

(2011) 07 DEL CK 0397

In the Delhi High Court

Case No : Writ Petition (Civil) No. 8359 of 2009

Subhash Chand Aggarwal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 17, 18

Delhi Holdings (Consolidation and Prevention of Fragmentation) Rules, 1959 — Rule 6

Delhi Land Reforms Act, 1954 — Section 14(1), 16, 19, 20(3), 21(2)

Urban Land (Ceiling and Regulation) Act, 1976 — Section 27(1)

Citation : (2011) 8 AD 338

Hon'ble Judges : Dipak Misra, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : B.K. Sood and Vipul Sharda, for the Appellant; Suhail Dutt Salwan and Gaje Singh, for R-3 to 6, for the Respondent

Final Decision : Allowed

Judgement

Sanjiv Khanna, J.—The Petitioner has challenged vires of Rule 6 (j) (v) of Delhi Holding (Consolidation and Prevention of Fragmentation) Rules, 1959 (Rules, for short) as being violative of Articles 14 and 19 of the Constitution of India and also on the ground that it suffers from the vice of excessive delegation; is beyond the scope, sphere and does not conform to the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948 (Act, for short).

2. The Petitioner had entered into two separate agreements to sell for purchase of two industrial plots each measuring 6 Biswas (about 300 square yards) in Khasra No. 81/154 with Respondent Nos. 3 and 4 and in Khasra No. 81/155 with Respondent Nos. 5 and 6 situated in village Bakauli, Delhi-36. The said Respondents, it is alleged, did not abide by and refused to comply with the contractual terms and, therefore, the Petitioner has filed two civil suits for specific performance. During the pendency of the civil suits, the said Respondents took the plea that the suit for specific performance is liable to be dismissed in view of Rule 6 (j) (v). This compelled the Petitioner to file the

present writ petition.

3. Rule 6 (j) (v) reads as under:

6. Statement of principles etc. of the Scheme - In preparation of Scheme of consolidation the Consolidation Officer shall have regard to the following principles:

Xxxx

Xxxx

(j) (v) The allottee of industrial plot shall neither transfer or sell the same in any manner nor shall amalgamate it with other land.

4. It may be noted here that Clause (v) to rule (j) was incorporated in Rule 6 by an amendment in 1996 vide notification dated 12th June, 1996. It is clear from the aforesaid Rule that it imposes an absolute and complete prohibition on an allottee/ holder of an industrial plot from transferring or selling the same to a third person. There is also prohibition or bar on amalgamation of an industrial plot with any other land/industrial plot.

5. Rule 6, as is apparent from the opening expression, states that the consolidation officer while preparing the scheme for consolidation shall have regard to the principles enshrined. Thus, the said absolute bar or prohibition has been incorporated in the Rule which merely provides that the consolidation officer while preparing the scheme should have regard to the principles prescribed. The placement of sub rule (j) (v) in Rule 6 itself is rather odd and ambiguous. The principles, which the consolidation officer has to keep in mind while preparing a scheme, include absolute prohibition of a right to transfer, sell or amalgamate the property i.e. industrial plot. This prohibition cannot be regarded as a principle which the consolidation officer has to keep in mind. This principle or bar is incorporated/enacted by the Rule and is not created or prescribed under any other statute. The omnibus prohibition is somewhat beyond what can be regarded as a principle, which has to be kept in mind and given regard to while formulating a scheme. However, this is not the ground/reason why we have struck down the impugned rule.

6. The Rules are subordinate legislation and cannot go beyond the ambit and scope of the main enactment. In Addl. District Magistrate (Rev.) Delhi Admn. Vs. Shri Siri Ram, Supreme Court has observed that the mere conferment of rulemaking power by an Act does not mean that the subordinate legislation will go beyond/exceed the scope of the enabling Act. It was held:

16. It is a well-recognised principle of interpretation of a statute that conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto. From the above discussion, we have no hesitation to hold that by amending the Rules and Form P-5, the rule-making

authority has exceeded the power conferred on it by the Land Reforms Act.

