent Nos. 11 to 26 was effected and they appeared through their respective counsels before this Court.

11. Pursuant to the notice in the writ petition, respondent Nos. 1 to 3 filed their short reply by way of affidavit of T.V.S.N. Prasad, IAS, Director, Consolidation of Holdings, Haryana who averred that "according to rule 5 of the Village Common Lands (Regulation) Rules, 1964 (for Haryana) if a Panchayat is of the opinion that it is necessary to exchange Panchayat land for the benefit of the inhabitants of

the village, it may transfer any land in Shamilat Deh by exchange with the land of an equivalent value (value to be determined by the concerned Deputy Commissioner) with the prior approval of the Government (it is further provided that Government shall not accord any approval in cases which are not received through the Deputy Commissioner concerned. A perusal of the case file reveals that no such prior approval of the Government is available on the case file". An additional written statement was also filed by respondent No. 2 through Dr. Ashok Khemka, Director General, Consolidation of Holdings, Haryana on 30.08.2012. Para Nos. 3, 4 and 5 read as under :-

3. That as per section 2(d) of the Punjab Village Common Lands (Regulation) Act, 1961, "inhabitant of a village" means a person, whether a proprietor or a non-proprietor, who ordinarily resides in the village and according to section 5(1), "All lands vested or deemed to have been vested in a Panchayat under this Act shall be utilized or disposed of by the Panchayat, for the benefit of the inhabitants of the village concerned in the prescribed manner.

Hence, any land belonging to a non-inhabitant of the village cannot be exchanged with the Panchayat land. A company is not an inhabitant of the village within the meaning of the Act, ibid. It is submitted that the beneficiaries in some of the impugned orders (Annexures P-7 to P-26) passed u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, hereinafter referred to as the Consolidation Act, being Companies are not inhabitants of the village.

4. That according to Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, the limitation for filing application u/s 42 of the Consolidation Act is six months of the date of the order against which it is filed. A perusal of the Table below show that the orders u/s 42 of the Consolidation Act were much beyond the period of limitation prescribed under the Consolidation Rules. The consolidation proceedings in any estate commence with the notification u/s 14(1) of the Consolidation Act and cease with the consignment of records with the Revenue Department.

5. That in some cases, the beneficiaries had purchased land in the village much after the process of consolidation was completed and hence were not entitled to any relief under the scheme of consolidation as shown in the Table below:

12. Respondent Nos. 16 and 27 have also filed their separate replies.

13. Opening his submissions, learned counsel for the petitioners has argued that the impugned orders (Annexures P-7 to P-26) are patently illegal being without jurisdiction and are liable to be quashed. In this regard, he has submitted that respondent No. 2 is coram non judice for deciding an issue of exchange of land by Gram Panchayat with the inhabitants of the village or even outsider while exercising powers u/s 42 of the Act. He further submitted that the proper authority for the purpose of effecting an exchange is provided under the 1961 Act who would act in accordance with Section 5 of the 1961 Act and Rule 5 of the

1964 Rules before passing an order of exchange. It is also argued that any such order which is passed by the authority having no jurisdiction is a nullity. In this regard, he has relied upon two decisions of the Supreme Court in Kiran Singh and Others Vs. Chaman Paswan and Others, and Deepak Agro Foods Vs. State of Rajasthan and Others,

14. He further submitted that a purchaser subsequent to the consolidation, not being a shareholder in the khewat at that time, has no right to seek exchange nor respondent No. 2 had the jurisdiction to do it. In this regard, he has relied upon a Division Bench judgment of this Court in the case of Smt. Nasib Kaur Vs. Additional Director, Consolidation of Holdings and Others,

15. He has further submitted that the consolidation proceedings had culminated more than 50 years ago and an application u/s 42 of the Act could not have been entertained by respondent No. 2 after such a long delay. In this regard, he has relied upon a decision of the Supreme Court in the case of Mange Ram Vs. Financial Commissioner and Others,

16. He has further argued that Rule 5 of the 1964 Rules protects the interest of the Gram Panchayat at various levels, inasmuch as if an exchange takes place, it has to be demonstrated by the Gram Panchayat that it is necessary for the benefit of inhabitants of the village. In this regard, he has relied upon an order dated 31.05.2012 passed by the Division Bench of this Court in CWP No. 19535 of 2011 titled as "M/s Tulsian Processors Private Limited and another v. State of Punjab and others''.

17. In reply, counsel for the subsequent purchasers have argued that since the petitioners have a remedy u/s 10-A of the 1961 Act against the orders Annexures P-7 to P-26, therefore. the present writ petition in not maintainable in its present form.

