
(2002) 09 DEL CK 0073

In the Delhi High Court

Case No : C.W.P. No"s. 3081 of 1998, 7582 of 1999 and 2833 of 2000

Satbir Singh and Others

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 18-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 243G, 40
Delhi Land Reforms Act, 1954 — Section 156
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 14(1), 14(2)

Citation : (2002) 100 DLT 85 : (2003) 66 DRJ 775

Hon'ble Judges : S.B. Sinha, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : B.S. Malik and R.S. Rana, Adv Avnish Ahlawat and V.K. Shali, for the Appellant;

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—Whether the provisions of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, is still in force and in any event has been impliedly repealed by Delhi Land Reforms Act, 1954, are some of the questions involved in these writ petitions.

2. The petitioners herein are the owners/Bhumidars in respect of non-agricultural and agricultural land in the Revenue Estate of Kanjhawala, North West District of Delhi. The present petition has been filed seeking quashing of Notification dated 8 9.1993 issued by the Lt. Governor Delhi intending to make a scheme for reconsolidation of holdings purporting to act under Sub-section (1) of Section 14 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act No. 50 of 1948 (as extended to Delhi) (Consolidation Act) and also for consolidation scheme under Sub-section (2) of Section 14 thereof.

3. The respondents in their counter affidavit have averred that the Notification dated 8.9.1993 u/s 14(1) of the East Punjab Holdings (Consolidation and

Prevention of Fragmentation) Act, 1948 was issued in respect of 12 villages including Kanjhawala.

4. Mr. B.S. Malik, learned Counsel appearing for the petitioner, inter alia, submitted that upon coming into force of Delhi Land Reforms Act, 1954, the first respondent-Government of NCT of Delhi, ceased to have any power or jurisdiction or authority to undertake the functions and duties of Goan Sabha and consequently the Notification issued in terms of Section 14(1) of the East Punjab Holdings Act must be held to be ultra vires. According to the learned Counsel, in terms of Section 156 of the Land Reforms Act the matter relating to consolidation of holdings been entrusted to Goan Sabha. Having regard to Articles 40 and 243G of the Constitution of India read with XI Schedule of the Constitution, the matters relating to agricultural land, implementation of land reforms, land consolidation and soil conservation etc., fall within the purview of Goan Panchyat and in that view of the matter Consolidation Act cannot be said to have any application at all. In any event, as the Notification in question does not disclose any reasons including the most probable reason for removing existing and preventing future fragmentation. The only object thereof, as mentioned in the scheme, being to preserve the land for common purpose as defined in Section 2(bb) of the Consolidation Act, namely, reserving land for extension of the abadi it is urged that the impugned Notification must be held to be ultra virus of Section 14 of the said Act.

5. Maintainability of the writ petition is questioned on the ground of delay and laches on the part of the petitioners. It is stated that the consolidation scheme after calling objections was issued on 14.11.1996 and confirmed on 24th April, 1997. The petitioner having fully participated in the preparation of consolidation scheme and later in the consolidation proceedings are now debarred from challenging the Notification dated 8.9.1993 and the consolidation scheme which has since been confirmed.

6. It was next submitted that having regard to the fact that consolidation of holding of an estate has been carried out under Consolidation Act, 1948 and the same having become final, the respondents without notifying the emergence of some new grounds could not have issued the impugned Notification. Learned Counsel appearing for the respondent on the other hand, would submit that admittedly no Gaon Sabha exists for a long time and no Panchayat having been constituted in terms of Part IXA of the Constitution and thus the Consolidation Act is still in force. Goan Sabha cannot be said to be possessed with any power of carrying on consolidation proceedings in absence of any specific provisions made in this behalf. The petitioners themselves in the writ petition having admitted that changes having come into force since 1952-1953, the respondent could exercise their jurisdiction u/s 14 of the Act, inasmuch, as the power once vested, having regard to provisions contained in Section 14 of the General Clauses Act may be exercised from time to time.

7. As both the Consolidation Act as also the Reforms Act can co-exist, the

question of the former being repealed by necessary implication by the later Act does not arise. In any event, the Consolidation Act, being a Special Act, and Delhi Land Reforms Act being general one, the earlier would prevail. It was urged that after coming into force of the Constitution 74th (Amendment) Act, the provisions of DMC Act have been extended to the entire Delhi pursuant to or in furtherance of the provisions contained in part IX A of the Constitution of India and thus Goan Sabha which is a non-existing body cannot be held to have been clothed with a power to take recourse to the consolidation proceedings. It is not necessary that in the Notification itself the purpose for which the power u/s 14(1) is required to be stated as the jurisdictional facts can be disclosed from other documents also.

8. The District of Delhi comprises of Tehsil of Delhi and Police Station of Mehrauli. It was formerly a province of Punjab. However, Governor-General in Council took over the administration thereof for being administered by the Chief Commissioner as a separate province. For the purpose of applying laws which were in force in the said territory as also extension of other enactment Delhi Laws Act, 1912 was enacted. Similarly, Delhi Laws Act, 1915 was enacted in respect of the area mentioned in the First Schedule thereof. In 1950, the Parliament enacted Union Territories Laws Act, 1950 with a view to provide laws to certain Union Territories. Section 2 empowers the Central Government to extend to U.T. of Delhi by Notification any enactment which is in force in the State on the said date with such restrictions and modifications as may be necessary pursuant to or in furtherance of the said Act, inter alia, the following Acts were extended to Delhi, namely, Punjab Tenants (Security of Tenure) Act, 1950, East Punjab Consolidation of Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. The Consolidation Act was extended to Delhi on 18.12.1951. The Punjab Tenant (Security of Tenure) Act was also extended by a Notification of the same date.

