

(2005) 05 DEL CK 0223

In the Delhi High Court

Case No : Writ Petition (C) 424, 531 and 775 of 2003 and 1991-2000, 2001-182 and 2183-84 of 2005

Rajinder Singh and Others

APPELLANT

Vs

Financial Commissioner and Others

RESPONDENT

Date of Decision : 31-05-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 23
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 14, 14(1), 19, 20(2), 21(1)
Land Acquisition Act, 1894 — Section 4
Registration Act, 1908 — Section 30(2)

Citation : (2005) 122 DLT 151 : (2005) 83 DRJ 219

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Anand Yadav and Anita Tomar, for the Appellant; Aman Lekhi and R.S. Rana for the Respondent Nos. 6, 7, 9, 10 and 13 and Avnish Ahlawat, for the Respondent Nos. 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—These petitions under Article 226 of the Constitution of India are directed against an order passed by the Financial Commissioner u/s 42 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948, as applicable in Delhi (hereafter called "the Act"). By that order, the Financial Commissioner set aside that extension of date for consolidation of scheme (in village Pooth Khurd, Delhi) from 23.2.1998 to 31.8.1998 as irregular, and remanded the case back to the Consolidation Officer, to proceed further on the basis of a resolution dated 23.2.1998. This was pursuant to a revision petition filed by Angrej Singh and others, challenging the Consolidation Proceedings of Village Pooth Khurd, Delhi; the said revision petitioners are parties to these proceedings, and are referred to as "the contesting respondents".

2. A notification u/s 14(1) of the Act, for consolidation proceedings was issued on 5.9.1988. A Consolidation Officer was appointed on 13.4.1989. After considerable time, another consolidation officer was appointed on 16.8.1996. Likewise, the Advisory Committee, which was initially constituted on 9.6.1989, was reconstituted on 11.9.1996. The consolidation scheme for the village was announced on 23.2.1998 by the Consolidation Officer. The contesting respondents alleged certain irregularities, and sought intervention of the Financial Commissioner in the matter. Consolidation proceedings were stayed on 24.4.2000; the stay was continued. An application was thereafter moved, which led to the Financial Commissioner vacating the stay on 15.1.2002.

3. The order of the Financial Commissioner dated 15.2.2002 was challenged before this Court in a writ petition, filed in 2002, by the contesting respondents. This Court passed an order on 25.5.2002 modifying the stay order, an interim restraint against delivery of physical possession of land to subsequent purchasers (who purchased the land after 23.2.1998) was directed. This Court had made its order on consent of the parties and without prejudice to their contention. It was also stated that the modification would operate till the final order of the Financial Commissioner and that the order would not come in the way of the Financial Commissioner to dispose of the proceedings in accordance with law. , The revenue authorities including the Consolidation Officer were at liberty to proceed with consolidation proceedings in accordance with the scheme.

4. The petitioners before the Financial Commissioner (contesting respondents) had pleaded that as on 23.2.1998 there were only 650 units entitled to benefits of consolidation. The date was extended, by the Consolidation Officer up to 31.8.1998 and in the process the number of eligible units increased from 650 to more than 1050. The increase was due to the inclusion of ineligible persons, who purchased lands contrary to law when there was a bar on transfers/sale after the notification of the Consolidation Scheme. The sale deeds were registered in Bombay to circumvent a circular issued by the Additional District Magistrate (ADM) on 3.10.1996. Mutation of land, based upon such sale deeds was impugned as not sustainable. The Consolidation Officer had recorded on 3 December, 1999, when a deputation from the village visited the Chief Minister, as follows:

"The matter has been examined after scrutiny of records and most of the grievances of the villagers are found to be correct. It has been found that there are some cases of deviation during the partition proceedings from the scheme so announced the purpose of consolidation."

5. The contention before the Financial Commissioner was that consolidation proceedings were vitiated and ought to be quashed. Reference to an administrative inquiry and investigation by Anti-Corruption Branch against some Revenue Officers allegedly involved in the irregularities in the consolidation work, was made during the proceedings u/s 42. This too was alleged to be a ground for quashing consolidation proceedings.

6. The official response during proceedings u/s 42 was that the date of consolidation was extended by Resolution No. 25 dated 15.7.1998, which was recorded after written request was received by the Settlement Officer (Consolidation) from members of the Local Advisory Committee and other villagers. He has maintained that the Consolidation Officer was competent to extend the date under Sections 36 and 43-A of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948. Allegations of tampering with official records made by the contesting respondents, were denied. It was submitted that merely because demands of the villagers were not entered in the diary register, these cannot be discarded because such demands did bear the signatures of the then Consolidation Officer. Some demands were received later as per the provisions of Resolution No. 25 dated 23.2.1998; they were entered in continuation in the Resolution No. 19 either "to maintain continuity or inadvertently" instead of entering them separately subsequent to resolution No. 25.

