

(1959) 11 P&H CK 0021

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 245 of 1958

Munsha Singh Dhaman Singh and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 05-11-1959

Acts Referred:

Constitution of India, 1950 — Article 31
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 14(1), 17, 18, 46
Land Acquisition Act, 1894 — Section 23(1)
Punjab Village Panchayat Act, 1939 — Section 8

Citation : AIR 1960 P&H 317

Hon'ble Judges : A.N. Bhandari, C.J; Tek Chand, J; S.S. Dulat, J; R.P. Khosla, J; I.D. Dua, J

Bench : Full Bench

Judgement

Tek Chand, J.

(1) Munsha Singh and twenty-six others, residents of village Majatri of Tahsil Kharar, District Ambala, appellants, have moved a petition in this Court under Arts. 226 and 227 of the Constitution of India, praying that consolidation proceedings which were being taken in village Majatri be quashed and proceedings for repetition, in pursuance of the consolidation might be stayed ad interim. The petition was against four respondents the State of Punjab through the Director of Consolidation. Jullundur, the Settlement Officer, Consolidation, Ambala, the Consolidation Officer and the Assistant Consolidation Officer, Kharar. All the respondents were represented by the Advocate-General. This petition was heard by the Grover J. and by his order dated 23-5-1958, the petition was dismissed.

The learned Singh Judge in his order of dismissal referred to his own decision in Civil Writ No. 645 of 1957 for detailed reasons. The petitioners from the order, have filed this appeal under clause 10 for the Letters Patent, which on being admitted came up before Bhandari C. J. and Dulat J. The Letters Patent Bench by

its order dated 3-4-1959, expressed the view that the points of law calling for decision in this case were important and were likely to arise in a number of other cases and this appeal was, therefore, referred to Full Bench.

(2) Bench dealing with the points raised before us by the learned counsel for the appellants, a brief resume of the facts stated in the writ petition, may be given.

(3) The petitioners had stated, that consolidation proceedings were taken in this village in 1945, and the holdings of all the proprietors were consolidated to the satisfaction of all concerned. The respondents again started consolidation proceedings in the village and prepared a scheme for consolidation. Under the new consolidation proceedings, the estate was notified under S. 14(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (No. 50 of 1948)--hereinafter called the Consolidation Act--as per notification No. 57-G/17943, dated 26-9-1955.

(4) According to para 2 of the written statement filed on behalf of the first respondent.

"the village was taken up for fresh consolidation operations in the interest of development work in the light of new socio-economic conditions released by independence and Constitution of India".

As stated in para 3 of the written statement the following reservations have been made during the course of publication of the draft scheme under S. 18(c) in the estate.

S. No. Details of purchase for which the reservation has been made Area reserved. Kanals, Marlas Ordinary Kanals, Marlas Standard 1. Village roads including Circular Road 78-3 50-4 2. Road under the Development Scheme with 12 karams width 36-18 29-15 3 Water tanks 1-10 1-10 4 Manure pits 7-0 5-16 5. Hadarori 1-10 1-10 6. Latrines 1-13 1-3 7. Primary School and playground for children 13-1 6-11 8. Fuel plantation 8-0 1-0 9. Cattle ground 6-5 3.15 10 Cremation ground for Harijans and others 5-4 2-17 11 Graveyard 1-9 0-18 12. Grazing ground for cattle 8-0 1-0 13. Area given to civil Panchayat 80-0 35-12 14. Area for extension of abadi given to the non-proprietors 5-5 5-5 235-18 145-17 235-19 235-20 1-18 235-21 2-7 235-22 235-23 Previous area available Area taken for various purposes from the khewat of the right-holders of the estate proportionately.....143-10

(5) Before us the items, which were subjected to serious attack on behalf of the petitioner appellants were 13 and 14. Items Nos. 1 and 2 were also criticised. The petitioners felt that their proprietary rights as also of other proprietors were being violated and they could not in law be deprived of parts of their holdings without payment of adequate compensation. I am not referring to a number of other objections, which were raised in the petition as they are not germane to the matters finally urged before us.

(6) The petition was opposed by the Punjab State, and it was urged, that the

areas reserved, as shown above, were for common purposes and that they would be entered as joint khewat of the right-holders. As the land had been taken for common purposes no question of payment arose and no fundamental rights of the petitioners were being infringed. The controversy has centred round the question whether in the exercise of powers under S. 18(c) of the Consolidation Act, the land of the proprietors could be reserved for the purposes indicated in the written statement, and whether the giving of control to the Gram Panchayat over the areas in question infringed any fundamental right of the right-holders. Before considering the arguments advanced in support of the respective of the relevant Acts and Rules having a bearing on the question raised may be considered.

(7) The Consolidation Act (No. 50 of 1948) was passed in December,, 1948. Under S. 2(b) "consolidation of holdings" meant

"the amalgamation and the redistribution of all or any of the lands in an estate or sub-division of an estate so as to reduce the number of plots in the holdings;"

"Common purpose" was defined under S. 2(bb) to mean "any purpose in relation to any common need, convenience or benefit of the village". It was provided in S. 14(1) for the Act, that the Government may of its own accord, or on application, declare its intention to make scheme for consolidation of holdings "for the purpose of better cultivation of lands therein".

(8) Section 17(1) provides that whenever in preparing the scheme for the consolidation of holdings, it appears to the Consolidation Officer that it is necessary to amalgamate any road, street, lane, path, channel, drain, tank, pasture or other land reserved for common purposes with any holding in the scheme he shall make a declaration to that effect stating in such declaration that it is proposed that the rights of the public as well as of all individuals in or over the said road, street, lane, path, channel, drain, tank, pasture or other land reserved for common purposes shall be extinguished or, as the case may be, transferred to a new road street, lane, path, channel, drain, tank, pasture or other land reserved for common purposes laid out in the scheme of consolidation.