9. An amendment in the Consolidation Act took place in 1960. The Amended Act was also extended to Delhi by Notification dated 3.4.1963. Pursuant to the power conferred upon the first respondent herein under the Consolidation Act, the Consolidation Act, the Delhi Holding of Consolidation and Prevention of Fragmentation Rules, 1959 were framed which were published vide Notification dated 23.6.1960. By reason of the provisions of Delhi Land Reforms Act, 1954 the enactments as specified in Section 2 of the Delhi Land Reforms Act were repealed. Punjab Tenant (Security of Tenure Act) is one such Act which was extended to Delhi by reason, of the same Notification under the Consolidation Act, stands repealed. The Legislature consciously thus did not repeal the Consolidation Act.

10. Part IX was added in the Constitution by reason of 73rd Amendment. Article 243G of the Constitution reads thus:

"243-G. Powers, authority and responsibilities of Panchayats--Subject to the provisions of the Constitution, the Legislature of a State may, by law endow the

Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-Government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level subject to such conditions as may be specified herein, with respect to:

- (a) the preparation of plans for economic development and social justice;
- (b) the implementation of Schemes for economic Development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule."

11. Relevant provisions of Eleventh Schedule appended to the Constitution are as under:

- (1) Agriculture including agriculture extension.
- (2) Land improvement, implementation of and reforms, land consolidation and soil conservation.
- (3) xxx xxx
- (4) xxx xxx
- (5) xxx xxx
- (8) Small scale industries including food processing industries;
- (9) Khadi village and cottage industries
- (10) Rural housing
- (13) Lands, culverts, bridges, ferries, waterways and other means of communication.

Section 156 of the Delhi Land Reforms Act reads as follows:

"156. Duties of Gaon Panchayats--Without prejudice to the generality of the provisions contained in Sections 154 and 155, the functions and duties of Gaon Panchayat shall include:

- (a) the development and improvement of agriculture and horticulture;
- (b) the maintenance and development of Abadi sites and village communications;
- (c) the consolidation of holdings;
- (d) the development of cottage industries.

12. By reason of Section 19(1) of Delhi Panchayat Raj Act, 1954 power has been conferred on Gram Pinch-hit as regards extending of village Abadi. The said Act provides as follows:

"A Gaon Panchayat may also make provisions within its jurisdiction for--(1)

extension of the abadi."

13. In the aforementioned backdrop the contentions raised in these writ petitions are required to be considered.

Re: Contention No. 1.

14. The question which arises for consideration is as to whether upon coming into force of the provisions of Delhi Land Reforms Act as also Part IX of the Constitution of India, Consolidation Act has lost its force. The answer to the said question must be rendered in the negative. The purpose and object of both the Acts are absolutely different and distinct, whereas the Consolidation Act was enacted to provide for compulsory consolidation of agricultural holding and for prevention of fragmentation in the State of Punjab and reservation of land for common purpose.

15. The Delhi Land Reforms Act has been enacted to provide for modification of Zamindari system so as to create a uniform body of peasant proprietors without intermediaries for unification of Punjab and Agra systems of Tenancy laws in force in the State of Delhi and to make provisions connected herewith.

16. The fact that by reason of the provisions of the Consolidation Act a complete procedure has been laid down for the purposes mentioned hereinbefore are not denied or disputed. By reason of the provisions of the said Act the first respondent herein was empowered to issue an appropriate Notification in terms of Section 14 thereof.

17. One of the functions of Gaon Sabha envisaged in Section 156(c) may be consolidation of holdings but the scheme of consolidation of holdings is vital to be achieved by compulsory consolidation and as also voluntary consolidation. Mr. Malik himself submitted that after the first consolidation was over in 1952-1953, a voluntary consolidation was permissible. Chapter II of the Consolidation Act provides for determination of standard areas and the treatment of fragments. Chapter III provides for consolidation of holdings. In a given case consolidation of holding and prevention of fragmentation go together but separate proceedings Therefore would also be maintainable. It is the contention of Mr. Malik that by reason the Delhi Land Reforms Act, the consolidation Act stands repealed by necessary implication if this argument is accepted then there would not be any enactment dealing with compulsory consolidation. Section 156 of the Land Reforms Act provides for various other functions also, as for example, the preservation and maintenance and of forest and trees; maintenance and development of Abadi sites and village communication; development of animal husbandry; including procedures and poultry farming and development of piggery, as also maintenance and development of fisheries, wells and tanks etc.

18. Can in the aforementioned situation be said that the authorities under the Indian Forests Act or the P&T Act or the National High Ways Act or any other Act dealing with the said subject would have no application within the Gaon Sabha?