7. As far as mutations based on sale deeds registered in Bombay are concerned it was contended that they were registered as per the provisions of Indian Registration Act; the administrative directions issued by the ADM could not alter the legal position. There cannot be blanket bar on the transfer of land during consolidation because as per the provisions of Sections 23(1) and (2) and Section 24(1) of the Act, the transfer of possession occurs at every stage beginning from re-partition under Sections 21(1) to 21(4) or Section 36 and Section 42, etc. as the case may be. The transfers could not violate the basic parameters of the consolidation operations; they had to be as per relevant rules/instructions and not otherwise.

8. The Financial Commissioner formulated the following as issues requiring adjudication:

"(1) Was the action of Consolidation Officer to extend the date of consolidation just and proper.

(2) Whether it was permissible to deny the mutation of land on the basis of the registration of the Sale Deeds in Bombay on the basis of circular dated 3.10.1996 issued by ADM (Revenue)".

9. The Financial Commissioner allowed the revision petition. The material part of the impugned order reads as follows:

"The fact that as per the initial scheme of consolidation the cut-off date was 23.2.1998 is undisputed. The scope of consolidation proceedings was restricted to the Hakdars converted by the said scheme. However, the date of scheme was extended by the Consolidation Officer ostensibly at the behest of the villagers and as per the resolution passed by the Advisory Committee. The petitioners have alleged that the said resolution was passed in a very irregular manner on the basis of undated/ante dated applications from person who had purchased land and got the same registered in Bombay to circumvent the requirements laid

down for registration of such sale deeds in Delhi. A perusal of the resolution makes its credibility highly suspect. The original consolidation scheme did not provide for any industrial plots. The resolution dated 18.7.1998 also clearly mentioned that after the notification of the scheme no objection has been filed against the same (Annexed as Annexure VI to the appeal). In other words the scheme ought to have been confirmed straightaway. However, it is interesting to note that the Consolidation Officer proceeded to take action on the basis of the suggestion that the Rasta should be given between the industrial plots where neither the original resolution nor the said resolution of 15.7.1998 mentions about allotment of any industrial plots. This resolution talks of the location of the land to be left for allotment to landless/Harijan residents for their residence. There is an undated application on record on the basis of which perhaps resolution No. 25 of 15.7.1998 was recorded by the Consolidation Officer to the effect that as many of the Hakdars have been deprived of their claims for residential plots, the extension of the consolidation benefits to those applicants whose names figured in records up to 31.8.1998 be accommodated. Prima facie this resolution makes odd reading. When admittedly there was no objection filed to the original consolidation scheme it is not understood how this group of aggrieved persons suddenly came up. Further their precise number ought to have been known when they approached for extending the date for consolidation. Even otherwise when the resolution was passed on 15.7.1998 there is little justification for extending the benefits to those who may figure in the land records up to 31.8.1998. This is rather unusual. Therefore, I inclined to agree with the learned Counsel for the petitioners that the persons for whose benefit the scheme was extended were mainly those who purchased the land illegally during the consolidation proceedings and not the same registered in Bombay and then sought mutation on the basis thereof to acquire the Hakdar rights under the extended consolidation scheme. These facts are amply borne out by record.

The learned Counsel for the respondent has contended that the Consolidation Officer was competent and acted within its jurisdiction in extending the dates of consolidation operations to 31.8.1998. I am inclined to agree with him. However, any authority exercising legal powers has to do so in a judicious manner in larger public interest. In the instant case it is apparent that the extension was done more to accommodate certain persons who are prima facie ineligible than to redress the genuine grievances of the bona fide Hakdars. The action of the Consolidation Officer was clearly arbitrary as there was no objection filed to the original scheme and the second resolution was passed after almost 5 months on 15.7.1998. Even if it is accepted that non-derivation of the so-called representations was not fatal to the proceedings as the same were marked by the Consolidation Officer, the manner in which these were processed raises serious doubts. In the written arguments of the Consolidation Officer it has been admitted that some of the demands which were accommodated under the garb of resolution No. 25 were inadvertently entered under Resolution No. 19 dated