7. In *Kunj Behari Lal Butail and Others Vs. State of H.P. and Others*, the Supreme Court has observed that the delegated power to legislate Rules cannot be used to bring within its purview/ambit a subject that has been specifically excluded by the statute itself, or to bring into existence disabilities/prohibitions not contemplated by the provisions of the Act. It has been observed:

13. It is very common for the legislature to provide for a general rule-making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the test of having been so framed as to fall within the scope of such general power conferred. If the rule-making power is not expressed in such a usual general form then it shall have to be seen if the rules made are protected by the limits prescribed by the parent act. (See: *Sant Saran Lal v. Parsuram Sahu*, AIR para 19.) From the provisions of the Act we cannot spell out any legislative intent delegating expressly, or by necessary implication, the power to enact any prohibition on transfer of land. We are also in agreement with the submission of Shri Anil Divan that by placing complete prohibition on transfer of land subservient to tea estates no purpose sought to be achieved by the Act is advanced and so also such prohibition cannot be sustained. Land forming part of a tea estate including land subservient to a tea plantation have been placed beyond the ken of the Act. Such land is not to be taken in account either for calculating the area of surplus land or for calculating the area of land which a person may retain as falling within the ceiling limit. We fail to understand how a restriction on transfer of such land is going to carry out any purpose of the Act. We are fortified in taking such view by the Constitution Bench decision of this Court in *Bhim Singhji v. Union of India* whereby Sub-section (1) of Section 27 of the Urban Land (Ceiling and Regulation) Act, 1976 was struck down as invalid insofar as it imposed a restriction on transfer of any urban or urbanisable land with a building or a portion only of such building which was within the ceiling area. The provision impugned therein imposed a restriction on transactions by way of sale, mortgage, gift or lease of vacant land or buildings for a period exceeding ten years, or otherwise for a period of ten years from the date of the commencement of the Act even though such vacant land, with or without a building thereon, fell within the ceiling limits. The Constitution Bench held (by majority) that such property will be transferable without the constraints mentioned in Sub-section (1) of Section 27 of the said Act. Their Lordships opined that the right to carry on a business guaranteed under Article 19(1)(g) of the Constitution carried with it the right not to carry on business. It logically followed, as a necessary corollary, that the right to acquire, hold and dispose of property guaranteed to citizens under Article 19(1)(f) carried with it the right not to hold any property. It is difficult to appreciate how a citizen could be compelled to own property against his will though he wanted to alienate it and the land being within the ceiling limits was outside the purview of Section 3 of the Act and that being so the person owning the land was not governed by any of the

provisions of the Act. Reverting back to the case at hand, the learned Counsel for the State of Himachal Pradesh has not been able to satisfy us as to how such a prohibition as is imposed by the impugned amendment in the Rules helps in achieving the object of the Act.

14. We are also of the opinion that a delegated power to legislate by making rules "for carrying out the purposes of the Act" is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.

(emphasis supplied)

8. The Supreme Court has held in *State of Tamil Nadu and Anr. v. P. Krishnamurthy and Ors.* (2006) SCC 517 that any subordinate legislation or part thereof, which does not conform to the object, scheme and provisions of the parent Act under which it is made, is invalid. In this case the court elucidated the grounds on which subordinate legislation can be challenged. It was observed:

15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:

- (a) Lack of legislative competence to make the subordinate legislation.
- (b) Violation of fundamental rights guaranteed under the Constitution of India.
- (c) Violation of any provision of the Constitution of India.
- (d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.
- (e) Repugnancy to the laws of the land, that is, any enactment.
- (f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).

16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity.

(emphasis supplied)

9. The Supreme Court, in this case, has relied upon the following decisions to

elucidate that the power of delegated legislation is limited to the rule making provisions of the statute under which they are framed, is subordinate to the objects of the enabling act and must come within the purview of the rule making power of the authority:

17. In *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India* this Court referred to several grounds on which a subordinate legislation can be challenged as follows: (SCC p. 689, para 75)

"75. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary.

(emphasis supplied)

18. In *Supreme Court Employees' Welfare Assn. v. Union of India* this Court held that the validity of a subordinate legislation is open to question if it is ultra vires the Constitution or the governing Act or repugnant to the general principles of the laws of the land or is so arbitrary or unreasonable that no fair-minded authority could ever have made it. It was further held that the Rules are liable to be declared invalid if they are manifestly unjust or oppressive or outrageous or directed to be unauthorised and/or violative of the general principles of law of the land or so vague that it cannot be predicted with certainty as to what it prohibited or so unreasonable that they cannot be attributed to the power delegated or otherwise disclose bad faith.

19. In *Shri Sitaram Sugar Co. Ltd. v. Union of India* a Constitution Bench of this Court reiterated: (SCC pp. 251-52, para 47)

47. Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterised as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be "reasonably related to the purposes of the enabling legislation". See *Leila Mourning v. Family Publications Service*. If they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires": per Lord Russell of Killowen, C.J. in *Kruse v. Johnson*.

20. In *St. John's Teachers Training Institute v. Regional Director, NCTE* this Court explained the scope and purpose of delegated legislation thus: (SCC p. 331, para 10)

10. A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details. The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of policy. The need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the rule, after coming into force of the Act, is in a better position to adapt the Act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes.

