**(1955) 09 P&H CK 0001**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ No. 84 of 1955

Kure Singh and Others APPELLANT

Vs

State of Punjab and Others RESPONDENT

**Date of Decision :** 01-09-1955

**Acts Referred:**

Constitution of India, 1950 — Article 31
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 1, 18, 34

**Citation :** AIR 1956 P&H 88

**Hon'ble Judges :** Bhandari, C.J;Khosla, J

**Bench :** Division Bench

**Advocate :** H.L. Sarin, for the Appellant; S.M. Sikri, General, for the Respondent

**Final Decision :** Dismissed

## Judgement

Khosla, J.—This petition under Article 226 of the Constitution came up in the original instance before Harnam Singh J., sitting singly. Since the application sought to challenge the vires of Section 18, East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 50 of 1948, the matter was referred by him to a Division Bench. A reference to the petition, shows that the vires of the Punjab Common Lands (Regulation) Act, 1 of 1954, was also challenged although Harna Singh J. did not make any reference to it in his order.

2. A scheme of consolidation in respect of the lands of village Halalpur was sanctioned by the Consolidation Officer. In pursuance of this scheme it was proposed that:

"(a) 1006 bighas and 5 biswas of shamilat land belonging to the petitioners and the other proprietors or biswadars of the village be set apart and vested in the Gram Panchayat for the common use of the villagers;

(b) 11 acres of agricultural land belonging to the biswadars should be used for providing housing accommodation for non-biswadars; and

(c) 30 acres of agricultural land should also be handed over to the Gram Panchayat for the common use of the villagers."

3. The Consolidation Officer purported to act under the provisions of Section 18 of Act 50 of 1948 and also under the provisions of Punjab Act 1 of 1954. This action of the Consolidation Officer was challenged on the ground that private property was being taken possession of without paying adequate compensation to the owners and the conversion of village proprietary land to the use of non-proprietors was a violation of Article 31 of the Constitution.

4. The provisions of Act 50 of 1948 were considered by a Division Bench of this Court in --''S. Gursaran Singh v. Punjab State'', (S) AIR 1955 Pun 161 (A). This Court came to the conclusion that Sections 15(1) and 34 of the Act were intra vires the Constitution and valid in every respect. The provisions of Section 18 were, however, not considered in that case.

There is, however, no doubt that the provisions of the Act as a whole do not violate the Constitution and the Act makes provisions for the payment of adequate compensation in every case. Kapur J. observed in that case :

"As I read Section 15 (1) it does make a provision for the payment of compensation to any owner who is allowed a holding of lesser market value than that of his original holding and also provides that the scheme should have a provision for the recovery of compensation from one owner for payment to another.

Although the amount of compensation is not fixed -- as indeed it could not be -- the principles on which and the manner in which the compensation is to be determined and given has been provided in Section 34 (1) of the impugned Act which provides that compensation shall be assessed by the Consolidation Officer as far as practicable in accordance with the provisions of Section 23 (1) of the Land Acquisition Act, which section provides for what is to be taken into consideration for determining the compensation."

5. When the holdings in a village are consolidated the entire land is thrown into one hotch-potch and is then parcelled out to the various owners in proportion to their original holdings. If any land is needed for the common use of the villagers every proprietor make''s a proportionate contribution and his final holdings are therefore decreased by the extent of his share in the land so set apart.

There is no difficulty about a case in which the entire land is parcelled out to the various proprietors. If a proprietor is assigned a smaller area than he held originally he is paid compensation and if anyone is allotted a larger area he has to pay compensation. But the difficulty arises where a deduction is made on account of land reserved for common use and question here arises whether the proprietors should be paid compensation in accordance with the terms of Section 34 of the Act.

6. Now, if village land is taken from the proprietors and set apart for their

 

common use it cannot be said that any private property has been appropriated by the State because every proprietor has a right to use the common land and has a proprietary interest in it. Therefore, although exclusive possession of a small portion of the land is denied to every proprietor he still remains owner of the entire area and can enjoy it all although his enjoyment of the common land will not be of the same type as his enjoyment of the land which he holds as an exclusive owner.