(9) Section 18, which is the controversial provision for purposes of this case, is reproduced below:

"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 State 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".

(10) Section 20 deals with provisions for confirmation of scheme and under the next section, the Consolidation Officer carries out repartition in accordance with the scheme as confirmed.

(11) Section 46 of the Act empowers the State Government by notification to make rules for carrying out the purpose of this Act and the State Government may, inter alia, make rules providing for

(e) "the manner in which the area is to be reserved under S. 18 and the manner in which it is to be dealt with and also the manner in which the village abadi is to be given to proprietors and non-proprietors (including scheduled castes, Sikh backward classes, artisans and labourers) on payment of compensation or otherwise".

(12) This Act repealed the Punjab Consolidation of Holdings Act, 1936, as amended in 1940 and 1945.

(13) The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules were made in 1949 and rule 16 which was added by Punjab Government notification No. 933-D-56/369, dated 3-3-1956, is reproduced below:

"The area to be reserved for the common purpose of extension of abadi for proprietors and non-proprietors under S. 18(c) of the Act shall be reserved after scrutinizing the demand of proprietors desirous of building houses and of non-proprietors including Harijan families working as agrarian labourers who are in need of a site for house. The land reserved for extension of abadi shall be divided into plots of suitable sizes. For the plots allotted to proprietors area of equal value shall be deducted from their holdings but in the case of non-proprietors including Harijan families these shall be allotted without payment of compensation and they shall be deemed to be full owners of the plots allotted to them".

(14) By notification No. 459-D-57/713, dated 9-4-1957, the Governor of Punjab amended the existing rule 16 by renumbering it as rule 16(i) and also by adding the following as rule 16(ii)--

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

the income derived from the land so reserved for the common needs and benefits of the estate or estates concerned".

(15) The Punjab Gram Panchayat Act (No. 4 of 1953) was passed to provide for a better administration in the rural areas of Punjab by Panchayats and it repealed the previous Punjab Village Panchayat Act, 1939.

(16) Under S. 8() of this Act every Gram Panchayat shall by name be a body corporate having perpetual succession, and shall, subject to any restriction or condition imposed by or under this Act, have power to acquire by purchase, gift or otherwise to hold, administer and transfer property, both movable and immovable, and to enter into any contract, and shall, by the said name, sue or be sued.

(17) It has not been denied that the Panchayat is a corporation and is controlled by the State a fact which is borne out by a large number of provisions of the Punjab Gram Panchayat Act.

(18) The Punjab Village Common Lands (Regulation) Act, 1953 (Punjab Act No. 1 of 1954) was enacted to regulate the rights in shamilat deh and abadi deh. Under S. 3 all rights, title and interests whatever in the land--

(a) which is included in the shamilat deh vest in a Panchayat having jurisdiction;

(b) which is situated in the abadi deh and which is under the house owned by a non-proprietor vest in the said non-proprietor.

(19) The real scope of the Consolidation Act before analysing the effect of Consolidation Rule 16 may be considered at this stage.

(20) According to the preamble, the Consolidation Act was passed

"to provide for the compulsory consolidation of agricultural holdings and for preventing the fragmentation of agricultural holdings in the State of Punjab".

(21) In the words of Sir Edward Coke (1 Inst. 79a cited at page 186 of Craies on Statute Law, Fifth Edition)--

"the preamble of the statute is a good means to find out the meaning of the statute and as it were a key to open the understanding thereof".

(22) The proper function of a preamble is to explain certain facts which are necessary to be explained before the enactments contained in the Act can be understood. The preamble is an important part of the statute. The general rule, with regard to the effect of the preamble, is, that if the meaning of the enactment is clear and unequivocal without reference to the preamble, it can have no effect whatever, but where a doubt arises over the terms employed by the legislature, preamble is another means of collecting the intention by calling in aid the ground and cause of making the statute.

(23) In the words of Dyer C. J., the preamble is "a key to open the minds of the

makers of the Act, and the mischiefs which they intended to redress" (vide *Stowell v. Zouch*, 1562 Plowd 369, cited with approval by Lord Halsbury in *Income Tax Special Purposes Commrs. v. Pemsel* 1891 AC 531 (543)).

(24) The scope of the rule as to the extent to which preamble is guided (sic) was stated by Earl of Halsbury L. C. in the following words in *Powell v. Kempton Park Race-Course Co.* (1899) AC 143 (157)--

"two propositions are quite clear, one that a preamble may afford useful light as to what a statute intends to reach and the other that if an enactment is itself clear and unambiguous no preamble can qualify or cut down the enactment".

(25) It therefore comes to this, that where the words construed in themselves without the aid of the preamble are capable of more than one meaning, the preamble may be referred to as it may furnish a clue, as to the scope of the statute.

(26) Another basic principle is that the words of a statute should be construed with regard to the object of the statute. There are cases where the language does not express the extent of the circumscription, of a field of operation of an Act, but it has to be construed narrowly in order to keep the Act within the limits of its object and within its real scope. In cases, where the language and the scope of the Act admit of doubt, resort may be had to the preamble, in order to determine which of the two meanings was the more agreeable to the policy and object of the Act. The preamble may sometime be used for extending or restraining the words of the enactment. In the words of Parker C. B. in *Ryall v. Rolfe* (1749) 1 Atk. 165 (174): 26 E. R. 107-

"It is laid down on the construction of the 13 Eliz C. 5 that the preamble shall not restrain the enacting clause. But I take it to be agreed that if the not restraining the generality of the enacting clause will be attended with an inconvenience, the preamble shall restrain it".

(27) Another rule of guidance relates to *contemporanea expositio*. The rule is that the words of a statute will, generally, be understood in the sense which they bore when it was passed or in other words they are to be understood as used with reference to the subject-matter in the mind of the legislature, and limited to it.