10. In *Mahalakshmi Sugar Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others*, the Supreme Court again observed that the validity of subordinate legislation may be questioned on the following grounds:

51... From these decisions, it may be deduced that validity of subordinate legislation may be questioned on the ground that:

(a) it is ultra vires the Constitution;

(b) it is ultra vires the parent Act;

(c) it is contrary to the statutory provisions other than those contained in the parent Act;

(d) law-making power has been exercised in bad faith;

(e) it is not reasonable; and (f) it goes against legislative policy, and does not fulfil the object and purpose of the enabling Act.

11. The Act in question, as per the preamble, has been enacted for compulsory consolidation of agricultural holdings and for prevention of fragmentation of agricultural holdings. The second object and purpose is for assessment or reservation of land for common purposes of village. A closer scrutiny of the Act would indicate that it provides for mode and manner in which consolidation proceedings are to be initiated, regulated and completed to prevent fragmentation and consolidate the land of the land holders.

12. u/s 4 of the Act, the Chief Commissioner after such enquiry is required to provisionally settle, for any class of land in any notified area, the minimum area

which can be cultivated profitably as a separate land. After provisional settlement, objections from the public are to be invited. After considering the objections u/s 5 of the Act, the Chief Commissioner is required to conduct further enquiry and determine the standard area for each class of land in the notified area. The said section also authorizes the Chief Commissioner to revise the standard area determined after following the prescribed procedure. Thereafter, the standard area is required to be notified under Sections 5 and 6 of the Act. Once notification is made, then in view of Sections 7 and 8 of the Act no person can transfer any fragment of land in respect of which notice has been issued. There is also bar on tenancy rights being created u/s 7 and 8 of the Act. Section 9 deals with penalty in case of violation. This bar/prohibition is for a limited period and subject to conditions.

13. Section 10 of the Act deals with valuation of fragments. After hearing the applicant and owners of the contiguous survey numbers of recognised subdivisions, the Collector is required to determine the market price or value the land of the applicant. Section 11 permits transfer of a fragment between land owners of contiguous survey numbers. Section 12 of the Act is not relevant as it deals with the cases where a decree of partition has been passed. Section 13 stipulates that notwithstanding anything contained in any law for the time being in force, no land, which is subject matter of notification, shall be acquired or sold at any sale held under the orders of any court so as to leave a fragment and if any land is acquired by the Chief Commissioner or any local authority, it shall be offered for sale to the owners of contiguous survey numbers.

14. Section 14 of the Act is relevant and reads as under:

14. Government may of its own accord or on application declare its intention to make scheme for consolidation of holdings (1) With the object of consolidating holdings in any estate or group of estates or any part thereof for purpose of better cultivation of lands therein, the Chief Commissioner may of its own motion or on application made in this behalf declare by notification and by publication in the prescribed manner in the estate or estates concerned its intention to make a scheme for the consolidation of holdings in such estate or estates or part thereof as may be specified. (2) On such publication in the estate concerned the Chief Commissioner may appoint a Consolidation Officer who shall after obtaining in the prescribed manner the advice of the landowners of the estate or estates concerned, prepare a scheme for the consolidation of holdings in such estate or estates or part thereof as the case may be.

15. The said section clearly brings about the object of consolidation proceedings that is to ensure better cultivation by consolidating the fragmentations. The Chief Commissioner may appoint a Consolidation Officer, who shall take advice of the landowners of the estate or estates in the prescribed manner and prepare a scheme for consolidation. The enactment is not to control or limit rights of land holders in the land after consolidation proceedings are complete.

16. Section 15 of the Act provides for compensation to an owner who is allotted a holding of less market value than his original holding and for recovery of compensation from any owner, who is allotted a holding of greater market value than his original holding. This section incorporates the principle of equivalence. Value of the two holdings as determined both pre and post consolidation should be the same. Section 16 of the Act stipulates that the scheme prepared by the Consolidation Officer may provide for the distribution of land held under occupancy tenure between the tenants holding a right of occupancy. We are not concerned with Section 16 as such. Section 17 of the Act stipulates that Consolidation Officer while preparing a scheme for consolidation can take into consideration necessary steps to amalgamate any road, street, lane, path, channel, drain, tank, pasture or other land reserved for common purposes. However, a member of the public or any person having interest or right in the land, which becomes part of the scheme, can file objections to the proposal. The objections filed have to be considered and if necessary amendment can be made in the scheme. However, no compensation is payable on account of extinction or diminution of the right as a result of amalgamation of public highway, road, street, lane, path, channel, drain, tank, pasture or other land reserved for common purpose. Section 18 of the Act deals with the land reserved for common purposes. Section 19 of the Act provides that the scheme is required to be published and objections shall be invited from persons, who are likely to be affected by the said scheme. Objections have to be considered by the Settlement Officer (Consolidation). The Chief Commissioner, u/s 20 of the Act, is required to appoint Settlement Officer(s) (Consolidation). The Settlement Officer (Consolidation), after considering the objections, if any filed, is required to confirm the scheme. Sub-section (3) to Section 20 stipulates that objections to the draft scheme, either oral or in writing, have to be examined by the Settlement Officer (Consolidation) and the scheme can either be confirmed with or without modification or the Settlement Officer (Consolidation) can refuse to confirm the scheme itself. If the scheme is refused/rejected, the Settlement Officer (Consolidation) shall return the draft scheme to the Consolidation Officer for reconsideration and resubmission.