It may be argued that his user of the common land is adequate compensation to him, but quite apart from that the action of the Consolidation Officer in reserving a part of the proprietary land for the use of the village as a whole cannot be said to violate the provisions of Article 31 of the Constitution because it will be exempted by Sub-section (2A) introduced by the Fourth Amendment to the Constitution. In this case no private property is acquired by the State or by a corporation controlled by the State.

7. Section 18 of Act 50 of 1948 is in the following terms :

"18. Notwithstanding anything contained in any law for the time being in force it shall be lawful for the Consolidation Officer to direct--

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

(b) that any land under the bed of a stream or torrent flowing through or from the Siwalik mountain range within the Province shall be assigned for any common purpose;

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

8. Punjab Act 1 of 1954 gives certain powers to the village Panchayat with regard to the management of common land. Section 18 of Act 50 of 1948 read with Punjab Act 1 of 1954 empowers the Consolidation Officer to convert common land into proprietary land in exchange for other proprietary land which may be converted into common land and handed over to the Gram Panchayat for management. It also empowers him to appropriate land for the extension of the village abadi.

There appears to be nothing unconstitutional in these provisions. The Consolidation Officer does not appropriate land. All he does is to parcel out the land in a way which promotes the economy of the village. If more land for abadi is required he is authorised to extend the village abadi. If the village common land is in an unsuitable locality he is authorised to change the location of the common land. His action therefore does not contravene the provisions of Article 31 of the Constitution.

9. What the petitioners seemed to resent most was the handing over of 11 acres

 

of proprietary land to the non-biswadars of the village. It was contended that this amounted to appropriation of private property. The learned counsel for the petitioners, however, appeared to disregard the true nature of the economy of an Indian village and the pattern of village life.

The village common land or shamilat deh comprises not only the uncultivated pasture lands but also the abadi deh, the gora deb which is the vacant space reserved for the extension of village dwellings and such amenities as a well, a pond etc. All the inhabitants of the village whether they are proprietors or non-proprietors, have an interest in shamilat deh.

The site of a house occupied by a non-proprietor does not belong to him in the same sense as the site of a house occupied by a proprietor belongs to him, but even a non-proprietor cannot be ejected from the village. His son inherits the site alter his death and in some parts of the Punjab he can even sell the site. The non-proprietors are entitled to make use of the pasture lands and the other features of the village which are included in the term "shamilat deh."

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

The granting of land to non-proprietors for building residential houses amounts to no more than tile extension of the abadi deh and in many cases such extension will be made from gora deh. When the land of the village comes under a consolidation scheme it may not be feasible to build houses on the gora deh and it may be better both from the point of view of convenience and health to provide extra houses from a portion of the proprietary land, and in such a case it may well be that the gora deh is converted into proprietary land to equalise matters.

It is, however, immaterial whether such an exchange of gora deh for proprietary land takes place or not, for it seems to me that non-proprietors are as much entitled to residential sites in the village as proprietors and to provide them with houses is a part of the scheme or the whole village.

This land will retain the character of shamilat deh or village common land, at least to the same extent as the land which is under the houses of the proprietors. Therefore I cannot accept the argument that the reserving of 11 acres of land for the houses of non-biswadars amounts to a contravention of the Constitution or that it can be considered as an appropriation of private property by the State.

10. I would therefore hold that Section 18, East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 50 of 1948, and Punjab Act 1 of 1954 are intra vires the Constitution. The order of the Consolidation Officer whereby he reserved 11 acres of proprietary land for the use of non-biswadars was necessary

 

in order to give effect to the provisions of Act 50 of 1948. This order does not amount to appropriation and is therefore valid in every respect.

11. For these reasons I would dismiss this petition but in the circumstances of the case make no orders as to costs.

12. There are some other petitions in which the same point arises although the facts are not identical. These petitions must also fail on the same grounds on which Civil Writ Application No. 34 of 1955 is being dismissed. These petitions are Nos. 48, 51, 71, 75, 102, 103 and 106 of 1955. These petitions will also be dismissed but there will be no orders as to costs.

Bhandari, C. J.

13. I agree.

 