**(1999) 09 DEL CK 0091**

**In the Delhi High Court**

**Case No :** C.W.P. No. 68 of 1993

Ram Batra and Others — APPELLANT

Vs

Financial Commissioner, Delhi and others. — RESPONDENT

**Date of Decision :** 17-09-1999

**Acts Referred:**

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 19, 20, 21, 36, 42

**Citation :** (1999) 5 AD 954 : (1999) 81 DLT 849 : (2000) 52 DRJ 35 : (2000) 1 RCR(Civil) 531

**Hon'ble Judges :** Chander Mohan Nayar, J

**Bench :** Single Bench

**Advocate :** Mr. Rajender Dutt, for the Appellant; Mr. Lala Ram Gupta and Mr. Mahender Rana, for the Respondent

## Judgement

C.M. Nayar, J.—The petitioners are aggrieved by an Order dated 23rd October, 1992 passed by Shri S.R. Sharma, Financial Commissioner, Delhi by which land allotted to the petitioners was withdrawn and the same was directed to be allotted to respondent No. 3. The facts which emerge from the reading of the petition are that consolidation proceedings started in Village Alipur, Delhi under the provisions of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as ''the Act'') in the year 1986 and the scheme of consolidation prepared u/s 19 of the Act by the Consolidation Officer was confirmed u/s 20 by the Settlement Officer on 24th July, 1987. The petitioners allegedly purchased the land in Field No. 324 (4B-16B) at Alipur by registered sale deeds dated 17th September, 1986 and were recorded bhumidars of the land and Haqdars (right-holders) at Nos. 304 to 306 for the purpose of repartition of land that was to be carried out under the provisions of Act. The petitioners opted for allotment of land in the extended Lal Dora by lodging demand in that behalf. Their request was allowed and they were allotted plot No. 679 (1-13). The applications moved in this regard are filed as Annexures-X, XI and X2 respectively. The first application of petitioner No.1 reads as under:-

"BEFORE THE CONSOLIDATION OFFICER: FOR VILLAGE ALIPUR: DELHI

In re:-

Application for allotment of Residential plot within the Extended Lal Dora Phirni of Village Alipur, Delhi on behalf of Sh. Sri Ram Batra S/o Sh. Tej Singh R/o 235, Dr. Mukherjee Nagar, Delhi-110009.

Sir,

The applicant above named most respectfully show the as under:-

1. That the applicant is the recorded bhumidhar in possession of the lands of Khasra No.324, measuring 1 bigha 12 bids was situated within the revenue estate of village Alipur, Delhi and the applicant may kindly be allotted residential plot equivalent to his entire agricultural land mentioned above, as the same is needed by the applicant for his residential purposes.

It is, Therefore, respectfully prayed that the applicant may kindly be allotted One Bigha 12 bids was to the applicant within the Extended Lal Dora Phirni of Village Alipur, Delhi, or equivalent to his entire agricultural land held by him in the said village mentioned above, in the interest of justice.

Prayed accordingly.

Delhi.

Dated: 16.4.1987.

sd/-

APPLICANT"

2. Similar application was made by petitioners 2 and 3. While the operation of consolidation of holding was going on it was discovered by the authorities that as many as 46 landless people who were not eligible for allotment of land in the Laldora as they were not landless artisans or members of Schedule Tribes or backward Classes, had been wrongly allotted plots of land and several Haqdars who had opted for plots in the extended Laldora had been denied allotment and had obtained orders in appeals and revisions preferred before the Settlement Officer and Financial Commissioner for being accommodated in the Laldora. A proposal for amendment of the Scheme of Consolidation u/s 36 of the Act was thus mooted and approved by the Settlement Officer. In accordance with the amended Scheme of Consolidation, the Laldora was to be extended by inclusion of an area of 56 bighas and 6 bids was comprised in field Nos. 322 to 328, 461, 564, 465, 471, 472, 475, 476, to 479, 532, to 535, 552 to 556 and 579 to 581. Copy of the amended Scheme is filed as Annexure-TA to the writ petition and translated copy may be reproduced as under:-

"Amendment of Scheme Section 36 East Punjab Holdings (Consolidation & Prevention of ragmentation) Act, 1948 Village Alipur, Delhi.