(28) The object of the Consolidation Act when it was passed in 1948 was simply to consolidate and prevent fragmentation of holdings. The intention of the legislature was to encourage the development of agriculture and improve agricultural products, and one way of achieving this object was by introducing consolidation schemes. The object of the Act was sought to be achieved by allotting a compact area in lieu of scattered plots, as that would facilitate large-scale cultivation with its attendant advantages. Fragmentation of holdings was intended to be avoided, as that impeded the development of agriculture, and interfered with increased production of food grains. This intention of the

legislature appears to be clear from the perusal of S. 14(1) of the Act which enable the State Government to make scheme for consolidation of holdings "for the purpose of better cultivation of lands therein". Section 18(c) declares,

"that it shall be lawful of the Consolidation Officer to direct that if in any area under consolidation any land is reserved for any common purpose including extension of the village abadi or if the land so reserved is inadequate to assign that land for such purpose."

Under the same section, a Consolidation Officer may even direct that any land specifically assigned for any common purpose shall cease to be so assigned and then he may assign any other land in its place.

(29) The words "common purpose" are significant. The Act treats an estate or sub-division of an estate as a unit, and "common purpose" should therefore mean community of interest shared by the persons constituting that unit. A purpose will be nevertheless common if it is shared by the majority or by many. According to Webster "common" means: (1) belonging equally to more than one or to may indefinitely; (2) belonging to the public; (3) general; (4) universal; (5) public. Section 17(1) illustrates "common purpose" such as amalgamation of "any road, street, land, path, channel, drain, tank, pasture". This list is to exhaustive of common purposes and should include cremation ground, grave-yards, ponds etc. The expression "common purpose" is not to be understood in a sense de hors the main object of he Act.

No doubt, section 2(bb) gives a very wide definition of the term "common purpose" so as to mean "any purpose in relation to any common need, convenience or benefit of the village", but this is to be understood in relation to the object of the Act, namely, the consolidation of agricultural holdings and the prevention of fragmentation of such holdings. While enacting this piece of legislation, the legislature in 1948 was not contemplating, through the provisions of this Act to launch any socio-economic programme of all-round and general development. Neither the language of the preamble nor of S. 18(c) could be extended so as to include within its ambit, wider programme with a view to bring about social equality, by taking away from individual proprietors their lands, and giving them over to non-proprietors, or handling them over to the Panchayat for purposes of management for any "common purpose".

(30) With this background, rule 16 of the Consolidation Rules 1949, may be considered. Under S. 46 of the Consolidation Act, the State Government has the power to make rules for carrying out the purposes of the Act.

(31) Rule 16(ii) has been reproduced in an earlier part of the judgment. Rule 16(ii) which was made by the Governor of Punjab on 9-4-1957, goes far beyond the scope of the Act or of S. 18(c). Nominally, proprietary rights in respect of land reserved for "common purpose" (except the area reserved for the extension of abadi of proprietors or non-proprietors) shall vest in the proprietary body of the estate or estates concerned, and the land shall be entered in the column of

ownership of record of rights as jumla malikan wa digar haqdarar arazi hasab rasad raqba, and the management of such land shall be done by Panchayat of the estate or estates concerned on behalf of the village proprietary body, and the Panchayat shall have right to utilise the income derived from the land so reserved for the common needs and benefit of the estates concerned.

The effect of this rule, therefore, is that a Consolidation Officer while purporting to exercise his powers under S. 18(c) may direct that any area, regardless of its size or needs, be assigned for any "common purpose. Such a vast power, it was argued, was prone to be misused and its unfettered exercise instead of leading to consolidation of holdings, could, if unchecked, result in virtual liquidation of the areas of the individual proprietors. The other effect of rule 16(ii) is that though in the column of ownership of the record of rights the right-holders shall be deemed to be owners in name but so far as the effective exercise of the rights of ownership is concerned, they cannot exercise any. Not only the management of such land shall be done by the Panchayat, but the Panchayat shall have the right to utilise the income derived from the land so reserved for the common needs and benefits of the estate. Thus the effect of rule 16 is, that the individual proprietors cease to have the right to enjoy their property as they like, and the Panchayat has the right, not only to utilise land for the common needs and benefits, but even to use it, for the purpose of raising income and then of making use of the money so raised, for the common needs and benefits of the estate.

(32) The learned Advocate-General firstly argued, that the Panchayat was merely a statutory agent and secondly, that the ownership remained vested in the proprietary body. It is absolutely misleading to treat Panchayat as a statutory agent. No agency has been created expressly or impliedly by the Act and it is an inconceivable agency in the creation of which the principal--even if he suffers from no legal disability of nonage, insanity or the like,--has no voice, and which continues indefinitely, without the former having any power to terminate it. Not only, the principal cannot direct or control the utilisation of his property, he cannot even claim the use of its income for himself. Rule 16(ii) when analysed, accomplishes an object which could never be within contemplation of the Punjab legislature when enacting the Consolidation Act.

It could never be within the purview of the framers of Act No. 50 of 1948 to confer a power on Consolidation Officer whereby the individual proprietors could be effectively deprived of the use and enjoyment of substantial areas of their lands without any power to exercise their several proprietary rights in respect of their property. In short, the actual effect of rule 16(ii) is expropriation without compensation, which could never be the intention of a statute, which was enacted for consolidation holdings with a view to bring about better cultivation.

(33) It was argued on behalf of the State, that proprietary rights have not been interfered with as they still vest in the proprietary body inasmuch as, in the column of ownership of the record of rights these persons are still styled as "malikan wa digar haqdarar arazi" (owners or other right-holders of land). It is

scant satisfaction to a proprietor to be told that in the revenue records, he is still styled as the proprietor, though he cannot exercise any of the rights which makes ownership worth while.