17. Section 21 of the Act is relevant and reads as follows:

21. (1) The Consolidation Officer shall after obtaining the advice of the landowners of the estate or estates concerned, carry out repartition in accordance with the scheme of consolidation of holdings confirmed u/s 20, and the boundaries of the holdings as demarcated shall be shown on the shajra which shall be published in the prescribed manner in the estate or estates concerned.

(2) Any person aggrieved by the repartition may file a written objection within fifteen days of the publication before the Consolidation Officer who shall after hearing the objector pass such orders as he considers proper confirming or modifying the repartition.

(3) Any person aggrieved by the order of the Consolidation Officer under Sub-

section (2) may within one month of that order file an appeal before the Settlement Officer (Consolidation) who shall after hearing the Appellant pass such order as he considers proper.

(4) Any person aggrieved by the order of the Settlement Officer (Consolidation) under Sub-section (3), may within sixty days of that order appeal to the Chief Commissioner. The order of the Chief Commissioner on such appeal, and subject only to such order, the order of the Settlement Officer (Consolidation) under Sub-section (2) was not appealed against, such order of the Consolidation Officer, shall be final and shall not be liable to be called in question in any court.

(5) The appellate authority may entertain an appeal under Sub-section (3) or Sub-section (4) after the expiry of the period of limitation prescribed therein if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

18. The aforesaid section stipulates that Consolidation Officer after obtaining advice of the landowners of the estate or estates concerned, shall carry out repartition in accordance with the scheme of consolidation of holdings and confirmed u/s 20 of the Act. The boundaries of the holdings demarcated shall be shown on the sharja which shall be published in prescribed manner. Sub-section (2) further permits any person aggrieved to file objections within 15 days. Other Sub-sections give right to a person to file an appeal before the Settlement Officer (Consolidation) and further appeal before the Chief Commissioner. If the scheme is implemented and repartition is undertaken, a fresh record-of-rights is made u/s 22 of the Act.

19. Manner/method of allocation of land to the landowners in the new holdings are prescribed by Section 23 of the Act, which stipulates that if all the owners and tenants affected by the partition agree to enter into possession of the holdings, the Consolidation Officer may allow them to enter into such possession forthwith or from such date as may be specified by him. Sub-section (2) to Section 23 stipulates that in case all the owners and tenants do not agree to enter into possession, the Consolidation Officer has to follow the prescribed procedure for transfer of possession in the new holdings.

20. Section 24 of the Act provides that as soon as the persons entitled to possession of the holdings enter into possession, the scheme shall be deemed to have been implemented. The scheme is to remain undisturbed until a fresh scheme is brought into force or a change is ordered in pursuance of provisions of Sub-sections (2), (3), (4) of Section 21 or an order is passed u/s 36 or Section 42 of the Act.

21. Section 25 of the Act is the most relevant and reads:

25. Rights of landowners and tenants after consolidation same as before-A landowner or a tenant shall subject to the provisions of Section 16 have the same right in the land allotted to him in pursuance of the scheme of

consolidation as he had in his original holding or tenancy as the case may be.

22. It is clear from the reading of the Section 25 that a landowner or tenant shall, subject to the provisions of Section 16, which deals with occupancy tenure, have the same right in the land allotted in pursuance to the scheme of consolidation as he had in his original holding or tenancy as the case may be. Thus, no change in the right in the land allotted post consolidation can take place. Section 25 places an embargo and prohibition that the scheme or consolidation proceeding cannot result in changing the rights of a Bhumidar/ Assami in the new holding. Pre and post partition/consolidation rights, as per the said section shall remain the same. The said Section prohibits imposition of fresh or new negative covenants/conditions for the first time, in the consolidation scheme. It is stipulated that the consolidation scheme per se cannot affect/impose new restriction or conditions on the rights in a particular type of land held by the landowner or tenant.