23.2.1998 to maintain continuity instead of entering them separately subsequent to resolution No. 25. This plea of inadvertence is not sustainable because each resolution is self-contained. There was no reference to any developments till 15.7.1998. Therefore, such entries under resolution No. 19 cannot be held to be regular or ascribed to a clerical error. Next is the issue of permitting of mutation on the basis of sale deed registered in Bombay. Legally it is permissible to get the sale deed registered in the Presidency town irrespective of the location of the property in India u/s 30(2) of Indian Registration Act. This facility was obviously meant for the residents of these towns. Because of its misuse this provision has since been deleted. It cannot be sheer co-incidence that several of those who stand to benefit by the extension of the date of consolidation scheme have got their deeds registered in Bombay instead in Delhi. The instructions issued by ADM dated 3.10.1996 even though of an executive nature were intended to prevent unauthorised and irregular land transactions. The Registration Authorities in Delhi would have certainly taken note of these instructions and would have called upon the parties to satisfy the requirements laid down therein. The Sub-registrars at Bombay were unaware of these instructions and that appears to be the reason for several parties involved to get the same registered in Bombay.

Even if the sale deeds registered in Bombay are legally in order the revenue authorities are free to insist on compliance with local rules/ instructions to ensure that the law relating to consolidation and mutation proceedings is implemented both in letter and spirit. It will be inadvisable to adopt totally technical or legalistic approach in matters affecting the community at large.

For reasons stated above the appeal is allowed. The extension of date for consolidation of scheme from 23.2.1998 to 31.8.1998 is set aside as irregular the case is remanded back to the Consolidation Officer to proceed further on the basis of the resolution dated 23.2.1998 as per law. The repartition proceedings may be conducted de novo accordingly."

10. The impugned orders of the Financial Commissioner have been assailed on several grounds. The petitioners aver that the order is void, since it is contrary to the mandate of Section 42, which cast an obligation on the Financial Commissioner to issue notice to persons likely to be affected, and hear them. It is further averred that the order extending the date was neither irregular nor improper; even the impugned order recognizes the power to extend the date. The petitioners further claim that the sales, duly registered in their favor, although in Mumbai, were legal; they were accepted, and mutations were effected. The impugned order, by a stroke of pen, invalidates such transactions, without a hearing, or without showing why such transactions were illegal.

11. The petitioners have also averred that the contesting respondents had no locus standi to move the revision petition, well after conclusion of consolidation proceedings. The revision petitions never disclosed how they had a grievance; the Financial Commissioner acted in violation of law in not noticing this aspect.

12. It has also been averred that the contesting respondents themselves are beneficiaries under the consolidation proceedings; many of them secured favorable orders, allocation of lands, and some even sold the lands allotted during consolidation proceedings. Hence, they cannot question the petitioners of sale transactions.

13. The contesting respondents have supported the impugned order; their position is broadly that the power u/s 42 has been invoked rightly; the consolidation proceedings were riddled with irregularities. The extension of date, for submission of claims, after the last date for receiving claims had expired in May, 1998, on 16th July, 1998, was done in dubious circumstances; it sought to extend the date to end of August, 1998. It is averred that such a procedure is unknown to law; the extension was resorted to illegally favor persons who had acquired lands through sales registered in Mumbai. Such sales were clearly illegal; at any rate, the transferees/vendees could not derive any benefit under the consolidation proceedings.

14. It has also been averred that the draft scheme was confirmed after delay in May, 1998. After that, the Consolidation Officer could not, either suo motu, or at the behest of the Advisory Committee, have extended the date, particularly in view of the fact that objections to the scheme, published on 23rd February, 1998, were not received within the stipulated period. The petitioner's right to claim shares had been disputed.

15. The contesting respondents have further averred that the Consolidation Officer had come under a cloud; he faced inquiry, and criminal proceedings, during which period he was denied bail. The charge in such proceedings was the usurpation of Gaon Sabha lands, and their assignment to ineligible persons.

16. The official respondent namely the Consolidation Officer, has averred that the scheme was confirmed on 18.5.1998. As per the scheme maximum land to be allotted for residential and industrial purpose was 2 bighas and 8 bids was out of which only six bids was allocable for industrial purposes. Simultaneously, pass books were issued to the villagers in respect of their Old Khasra numbers, giving respective values of lands assessed. Residents of the village including the petitioner/respondents applied for residential and commercial plots and were allotted the same. Repartition proceedings u/s 21(1) were carried out by the Consolidation Officer from 18.3.1999 to 5.5.1999 and individual pass-books with respect to re-partition (allotment) were issued to the villagers. The pass books were collected by the villagers under the signatures including the petitioners/respondents. Objects to the repartition of the land were raised by some of the individuals u/s 21(2) of the Act which were mostly decided in their favor. All objections raised u/s 21(2) were decided; thereafter consolidation proceedings were almost complete.