(34) Austin's classical description of ownership, as "a right conferred over a determinate thing, indefinite in point of user, unrestricted in point of disposition and unlimited in point of duration, Jurisprudence by Austin, Volume II, page 477) is too sweeping and theoretical to serve any practical purpose. Under the present day exigencies a person is still deemed an owner, although his rights in matter of user disposition or duration may be attenuated by statute, custom or contract.

(35) Though less general than the Austinian concept, the definition as given by Ahrens suffers from want of perspicuity and precision. According to him, La prorate EST le pouvoir juridique, plein et entier d'une personne sur une chose corporelle--ownership is the full and complete juridical power of a person over a corporeal object Le pouvoir de droit d'une personne sur une chose d'après tous les buts rationnels d'utilité possible inhérents à la nature,--The rightful power of a person over a thing for all possible rational ends inherent in the nature of the thing (Droit Naturel, Volume II, page 143).

(36) According to French Code, ownership is defined as--

"Le droit de jouir et disposer des choses de la manière la plus absolue, pourvu qu'on n'en fasse pas un usage prohibé par les lois ou par les règlements". (Art. 436)

(The right to enjoy and dispose of the things in the most absolute manner provided that one does not do what is prohibited by usage, law or the rules):

(37) A really satisfactory and comprehensive definition of the right of ownership, equally exhaustive and exclusive, has not been attempted so far, because of its obvious difficulties in consequence of changing situations varying with altered circumstances. But the concept of ownership presents no difficulty of general comprehension. The well-known and widely understood rights which are exercisable by an owner are--

1. Jus Utendi: the right to the use of a thing;
2. Jus possidendi: the right to possess a thing;
3. Jus abutendi: the right to consume or destroy a thing;
4. Jus disponendi vel transferendi: the right to dispose of a thing or to transfer it as by sale, gift, exchange etc.;
5. Jus sibi habendi: the right to hold a thing for oneself;
6. Jus alteri non habendi or jus prohibendi: the right to exclude others from its use.

(38) Some of those component rights may be overlapping and it may also be

possible to add to them. In essence the rights of ownership may be conveniently arranged under three head, Possession, Enjoyment and Disposition.

(39) Sir Paul Vinogradoff in his book, *Outlines of Historical Jurisprudence*, Volume II, page 197, said--

"The essence of the law of property is the attribution to certain persons of exclusive rights of disposal over certain things".

(40) Same idea was expressed by Cairns (*Law and the Social Sciences*, page 60) when he said--

"The property right is essentially a guarantee of the exclusion of other persons from the use or handling of the thing".

(41) In a recent decision of the Supreme Court in *Amar Singh Vs. Custodian, Evacuee Property, Punjab*, Jagannadhadas J. at page 833 (of SCR): (at p. 611 of AIR) said,

"Property to fall within the scope of Art. 19(i)(f) must be capable of being the subject-matter of "acquisition and disposal".

(42) The lands of the right-holders in this case do not admit of any right of "acquisition and disposal". The word "property" contemplates a bundle of rights, and it is indisputable that a person does not cease to be the owner if he is deprived of one or more of these rights, so long as he is left in the enjoyment of the essential rights.

(43) In the instant case, however, the individual proprietors are not left even with a single right which may be included among the attributes of ownership. The person who has been hitherto a proprietor, is stripped of almost every vestige of ownership which makes the property owned valuable to him in several ways. The right merely to figure in the column of ownership in the revenue records is not even an empty husk of ownership or a *nuda proprietas*. The right-holders in this case have been denuded of their property and no vestige of ownership really remains in the case of the area which has been given to non-proprietors.

Even in respect of the area given to the civil Panchayat, no conceivable right of ownership can be exercised by the right-holders after the management of such land is taken over by the Panchayat. According to Rule 16(ii) the management of the land so assigned shall be done by the Panchayat on behalf of the village proprietary body, but these words lose all their meaning when the proprietors can exercise no control over the acts of the Panchayat, on which has been conferred the right to utilise the land or the income derived from it. The entry in the column of ownership of right-holders is neither equivalent to possession nor to dominion as they are not permitted to exercise any of the proprietary rights.

(44) In this case the proprietors cannot exercise any right of disposal over the area in question. They have neither the power of enjoyment as they no longer can determine the use to which their land is to be put; they have no power to

deal the produce as they please, that is to consume, give or sell it. Right to possession which admits the right to exclude others can no longer be exercised. In theory perhaps they can alienate the land or charge it as security or may leave it by will but the land over which they no longer can exercise any one of the well recognised rights of ownership, cannot in practice be profitably alienated. Similarly, it cannot serve as security and the legatee, to whom it may be left by a will, cannot exercise any effective proprietary rights over it. One of the most important of these powers of ownership is the right to exclude others, but in this case there has been an effective exclusion of the owners themselves.

(45) In substance this is a case of total expropriation of the right-holders. But even if their right is deemed to have been substantially abridged but not completely lost, Rule 16(ii) would still be struck down, on the ground that it is ultra vires, being in excess of the rule-making powers conferred by S. 46 of the Consolidation Act. Depriving the proprietors of 80 kanals of their area by making it over to the civil Panchayat is an Act which is not within the scope of the statute. Section 18(c) does not authorise the giving of land to the Panchayat so that it may utilise it for raising income, which in its turn may be spent for the common needs and benefits of the village. Such a wide interpretation of the expression "common purpose" could not be within the contemplation of the framers of the statute, the object of which was no other than consolidation of agricultural holdings.

(46) Rule 16(i) contemplates the allotment of area for extension of Abadi to non-proprietors including Harijan families working as agrarian labourers without compensation and they shall be deemed to be full owners of the plots allotted to them. As regard plots allotted to proprietors, the area of equal value shall be reduce from their holdings.