23. Section 25-A of the Act deals with evacuee property. We are not concerned with the said section. Section 26 of the Act also fortifies that the Act seeks to preserve rights in the new holdings as they existed in the land pre consolidation. The consolidation should not result in change in the rights. Section 26 of the Act reads as under:

26. Encumbrances of Landowners and Tenants: (1) If the holding of a land-owner or the tenancy of a tenant brought under the scheme of consolidation is burdened with any lease mortgage or other encumbrance, such lease, mortgage or other encumbrance shall be transferred and attached to the holding or tenancy allotted under the scheme or to such part of it as the Consolidation Officer, subject to any rules that may be made u/s 46, may have determined in preparing the scheme; and thereupon the lessee, mortgagees or other encumbrancer, as the case may be, shall cease to have any right in or against the land from which the lease, mortgage or other encumbrance has been transferred.

(2) If the holding or tenancy to which a lease, mortgage, or other encumbrance is transferred under Sub-section (1) is of less market value than the original holding from which it is transferred, the lessee, mortgagee or other encumbrancer, as the case may be, shall subject to the provisions of Section 34 be entitled to the payment of such compensation by the owner of the holding, or as the case may be, the tenant as the Consolidation Officer may determine.

(3) Notwithstanding anything contained in Section 23, the Consolidation Officer shall if necessary put any lessee or any mortgagee or other encumbrancer entitled to possession, in possession of the holding or tenancy or part of the holding or tenancy to which his lease, mortgage or other encumbrance has been transferred under Sub-section (1).

24. Section 26 stipulates that encumbrances upon holdings/tenancy being brought under the scheme of consolidation shall be transferred and attached to

the holding/tenancy allotted under the scheme; in case of the holding/tenancy being of less market value than the original, the encumbrancer is entitled to such compensation by the owner/tenant as the Consolidation Officer may determine. 25. We are not concerned with Sections 27 to 28 of the Act. Section 29 of the Act deals with recovery of compensation, payable under the Act, which is recoverable as arrears of land revenue.

26. Section 30 of the Act is again relevant and reads as under:

30. After a notification under Sub-section (1) of Section 14 has issued and during the pendency of the consolidation proceedings no landowner or tenant having a right of occupancy upon whom the scheme will be binding shall have power without the sanction of the Consolidation Officer to transfer or otherwise deal with any portion of his original holding or other tenancy so as to affect the rights of any other land-owner or tenant having a right of occupancy therein under the scheme of consolidation.

27. The said section stipulates that after a notification is issued u/s 14(1) of the Act and during pendency of the consolidation proceedings, no land owner or tenant having occupancy right, can transfer or deal with its original holding or other tenancy except with the sanction of the Consolidation Officer. Thus, the right to transfer during pendency of consolidation proceedings is not absolutely prohibited but is subject to sanction of the Consolidation Officer. There is no bar/prohibition after a consolidation scheme is implemented. In *Rajinder Singh and Others Vs. Financial Commissioner and Others*, a single Judge of this Court has opined:

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 (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

(emphasis supplied)

28. We are not concerned with Section 30A of the Act. Section 31 has been omitted. Section 32 of the Act deals with partition proceedings and their effect during the pendency of the consolidation proceedings. It stipulates that if such proceedings were commenced before the issue of the notification they shall remain in abeyance, during the pendency of the consolidation proceedings. Section 33 of the Act is again not relevant. Section 34 of the Act deals with apportionment of compensation or the net value in case of a dispute. Thus, the principle/doctrine of equivalence is applied and the object is to ensure that pre

and post consolidation holdings should be of equal value. We are not concerned with Sections 35 to 45 of the Act.

29. Section 46 deals with rule making power of the Chief Commissioner. The said provision reads as under:

46. (1) The Chief Commissioner may by notification make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the 1[State] Government may make rules providing for -

(a) the manner of publication under Sub-section (2) of Section 4, Sub-section (1) of Section 14 3[x x x] Section 19, Sub-section (4) of Section 20 and Sub-section (1) of Section 21;

(b) the manner of giving public notice under Sub-section (3) of Section 5;

(c) the manner of giving notice under Sub-section (2) of Section 6;

(d) the procedure to be followed in the preparation of the scheme under Sub-section (2) of Section 14;

(e) the manner in which the area is to be reserved u/s 18 and the manner in which it is to be dealt with and also the manner in which the village abadi is to be given to proprietors and nonproprietors (including Scheduled castes, Sikh backward classes, artisans and labourers) on payment of compensation or otherwise;

(f) the manner in which compensation recoverable from any person under Sub-section (3) of Section 23 shall be deposited by him;

4[ff] the fees to be paid in respect of appeals and applications made under this Act, the documents which shall accompany such appeals and applications and the period within which applications shall be filed].