18. On the other hand, counsel for the State did not support the orders Annexures P-7 to P-26 and has fairly conceded that respondent No. 2 had no jurisdiction under the law to pass an order of exchange.

19. We have heard learned counsel for the parties carefully and perused the record with their able assistance.

20. From the resume of the aforesaid facts, the following questions of law have emerged for adjudication :-

a) Whether respondent No. 2 had jurisdiction to pass an order of exchange of the land of Gram Panchayat with the land of the non-inhabitants of the village while exercising powers u/s 42 of the Act or it can be exchanged in terms of Section 5 of the 1961 Act and Rule 5 of the 1964 Rules?

b) Whether a purchaser of the land subsequent to the consolidation, who was not shareholder in the khewat at that time, can maintain a petition u/s 42 of the Act before the Director Consolidation?

Before we embark upon to answer the aforesaid questions, it would be relevant to refer to the following provisions of law :-

Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948

42. Power of State Government to call for proceedings.-The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under Act, call for an examine the record of any case pending before or disposed of by such officer and may pass order in reference thereto as it thinks fit:

Provided that no order or scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration.

Sections 5 and 5-A of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to Haryana)

5. Regulation of use and occupation, etc., of lands vested or deemed to have been vested in Panchayats.-(1) All lands vested or deemed to have been vested in a Panchayat under this Act, shall be utilised or, disposed of by the Panchayat for the benefit of the inhabitants of the village concerned in the manner prescribed:

Provided that where two or more villages have a common Panchayat, Shamilat deh of each village shall be utilized and disposed of, by the Panchayat for the benefit of the inhabitants of that village:

Provided further that where there are two or more shamilat tikkas in a village, the Shamilat tikka shall be utilized and disposed of, by the Panchayat for the benefit of the inhabitants of that tikka :

Provided further that where the area of land in shamilat deh of any village so vested or deemed to have been vested in Panchayat is in excess of twenty five per cent of the total area of that village (excluding abadi deh) then twenty-five per cent of such total area shall be left to the Panchayat and out of the remaining area of shamilat deh an area up to the extent of twenty five per cent of such total area shall be utilized for the settlement of landless tenants and other tenants ejected or to be ejected of that village and the remaining area of shamilat deh, if any, shall be utilized for distribution to small land owners of that village subject to the provisions relating to permissible area under the Haryana Ceiling on Land Holdings Act, 1972, by the Assistant Collector of the first grade in consultation with the Panchayat in such manner and on payment of such amount as may be prescribed.

(2) The area of shamilat deh to be utilized for the purposes of the third proviso

to sub-section (1) shall be demarcated by such officer in consultation with the Panchayat and in such manner as may be prescribed.

(3) The State Government or any officer authorized by it in this behalf may, from time to time, with a view to ensuring compliance with the provision of the second proviso to sub-section (1) or sub-section (2), issue to any Panchayat such directions as may be deemed necessary.

(4) Nothing contained in the third proviso to sub-section (1) and in sub-section (2) and subsection (3) shall apply to the "hilly area".

(5) Notwithstanding anything contained in this section, if in the opinion of the State Government, it is necessary to take over, to secure proper management for better utilization for the benefit of the inhabitants of the village concerned any shamilat deh, the Government may by notification take over the management of such shamilat deh for a period not exceeding twenty years:

5A. Disposal of lands vested or deemed to have been vested in Panchayat.-(1) A Panchayat may, on such terms and conditions as may be prescribed, gift, sale, exchange or lease the land in shamilat deh vested in it under this Act to the members of Scheduled Castes and Backward Classes of the village in which such land is situated and to the persons of any other category.

(2) The gift, sale, exchange or lease of land in shamilat deh already made shall be deemed to have been made under sub-section (1).

Rule 5 of the Punjab Village Common Lands (Regulation) Rules, 1964 (as applicable to Haryana)

5. Exchange of land. Sections 5 and 15(2)(f). -A Panchayat, if it is of opinion that it is necessary so to do for the benefit of the inhabitants of the village may, with the prior approval of the State Government, transfer any land in shamilat deh by exchange with the land of an equivalent value to be determined by the Deputy Commissioner in whose jurisdiction the land is situate:

Provided that State Government shall not accord any approval in cases which are not received through the Deputy Commissioner concerned :

Provided further that for the purpose of allotment of residential plots to the eligible families identified under the scheme approved by the State Government, to allot house-sites to the Scheduled Caste families and the families living below poverty line, the concerned Deputy Commissioner or Sub Divisional Officer (Civil), as may be authorized by the State Government, shall be competent to accord approval for transfer any land in shamilat deh, by way of exchange, with the land of equivalent value.