Answer to the said question must be rendered in the negative. The enactments which deal with such detailed procedures laid down Therefore and having wider ramification cannot by no stretch of imagination be said to have been repealed by necessary implication.

19. Two Acts as is well known operating in the said field must be harmoniously construed. Attempt should be made to see that both the Acts survive. A conflict between the two Acts would not be presumed, nor any attempt to be made to find out one.

20. In *Municipal Council Palai Vs. T.J. Joseph and Others*, the law has been laid down in the following terms:

"9. It is undoubtedly true that the legislature can exercise the power of repeal by implication. But it is an equally well-settled principle of law that there is a presumption against an implied repeal. Upon the assumption that the Legislature enacts laws with a complete knowledge of all existing laws pertaining to the same subject the failure to add a repealing clause indicates that the intent was not to repeal existing legislation. Of course this presumption will be rebutted if the provisions of the new Act are so inconsistent with the old ones that the two cannot stand together. As has been observed by Crawford on Statutory Construction, p. 631, para 311:

"There must be what is often called such a positive repugnancy between the two provisions of the old and the new statutes that they cannot be reconciled and made to stand together. In other words they must be absolutely repugnant or irreconcilable. Otherwise there can be no implied repeal.... for the intent of the Legislature to repeal the old enactment is utterly lacking."

The reason for the rule that an implied repeal will take place in the event of clear inconsistency or repugnancy, is pointed out in *Crosby v. Patch*, 18 Calif. 438, quoted by Crawford "Statutory Construction" p. 683 and is as follows:

"As laws are presumed to be passed with deliberation, and with full knowledge of all existing ones on the same subject, it is but reasonable to conclude that the Legislature, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two is irreconcilable....."

For implying a repeal the next thing to be considered is whether the two statutes relate to the same subject-matter and have the same purpose. Crawford has stated at p. 634:

"And as we have already suggested, it is essential that the new statute cover the entire subject matter of the old, otherwise there is no indication of the intent of the Legislature to abrogate the old law. Consequently, the latter enactment will be construed as a continuation of the old one".

The Third question to be considered is whether the new statute purports to

replace the old one In its entirety or only partially. Where replacement of an earlier statute is partial, a question like the one which the Court did not choose to answer in the Commissioner of Sewers case (1862) 142 ER 1104: 31LJ CP 223, would arise for decision.

12. Another principle of law which has to be borne in mind is stated thus by Sutherland on Statutory Construction (Vol. 13th Edn. p. 486):

"Repeal of special and local statutes by general states : the enactment of a general law broad enough in its scope and application to cover the field of operation of a special or local statute will generally not repeal a statute which limits its operation to a particular phase of the subject covered by the general law, or to a particular locality within the jurisdictional scope of the general statute. An implied repeal of prior statutes will be restricted to statutes of the same general nature, since the Legislature is presumed to have known of the existence of prior special or particular legislation and to have contemplated only a general treatment of the subject matter by the general enactment. Therefore, where the later general statute does not propose an irreconcilable conflict, the prior special statute will be construed as remaining in effect as a qualification (or exception to the general law.

Of course, there is no rule of law to prevent repeal of a special by a later general statute and, Therefore, where the provisions of the special statute are wholly repugnant to the general statute, it would be possible to infer that that special statute was repealed by the general enactment. A general statute applies to all persons and localities within its jurisdiction and scope as distinguished from a special one which in its operation is confined to a particular locality and Therefore where it is doubtful whether the special statute was intended to be repealed by the general statute the Court should try to give effect to both the enactments as far as possible. For, as has been pointed out at p/470 of Sutherland on Statutory Construction Vol. I where the repealing effect of a statute is doubtful, the statute is to be strictly construed to effectuate its consistent operation with previous legislation."

21. In Ratan Lal Adukia and Another Vs. Union of India, it was held:

"11.....The doctrine of implied repeal is based on the postulate the Legislature which is presumed to know the existing state of the law did not intend to create any confusion by retaining conflicting provisions. Courts in applying this doctrine are supposed merely to give effect to the legislative intent by examining the object and scope of the two enactments. But in a conceivable case, the very existence of two provisions may by itself, and without more, lead to an inference of mutual irreconcilability if the later set of provisions is by itself a complete Code with respect to the same matter. In such a case the actual detailed comparison of the two sets of provisions may not be necessary. It is a matter of legislative intent that the two sets of provisions were not expected to be applied simultaneously. Section 80 is a special provision. It deals with certain class of

suits distinguishable on the basis of their particular subject-matter."

22. Yet again in *The Krishna District Co-operative Marketing Society Limited, Vijayawada Vs. N.V. Purnachandra Rao and Others*, it has been held:

"8.....It is true that the State Act is a latter Act and it has received the assent of the President but the question is whether there is any such repugnancy between the two laws as to make the provisions of the Central Act relating to retrenchment ineffective in the State of Andhra Pradesh. It is seen that the State Act does not contain any express provision making provisions relating to retrenchment in the Central Act ineffective insofar as Andhra Pradesh is concerned. We shall then have to consider whether there is any implied repugnancy between the two laws. Chapter VA of the Central Act which is the earlier law deals with cases arising out of lay-off and retrenchment. Section 25J of the Central Act deals with the effect of the provisions of the Chapter V-A on other laws inconsistent with the Chapter. Sub-section (2) of Section 25J is quite emphatic about the supremacy of the provisions relating to the rights and liability arising out of lay off and retrenchment. There are special provisions and they do not apply to all kinds of termination of services. Section 40 of the State Act deals generally with termination of service which may be the result of misconduct, closure, transfer of establishment etc. if there is a conflict between the special provisions contained in an earlier law dealing with retrenchment and the general provisions contained in a later law generally dealing with terminations of service, the existence of repugnancy between the two laws cannot be easily presumed."