(g) the guidance of the Consolidation Officer in respect of the transfer of a lease, mortgage or other encumbrance u/s 26;

(h) the manner in which the area, and assessment (including water rate ,if any) of each reconstituted holding and tenancy shall be determined;

(i) the appointment of guardians ad litem for minors;

(j) generally for the guidance of the Consolidation Officer and other officers and persons in all proceedings under this Act; and

(k) any other matter which is to be or may be prescribed. (3) All rules made under this section shall be subject to the condition of previous publication.

30. The said section stipulates that rules can be made for carrying out the purpose of this Act. Sub-section (2) to Section 46 provides that the Chief

Commissioner in particular and without prejudice to the generality of the foregoing power can frame rules on various aspects. Under the said section the Chief Commissioner can frame the rules about the manner in which the area and assessment of each reconstituted holding and tenancy shall be determined.

31. We may now refer to some of the relevant rules. Rule 6 (j) (i), (ii) & (iii) of the Rules read as under:

6. Statement of principles etc. of the Scheme - In preparation of Scheme of consolidation the Consolidation Officer shall have regard to the following principles:

(i) Bhumidar whose land has been included in the extension of the village abadi may be given agricultural land worth two times the value of land surrendered.

(ii) Bhumidar who has applied for allotment of plot in the extension of the village abadi shall surrender in exchange during consolidation two times the size of agricultural land subject to the size of plot and his eligibility.

(iii) The maximum size of a residential plot to be provided in the extension of the village abadi to a bonafide resident of the village shall be two bighas and eight biswas out of which the "bhumidar" can take industrial plot upto maximum size of six biswas. Allotment of such plot shall be done through draw of lots.

32. Rule 6(j) (i) & (ii) stipulate that a Bhumidar whose land is included in the extension of the village abadi shall be given agricultural land worth two times the value of a land surrendered and a bhumidar who has applied for allotment of a plot in the extension of the village abadi shall surrender two times the size of agricultural land subject to the size of the plot and eligibility. This also shows that the principle of equivalence applies. As noticed above, the principle of equivalence finds recognition and acceptance in Section 25 and other provisions of the main enactment. Rule 6(j)(iii) stipulates that maximum size of a residential plot in the extended village abadi shall be two bighas and eight biswas. However, a Bhumidar can take an industrial plot upto a maximum size of six biswas out of the residential plot. Thus to get an industrial plot, the bhumidar has to surrender and give up his right in the residential plot equal to the area of the industrial plot.

33. Rule 6(j)(v) is contrary to Section 25 of the main enactment and is beyond the scope and ambit of the main enactment. Section 25 of the Act protects pre/post consolidation interest or rights in the land. The principle of equivalence is the underlying principle though the type of holding may undergo a change in the consolidation proceeding i.e. a holder may acquire right in different types of land in village. A new restriction or dilution of rights is not permitted in view of the express stipulation in Section 25. The enactment in Section 25 clearly provides that the rights, after the new land is allotted, shall not undergo any change and will remain the same. Thus the main enactment prohibits any change in rights in the land as a result of the consolidation proceedings. However, under Rule 6 (j)

(v), the nature of the right in the industrial plot becomes non transferable and non amalgamable. Thus a new restriction is imposed. But Section 25 prohibits new restrictions in the scheme of consolidation though depending on the type of land opted for allotment, the restrictions/conditions under the general law depending upon the type of holding are protected by Section 25 of the Act. Thus, Rule 6(j)(v) is in direct conflict and contrary to Section 25 of the Act, the main enactment. Rule 6 (j)(v), which prohibits transfer or amalgamation of the allotted industrial land, therefore and as sequitur, cannot be sustained. The aforesaid Rule is clearly in conflict and contrary to Section 25 of the Act.

34. The main enactment does not envisage a complete bar or prohibition on transfer of any type of land in absolute terms. It is not pleaded and no provision in any enactment has been pointed out, under which industrial plots or land used for industrial purpose are not transferable or cannot be amalgamated.