Order of Lt. Governor, Delhi in regard to inclusion of area in Phirni have been received. For right holders ,who have procured order of Financial Commissioner and Consolidation Officer recognizing demands, extention of limits of Phirni has become necessary. In all, an area of 56 bighas and 6 bids was has been taken for inclusion. List is enclosed. Besides, it is necessary to provide passages for the plots. Those right holders would be allotted plots within area whose demand is mentioned in the list. While allotting plots of the right for allotment would be of the old bhumidars only if their names are mentioned in the list. If the tube well of a right holder falls within the phirni and his name is mentioned in the list, the plot would be allotted to such right holder otherwise to some one else and the value of tube well would be worked out as the value of tube wells in the village has not been determined. Benefit of inclusion of land in phirni (Beshi phirni) would be given to old bhumidars as per original scheme of consolidation. However, Bhumidars who were allotted pre consolidation area under 21(1) and the same has been sold the purchasers would be entitled to the aforesaid benefit.

Passages within phirni existing up to old phirni would not be extended to the new phirni. Passages which would be located in the Gaon Sabha land would be four Gath has wide and no benefit of Beshi Phirni would be given. Old phirni which stands included in plots by extention of phirni would be kept at 3 Gath has as against 4 Gath has. The value of land inside phirni would be 48 annas.

If there is any excess area after repartition, it may be given to persons having unsatisfied demands otherwise it would go to pre consolidation Bhumidars. If there is any deficiency it would made up on prorate basis considering the demands.

The agricultural land left out after plotting would be allotted to those right holders whose land has fallen within phirni. If there is no objection by the right holders allotment can be changed/varied.

If some right holders has already been allotted plot and further plot is to be allotted allotment would be made at one place, if possible otherwise at two places. If there is any objection from others plots would not be allowed to be joined.

In this village 21(1) proceedings of repartition are already taken place. Right holders would be given two Gath has passages to Chaks. In Case of need deduction would be made on prorata basis for the areas of bhumidars for achieving this end.

Khasra Nos. 115/3, 115/4 which are new Consolidation numbers, old number where of are 1448/3 and 1450/1, have been reserved for common purposes on demand made by villagers.

The aforesaid Scheme has been read out and explained on paper. All have come to know of the operation. If there is any objection, it may be filed in writing within 30 days before S.O. (C). Notice is affixed at public Place.

 

sd/-

Consolidation Officer:

Delhi

12.8.92"

3. The petitioners claimed to the Haqdars recorded bhumidars of field No. 324 which had been included in the extended area and claimed that they were entitled to the benefit of inclusion of their land in the extended Laldora inasmuch as according to the Scheme of Consolidation as originally framed the value of the land falling in the Laldora is three times to the value of the agricultural land. Therefore, it is contended that all right-holders whose land got included in the extended Laldora on account of amendment became entitled to the benefit of getting three times area of agricultural land or increase in the area in the extended Laldora equal to the pre consolidation area. The amended scheme was stated to be made on 8th May, 1991 and approval was accorded on 24th July, 1991 and the petitioners as a consequence were made further allotment of plot No. 745 (8B-2B) by order dated 25th July, 1992 against which no objections were stated to be filed. The facts relating to the allotment of one Shri Dinesh Kumar, respondent no.6 from whom respondent no.3 purchased the land are stated in paragraph 8 of the writ petition which may be reproduced as follows:-