23. Principles of implied repeal would be applicable only where two laws, namely, the earlier one and the later one cannot stand together, (see *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*,

24. Mr. Malik has placed strong reliance on *Shri Sarwan Singh and Another Vs. Shri Kasturi Lal*, . The said authority does not militate against the contention raised by the Counsel for the respondent. It was held:

"21. For resolving such inter se conflicts, one other test may also be applied though the persuade force of such a test is but one of the factors which combine to give a fair meaning to the language of the law. That test is that the later enactment must prevail over the earlier one. Section 14A and Chapter IIIA having been enacted with effect from December 1, 1975 are later enactments in reference to Section 19 of the Skim Clearance Act which, in its present form, was placed on the statute book with effect from Feb. 28, 1965 and in reference to Section 39 of the same Act which came into force in 1956 when the Act itself was passed. The Legislature gave overriding effect to Section 14A and Chapter IIIA with the knowledge that Sections 19 and 39 of the Slum Clearance Act contained non-obstante clauses of equal efficacy. Therefore the later enactment must prevail over the former....."

25. In *Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others*, the Apex Court was dealing with the contention as to whether the Rent Control

Act will override the Public Premises Act. Relying on the maxim *generalia specialibus non derogant* and *leges posteriores priores contrarias abrogant* it was held:

"49. This means that both the statutes, viz. the Public Premises Act and the Rent Control Act, have been enacted by the same Legislature Parliament, in exercise of the legislative powers in respect of the matters enumerated in the Concurrent List. We are, Therefore, unable to accept the contention of the learned Additional Solicitor General that the Public Premises Act, having been enacted by Parliament in exercise of legislative powers in respect of matters enumerated in the Union List would ipso facto override the provisions of the Rent Control Act enacted in exercise of the legislative powers in respect of matters enumerated in the Concurrent List. In our opinion, the question as to whether the provisions of the Public Premises Act override the provisions of the Rent Control Act will have to be considered in the light of the principles of statutory interpretation applicable to laws made by the same Legislature.

50. One such principle of statutory interpretation which is applied is contained in the latin maxim : *leges posteriores priores contrarias abrogant* (a general provision does not derogate from a special one), this means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act. It is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one."

26. Mr. Malik also relied upon *Dharangadhra Chemical Works Vs. Dharangadhra Municipality and Another*, wherein a finding was arrived that later legislation was so inconsistent with or repugnant to an earlier enactment or subordinate legislation that the two cannot co-exist and in that premises the doctrine of implied repeal was applied. It was observed:

"11. In the instant case the two pieces of legislation are so inconsistent with or repugnant to each other that both cannot stand together and such repugnancy raises from, (a) the conferral of power to levy duty on two different bodies, namely, the State Government under the Ordinance and the Municipality under the appropriate Act and obviously the exercise of the power concurrently by both the bodies would be incongruous and entirely destructive of the object for which the power was conferred, and (b) the enhanced rate of duty prescribe by the Municipal Rules and bye-laws a situation similar to enhanced punishment provided by a later enactment. Having regard to such repugnancy obtaining between the two pieces of legislation dealing with the same subject matter the latter in point of time will have the effect of displacing the former by necessary implication. That such implied repeal or displacement was within the contemplation of the legislative authority which issued the Ordinance of 1949 will be amply clear if regard is had to the object with which the Ordinance was to be promulgated. The avowed object of the Ordinance was to enable the State Government to levy and collect octopi duty in towns and cities of the erstwhile

State of Saurashtra and to pass on the duties so collected by it to those towns and cities until municipalities therein were constituted under the appropriate Act and those municipalities made their own Rules and Bye-laws enabling them to levy and collect octroi and other usual municipal taxes, Clause (9) of the Ordinance has been clearly stated by this Court in *Mulchand Odhavji v. Rajkot Borough Municipality*. In other words the Ordinance and the Government Rules framed there under were a stopgap measure, being transitional in character which would automatically cease to operate no sooner the concerned municipality (here Dharangadhra Municipality) made and published its own octroi Rules and Bye-laws under the appropriate Act.