17. It has been averred by the Consolidation Officer, that contesting respondents had their claims settled u/s 21(1) i.e. they were allotted residential plots and

industrial plots as per demands raised by them. Some of them raised objections, which were dealt with and disposed of. Those orders became final; they did not file appeals. It is submitted that aggrieved demand holders filed written objections before Consolidation Officer u/s 21(2); 561 objections were received including that of the petitioners. After granting hearing all the objections were disposed of and a public notice to that effect was issued on 23rd of February, 2001. None of the respondents had filed appeals. It is averred that all objections u/s 21(2) were decided by the Consolidation Officer and possession of land was given to the parties except those whose case come within 23.2.1988 to 31.8.1998.

18. The Resolution of 15th July, 1998 was defended as having been approved by the then Settlement Officer (Consolidation). During this period, mutation was effected of those villagers who had inherited lands from their ancestors, i.e. on the death of father, the son's names were mutated in the records. There were also cases of purchase of land during this period. It is averred that no lawful claimant was deprived of his legal right by extension of the date for consolidation. All the contesting respondents who have filed the revision before the Financial Commissioner got the benefits under the consolidation scheme and by extending the consolidation date, their benefits were neither reduced nor withdrawn. The extended period also includes cases of inheritance and sales prior to 23rd February, 1998. The extension was for the benefit of the village and was not made with mala fide intentions.

19. Mr. Anand Yadav, learned Counsel appearing for the petitioners submitted as follows:

(a) The contesting respondents had no locus standi to maintain proceedings u/s 42 of the Act. They had not objected to the allocations made during the consolidation and repartition proceedings; a few of them had objected to allocations given to them. The objections were adjudicated; the matter became final. No person was aggrieved in any manner by the re-partition proceedings, or on account of the extension of date for the claims. In fact, some of the contesting respondents themselves sold their lands subsequently;

(b) The proceedings u/s 42 were not maintainable since the consolidation proceedings had acquired finality, and parties had been allotted their respective shares/lands; even repartition proceedings had been completed. The contesting respondents of chose to come forward after delay, and after rights of parties were settled in consolidation proceedings. He has relied upon the decision of the Supreme Court in State of M.P. and Others Vs. Nandlal Jaiswal and Others, .

(c) The Financial Commissioner did not follow the procedure mandated by Section 42; it cast an obligation upon him to issue notices to persons likely to be affected by his orders. That procedure was not resorted to; the impugned order is Therefore void. The provision of Section 42 is mandatory; it uses the expression "shall" when requiring the Financial Commissioner to pass orders, vis-

a-vis the requirement to issue notice. Reliance has been placed on the decision reported as Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others, . It is also submitted that the proviso is beneficial, and has to be given full effect, having regard to the purpose of the Act. The petitioners were never issued with notices, or heard to answer to any specific issue of illegality, vis-a-vis the properties held by them, or allotted to them. Reliance has been placed upon decisions reported as Gram Panchayat Udhawal v. Additional Director, Consolidation, Punjab, 1983 (5) A R 4; Harbans Lal and Others Vs. Financial Commissioner and Others, .

(d) The impugned order is also vitiated on account of non-application of mind. A large portion of the village lands has been notified for acquisition u/s 4 of the Land Acquisition Act. The impugned order, besides depriving the petitioners of their valuable rights to receive compensation and other benefits, would result in an anomaly whereby original landowners, who had alienated the lands, would be shown as having rights.

(c) The assumption that sale deeds registered in Mumbai are illegal, is entirely incorrect. The sale deeds in favor of the petitioners were legal and valid; the administrative instructions relied upon by the Financial Commissioner to hold such sales illegal, cannot be enforced; they were contrary to express provisions. The amendment creating a bar on registration of sales outside the city came into force subsequently.

(f) The impugned order, besides not following the procedure established by law, is also vitiated on account of non-application of mind, since in a large number of cases, transfers, which had been given effect to in mutation proceedings, were occasioned by intra family transactions in many instances, mutations were necessitated on account of death of the owner.

20. Ms. Avnish Ahlawat, learned Counsel appearing for the Consolidation Officer, relied upon averments in the counter affidavit, to the effect that the contesting respondents are in fact not aggrieved persons; she submitted that they were not affected in any manner by the impugned action of the Consolidation Officer. She submitted that the contesting respondents were not in manner deprived of any lands or allocations.

21. Mr. Aman Lekhi, learned Counsel for the contesting respondents, submitted that the issue in question here is Whether the impugned order of the Financial Commissioner is vitiated in law, or perverse. Counsel submits that parameters of judicial review in regard to the orders of quasi-judicial bodies such as the Financial Commissioner, are extremely limited. Where judicial review proceedings concern correctness of decisions of quasi-judicial authorities, particularly Tribunals, the scope of scrutiny is even narrower; the Court merely has to evaluate whether the decision of such Tribunal or the authority is within the bounds of law and the jurisdiction which controls such a Tribunal and whether the approach of the Tribunal is broadly correct. Keeping these in mind, it is submitted

that there is no infirmity or illegality in the impugned order of the Financial Commissioner.