"8. That it may further be mentioned that Shri Dinesh Kumar, respondent No. 6, was right-holder of land in field No.1244 at Alipur at the time of commencement of the operation of consolidation. Field No.1244 was included in the Phirni (Laldora) when the original Scheme of Consolidation came into force in the year 1987. Accordingly he got benefit of the inclusion of his agricultural land in the extended laldora and was allotted three times area of agricultural land comprised in field No. 28/12, 28/19 and 28/22 each measuring 4 bighas and 9 bids was since he had not made demand for allotment of land within the extended Laldora. He was accordingly put into possession during repartition proceedings in the year 1987. A long time thereafter, he sold this land to Shri Gautam Jain, respondent No. 3 in the year 1988 and out of that land in Killa No. 28/22 (4-9) was such as earlier formed Khasra No. 324 which was the pre-consolidation field number of the petitioner''s land. Inasmuch as his predecessor in interest had already taken benefit of the inclusion of his land in field No.1244 in the Laldora the learned Consolidation Officer allotted equal area forming Killa Nos.102/19 min (0-8) & 102/20 (4-8) to Shri Gautam Jain in lieu of Killa No. 28/22 which was included in Laldora consequent to the amendment of the Scheme of Consolidation. Copy of entries in Rule Register is Annexure-CC with translation TCC."

4. The Consolidation Officer vide his order dated 25th March, 1992 decided the matter and allotted an area as referred to in the above said paragraph. This order is filed as Annexure-E to the writ petition. The operative portion may be reproduced as below:-

 

"IN THE COURT OF THE CONSOLIDATION OFFICER: DELHI.

Case No.3097 To 3105/C.O. Village:Alipur

Date of order:

25.3.92.

During the consolidation proceedings in village Alipur which were taken up in the year 1986, some of the land holders who were deprived of their rights for residential plots as per their demands, moved the court of the S.O. (C) and some of them went to the Hon''ble Financial Commissioner. Their pleas for allotment of residential plots were upheld by the S.O.(C) and the Hon''ble F.C. respectively and the cases were remitted back for allotment of residential plots to the aggrieved persons in the extended abadi.

The scheme was amended u/s. 36 of the Act with a view to accommodate the demand created for allotment of residential plots to the above category of land holders who were earlier denied residential plots and phirni who extended for an area measuring 56 Big. 6 Bis. on the Northern side. The demand of majority of persons who were to be allotted residential plots was for the North or North West side. However, an application dated 10.9.91 moved by Jai Singh S/o Bharat Singh and six others for extending the abadi in the South-East side on the ground that their homes in the village are situated in that side, thus asking for plots near their houses. It was not found feasible to extend the phirni of the South-West side as there are large number of built up structure abutting the G.T. Road and the pre-extended phirni i.e. the Farm Road. On the East side there is no land as the pre extended phirni touches the G.T. Road.

Notices were issued to all the proposed allottees and the persons who were to be affected by the proposed allotment for 25.3.92 to announce the allotment in pursuance of the amended scheme.

In all, notices were sent to 50 persons, out of whom 44 persons were served with notices; 42 were present either in person or through their representatives at the time of announcement of allotment; 18 persons put their signature for themselves and for these whom they were representing in token of their presence at the time of announcement but Sh. Samar Singh, Jai Singh s/o Bharat Singh and Chand Singh s/o Rati Ram refused to sign, though they were present at the time of announcement of the allotment. The following in pursuant to the amended scheme were made as follows:

Sl. Name of the Area withdrawn Area allotted No. Haqdar 1. -- -- -- 2. -- -- -- 3. -- -- -- 24. Gautam Jain 28/22 4-16 102/19 min 0-88 H.No. 769-770/1 Inside 20 4-08 Pirni 25. -- -- -- 39. Sri Ram, H.No. 305 Beshi Phirni 2-13 745 8-02 40. Harish, H.No. 306 -do- 2-13 41. Ramesh, H.No. 304 -do- 2-14 8-00 42. -- -- --" 5. That against the order dated 25th March, 1992 Shri Gautam Jain, respondent No. 3 herein filed revision petition u/s 42 of the Act contending that he was entitled to three times area in lieu of field No. 28/22 on account of the inclusion thereof in the extended Laldora. The matter was examined by the learned Financial Commissioner who allowed the revision petition of respondent No. 3 by an Order made on 23rd October, 1992. The grievance of respondent No. 3 is referred to in paragraph 1 of the order which reads as under:-