13. Counsel for the appellant also raised the question as to whether the Municipal Rules and Bye-laws being a subordinate piece of legislation could repeal either expressly or by implication the Ordinance promulgated by Rajpramukh and the Rules framed there under by the State Government and urged that the Municipal Rules or Bye-laws could not do so, he further urged that for effecting such repeal the Municipal Rules and Bye-laws, 1965 should have at least been raised to the Status of parent legislation by deeming them to have been incorporated in the Statute as is done in some cases like the Town Planning Scheme comes into force it shall be deemed to have been incorporated in the Act itself. The contention as formulated really misses the vital aspect that the effective charge and levy of the octroi is imposed by the Rules and not by the parent legislation, be it an Ordinance or the appropriate Municipal Act. The parent legislation merely confers power on the specified body or authority to frame rules for the purpose of levying and collecting octroi duty. Under the Ordinance of 1949 it was the State Government on whom such power had been conferred while under the appropriate Act such power has been conferred on the concerned municipality, in either case the levy and collection of the duty is by means of subordinate legislation and if such subordinate legislation is validly enacted by following the prescribed procedure under the parent legislation there is no reason why such subordinate legislation should not have the effect of impliedly repealing the earlier subordinate legislation and no question of one name body or authority being lower than the other can arise; in other words the status or character of the rule making body would be irrelevant. In this view of the matter there should be no necessity of raising the Municipal Rules and Bye-laws to a higher status of the parent legislation as contended by the Counsel for the appellant. The first contention Therefore fails."

27. It is true that the Land Reforms Act is a later Act but an earlier Act does not stand repealed only because a latter Act has come into being. When Legislature enacts a latter Act, it is presumed that it was aware of the earlier law. If it was the intention of the Legislature to repeal the Consolidation Act it could have done so as it did in the case of Punjab Tenants (Security of Tenure) Act which was extended by the same Notification on the same day.

28. Yet in Director General Council Of Scientific and Industrial and Industrial

Research Vs. DR. K. Narayanaswami and others, , the Apex Court has held that where two provisions operate in one field both are to be allowed to have their play unless it results in absurdity.

29. Apart from the fact that under the Delhi Land Reforms Act no provision exists as regards providing for detailed mode and modalities for carrying out the purpose of the consolidation scheme, it appears that the Legislature in a situation of this nature might have thought of validity of consolidation only while enacting Delhi Land Reforms Act. Consolidation Act also provides for prevention of fragmentation which Delhi Land Reforms Act does not Consolidation Act is a self contained Code.

30. Furthermore both the Acts operate in different field. The function of Gaon Sabha may, inter alia, be to hold consolidation but having regard to the fact that another special statute operate in the field, we are of the opinion that function of Gaon Sabha must be restricted to the areas which are not covered by the Consolidation Act namely, voluntary consolidation particularly when such voluntary consolidation is permissible and is applied in the case of cooperative societies. The intention of the Legislature in enacting a separate Act so far as to infer repeal by necessary implication must be judged by the subsequent legislative enactment. As noticed hereinbefore 1963 amendment made in the Consolidation Act by the legislation of the State of Punjab was extended to Delhi. There, thus cannot be any doubt whatsoever that the Legislature did not intend that by reason of coming into force of the Land Reforms Act, the Consolidation Act would cease to operate.

31. The submission of Mr. Malik to the effect that by reason of Article 243G of the Constitution of India, the functions of Gaon Panchayat as inserted by the 73rd Amendment again is devoid of any merit as specified therein cannot be performed by any other agency.

32. The Delhi Land Reforms Act does not deal with the constitution and functioning of Gram Panchayat.

33. A bare reading of Article 243G shows that the State is required to be endowed with the power of making law. State has not made any law in this behalf. The Court cannot direct by issue of a writ of mandamus to enact it.

34. Before the 73rd Amendment of Constitution Act, Article 40 which is in Part IV of the Constitution provided for creation of units of Local Self Government and confer power on them. With advent of Part IX in the Constitution it became obligatory on the part of the State to constitute Panchayat and such other unit and confer on them which are included in the XI Schedule. But unless a statute as such is enacted a void cannot be held to have come into being A.P. Sarpanchas Association Vs. Government of A.P. and others,

35. In terms of Article 243(d), Constitution of India, a Panchayat means an institution constituted under Article 243B for the rural areas. These Panchayats

could come within the purview of Article 243(d) which refers to Panchayat constituted under Article 243B only. By reason of the Constitutional Amendment, Delhi Panchayat Act or for that matter Delhi Land Reforms Act were not and could not have been amended automatically, 73rd Constitutional Amendment Act came into force on 23.4.1993. In terms of Article 243N if any law which is inconsistent then the same will remain in force until expiration of one year from the commencement i.e. from 24.4.1993.

36. The impugned Notification was issued on 8.9.1993 and thus the same also does not run contrary to the provisions of the Constitution. Accordingly, after coming into force of Part IX of the Constitution, the DMC Act was applied to the whole of Delhi, whereas Delhi Panchayat Act has not been amended. Nothing has been produced before us to show that a public Notification has been issued specifying the village by the Governor for the purpose of the said Act or a group of villages. If no such Notification has come into being, the question of Part 9 A giving effect to does not arise.

37. We, Therefore, are of the opinion that for the reasons of the provisions of the Consolidation Act, Delhi Land Reforms Act was not repealed by necessary implication.

38. It may be true that the Delhi Land Reforms Act, 1954 is the latter statute, but, as indicated hereinbefore, the same would not mean that the Consolidation Act would lose its validity.