(47) It is argued by the learned counsel on behalf of the appellants, that howsoever laudable it may be to allot land for building purposes to non-proprietors without payment of compensation, it cannot be deemed to be for "common purpose" as understood, having regard to the object of the Consolidation Act. It was contended that taking of the proprietary land from the proprietors and giving the same to the non-proprietors without paying compensation to those whose lands have been taken away, could not be deemed to be an assignment of land for "common object" within the meaning of section 18(c) of the Act. I think that the intention of the law makers was to give a liberal construction to the expression "common purpose". Section 18(c) expressly includes extension of the village Abadi as such a purpose. The village Abadi consists of both proprietor and non-proprietors who live there. The village economy depends for its development on non-proprietors to a considerable degree and a provision for an extension of the Abadi cannot be placed outside the scope of common purpose. Rule 16(i) if so construed does not go beyond the scope of section 18(c) or any other provision of the Act. This matter came up before a Division Bench of this Court in Kure Singh and Others Vs. State of

Punjab and Others, Khosla J. observed--

"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.

.....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".

(48) Regarding the giving of the land as per items 1 and 2, i.e., for village roads including circular road or for roads under development scheme with 12 karams width that may be well within the definition of "common purpose". It is not for this Court to determine, whether having regard to the requirements of the people to the village, so large an area, is really required for roads, or that the Consolidation Officer might as well have assigned a lesser area. The vires of such an assignment cannot be successfully called into question. I am, therefore, of the view that neither section 18(c) nor any other provision of the Consolidation Act No. 50 of 1948 authorises the giving of property of the right-holders to the Panchayat. Rule 16(ii) of the Consolidation Rules must be struck down as ultra vires of the Consolidation Act.

(49) In view of what has been stated above, it is no necessary to examine the alternative argument advanced at the Bar that section 18(c) contemplates acquisition or requisition of property and unless compensation is paid to the right-holder, his property can neither be acquired nor requisitioned under the Constitution.

(50) To sum up, Rules 16(ii) being outside the scope of section 18(c) and not germane to the main and even collateral purpose of that Act which is consolidation of agricultural holdings and for preventing their fragmentation is ultra vires.

(51) The result of the aforementioned discussion is that the judgment of the learned Single Judge is set aside and this appeal under the Letters Patent is allowed. The writ petition is accepted and the consolidation proceedings taken in village Majatri, Tehsil Kharar, District Ambala, not being in accordance with the provision of law, are quashed. I will leave the parties to bear their own costs.

Dulat, J.

(52) In the petitioners' village proceedings for the consolidation of land holdings are going on and a scheme has been prepared under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act 50 of 1948. This scheme proposes, among other things, to set apart or Reserve Bank of India, or assign, as the Act calls it, an area of about 235 kanals for "common purposes" of the

village, and one of the items is an area of 80 kanals to be given to the village Panchayat. We gather that, in accordance with rule 16(ii) framed under the Act; this land will be managed by the Panchayat and its income used for the common needs of the village. The petitioners claim that this cannot be done under the Consolidation Act and therefore pray that the consolidation scheme as framed should be quashed. The question therefore is whether Punjab Act 50 of 1948 authorises the handing over of any area of land out of the proprietors' holdings to the village Panchayat, so that its income might be used for the common needs of the village. On behalf of the State and the consolidation authorities it is contended that section 18(c) of the Consolidation Act authorises this, and we are thus mainly concerned with the meaning of section 18 of the Act. This says:--

"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 forming the Siwalik mountain range within the State shall be assigned of 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".

"Common purpose" u/s 2(bb) of the Act means "any purpose in relation to any common need, convenience or benefit of the village".

(53) It will be observed that section 18 again and again speaks of land and its assignment or reservation for a common purpose, one instance of which is the reservation of land required for the extension of the village abadi. The context leaves no doubt that the power of the Consolidation Officer here is confined to dealing with land which is actually needed for a common purpose. It was of course, known at the time of the framing of this Act that in nearly every village some land is in fact used for common purpose, such as a path, a tank, a grazing round or a well. It was realised that the nature and the extent of a common need might from time to time change, and power was therefore given by the Legislature to the consolidation authorities to ensure that the land reserved for a particular purpose was adequate and, if a new need had arisen, to make reservation of land for that purpose.

A village common need for its fulfillment may, and very often does, require not only land but also other things like money and labour. If, for instance, a common well is to be sunk or a common tank is to be built, there will be needed not only the land but also some money to buy the necessary material and also some labour. It is not suggested, and it could not be suggested, that a consolidation officer could because of section 18 either mobilise village labour to sink a

common well or collect funds to pay for the cost of a tank. Nor can he, in my opinion, say that the income from any particular piece of land must be used to pay for such cost. All he can do is to provide the land and only the land required in connection with a particular common purpose. He cannot, however, finance it. The purpose of the Act is the consolidation of land holdings and prevention of fragmentation to ensure better cultivation.

What the consolidation authorities can, therefore, deal with and Reserve Bank of India, or assign u/s 18 is land and not its income for any common purpose. It is were otherwise, it would be open to a consolidation officer to keep apart half the village land, so that its income could finance the running of a school or a hospital that may be legitimately needed by the villagers. I am quite clear in my mind that this cannot be done under the Consolidation Act of 1948. It is equally clear that what is proposed to be done in the present case is that a substantial area of land out of the common pool is to be handed over to the Panchayat, so that its income may be used to fulfil some common needs of the village. This in substance and reality is reserving or assigning the income from certain land for a particular purpose and not assigning or reserving any land for that purpose. This particular proposal in the consolidation scheme thus travels beyond the Act and is for that reason invalid. So is the rule under which the proposal is made, for that rule authorises the doing of something which the Act itself does not contemplate.