Section 10-A of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to Haryana)

10-A. Power of Assistant Collector of first grade to cancel or vary sale, lease, gift or exchange etc., of lands vested in Panchayats.-(1) Notwithstanding anything contained in this Act, or the Shamilat Law or in any other law for the time being in force, the Assistant Collector of first grade may call for from any Panchayat in the area of his jurisdiction the record of any sale, lease, gift, exchange, contract or agreement entered into by the Panchayat in respect of any land vested or deemed to be vested in it, whether such sale, lease, gift, exchange, contract or agreement is entered into before or after the commencement of the Punjab Village Common Lands (Regulation) Amendment Act, 1964, and examine such record for the purpose of satisfying himself as to the legality or propriety of such sale, lease, gift, exchange, contract or agreement.

(2) Where, on examination of the record under sub-section (1) and after making such inquiry, if any, as he may deem fit, the Assistant Collector of the first grade is satisfied that such sale, lease, gift, exchange, contract or agreement:

(i) has been entered into in contravention of any of the provisions of this Act or the rules made thereunder; or

(ii) has been entered into as result of fraud or concealment of facts; or

(iii) is detrimental to the interests of the Panchayat as prescribed, the Assistant Collector of the first grade may, not withstanding anything as aforesaid, cancel the sale, lease, gift, exchange, contract or agreement or vary the terms thereof unconditionally or subject to such conditions as he may think fit:

Provided that no order under this sub-section shall be passed by the Assistant Collector of the first grade without affording reasonable opportunity of being heard to the parties to the sale, lease, gift, exchange, contract or agreement.

(3) Where the terms of any sale, lease, gift, exchange, contract or agreement have been varied by the Assistant Collector of the first grade under subsection (2), the variation shall, notwithstanding anything contained in this Act or shamilat law or in any law for the time being in force, be binding on the parties to the sale, lease, gift, exchange, contract or agreement, as the case may be.

(4) Where the vendee, lessee, donee or the person with whom a contract or agreement has been entered into by a Panchayat refuses to accept the variation made by the Assistant Collector of the first grade under this section in the terms of sale, lease, gift, exchange, contract or agreement, as the case may be, such sale, lease, gift, exchange, contract or agreement, as the case may be, shall be deemed to be cancelled by the Assistant Collector of the first grade under this section with effect from the date of such refusal.

(5) Where, under this section, any sale, lease, gift, exchange, contract or agreement is cancelled or deemed to be cancelled or its terms are varied, the vendee, lessee, donee or the person with whom the contract or agreement has been entered into, who suffers by such cancellation or variation, is entitled to receive compensation to be passed by the Assistant Collector of the first grade for any loss or damage caused to the vendee, lessee, donee or such person

which naturally arose in the usual course of things from such cancellation or variation:

Provided that no such compensation shall be given for any remote and indirect loss or damage sustained by reason of such cancellation or variation.

(6) Notwithstanding anything contained in any law for the time being in force, the amount of compensation awarded by the Assistant Collector of the first grade under this section shall be payable by the panchayat in the prescribed manner and shall be a valid charge on the Sabha funds.

(7) Any party to a sale, lease, gift, exchange, contract or agreement aggrieved by any order of the Assistant Collector of the first grade made under this section may, within a period of thirty days from the date of such order, appeal to the Collector whose decision thereon shall be final.

21. A bare look at Section 42 of the Act would show that it empowers the State Government to call for the record of any order passed, scheme prepared or confirmed or repartition made by any officer under the Act. Obviously, the authority exercising the powers under this Section can examine any order which has been passed by any officer under the Act, namely, the Consolidation Officer, the Settlement Officer (Consolidation) or the Assistant Director (Consolidation) against the scheme or repartition. As a matter of fact, the powers u/s 42 are revisionary in nature which can be exercised against an order passed by a subordinate authority or a scheme or repartition, if it suffers from an impropriety or illegality. Section 42 of the Act does not empower the State Government to pass an order of exchange of land by the Gram Panchayat to a person or company.

22. Insofar as Section 5 of the 1961 Act is concerned, it talks of disposal of land vested in the Panchayat for the benefit of the inhabitants of the village in the manner prescribed. Section 15(2)(f) of the 1961 Act empowers the State Government to lay down the manner and circumstances in which such land may be disposed of, transferred or sold. Rule 5 of the 1964 Rules provides that the Panchayat must form an opinion before it ventures for exchange that it is necessary for the benefit of the inhabitants of the village which has to be routed through the Deputy Commissioner and completes with the prior approval of the Government with the land of equivalent value.