39. The submission of Mr. Malik to the effect that by reason of Part IX of the Constitution, the Delhi Land Reforms Act will supersede Punjab Consolidation Act is entirely devoid of merit. Delhi Land Reforms Act does not deal with the constitution and functions of the Panchayat nor the said Act provides for matter envisaged in Part IX of the Constitution of India. It is not in dispute that in Delhi Panchayat Raj Act had not been amended with a view to bring the matters enumerated in Part IX of the Constitution of India.

Re: Contention No. 2.

40. A question which now arises for consideration is as to whether it was incumbent upon the Lt. Governor to state the reasons before issuing the Notification u/s 14(2).

41. The consolidation scheme of village Kanjhawala, may be noticed which is as tinder:

"The total land area of village Kanjhawala amounts to 10599 bighas 2 biwas. The land consolidation of this village was done far ago in the year 1951-52 but at that time no demarcation of Phirni was made for the ever expanding population since then. No residential plots were allotted or distributed nor any provision was made for minor canals for the purpose of irrigating the agriculture land. Since then the village population has increased manifold. A lot of land area has been acquired by the Government besides it, several departmental offices have come

to function. Roads and drains etc. have been expanded and extended. For these reasons the surface of the land has substantially changed. At present the land distribution of the village in various units, as stated hereafter.

Delhi Police Department 5-17, Delhi Electricity Board 59-4, village ponds 233-18, unused water wells 2-3, drains for rain water 58-19, minor canals for irrigation 21-2, extended Abadi of the village 20347, toilet (Gram Sabha) 1-12, Delhi Wakf Board, Daryaganj (unused burial ground) 0-10, Gair Mumkin cremation ground 13-15, for Had wari (cattle crops enclosure) 2-3, roads under PWD 193-10, Hospital under MCD 23-0, irrigation department 49-5, drains for rain water 87-16, Haryana Shakti Sr. Sec. School 100-2, other places of public utility 70-3, MCD Primary School 10-18, Animal Husbandry Department 9-12, the total area thus covered under the above stated departments and institutions comes to 1146 bighas 6 biswas. The remaining area i.e. 9452-16, has to be brought under the consolidation operation.

42. East Punjab Consolidation Act, as noticed hereinbefore deals with several subjects, whereas Chapter II deals with prevention of fragmentation, Chapter III deals with consolidation of holdings.

43. The preamble of the Act clearly suggests that the said Act provides for compulsory consolidation of agricultural holding for prevention of fragmentation thereof as also for assignment of land for common purpose of the village. It is, Therefore, possible to take recourse to the provisions of the said Act for all or any of the aforementioned purposes. The Notification dated 8.9.1993 issued u/s 14 of the said Act is in respect of the entire revenue estate of Kanjhawala. The scheme shows the modes of measurement as under:

"Mode of Measurement

The Mustatil bandi at the rate of 133 % x 120 gatha and kila bandi at the rate of $232/3 \times 24$ gatha has already been made effective and demarcation done to the same effect. The total land area subject to consolidation at present i.e. 9452.16. The common land of this village has already been distributed in various units of common utility."

44. It also speaks of repartition of land under consolidation. The said scheme further provides for distribution of land outside Phirni of the village as under:

"Consolidation of land in this village was made long ago in 1950-51. At that time no passages were provided from Chak to Chak. In the present consolidation operation, main passages from Chak to Chak will be of 2 gatha width and sub passages of 1 gatha width. After the consolidation of land if someone's tube well is found possessed by some new landholder, then the settlement of the same will be made between the old and new owners. Just boring of a tubewell will not qualify for an installed tube well. The policy matter made with regard to tube wells will equally hold good in case of tress also. In case of an unsettled dispute, the old owner, 15 days after the consolidation is over, will cut off his tree.

Chak to the tenure holder shall be allotted at first point. Efforts will be made to provide land at one point only. Variation of 5 Annas in repartition shall be meaningless."

It also provides for partition of joint land holding stating:

"Those who hold till now joint land-holdings as in the revenue record, can with their mutual consent get their joint holdings partitioned under different heads. A copy of the list of those who want their joint holdings is enclosed."

45. It is, Therefore, evident that the said scheme also deals with agricultural land and not the matter relating to Abadi alone, as contended by Mr. Malik. It is, Therefore, not correct to say that the scheme was meant for assignment for common purpose only. It is also not in dispute that the value of the land was assessed in respect of the entire village which would evidently include agricultural land. Passbooks were also issued to land holders, the land area has been mentioned subject to consolidation as 9452.16Bighas. As indicated hereinbefore even distribution of land outside Phirni of village has been referred which is agricultural land, as the land inside Phirni would be Abadi and outside thereof would be agricultural land.

46. The petitioner therein had filed objections in terms of Section 21 (2) of the Act. From an application filed by Satbir Singh, it appears, that he had prayed before the Chakbandi Officer that, in the land Mustatil No. 74 Kila No. 4/2,5,14/2 and 15/ 1 be kept "Kayani" as in the said agricultural land there existed a well. The well according to Satbir Singh is used for irrigation of the agricultural lands. He annexed details of his plot which were to remain agricultural land after consolidation. Even in the objections dated 8.12.1999 the petitioner Satbir Singh it is so stated and yet again from the Chakbandi register it appears that the agricultural land have been allotted to the said petitioner during consolidation proceedings as would appear from page 220 of the paperbook. So far as other petitioners are concerned they were allotted agricultural land as appears from pages 228,231,233,234,238,239 and 243 of the paperbook. It is, Therefore, not correct to contend that consolidation scheme is only for reservation of land for assignment of common purpose where for a scheme for consolidation of holding was prepared.