35. The main enactment is not concerned with the transfer of land after the scheme is implemented. During the implementation of scheme for consolidation after the notification is issued, certain restrictions have been put on transfer or partition, but these continue during the term of the scheme and till the scheme for consolidation is implemented. The main enactment does not deal with post consolidation rights. It is clear from the aforesaid provisions that the statutory enactment is to provide for mode and manner of consolidation. The enactment is applicable, when the notification is issued, remains in force till repartition is affected. The Rule has introduced a new/fresh restriction in the post consolidation holding, which is beyond the scope, sphere and concern of the main enactment. We are not concerned with whether any such restriction on transfer could have been framed under the Delhi Land Reforms Act, 1954 (Reforms Act, for short) or the rules framed therein. Presently as noticed below there is no absolute/complete restriction.

36. Rule 6 (j)(v) cannot be sustained as it has no nexus with the object, purpose and scope of the enactment itself. By the very nature, every person affected by the scheme for consolidation or repartition should have a stake and rights in the new holding. The scheme of consolidation is enforced with their consent and will. This ensures democratic functioning at the grass root level.

37. Learned Counsel for the Respondent No. 2 has submitted that Rule 6(j)(v) has to be read along with the Reforms Act to understand the purpose of the provision of Rule 6 (j)(v). Although we are not directly concerned with the Reforms Act or the rules framed under the said Act, however, we have examined the said contention to ascertain whether there is any absolute bar/prohibition on transfer of industrial land/plot. In his written submissions, the learned Counsel for the Respondent No. 2 has referred to how and in what manner the said Reforms Act has abolished the Zamindari system/ownership rights and has given special rights to the actual cultivators in the form of "Bhumidari Rights" and the other tenure holders termed as Asami. It is submitted that the ownership rights as understood stand abolished and new rights as Bhumidar, Asami and

community land rights in Gaon Sabha have been created.

38. Neither does the Reforms Act, nor do the Rules prohibit or impose an absolute bar transfer of land. Section 31 of the Reforms Act stipulates that the interest of the Bhumidar shall be transferable subject to the conditions stipulated. Section 32 states that Asami can also transfer the land when expressly permitted under the Act. Section 33 stipulates restrictions when and in what circumstances a Bhumidar cannot transfer by way of sale or gift or otherwise any land except to religious or charitable institution or person in charge of Bhoodan movement when the transferor is left with less than eight standard areas in the Union Territory of Delhi. The proviso, however, states that the Chief Commissioner may exempt a person from operation of the Section if the land covered by the said transfer does not exceed 1 acre and is used or intended to be used for the purposes other than those mentioned in Section 3(13). Section 33 of the Act reads as under:

33. Restrictions on the transfers by a Bhumidhar; (1)-No Bhumidhar shall have the right to transfer by sale or gift or otherwise any land to any person, other than a religious or charitable institution or any person in charge of any such Bhoodan movement, as the Chief Commissioner may, by notification in the Official Gazette, specify, where as a result of the transfer, the transferor shall be left with less than eight standard acres in the Union Territory of Delhi: Provided that the Chief Commissioner may exempt from the operation of this section, the transfer of any land made before the 1st day of December, 1958, if the land covered by such transfer does not exceed one acre in area and is used or intended to be used for purposes other than those mentioned in Clause (13) of Section 3. (2) (Note: Inserted by Act 38 of 1965) Nothing contained in Sub-section (1) shall preclude the transfer of land by a Bhumidhar who holds less than eight standard acres of land, if such transfer is of the entire land held by him; Provided that such Bhumidhar may transfer a part of such land to any religious or charitable institution or other person referred to in Sub-section (1) Explanation - For the purposes of this section, a religious or charitable institution shall mean an institution established for a religious purpose or a charitable purpose, as the case may be.

39. The object and purpose of Section 33 is not to prevent transfer of interest by a Bhumidar but to ensure that the Bhumidar must retain 8 standard areas of land as the said area is regarded as an economic holding. Section 33 does not prevent a Bhumidar from selling his entire holding whereby he reduces his holding to NIL. There is no provision under Reforms Act and/or Rules which completely bars or prohibits (without any exception) transfer of land. Section 35 of the Reforms Act prohibits creation of a lease except in case of a disabled person stipulated in Section 36. The said section operates in a different field and has a distinct purpose. Section 40 of the Reforms Act permits exchange of land by a Bhumidar subject to provisions of Section 33. Bhumidar has right to transfer his holding under the Reforms Act, but in case there is violation of the provisions

of the Reforms Act, the revenue authorities can act and take away the land from the transferee and vest it in the Gaon Sabha after following the due process of law. The said contention of the Respondent instead of supporting the Respondent, supports the case of the Petitioner.