(54) It was said at one stage of the arguments before us that the setting up of a Panchayat fulfils a common need, and assigning some land to that Panchayat to be used for a common purpose should be deemed as assigning that land for a common purpose. It is obvious, however, that the Panchayat does not need the land to be used for any common purpose. What it needs is the income from that land, and what it will use for the common purpose of the village is such income. Such assignment or reservation is, in my opinion, wholly outside the purview of the Act of 1948. In spite of rule 16(ii) therefore, this part of the scheme remains invalid and the scheme to that extent must be quashed.

(55) As an alternative argument it was contended on behalf of the petitioners that, if the Consolidation Act does authorise what has been proposed in this connection, the Act itself would be invalid as our Constitution forbids the taking of anyone's property in this manner without compensation. It is. I think, unnecessary for us to pronounce on this question, for if my view is correct that the Consolidation Act does not authorise the taking of the proprietors' land and giving it to the Panchayat, the other question concerning the constitutional validity of the Act does not arise. It is. I think, not unlikely, if my view of the meaning of the Consolidation Act prevails, that fresh legislation would be undertaken, and I wish to guard myself against saying anything that may ahead of time prejudice such legislation.

(56) The second item in the scheme, to which serious objection was raised, concerns the reservation of an area of about 5 kanals for the extension of the

abadi for building houses for the non-proprietors. For such extension of the abadi, however, there is, in my opinion, ample legislative sanction in the Consolidation Act. Section 18 (c) expressly authorise the Consolidation Officer to Reserve Bank of India, land for the extension of the abadi once he finds the existing abadi land inadequate. What it means is that, if more houses have to be built and the existing abadi land is not sufficient for that purpose, more land can be added to the abadi area. Such a step would, in my opinion, be in fulfillment of a common need or a common purpose, and falls within the Act. The manner in which this is to be done is mentioned in rule 16 (i) of the rules which says--

"16. (i) The areas to be reserved for the common purpose of extension of abadi for proprietors and non-proprietors u/s 18 (c) of the Act shall be reserved after scrutinising the demand of proprietors desirous of building houses and of non-proprietors including Harijan families working as agrarian labourers who are in need of a site for house. The land reserved for extension of abadi shall be divided into plots of suitable sizes. For the plots allotted the proprietors including Harijan families these shall be allotted without payment of compensation and they shall be deemed to be full owners of the plots allotted to them."

(57) The objection raised is that under this rule the proprietors' land is to be given to non-proprietors without compensation and that is contrary to the Constitution. This matter was actually considered by a Division Bench of this Court, of which my Lord the Chief Justice was a member, in Kure Singh and Others Vs. State of Punjab and Others, and it was held that there was nothing unconstitutional in the provision. I find myself in full accord with that view and consider it unnecessary to repeat the reasoning adopted by the Court in that case. This part of the consolidation scheme, therefore, proposing to Reserve Bank of India, some area for the extension of the abadi for the non-proprietors' houses is not, in my opinion, open to any objection.

(58) Some other items included in the area reserved for common purposes were also objected to but those objections were not seriously pressed and none of those objections seems to me well-founded. All those items directly concern the reservation of land and only land for common purposes which the Consolidation Act authorises and to which reservation no objection can be seriously raised. I would therefore, uphold the petitioners' objection concerning the item of land proposed to be handed over to the village Panchayat and thus allow the appeal and to that extent quash the consolidation scheme, but in the circumstances make no order as to costs.

R.P. Khosla, J.

(59) I had the advantage of perusing the judgments prepared by Dulat and Tek Chand JJ. After giving my best consideration to the opinions expressed in the two judgments, for which I have the greatest respect, I have come to the conclusion that I am not in a position to be in agreement. I would, therefore, prefer to deliver my own judgment.

(60) The question that arise for determination and which had been canvassed at length are:

(i) Whether the disputed assignments of land by the Consolidation Officer in the instant matter were beyond the scope of his power as envisaged by Section 18(c) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (No. L of 1948); and

(ii) whether the said assignments contravened and were repugnant to the provisions of Article 31 of the Constitution of India.

(61) I might at the outset state that in the first instance the points now arising were agitated in Civil Writ No. 682 of 1957. The petitioners having been non-suited went up in Letters Patent Appeal No. 245 of 1948. In view of the importance of the question involved, the matter was referred by the Letters Patent Bench consisting of Bhandari C. J., and Dulat J., to the present Full Bench for decision.

(62) For appreciating the arguments addressed bearing on the controversy, it would be necessary to set out a few relevant facts: In village Majatri, Tehsil Kharar, District Ambala, proceedings for consolidation of holdings ensued in the year 1948 and the holdings of all the proprietors were consolidated. During the repartition proceedings in accordance with the consolidation scheme some areas had been reserved for purpose as follows:

(i) For village roads including the circular road - 78 kanals 3 marlas. (ii) Road under the development (iii) scheme, 12 karams (iv) width - 36 kanals 18 marlas (v) (iii) Water tanks - 1 kanal 10 marlas (vi) (iv) Manure pits - 7 kanals (vii) (v) Had Rori - 1 kanal 10 marlas (viii) (vi) Latrines - 1 kanals 13 marlas. (ix) (vii) Primary schools and play grounds for children - 13 kanals 1 marla (x) (viii) Fuel plantation - 8 kanals (xi) (ix) Cattle ground - 6 kanals 5 marlas. (xii) (x) Cremation ground for (xiii) Harijans and others - 5 kanals 4 marlas (xiv) (xi) Graveyard - 1 kanal 9 marlas (xii) Grazing ground for cattle - 8 kanals (xiii) Area for civil Panchayat - 80 kanals (xv) Area for extension of abadi for (xvi) non-proprietors - 5 kanals 5 marlas