47. We may note that according to the respondent agricultural land has been allotted to petitioner No. 5 during the consolidation proceedings but we need not dilate on this aspect.

48. We may, however, notice that in CWP 2895/98 a statement has been made that the petitioners therein are owners of land measuring 100 bigha but no Kayamr thereof has been made.

49. Yet again in CWP 3081/98, the petitioners themselves have filed field passbooks for consolidation wherein the area of agricultural lands, their valuation during consolidation proceeding has duly been recorded.

50. The ratio of the decision relied of the Apex Court upon by Mr. Malik in Attar Singh and Others Vs. The State of U.P., is not in dispute. Therein having regard to the object of consolidation as contained in the Act, it was held:

"The object of the Act is to allot a compact area in lieu of scattered plots to tenure-holders so that large scale cultivation may be possible with all its attendant advantages. Thus, by the reduction of boundary lines having of land takes place and the number of boundary disputes is reduced. There is saving of time in the management of fields inasmuch as the farmer is saved from traveling from field to field, which may be at considerable distances from each other. Proper barriers such as fences, hedges and ditches can be erected around a compact area to prevent trespassing and thieving. It would further easier to control irrigation and drainage and disputes over water would be reduced considerably where compact are allotted to tenure holders. Lastly, the control of pests, insects and plant disease is made easier where farmers have compact areas under cultivation. These advantages resulting from consolidation of holdings are intended to encourage the development of agriculture and larger production of food grains, which is the necessity of the day."

51. Having regard to our aforementioned findings, we are of the opinion that the decision of the Punjab High Court in Mahant Som Dass Vs. The State of Punjab and Others, cannot be said to have any application whatsoever in the instant case.

Re: Contention No, 3

52. The next question which has been raised by Mr. Malik is that as the consolidation has been fully carried out in 1951-52 under the said Act, the same has attained finality and thus, without notifying emergence of new grounds the State had no power or jurisdiction to authorise re-consolidation of holding of the said estate.

53. Mr. Malik would submit that in a case of this nature Section 14 of the General Clauses Act would not be attracted inasmuch as the same can be taken recourse to only in the event when "an occasion arises" there for which is a condition precedent for exercising the said power.

54. Consolidation in respect of the village in question was held in 1952. From the counter affidavit filed by the respondents herein it is evident that various changes have taken place. The fact that various changes have taken place within National Capital Territory having regard to the increase in population and several other factors is so notorious that judicial notice thereof can be taken. The question as to whether a further consolidation of land is necessary or not, is essentially a matter of policy decision. This Court in exercise of jurisdiction under Article 226 of the Constitution of India, it is trite would not interfere with such a policy decision unless and until it is shown that the scheme notified contravenes the provision of the statute.

55. The Notification clearly shows that there had been changes and having regard to the extended population it has become necessary for extending the Abadi. Such a requirement cannot be said to be de hors the statute. Once it is held that such requirement did exist the action on the part of the respondent cannot be said to be arbitrary or irrational or ultra virus the provisions of the said Act.

56. It is not in dispute that after 1952 a lot of changes have been made. Several transactions must have taken place. Inhabitation has increased.

We may notice that in CWP 3081/98 it has been stated that;

"It is submitted that last consolidation of holdings took place in village Kanjhawala in 1952-53. Since the last consolidation there has been an expansion in each and every family in the village, which fact has necessitated additional requirement in each family for residential land which is available only in the village Abadi.

6. That in each village with the passage of time there is fragmentation of agricultural holdings and due to growth in the village population there is additional demand for residential land. To provide for consolidation and assignment or reservation of land for common purposes the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 was enacted. The same has been extended to the Union Territory of Delhi vide Government of India, Ministry of Home Affairs Notification No. GSR 744 dated 23.4.1963,"

57. The said statements would amount to admission on the part of the writ petitioners that there has been a large scale of changes warranting fresh consolidation having regard to the objects for which the said Notification has been issued.

58. Admission of one of the writ petitioners may be binding upon the other petitioners.

59. We may notice that in CWP 3081/98 is in the nature of Public Interest Litigation. Satbir Singh has filed CWP 7582/99. He is petitioner No. 4 in CWP 3081 / 98. The averments in the said petition would clearly go to show that the admission have been made therein (which thus need not be proved) that with the passage of time fragmentation of agricultural holdings and due to growth in rural population, there exists a demand for additional Abadi land.

60. Having regard to the aforementioned admission on the part of the petitioner the Court need not go into any other question. We are thus unable to agree with the submission of Mr. Malik to the effect that the consolidation of holding in 1952-53 shall constitute a complete bar to the exercise of power and the impugned Notification is liable to be set aside being ultra vires.

61. It is not a case where discretionary powers has been exercised by the Lt. Governor without the condition precedent Therefore being present as was the

case in K.R. Raghavan v. Union of India 1979 Lic 1294.