"This is a revision petition u/s 42 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation ) Act, 1948, as extended to the Union Territory of Delhi (called the Act) against the part of the order dated 25.3.92 passed by Shri V.P. Yadav, Consolidation Officer, Delhi in pursuance of the amended scheme of consolidation for extension of village Abadi of village Alipur whereby Killa No. 28/22 measuring 4 bighas 16 bighas has been with drawn from the petitioner for inclusion in the Phirni and in lieu thereof the Petitioner has been allotted killa Nos.102/19 min (0-08) and 102/20 (4-08) total measuring 4 bighas 16 biswas. The only grievance of the petitioner as set forth in the revision petition has been that the learned Consolidation Officer was erred in not extending the benefit of Beshi Phirni to the petitioner and failed to allot him three times of the value of his land thus included within the phirni as provided under the amended scheme. Instead, the petitioner has been allotted land of just equivalent area."

6. The arguments as raised by respondent No. 3 before the learned Financial Commissioner are referred to in paragraph 3 which makes the following reading:-

"3. I have heard Shri Mahipal Singh as well as Shri Tyagi Advocate, (Shri Rathee added nothing as noted above) and have also examined the record. Reiterating the submissions made in the written revision petition, Shri Mahipal Singh had argued that as per the provisions of the amended scheme of consolidation, the benefit of Beshi Phirni i.e. allotment of three times of valuation of land included within the amended extended phirni had to be given to the present right holder but in the case of the petitioner no such benefit has been given to the petitioner in respect of the phirni. He has thus pleaded that this action of the Consolidation Officer is wholly illegal and improper and deserves to be rectified by ordering allotment of the land to the petitioner remaining due to him. He also submitted that he did not have any grievance against the newly added respondents Nos. 4, 5 and 6 at the initial stage but since the benefit which had to be given to the petitioner is reported to have been extended to these respondents, they have been imp leaded in this case and if it is so, the learned counsel pleaded that the said benefit has to be withdrawn from the respondents Nos. 4, 5 and 6 and given to the petitioner. Prayer has been made accordingly."