22. Learned Counsel submitted that the impugned order is justified; it interfered with a palpably unreasonable order of the Consolidation Officer. No objections were received in respect of the scheme; it was finalized. Thereafter, the decision to extend the date, taken at the behest of the Advisory Committee, was utterly unjustified. Counsel submits that it amounted to abuse of power, every power has to be exercised reasonably and in furtherance of the objects of the enactment. Reliance has been placed upon the decision reported as Bangalore Medical Trust Vs. B.S. Muddappa and others, , for the purpose. It has also been submitted that the power to change or modify a scheme can be only in exercise of powers under Sections 36, 42 or 43A of the Consolidation Act, admittedly these sections were not invoked.

23. Learned Counsel for the contesting respondents also submits that the procedure adopted after the confirmation of 18.5.1998 is unknown to law; Sections 19 and 20(2) of the Consolidation Act talk about "objections" (which were not filed) and not about negotiations/discussions. Even if, in the absence of objections, dates could be changed, the choice of 31.8.1998 or 15.7.1998 defies logic. The fact that the changes being made were illegal and unauthorised was known to those making them which was the reason why the list of owners pursuant to extension of the date was interpolated in the list of 28.2.1998 "accidentally and inadvertently".

24. It is submitted that this is a glaring instance of fraud and fraud vitiates all transactions known to law of however high a degree of solemnity Vijay Shekhar and Another Vs. Union of India (UOI) and Others, . No right, Therefore, can arise out of such a fraudulent transaction. Fraud and justice never dwell together nor defend or excuse any man.

25. It is submitted that contesting respondents form a class distinct from the petitioners and claim their rights as or through the right holders as they stood on 23.2.1998. They have challenged the validity of the transaction extending the date to 31.8.1998 (which increases the right holders from those actually entitled on the date of the scheme) and have derived no advantage from the extension. Having taking no benefit of the extension there is no estoppel in the contesting respondents alleging its invalidity. Proceedings u/s 21 of the Consolidation Act would have open to these respondents even if the date had not been extended and their participation does not debar them from questioning the same.

26. It is also submitted that the proviso to Section 42 is conditioned by an exception; where the Financial Commissioner is of the opinion that a particular case/order was on account of "unlawful consideration" the requirement of notice can be dispensed with. Learned Counsel submitted that the fact that an inquiry was initiated, and criminal proceedings were launched, established that the order extending the date was for unlawful consideration; hence the petitioners were

not required to be issued separate notices. In any event, the petitioners participated in the proceedings; they cannot be heard to complain of prejudice on account of notice not having been given to them. He has relied upon the decision of the Supreme Court in *Commissioner of Customs, Bombay Vs. Virgo Steels, Bombay and Another*, for the submission that where a provision is enacted for the benefit of an individual, such as in the case of requirement of issuance of notice, he can waive it, and thereafter cannot plead prejudice. By their conduct, it is submitted, the petitioners waived that requirement of notice u/s 42.

27. The learned Counsel for the contesting respondents also submitted that the consolidation proceedings were vitiated on account of extension of date; hence, the impugned order, directing the sales to be invalid, and directing fresh proceedings, cannot be termed unwarranted or unjustified. He relied upon the decision reported as *Ram Preeti Yadav v. UP Board of High School* 2003 (8) SCC 313. It is also submitted that the Financial Commissioner had ample power u/s 42 to cure the illegality found by him; reliance has been placed upon the decision reported as *Gram Panchayat, Village Kanonda Vs. Director, Consolidation of Holdings, Haryana, Chandigarh and Others*, .

28. The first question that arises is whether the date could have been extended, during the course of consolidation proceedings, after confirmation of the scheme. The Act was passed to provide for the consolidation of agricultural holdings and for preventing the fragmentation of agricultural holdings in the State of Punjab. It was extended to Delhi. Chapter III of the Act deals with Consolidation of Holdings and it is provided by Section 14 that the Government may either suo motu, or on application made, declare its intention by notification to make a scheme for consolidation of holdings in an estate or estates or any part as may be specified. The Consolidation Officer has to obtain the advice of the landowners, of the non-proprietors and of the Gram Panchayat; he thereafter is required to prepare a scheme for the consolidation of holdings. u/s 19, the Consolidation Officer shall cause to be published the draft scheme of consolidation and within 30 days of such publication any person likely to be affected by such scheme may communicate in writing to the Consolidation Officer, any objection relating to it. He then has to consider objections, if any, and submit the scheme with such amendments as he may consider to be necessary together with his remarks on the objection to the Settlement Officer (Consolidation). The scheme, as amended, is then published. Section 20 provides that if no objections are received to the draft scheme, the Settlement Officer (Consolidation) shall confirm the scheme. If objections are received, then the Settlement Officer (Consolidation) may either confirm the scheme, with or without modifications, or refuse to confirm it. If the scheme is confirmed it should be published. Section 21 relates to repartition to be carried out by the Consolidation Officer in accordance with the scheme as confirmed u/s 20 and the boundaries of the holdings as demarcated are required to be shown on the Shajra which is published. Those aggrieved by such repartition can file written