(63) The challenge of the learned counsel appearing for the appellants was confined to two of the items only, e.g., (1) areas reserved for panchayat and (2) for extension of abadi for non-proprietors which have been categorised as above at items (xiii) and (xiv). It was contended that the assignments of land in connection with the said two items were not within the scope of the Consolidation Act (Act L of 1948) nor within the ambit of powers of the Consolidation Officer u/s 18(c) of the said Act. It is thus for decision whether assignments in respect of areas 80 kanals for panchayat, and 5 kanals 5 marlas for extension of abadi for non-proprietors were legally valid and within competence of the Consolidation Officer under the said provision. Section 18(c) of Act L of 1948 is worded as follows:

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

(a) ** ** ** **

(b) ** ** **

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

The contention of the learned counsel for the appellants was that the purpose of the Consolidation Act was merely to consolidate holdings and not to take over property of the right holders and give the same to non-owners and panchayats. Act L of 1948, no doubt, sets itself to consolidate the holdings, but it had in the process in view at the same time reservation of land for such objects and purposes that were conducive to the progressive economy of the village. Said objects were the common purposes of the village community. The entire scheme of the Act appears to be that the land of the land-holders is put in a hotchpotch and from the common pool land is parcelled off, while reserving some bits for common user. What is done u/s 18 (c) is not deprivation of any rights of the proprietors over land but to channelise the user of the land reserved to common needs, the ultimate object being promoting village economy. The test all along is whether the reservation is for common purposes meaning thereby for common purposes of the persons forming the village community.

(64) "Common purpose" is defined in the Act Reference is directed to definition section 2 (bb) of Act L of 1948--

"2(bb). "Common purpose" means any purpose in relation to any common need, convenience or benefit of the village".

Question, therefore, in each case would be, does reservation satisfy the test contemplated, e.g., was it for common purpose ? The words that require elucidation was "common need," "convenience" and "benefit". Webster in his valuable Dictionary gives meaning to these words. "Convenience" is stated to be "freedom from discomfort, difficulty or trouble," "need condition fulfilling want," "benefit" whatever promotes welfare and advantage or profit. Reading these words with the words "common of the village" would result in the statement that the reservation must be for the common good of the village inhabitants. Common purposes were well known to the village community as would be clear from the provisions of section 17(1) of Act L of 1948. The Act also proceeded to provide for the common purposes of the village of the new pattern set in the welfare State. Section 17(1) says--

"(17)(1) Whenever in preparing a scheme for the consolidation of holdings, it appears to the Consolidation Officer that it is necessary to amalgamate any road, street, lane, path, channel, drain, tank, pasture or other land reserved for common purposes with any holding in the scheme he shall make a declaration to

that effect stating in such declaration that it is proposed that the rights of the public as well as all individuals in or over the said road, street, lane, path, channel, drain, tank, pasture or other land reserved for common purposes, shall be extinguished or, as the case may be, transferred to a new road, street, lane, path, channel, drain, tank, pasture or other land reserved for common purpose laid out in the scheme of consolidation".

(65) It is plain that the common purposes were already understood to mean as right of public as well as of all individuals in or over roads, streets, lanes, paths, channels, drains, tanks and pastures. Add to these, similar objects for the common user of the inhabitants forming up the community of the contemporary village and perhaps of the one to come.

(66) In this view, when solving the question, it has to be enquired into whether reservation of land for Panchayat and for extension of abadi for non-proprietors was conforming to the needs of the pattern that is set for the village community. Having this as a test, it would be evident that the Harijans formed important part of the village labour and any provision made for their habitation was necessarily directed to the common needs of the village and, therefore, the said reservation would have to be held as being one for common purpose, and valid. Similarly, in case of reservation of land for panchayat u/s 18(c) of Act L of 1948 and the rules made thereunder with particular reference to rule 16, as amended; apart from the consideration that the rule being merely regulatory or circumscribing the manner of exercise of the power and therefore not ultra vires (vide S. Prem Singh Lala Sunder Dass and Others Vs. Deputy Custodian-General, Evacuee Property "P" Block, New Delhi and Others, the property remained vested in the land-holders, the statute only ejected an agency already known, to control and administer on behalf of and for the benefit of the village community to meet its common requirements.

The reservation of land basically is not for raising income commercially but putting the land so reserved to the common purpose, e.g., constructing a Panchayat Ghar, a village common rest house, common playgrounds and other ailed purposes, but if the maintenance of those purposes require further lay out, there appears on principle no repugnancy in assigning land yielding income which in due course would serve the said common purpose. The test all along is assignment of the "common purpose". The assignments in the instant matter satisfy the test and could not be struck down or held repugnant.

(67) In the alternative, on the second point, it was urged that the instant reservations of land were unconstitutional, for Article 31 of the Constitution was violated.

(68) Article 31 of the Constitution provides--

"31. (1) No person shall be deprived of his property save by authority of law.

Compulsory acquisition of property:

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any Court on the ground that the compensation provided by that law is not adequate.

(2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.

(3) ** ** **

(4) ** ** **

(5) ** ** **

(6) ** ** **

For the contention raised by the learned counsel for the appellant that the instant assignments amounted to acquisition, support was sought from decision in *The State of West Bengal Vs. Subodh Gopal Bose and Others*, (AIR 1954 SC 92) *Dwarkanadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, and *Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and Others*, laying down that word "acquisition" does not necessarily imply acquisition of legal title by the State in the property taken possession of but may comprehend cases where the citizen has been substantially dispossessed of the right to enjoy the property, with the result that the right to enjoy the property, with the result that the right to enjoy property has been seriously impaired or the value of the property has been materially reduced by the impugned State legislation. It was urged that the reservation of land as regards the disputed items with particular reference to assignment of land to panchayat resulted in virtual effacement of the right of ownership: "the substance had been taken away only husk remained". As a first impression argument, it appears nothing is taken away, every proprietors has a right to use the land so reserved and has a proprietary interest in it. The land so assigned was to remain entered in the column of ownership of record of rights as jumla malikan wa digar haqdarani arazi hasab rasad raqba, e.g. ownership rights according to respective area of land held. The management thereof was left to the panchayat on behalf of the village proprietary body.