7. The consideration of the matter is elaborately done in paragraph 6 of the Order which may be reproduced as below:-

"6. A narration of the facts brought out by the learned counsels for the parties detailed in the foregoing paragraphs brings out that the only point for determination in this case pertains to the benefit of allotment of Beshi Phirni area as a result of inclusion of Killa No. 28/22 within the extended phirni as a result of the Amended Scheme of Consolidation confirmed on 12.8.91. According to the learned Consolidation Officer, this benefit has been given to the respondents Nos. 4, 5 and 6 taking into consideration the fact that killa Nos.28/22 was the new number of pre-consolidation Khasra No. 324 held by these respondents Nos. 4, 5 and 6. I have given my careful consideration to the issue involved in this case. I find that in the amended scheme of consolidation, it has been laid down that the benefit of Phirni shall go to the present right-holder. I do not see any logic in the reported comments of the Consolidation Officer, that the word `present right-holder'' has been mistyped for the words (previous right-holder''. This controversy is set at rest by the reading of the Hindi version of the amended scheme of consolidation which amplifies the position. It has been laid down therein that the Beshi Phirni shall go to the original right holder according to the original scheme. However, in cases the right holders who have transferred the land after repartition u/s 21(1) of the Act, the benefit of Beshi Phirni shall accrue to the purchaser. Here, in this case, admittedly the respondents Nos. 4, 5 and 6 had been allotted plot No. 679 during repartition in lieu of khasra No. 324. They did not raise any objection against this allotment. Consequently, allotment of plot No. 679 became final. It is also not the case of these respondents that khasra No. 324 had been included within the extended Phirni in the original scheme of consolidation. That being so, their right to the benefit of Beshi Phirni stood waived at that stage itself. Killa No. 28/22is admittedly the new number of pre consolidation Khasra No. 324. Allotment of killa No.28/22 was made to Shri Dinesh Kumar Along with Killa Nos. 28/22 and 28/19 during repartition u/s 21(1) of the Act in lieu of his pre-consolidation khasra No.1244 which was consumed in the extended phirni in pursuance of the original consolidation scheme of the village and Dinesh Kumar was given the benefit of Beshi Phirni at that moment. Later on, the petitioner purchased the land allotted to Dinesh Kumar u/s 21(1) of the Act. Now, out of the land so purchased by the petitioner, Killa No.28/22 has been included within the extended phirni pursuant to the amended scheme of consolidation. Apparently, after allotment u/s 21(1) of the Act, Dinesh Kumar transferred land to the amended scheme of consolidation, the petitioner was the bhumidar of Killa No. 28/22. His case is fully covered under the provisions of the amended scheme which envisages categorically that in case of the right-holders who transferred the land after repartition u/s 21(1), the benefit of Beshi Phirni shall accrue to the purchaser. Undisputedly, the petitioner was the bona fide purchaser of Killa No. 28/22 at the relevant time and as such he is fully entitled to the benefit, as claimed by him. There is no point in the arguments of Shri Tyagi that the same benefit shall be given twice in case the claim of the petitioner is admitted. It was Dinesh Kumar who got the benefit initially for inclusion of pre-consolidation Khasra No.1244. The petitioner came into picture much after the repartition u/s 21(1) of the Act when he purchased the land in question from Dinesh Kumar after the said repartition. The case of the respondents No. 4,5 & 6 has already been dealt with by me observing that after the allotment of plot No.679 to them in lieu of pre-consolidation 324 during repartition u/s 21(1) of the Act their interests with respect to Khasra No. 324 came to an end since they never raised any objection against the allotment of plot No. 679 to them. In the end result, it is held that the benefit of Beshi Phirni for inclusion of Killa No. 28/22 within the extended phirni as a result of the amended scheme of consolidation has to be given to the petitioner. The refusal of such benefit to the petitioner by the Consolidation Officer is illegal and improper and the benefit extended to the respondents No. 4, 5 and 6 has to be taken away as it was given without justification and against the provision of the scheme."

8. On the above basis the revision petition of respondent No.3 was allowed and the land comprised in plot No. 745 was directed to be withdrawn from the petitioners for allotment to respondent No. 3. The learned counsel for the petitioners has contended that the Order of the Financial Commissioner cannot be sustained in law as the area allotted to the petitioners has been wrongly withdrawn for the reason that the petitioners were the original right-holders of plot No. 324 prior to amendment of the scheme and, Therefore, they were entitled to the benefit as was granted by the Consolidation Officer as no challenge was made to the scheme by respondent No. 3. Reliance is placed on the judgments reported as. The Director, Consolidation of Holdings, Jullundur & another Vs. Johri Mall (1961) 63 PLR 93; Bhikan and others Vs. The Punjab State and others (1963) 65 PLR 368 and Smt. Nasib Kaur Vs. Additional Director, Consolidation of Holdings and Others, to reiterate that amendment of the scheme under the provisions of Section 36 of the Act does not mean that the scheme is reframed and the scheme as originally framed remains in operation and no benefit can accrue subsequently on the basis of the amendment to respondent No. 3. Paragraph 4 of the judgment in the case of Smt. Nasib Kaur (supra) has been referred to as follows:-