40. Industrial purpose/use is not alien to the Reforms Act. Section 23 and 24 of the Reforms Act read:

23. Use of holding for industrial purposes - (1) A Bhumidhar or Asami shall not be entitled to use his holding or part thereof for industrial purposes, other than those immediately connected with any of the purposes referred to in Section 22, unless the land lies within the belt declared for the purpose by the Chief Commissioner by a notification in the official Gazette: Provided that the Chief Commissioner may, on application presented to the Deputy Commissioner in the prescribed manner, sanction the use of any holding or part thereof by a Bhumidhar for industrial purposes even though it does not lie within such a belt.

(2) Where permission for industrial purposes is accorded, the provisions of this Chapter relating to devolution shall cease to apply to the Bhumidhar with respect to such land and he shall thereupon be governed in the matter of devolution of the land by personal law to which he is subject. Section 24. Reversion of Agriculture - (1) Whenever any land held by a Bhumidhar which is used for industrial purposes has become land used for purposes connected with agriculture, horticulture or animal husbandry, which includes pisciculture and poultry farming, the Deputy Commissioner on being so satisfied, may with the sanction of the Chief Commissioner make a declaration to that effect and thereupon the Bhumidhar shall, as respects the land, be subject to the provisions relating to devolution in this chapter.

(2) Upon the grant of the declaration under Sub-section (1) in respect of any land any person other than the Bhumidhar in possession of the land shall -

(a) If he holds it under any contract or lease which is inconsistent with any of the provisions of this chapter, be deemed to be an occupant liable to ejectment u/s 84.

(b) If he holds it under any contract or lease which is not inconsistent with any of the provisions of this chapter, be entitled to the rights in the land determined in accordance with the provisions thereof.

(3) Any contract or lease referred to in Sub-clause (a) of Sub-section (2) which is inconsistent with the provisions of this chapter shall, to the extent of the inconsistency, become void with effect from the date of declaration: Provided that any mortgage with possession existing on any such land shall, to the extent of the amount due and secured on such land, be deemed to have been substituted by a simple mortgage carrying such rate of interest as may be prescribed.

41. u/s 23 of the Reforms Act, a Bhumidar or Asami is not permitted to use his

holding or any part thereof for industrial purposes, other than those immediately connected and referred to in Section 22, unless the land lies within the belt declared to be industrial by the Chief Commissioner by a notification in the official Gazette. The Chief Commissioner can, on an application presented to the Deputy Commissioner, sanction use of a holding or part thereof by a Bhumidar for industrial purposes even though it does not lie within such a belt. When permission is accorded for industrial purposes, the provisions relating to devolution cease to apply to the Bhumidar in respect of such land and the land thereupon is governed in the matter of devolution of the land in question by the personal law to which the bhumidar/asami is subject. u/s 24 of the Act, the Chief Commissioner can issue a sanction after Deputy Commissioner is satisfied and has made a declaration that the Bhumidar, who is carrying on industrial activity, shall for the purpose of devolution be governed by the provisions of the Reforms Act. Thus, the Reforms Act not only recognizes the concept of industrial use but it also does not place any absolute bar on transfer of land. The said provisions do not bar/prohibit transfer of land, because the land can be or is used for industrial purpose.

42. Section 23 permits a Bhumidar or Asami to use his holding or part thereof for industrial purposes referred to in Section 22. The land can be also used for industrial purposes if the land is in a belt declared for the said purpose by the Chief Commissioner by a notification. The Chief Commissioner is authorised to sanction use of holding or part thereof for industrial purpose even though the said land does not lie within the industrial belt. In the latter two cases, industrial purpose is not confined to the purpose specified in Section 22 of the Reforms Act. Thus, there is no absolute bar or prohibition on transfer of land by a Bhumidar or an Asami under the Reforms Act, but a Bhumidar who has acquired an industrial plot pursuant to the scheme of consolidation faces an absolute prohibition or bar from transfer, sale or amalgamation as per the impugned Rule. A Bhumidar can use an industrial plot only as per the provisions of the Reforms Act and not contrary to the same. Land which can be used or is used for industrial purpose under the Reforms Act is transferable but as per the impugned Rule an industrial plot allotted in the consolidation proceedings is not transferable and cannot be amalgamated with any land. This contradiction in the Reforms Act and the impugned rule has made the rule vulnerable and contrary to the Reforms Act. As noticed above the Rule is also beyond the legislative mandate of the principal enactment.

43. In view of the aforesaid discussion, the present writ petition is allowed and Rule 6(j)(v) of the Rules is struck down as being contrary and repugnant to the provisions of the principal enactment as well as beyond the nature, object and scheme and does not conform to the principal enactment. It is clarified that the restrictions and conditions imposed by the Reforms Act on transfer, use of land etc. do not get affected and shall continue to apply. No costs.