objections before the Consolidation Officer who after hearing the appellant has to pass such order as he considers proper. An appeal is provided from the order of the Consolidation Officer to the Settlement Officer (Consolidation). A person aggrieved by the order of the Settlement Officer (Consolidation) may appeal to the State Government. Section 22 provides for the preparation of a new record-of-rights by the Consolidation Officer. Section 23 deals with the rights to possession of new holdings. Section 36 provides for the power to vary or revoke the scheme.

29. After preparation of and publication of the draft scheme, the issue is whether the Consolidation Officer is, in the absence of any objection, bound to confirm the scheme. Here, it is immediately apparent that the consolidation proceedings are for the benefit, and efficient utilization of agricultural lands; they are meant to avoid fragmentation, and consequent uneconomic holdings. Undoubtedly, the various stages where the scheme is published, objections are invited and considered, and the scheme is finalized and confirmed, do indicate orderly, distinct and stage-wise management of the process. Yet, at the same time, there is, in my opinion, sufficient operational flexibility inherent in the exercise. Thus even during repartition proceedings, when the allocations are completed, after confirmation of the scheme, which would contain the broad outlines, the authorities are empowered to pass orders in relation to individual claims. Hence having regard to the purpose of the enactment, the Consolidation Officer is under a duty to apply his mind, while confirming the scheme. If that is the position, representations or a re-thinking on certain issues cannot be ruled out. Hence, there is no bar under the enactment for revising or extending the date, as contended by the Counsel for the contesting respondent. Further, this was in fact conceded by the Financial Commissioner, in the impugned order, when he held as follows:

"The learned Counsel for the respondent has contended that the Consolidation Officer was competent and acted within its jurisdiction in extending the dates of consolidation operation to 31.8.1998. I am inclined to agree with him. However, any authority exercising legal powers has to do so in a judicious manner in larger public interest."

(Emphasis supplied)

There is no challenge to the above reasoning, by the contesting respondent. Hence, the question of whether the Consolidation Officer had the power to permit change of date, cannot be gone into.

30. The next issue is regarding the petitioner's contentions with regard to lack of power of the Financial Commissioner, in view of the provisions in Section 42 of the Act, and the fact that allocations had been made, and had become final, under the Act.

31. Section 42 of the Act empowers the Chief Commissioner (a power which has now been delegated to the Financial Commissioner) to call for proceedings under

the Act. It says:

"42. Power of Chief Commissioner to call for proceedings.--The Chief Commissioner 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 this Act, call for and examine the record of any case pending before or disposed of by such officer and may pass such 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."

32. The Supreme Court, in its judgment reported as *Johrimal Vs. Director of Consolidation of Holdings, Punjab*, held the power u/s 42 to be an independent one, and of wide amplitude. In *Shri Shubhlaxmi Mills Limited Vs. Additional Commissioner of Income Tax, Gujarat*, and *Gram Panchayat, Kakran Vs. Addl. Director of Consolidation and Another*, , the Supreme Court held that the power u/s 42 is without any limitation, and can be invoked at any time, but it should be exercised within reasonable time.

33. In view of the above decisions, I am of the opinion that merely because objections had been adjudicated, and orders had become final, the power u/s 42 could not be curtailed, or restricted in any manner. The nature of finality, and the circumstances that of a particular case are relevant factors to be examined in each given case, by the Financial Commissioner, while exercising, or declining to exercise jurisdiction u/s 42. I, Therefore, hold that the Financial Commissioner could have examined the issues before him, under that provision.