"4. After hearing learned counsel for the parties and perusing the record, we are of the opinion that the contention of learned counsel for the petitioner is correct. Learned counsel appearing on behalf of the respondents by reference to any material on record could not show that the petitioners before the Additional Director, Consolidation, including the present petitioner were shareholders at the time of consolidation. In none of the corresponding paragraphs of the written statement, the fact as alleged in the writ petition was disputed. Once that is so, the petitioner and Jagir Singh (one of the petitioners before the Additional Director Consolidation) had no right to move the Consolidation especially when some litigation in that behalf had commenced before the Civil Court to which the father of the private respondents was a party. The Director, Consolidation could entertain an application in respect of limited matters and that too, at the instance of the right-holders at the time of consolidation. The persons acquiring title to the property after consolidation have in our opinion no right to approach the Director Consolidation under the Act for the type of relief granted by the impugned order, especially when the application was moved after about 40 years of the conclusion of the consolidation proceedings. No reason whatsoever has been given by Additional Director to condone this delay either."

 

9. On the basis of the above it is argued that Khasra No. 324 was originally owned by the petitioners prior to consolidation and thereafter they took Khasra No. 679 in lieu thereof. The benefit of three times the allotment of land in such a situation has to accrue to the petitioner which was rightly granted by the Consolidation Officer. The learned inancial Commissioner on appreciation of facts as well as law on the subject categorically came to the conclusion that the petitioners had been allotted plot No. 679 during repartition in lieu of Khasra No. 324. They did not raise any objection against this allotment. Consequently allotment of plot No. 679 became final. It is also not the case of the petitioners that Khasra No. 324 had been included within the extended phirni (Abadi) in the original scheme of consolidation. That being so, their right to benefit of beshi phirni stood waived at that stage itself. Killa No. 28/22 is admittedly the ''new number of pre consolidation Khasra No. 324. The allotment of Killa No. 28/22 was made to Shri Dinesh Kumar Along with Killa Nos. 28/22 and 28/19 during repartition u/s 21(1) of the Act in lieu of his pre-consolidation Khasra No.1244 which was consumed in the extended Phirni by the original consolidation scheme of the Village and Dinesh Kumar was given the benefit of beshi phirni at that moment. Respondent No. 3 purchased the land allotted to Dinesh Kumar u/s 21(1) of the Act and out of the land so purchased by the said respondent Killa No. 28/22 was included within the extended phirni pursuant to the amended scheme of consolidation. In view of the above facts the Financial Commissioner came to the conclusion that the petitioners have been allotted plot No.679 in lieu of pre-consolidation plot No. 324 during repartition u/s 21(1) of the Act. Their interest with regard to Khasra No.324 came to an end as they never raised any objection against the allotment of plot No.679 to them. Therefore, the benefit of beshi phirni for inclusion of Killa No. 28/22 within the extended phirni as a result of the amended scheme of consolidation had to be given to respondent No. 3. The judgment in the case of The Director, Consolidation of Holdings, Jullundur (supra) may now be considered. Paragraph 18 of the judgment deals with the provisions of Section 36 of the Act with regard to varying of the scheme. The same reads as follows:-