62. No case has been brought about, which, in the facts and circumstances of the case can establish to be arbitrariness on the part of the respondent. We may notice that this fact in Jia Ram and Others Vs. Union of India (UOI), , this Court relying on the earlier decision of a Division Bench in Umed Singh Vs. Government of National Capital Territory of Delhi and Others, it was held:

."18. There is nothing in the Act to show that the power of consolidation once exercised, the same is exhausted. In the instant case, consolidation of the village in question was held as far back as 1952-53. As noticed hereinbefore, the Rules were framed in the year 1959 and only in the year 1996, they have been amended.

19. The situation must have undergone a sea change in the intermittent period 1952-53 and till the scheme was announced with the passage of time, fragmentation, might have occurred. The question as to whether a fresh consolidation is required or not, is a matter of policy decision. The Court exercising its jurisdiction under Article 226 of the Constitution of India, cannot have any say in this regard.

20. The respondents have categorically stated that the intention to undertake consolidation of holdings in the village in question in terms of the Notification dated 12th June, 1996 which was issued u/s 14(1) of the Act, was brought to the notice of the villagers which as published in the prescribed manner. A village Advisory Committee from amongst the villagers as nominated by them was constituted on 5th March, 1997. Thereafter, the valuation of the land had been carried on with the aid and advice of Village Advisory Committee and the villagers, where after the persons concerned were notified about their individual entitlement in relation where to pass books had been issued to them. The draft scheme had also been prepared with the assistance of the Village Advisory Committee on 18th June, 1999 whereafter, in terms of the provisions contained in Section 19 of the Act, objections and suggestions had been invited. No objection having been received, the said scheme was confirmed."

It was observed:

"Section 14 of the General Clauses Act reads thus:

Powers conferred to be exercisable from time to time--

(1) Where, by any Central Act or Regulation made after the commencement of this Act, any power is conferred, then unless a different intention appears, that power may be exercised from time to time as occasion requires.

(2) This section applies also to all Central Acts and Regulations made on or after fourteenth day of January, 1887.

23. Thus, it cannot be said that only because consolidation proceedings had been held as far back as 1952-53 and by reason of the provisions of the said Act

fragmentation was prevented, no further consolidation in relation to the village was necessary or the same would be contrary to the objects of the Act.

24. Once it is held that the said Act does not prohibit holding of consolidation again after a period of about 46 years, the contention of the petitioners must fall.

25. A Division Bench of this Court in *Umed Singh Vs. Government of National Capital Territory of Delhi and Others*, , has categorically held:

"No other provision of the Delhi Land Reforms Act or any other provision of any other enactment was brought to our notice due to which the revenue estate on being declared to be urbanized might affect the status of the land located therein. Accordingly, the lands situated in village Bamnolli, irrespective of issuance of the Notification u/s 507 of the Delhi Municipal Corporation Act, 1957 would continue to remain agricultural land and will not affect its status. Consequently, it cannot have any effect on the on-going process of consolidation, which is being carried out under a valid piece of legislation, namely, Consolidation Act the object of which is to provide for better cultivation of land within the estate concerned."

We may at this juncture notice that decision in *Umed Singh (supra)*, and *Jai Bhagwan (supra)*, have not considered various aspects of the matter and those should not be held to be a precedent although it may be correct but the correctness thereof need not be gone into having regard to our findings aforesaid.

63. The said question is, thus, also answered against the writ petitioners.

64. We may however place certain disturbing features. Sh. Satbir Singh is petitioner in CWP No. 7582/99. He is also one of the petitioners in CWP No. 3081 / 98.

65. In para 36 of the latter petition it was contended that the petitioners therein had not filed any other writ petition in respect of the same subject matter either in the Supreme Court of India or any other High Court or before this Court. It is also stated that no proceeding has taken place in reconsolidation proceedings although from the record it appears that not only Satbir Singh and Ors. filed objections u/s 21 (2) of the Act but such objections were also determined and various orders were passed on the proceedings.

66. Even the objections filed by the petitioners against repartition of land had been decided. The petitioners in some cases had applied for residential and industrial plots and during the pendency of the proceedings they were allotted the same. They were also allotted agricultural land during the said proceedings.

67. They submitted themselves to the jurisdiction of the authorities created under the said Act. They took benefits of the orders passed by the said authorities but now they seem to turn around and say that the Act is ultra vires.

68. Some of the petitioners, Therefore, have not approached this Court with clean hands. They are guilty of concealment of material facts.

69. However, having regard to the fact that Mr. Malikhad raised a constitutional question, we although deprecate the attitude of such petitioners, we would not dismiss the writ petitions only on these grounds alone. For the reasons aforementioned that there is no merit in the writ petitions which are dismissed.

70. Normally in a PIL a person is not permitted to question the validity of an Act particularly when he himself is interested in the matter. The Forum of PIL has thus been used for private interest. Although, we do not intend to dismiss this petition on that ground alone, we are of the opinion that the petitioner should pay exemplary costs. These petitions are dismissed. Petitioners in CWP 3081/98 shall pay the costs to the first respondent which is quantified at Rs. 25,000/-.