34. The next issue which has to be considered is regarding the locus standi of the contesting respondents, who moved the Section 42 applications, after having secured benefits. Here again, there can in my opinion be no absolute bar. The very nature of consolidation proceedings is such that apart from benefits that accrue to individuals, by way of allocations, every scheme comprehends community, or common use of lands, and the extent of such usage. The utilization of such lands, manner of allocation of such lands, variations from the original, notified scheme, resulting after repartition, can be matter of concern to individuals, or even classes of individuals, in given cases. Hence, there can be no thumb rule that individuals who secure benefits are barred from approaching u/s 42. Indeed, that provision is couched in such wide language, that the authority in question can take suo motu action, and examine an order, scheme, or repartition. In all such cases, the Financial Commissioner is bound to consider relevant factors, which would include the timing of the application, and whether the individual allocations of the applicant/petitioner before him are prejudicially affected in any manner. Likewise, if no such prejudice is caused, the extent of likely prejudice caused, if the relief sought is granted, having regard to the

claims and allocations that have already become final (and in some cases, where even possession might have been taken) would be material aspect that necessarily have to shape the course of the decision in proceedings u/s 42.

35. The conclusions indicated above, however are of a general nature. Here, in the present case, the Financial Commissioner was exercising power and seeking to set aside alienations and sale transactions, that had been recognized in 1998-99, during the course of repartition proceedings. Therefore, the consideration of the timing of the contesting respondents approaching with an application, the fact as to whether they were individually affected or not; whether and to what extent they had projected a group or community grievance, which others in the village espoused or did not espouse, were relevant considerations. They have, however, not been considered in the impugned order.

36. The next, and perhaps the most important aspect arising for consideration is whether the Financial Commissioner could have acted u/s 42, and passed an order "declaring" the transactions of persons who had not been given notice of a possible adverse order, or had not been given notice, tender proviso to Section 42. A great deal of arguments was addressed on either side of the Bar, and authorities, noted earlier in the course of the judgment, and others, were cited.

37. A careful analysis of Section 42 would reveal that it is a conditional power. Conditional, because as long as the Financial Commissioner does not affect the rights of any person adversely, the legality and propriety of any order, scheme or repartition made, can be examined. However, where the order of the Financial Commissioner would result in variation or reversal of such order/scheme/ repartition, "parties interested" have to be necessarily given notice of hearing, and an opportunity to be heard. The requirement is absolute; the negative expression, casting a restriction on the power of the Financial Commissioner, underlines that intention. The reference is not merely to parties who would be adversely affected; it is to all "interested parties", which is a wider term.

38. The facts of this case show that some of the petitioners had approached this Court, when the contesting respondents had filed writ petitions against the interim proceedings/vacation of interim orders by the Financial Commissioner. They were, however, not arrayed as respondents; no relief was claimed against them. After the order dated 25.5.2002, some of those approached the Financial Commissioner. No separate notices were issued to them or the others belonging to their class, i.e. approximately 400 persons who were alleged to be beneficiaries of the extension of cut-off. Admittedly, mutations had been effected in their favor; they were alienees / transferees, in some cases, for valuable consideration; in other cases they were transferees on account of inheritance. The Financial Commissioner proceeded with the hearing, in those conditions, and passed the impugned order. The issue is whether such order conforms to the requirement of Section 42.

39. An integral component of the principles of natural justice is the right to be

heard (*Audi alteram partem* rule). This has two facets; the right to a notice and the right to reasonable or sufficient opportunity. The right to notice has been described in a Constitution Bench judgment of the Supreme Court, in *I.J. Rao, Asstt. Collector of Customs and Another Vs. Bibhuti Bhushan Bagh and Another*, as follows:

"The right to notice flows not from the mere circumstance that there is a proceeding of a judicial nature, but indeed it goes beyond to the basic reason which gives to the proceeding its character, and that reason is that a right of a person may be affected and there may be prejudice to that right if he is not accorded an opportunity to put forward his case in the proceedings."

More recently, in *Canara Bank and Others Vs. Shri Debasis Das and Others*, Supreme Court held as follows:

"The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play."

40. The negative nature of the power, or the prohibition in its exercise, in Section 42 makes it incumbent on the Financial Commissioner, to issue notice. The present is not a case where the statute is silent; it imperatively requires the authority to issue notice, if an order is sought to be varied; the notice has to be issued to the person interested. Therefore, there is no question about the requirement; the terms of the statute itself are categorical in this respect. The exercise of power is conditioned upon issuance of notice.

41. The contesting respondents have urged that the condition of notice was waived, by the petitioners. Reliance was placed upon the judgment of the Supreme Court in *Virgo Steels* case (*supra*) for the purpose. It is true there are observations in the judgment which suggest that where a provision exists in a statute casting obligation to hear a party, that person or party can waive it, if the statutory provision is conceived primarily for his benefit.

42. The question Therefore is whether Proviso to Section 42 was designed merely as a benefit to an individual or class of individuals likely to be affected by variation of an order or a scheme, or conceived in the interest of general public. Here again, the nature of the order coupled with the choice of language used in

the provision are crucial. In *Johrimal Vs. Director of Consolidation of Holdings, Punjab*, the Supreme Court had held that notice is necessary, and essential, where the proviso operates.