"18. He is certainly not expressly referring to the scheme. If it was his intention to vary the scheme, he should have at least indicated in what manner the scheme was to be varied. A scheme as confirmed is a formal and a written document containing all the major details of consolidation. Whenever a scheme is varied in a particular manner, the specific amendments to it have to be incorporated in it. This scheme may be likened to an Act of the legislature or to the Statutory Rules which are published. If any variation is intended, then that is given effect to, by amending the ipsissima verba that is the actual words. The scheme, under the Consolidation Act, is not an airy, formless determination. It is couched in precise language and after due confirmation it is adopted as such. The language of the scheme so long as it stands in its existing form, cannot be paraphrased, explained or otherwise altered, while still retaining its identity intact. The scheme in this case, as in all such cases, is a written document. So long as the scheme is left unaltered and untouched, by the respondent such order, as he has passed in this case in respect of the petitioner re.Khasra No.3942, cannot be treated as a variation of the "scheme prepared or confirmed". Just as no piece of legislation and no part of statutory rules can be said to have been amended, so long as the verba legis are not substituted, rearranged, omitted, or added to, similarly, a written scheme cannot be deemed to have been varied unless the language was suitably altered to give effect to the change. It will lead to inescapable confusion, if a scheme is deemed to have been nationally, or inferentially varied, without bringing about a corresponding variation in the language, to indicate such an intention. The word "Scheme" is not merely an idea, a proposal, or an intention unclothed in words. A statutory scheme must wear the garb of language. A scheme which is in the mind, and not committed to the paper, is non-existent. And surely, this could not be the intention of the Consolidation Act, which contemplates preparation of a scheme by the Consolidation Officer, the publication of the draft scheme, consideration of the objections in writing to it, further publication of the amended scheme by him and the final publication of the scheme as confirmed. Even Section 36, which gives certain powers to vary or revoke a scheme by the authority confirming it, provides for preparation, publication and confirmation of the subsequent scheme in accordance with the provisions of this Act.

10. The reading of paragraph 25 further indicates that there is no bar in making variation of the scheme Similarly in paragraph 31 Dulat J. elaborates the purpose behind the provisions of Section 36 and 42 of the Act. The same may also be reproduced as below:-

31. Regarding Section 36, the position is, to my mind clear. That section says "36. A scheme for the consolidation of holdings confirmed under this Act may, at any time, be varied or revoked by the authority which confirms it subject to any order of the State Government that may be made in relation thereto and a subsequent scheme may be prepared, published and confirmed in accordance with the provisions of this Act". It is apparent that this section authorises the authority confirming a scheme to alter or revoke it, and in that case, of course, the new scheme has to be published and confirmed once again in accordance with the ordinary procedure. This provision, however, does not touch the power of the State Government conferred on it by Section 42 of the Act, for it is only when the authority confirming a scheme decides to vary or revoke it that recourse has to be had to section 36, while the power of the State Government u/s 42 is wholly independent of the power of the authority confirming the scheme, and the only limitation prescribed in Section 42, as contained in the proviso, is that before the State Government makes any order the parties interested in the matter are given notice to appear and opportunity to he heard. There is, Therefore, no force in the contention that a scheme of consolidation cannot be varied even by the State Government except in accordance with Section 36 of the Act, and the recent amendment of Section 42 leaves no room for doubt about that matter. I am, in the circumstances, unable to accept Mr. Sachhar''s

 

main argument that, if the scheme of consolidation was to be disturbed even by the State Government, it was necessary to proceed u/s 36 of the Act. The reason for these two different provisions in Sections 36 and 42 of the Act is also clear, for if a scheme is varied or revoked by the authority confirming it, then the new scheme has to be published so that interested parties may object and their objection decided by competent authorities set up under the Act, those decisions being finally appealable to the State Government, but, when a scheme is to be varied by the State Government itself, there is not much point in publishing the varied scheme, for the State Government is required to hear the interested parties before the variation is made."

11. The learned Financial Commissioner assessed the evidence on record and has correctly come to the conclusion that the benefit of ''Beshi Phirni'' could not be granted to the petitioners as Killa No. 28/22 for which the benefit was available was a pre-consolidation Khasra No. 324 which was allotted to Shri Dinesh Kumar Along with Killa Nos. 28/22 and 28/19 during repartition proceedings. The petitioners were not in possession of this Khasra and, Therefore, could not be granted benefit of allotment as granted by the Consolidation Officer and his order was correctly set aside.

12. It is also not open for this Court to interfere in findings of fact as recorded by the Financial Commissioner on appreciation of documentary evidence on record. This Court is only required to see that the Subordinate Court or Tribunal functions within the limit of its authority and cannot correct mere errors of fact or evidence by reappreciating and reassessing the same and cannot exercise its powers as a Court of appeal. The present petition is, accordingly, dismissed. There will be no order as to costs.

 