23. Insofar a the first question is concerned, the matter is no more res integra as repeatedly held by this Court in Mewa Singh and Others Vs. State of Punjab and Others, ''The Gram Panchayat of village Behrampur v. The Director, Consolidation, Haryana and another'', dated 28.01.2011 and Jagir Singh Vs. State of Punjab and Others

24. Hence, it is reiterated that the Director Consolidation under the Act has no power to pass an order regarding exchange of land of the Gram Panchayat in exercise of powers u/s 42 of the Act.

25. In regard to the second question, the companies who have purchased the land after consolidation are obviously not the inhabitants of the village which is defined u/s 2(d) of the 1961 Act to mean a person, whether a proprietor or a non-proprietor, who ordinarily resides in the village and as per Section 5(1) of the 1961 Act all lands which are vested or deemed to have been vested in the Panchayat can be utilized or disposed of by the Panchayat for the benefit of the inhabitants of the village concerned in the prescribed manner which is provided in Rule 5 of the 1964 Rules.

26. In Nasib Kaur''s case (supra), the Division Bench of this Court has held that the Director (Consolidation) has no jurisdiction to entertain an application filed u/s 42 of the Act by a purchaser of the land subsequent to the consolidation who was not shareholder in the khewat at the time of consolidation. Similarly, in the case of Parmal Singh and others v. Commissioner. Ambala Division, Amhala Cantt and others, 2012(3) PLR 781, it has been held that the subsequent purchasers have no right to seek path in respect of a scheme finalized earlier at the time of consolidation.

27. Hence, the second question is also decided accordingly.

28. Insofar as the argument raised by counsel for the subsequent purchasers that the petitioners had an alternative remedy to assail the validity of orders Annexures P-7 to P-26 u/s 10-A of the 1961 Act is concerned, had the alleged exchange between the Gram Panchayat and the company/individual been effected in terms of Section 5 of the 1961 Act or Rule 5 of the 1964 Rules, then the matter would have been altogether different as the proceedings would have been carried out under the 1961 Act but as the orders of exchange have been passed by the Director Consolidation u/s 42 of the Act, the provisions of Section 10-A of the 1961 Act are totally inapplicable and writ is the only remedy for the petitioners to challenge validity of the order passed u/s 42 of the Act.

29. The ultimate result of the aforesaid discussion is that the impugned orders (Annexures P-7 to P-26) are without jurisdiction and are liable to be quashed as held in Kiran Singh and others'' case (supra) that "it is a fundamental principle that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction., whether it is (sic) or territorial. or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties" and in Deepak Agro Foods" case (supra) that "all irregular or erroneous or even illegal orders cannot be held to be null and void as there is a fine distinction between, the orders which are null and void. and orders which are irregular wrong or illegal Where an authority making order lacks inherent jurisdiction, such order would be without jurisdiction. null non-est and void ab-initio as defect of jurisdiction of an authority goes to the root of the matter and strikes as its very authority to pass any order and such a defect cannot be cured even by consent

of the parties. However, exercise of jurisdiction in a wrongful manner cannot result in a nullity. It is an illegality, capable of being cured in a duly constituted legal proceedings.

30. Hence, the present writ petition is found to be meritorious and the same is hereby allowed and the impugned orders (Annexure P-7 to P-26) are hereby quashed.

31. Since we are dealing with a public interest litigation and have found that the Director Consolidation, who happens to be senior officers of the State of Haryana, had passed the impugned orders without jurisdiction about whom an observation has also been made by a learned Single Judge of this Court in CWP No. 15130 of 2009 that "before parting with the order, I have to observe that the land falling in Shamilat Deh that is under the management and control of Gram Panchayat which is required to be used for common purposes is being dealt with by the authorities casually, de hors the statutory provisions and de hors the interest of the Gram Sabha. One such example has been set up by Mr. Anil Kumar. IAS. Director. Consolidation. Haryana. Punchkula. who in total abuse of powers and authority vested by law has allowed exchange of land that belongs to the Gram Panchayat", we feel that facts of the present case appears to be a tip of an iceberg as numerous orders might have been passed by the Director Consolidation with regard to the exchange of Gram Panchayat land with the colonizers/builders or even individual persons. We, thus, deem it appropriate to direct all the Divisional Commissioners in the State of Haryana to prepare list of all such cases decided in the past, u/s 42 of the Act, wherein Panchayat land has been ordered to be exchanged with the land of the private parties, while exercising powers u/s 42 of the Act and without specific prior approval of the Government of Haryana much-less the department of Development and Panchayats. A copy of this order be sent to the Chief Secretary. Haryana Government for transmitting it further to all the Divisional Commissioners in the State of Haryana for compliance, who are further directed to complete the aforesaid task within a period of six months from today and apprise this Court with the status report, which shall be placed on record of this case.