43. The order or scheme sought to be varied, is in the course of consolidation proceedings; it may well have acquired a finality, under the Act, in the sense, that the Consolidation Officer might have passed orders conforming the scheme, disposed of objections, effected repartition, and appeals too might be disposed of under the Act. In such a case, the requirement of notice, is to my mind, a fundamental one, preconditioning exercise of the power u/s 42 itself. There is no question of waiver of such a requirement.

44. It has been urged that the petitioners waived their right to notice u/s 42; their conduct in appearing in the proceedings and addressing the Financial Commissioner, has been cited in support of this argument. This argument, in my opinion, is not sustainable. Firstly, not all the parties likely to be affected appeared in the proceedings. Some of them including the petitioners certainly did so. Secondly, there was no indication about the nature of orders likely to be passed, or the outcome of proceedings u/s 42. Fairness demanded that if the Financial Commissioner was forming an opinion that the petitioner, and persons of their class were interested, or likely to be affected, individual notices ought to have been issued. Thirdly the injustice apparent in the proceedings would be clear from the fact that even while not dealing with individuals, by one stroke, the Financial Commissioner has invalidated an entire set of transactions in respect of which even mutations were effected. I am of the view that such a course of action, "declaring" an entire class of transactions, illegal, or contrary to law, was not permissible to quasi-judicial Tribunal, u/s 42. Even the High Court, under Article 226 of the Constitution, normally refrains from such a general or "class" declaration.

45. The contesting respondents had also taken the position that the present case fell in the category of the exception to Section 42 i.e. involving "unlawful consideration" and, Therefore, notice was not necessary. Unlawful consideration has nowhere been defined under the Act. However, as generic expression, it has a meaning; Section 23 of the Contract Act, 1872 provides a clue about its purport; it states that the consideration or object of an agreement is lawful, unless it is forbidden by law; or is of such a nature that, if permitted, would defeat the provisions of any law, or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases the consideration or object of an agreement is said to be unlawful.

46. The expression "unlawful consideration" is a strong one; in addition, for dispensing with the requirement of a notice, the Financial Commissioner has to form an opinion in that regard. There, is nothing in the impugned order, stating that the Financial Commissioner formed such an opinion. Suspicion is no doubt cast about the manner in which the resolution was diarised, the seeming

irregularity in considering the sale transactions registered in Bombay, etc. There is also a reference to criminal investigations., Yet, there is no expression of opinion, in terms of Proviso to Section 42, stating that for given reasons, the order required to be varied, since the proceedings were vitiated by unlawful consideration. I am, Therefore, of the view that the exception to the proviso was not attracted. The Financial Commissioner was under a duty to give notice, no factor relieving him of that duty was placed on record; he did not form the requisite opinion.

47. In the decision reported as State of Uttar Pradesh Vs. Singhara Singh and Others, , the Supreme Court, speaking about the mandatory nature of a statutory obligation and the duty to act only in the manner prescribed, held as follows:

"In AIR 1936 253 (Privy Council) , the Judicial Committee observed that the principle applied in Taylor v. Taylor, 1875 (1) ChD. 426, to a Court, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden."

I am of the considered opinion, that there was no question of dispensing with the requirement of notice and a hearing u/s 42 since it was of the essence, and in fact a precondition for the exercise of jurisdiction of the Financial Commissioner. The petitioners were entitled to notice, and reasonable hearing in accordance with that provision, since their valuable rights were affected. As the order of the Financial Commissioner itself shows, the rights to property, indeed validity of the sale transactions in their favor have been set aside.

48. In view of the above findings, I am of the view that the petitioners are entitled to succeed. However, this is not a case where the entire proceedings have to be quashed. I have refrained from discussing the merits of the transactions, and the other contentions raised during the course of proceedings. Those are issues requiring determination in proceedings u/s 42. In several rulings, including the judgment reported as Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , a Constitution Bench of the Supreme Court had held that a finding of violation of principles of natural justice ought not to necessarily lead to quashing or setting aside the entire proceedings; it would be appropriate for the Court to require the quasi judicial body to determine the matter afresh, after observing the necessary principle or facet of natural justice, that was violated. The present case call for adherence to such a rule.

49. In view of the foregoing discussion, these petitions are allowed. The impugned order of the Financial Commissioner, dated 24.12.2002 is hereby quashed/set aside. The Financial Commissioner is directed to proceed and dispose of the revision petitions before him afresh after observing the requirements under the proviso to Section 42 of the Act.

No costs.