(69) By setting apart the said land each proprietor was temporarily deprived of a certain portion of his land which, however, he was getting back in another form as soon as it was converted into land for common purpose. In *Kure Singh and Others Vs. State of Punjab and Others*, G. D. Khosla J., observed--

"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 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".

In *Kure Singh*, AIR 1956 Punj 88 "reservation of land for non-proprietors" fell for decision, and the same was held to be intra vires and not violative of the Constitution. A fortiori assignment of land to panchayats, where the land remained entered in the name of the proprietors could not be said to be repugnant.

(70) That apart, in view of the latest pronouncement of the Supreme Court in *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, decisions in *The State of West Bengal Vs. Subodh Gopal Bose and Others*, *Dwarkanadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, and *Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and Others*, do not appear to hold the field. In *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, their Lordships of the Supreme Court, while considering the effect of clause (2A) added in Art. 31 of the Constitution observed--

"The Constitution (Fourth) Amendment Act, 1955, amended clause (2) of Art. 31 and inserted clause (2A) in that Article. The amendments, in so far as they are relevant to the present purpose, substitute in place of the words "taken possession of or acquired the words "compulsorily acquired or requisitioned" and provide an explanation of the words "acquired and requisitioned" in clause (2A). The result is that unless the law depriving any person of his property provides for the transfer of the ownership or right to the possession of any property to the State, the law does not relate to "acquisition or requisition" of property and therefore the limitations placed upon the legislature under clause (2) will not apply to such law".

(71) It is indeed clear, and has not been controverted, that the land assigned for the questioned purpose was to remain entered in the record of rights as vested in the proprietors. The land was not to be appropriated by the Consolidation Officer, nor does the panchayat become owner of it. The entry in the proprietary column as already observed, remains to be "jumla malikan wa digar haqdarani arazi hasab rasad raqba".

(72) In *Kure Singh and Others Vs. State of Punjab and Others*, G. D. Khosla J., while considering this aspect pointedly observed--

"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 provision of Art. 31 of the Constitution because it will be exempted by sub-s. (2A) introduced by the Fourth Amendment of the Constitution".

With the said dictum I respectfully agree. "Acquisition contemplates transfer of

the ownership to the State requisition that of right to the possession. What was done under S. 18(c) was neither acquisition or requisition. It might properly be called reservation for a particular purpose--a "common purpose. The impugned assignments of land could not, therefore, be held to be hit by constitutional provisions.

(73) Even otherwise there is ample provision in the Act for payment of compensation. Reference is direction S. 15(1) of the Act which says:

"15(1) The scheme prepared by the Consolidation Officer shall provide for the payment of compensation to any owner who is allotted a holding of less market value than that of his original holding and for the recovery of a compensation from any owner who is allotted a holding of greater market value than that of his original holding".

The mode of assessment of compensation is given in S. 34 which is in the following terms:

"34(1) The amount of compensation payable under this Act shall be assessed, so far as practicable, in accordance with the provisions of sub-s. (1) of S. 23 of the Land Acquisition Act, 1894.

(2) ** ** *

(74) Clearly thus if the land apportioned is less than the previous holding in extent or market value, compensation is provided for; that apart, in case of land reserved for common purposes, the common user is itself compensation. It is not a case of State appropriating private property. In these premises, it is not possible to hold that S. 18 or any other provision of Act L of 1948 or repugnant to Art. 31 of the Constitution.

(75) For all these considerations, this appeal must fail and I would dismiss it. In the circumstances, however, I propose no order as to costs.

Dua, J.

(76) I have read with great care the separate judgments prepared by my learned brethren Dulat, Tek Chand and R.. P. Khosla JJ. for whose opinions I have the highest regard. The object of giving land to the Civil Panchayat is indeed commendable and it may be calculated to benefit the village society in more ways than one. The question, however, which falls for decision in the instant case, is, whether this object was intended by the legislature to fall within the purpose and intent of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act L of 1948. It is no doubt open to the legislature to achieve this object by suitable enactment, but, as at present advised, I am inclined to agree with the views of my learned brethren Dulat and Tek Chand JJ. with whom my Lord the Chief Justice has also agreed, that it falls outside the scope and purpose of the above enactment; the wide definition of the term "common purpose" notwithstanding. The definition must in my view, be construed in the

light of the policy and equity of the statute, to enforce which it has been enacted.

(77) In so far as the allotment of land to non-proprietors, of which they are made full owners, is concerned, I am not clear if such allotment can be considered to be land "reserved or "assigned" for the "common purpose"--the purpose in relation to any common need, convenience or benefit of the village. If the non-proprietors are to become full owners of land, they would presumably be entitled to alienate the same to whomsoever they like and whenever they like; indeed nothing was said at the Bar that they would not be so entitled.

In this view of the matter, can it be considered to have been "reserved" or even "assigned" for a "common purpose within the contemplation of the impugned statute and does this construction really promote and carry out the true purpose and object of the Act ? I have doubts if it does.

But as of my learned brethren, for whose opinions I have great respect, are of the view that this allotment does fall within the purview of "common purpose", I do not propose, as at present advised, to press my doubts to the point of recording a dissent, and would therefore concur with them. The result is that I agree with the order proposed by Dulat and Tek Chand JJ.

Bhandari, C.J.

(78) I have had the advantage of reading the judgments, which are proposed to be delivered and have no hesitation in endorsing the views taken by my brothers Dulat, J. and Tek Chand J.

(79) Appeal allowed.