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(1972) 12 DEL CK 0019

In the Delhi High Court

Case No : Letter Patent Appeal No. 271 of 1971

Suraj Mal and Another APPELLANT

Vs

Manohar Lal RESPONDENT

Date of Decision : 13-12-1972

Acts Referred:

Citation : (1973) ILR Delhi 1016

Hon'ble Judges : S.N. Shankar, J;Prakash Narain, J

Bench : Division Bench

Advocate : Lila Dhar and S.S. Dalal, for the Appellant;

Judgement

Prakash Narain, J.

(1) This judgment will dispose of L.P. A. No. 271 of 1972, R.S. A. 92-D of 1966 and R.S.A. 93-D of 1961 is a common question of law arises in all the three cases. In order, however, to appreciate the question of law it is first necessary to briefly notice the facts of each case.

(2) L.P. A. 27 of 1972 comes before us on a certificate given by a learned Single Judge of this court under Clause X of the Letters Patent while accepting R.S.A.264-D of 1962. The second appeal in this case was referred against concurrent judgments of the trial Court and the First Appellate Court dismissing the plaintiff''s suit for declaration that the order dated 8th April, 1960 of the Chief Commissioner allotting land in village Bhorgarh, Delhi worth Rs. 7.09 out of the plaintiff''s holding allocated to him in consolidation proceedings in village Bhorgarh was ultra vires, illegal, without jurisdiction, void and not binding on the plaintiff and also for permanent injunction against the defendants in the suit, who were previously non-occupancy tenants under the plaintiff, restraining them from taking possession of any land of the plaintiff in pursuance of the said order of the Chief Commissioner. Consolidation proceedings under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, herein after referred to as the Consolidation Act, were ordered in 1952. A scheme of

consolidation of holdings was prepared but by an order passed in 1954 the Chief Commissioner ordered fresh revaluation of the land in the village. Pending revaluation, it seems, repartition had started in June, 1954. The repartition proposals themselves were published in December, 1954, and were finalised without there being any objections from the defendants. After the new holdings were allotted, it seems, the defendants first moved the Consolidation officer for getting possession of land in lieu of their previous tenancies but the application was rejected in 1957. An appeal to the Settlement Officer was also dismissed. On a further appeal/revision to the Chief Commissioner the impugned order dated 8th April, 1960, was passed. The plaintiff in this case was Manohar Lal while the defendant-tenants were Suraj Mal and Khubi.

(3) In suits out of which R.S.A.92-D of 1966 and R.S.A. 93-D of 1966 arose the plaintiff land owner was Chandgi while the tenants were respectively Jag Ram and Amar Siagh. Both these suits were disposed of by the trial Court by a common judgment. The village in which the consolidation proceedings were ordered was Bawana. In this village consolidation proceeding- had started in 1952 but on 6th August, 1954 the Chief Commissioner had set aside the original scheme of partition and fresh scheme was ?ordered to be prepared. On 4th February, 1955, the scheme was drawn up and announced by the Consolidation officer. On 28th May, 1955, the scheme was confirmed by the Settlement offices'' and on 27th June. 1955, the repartition, proposals were announced. Thereafter repartition was carried out and it was alleged by the plaintiff that the scheme came into force on 29th July, 1955. The defendant-tenants did not feature either in the draft scheme or the final scheme or even in the repartition proposals nor had they filed any objections about their names not being found therein. Jag Ram moved an application on 17th December, 1959 to the consolidation officer for being put into possession of land in lieu of his former tenancy. On 28th April, 1960 the Consolidation officer accepted this application by an order purported to have been passed u/s 26 of the Consolidation Act, (Exhibit P.13). Amar Singhmoveda similar application to the Consolidation officer on 23rd March, 1959 and his application was also similarly accepted by an order of the Consolidate corporation officer dated 28th April, 1960 (Exhibit P. 12). It seems that both Jag Ram and Amar Singh had first approached the Revenue Assistant, Delhi, u/s 18(2) of the Delhi land Reforms Act but the Revenue Assistant had passed an order to the effect that inasmuch as consolidation was taking place in this village the applicants should approach the Consolidation officer. Appeals filed to the Additional Collector from the order of the Revenue Assistant had also been dismissed. The question of law that arises thus in all the three cases is whether either the Chief Commissioner, Delhi (now the Lt. Governor) or the Consolidation officer acted within jurisdiction in ordering land being given to the non-occupancy tenants at the time when the respective orders were passed in favor of the three non-occupancy tenants.

(4) At this stage it will be advantageous first to read certain relevant provisions of the Consolidation Act and the East Punjab Holdings (Consolidation and

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Prevention of Fragmentation)Rules, 1949, hereinafter called the Consolidation Rules, as applicable in Delhi and also to read some of the relevant provisions of the Punjab Land Revenue Act, 1887.

(5) It will also be necessary to appreciate the scheme of the Consolidation Act and the Consolidation Rules so as to understand the respective rights and obligations of the parties in consolidation proceeding. The relevant provisions of the Consolidation Act are Section 2(a), (b), (f), (h) and (k), Sections 14,15,16,17,(4), 19,20,21,22,23,24, 25,26,30,36,41,42, and 44. These read as under :-

"2.In this Act, unless there is anything repugnant in the subject or context: (a)"''Consolidation Officer means an officer appointed as such u/s 14 by the Chief Commissioner and includes any person authorised by the Chief Commissioner to perform all or any of the functions of the Consolidation officer under this Act ; (b) "Consolidation of Holdings" means the amalgamation and the redistribution of all or any of the lands in an estate or sub-division plots in the holdings ; (f) "owner" means in the case of unalienated land the lawful occupant and when such land has been mortgaged, owner means the mortgagor; in the case alienated land, owner means the superior holder: (h) "Settlement officer (Consolidation)" means an officer appointed as such u/s 20 by the Chief Commissioner and includes any person authorised by the Chief Commissioner to perform all or any of the functions of the Settlement Officer (Consolidation) under this Act ; (k) words and expression used in this Act but not defined, have the meanings assigned to them or to their equivalents in the Punjab Land Revenue Act. 1887 or the U.P. Land Revenue Act, 1901 as the case may be. 14(1). With the object of consolidating holdings in any estate or group of estates or any part thereof for the 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 scheme prepared by the Consolidation officer shall provide for the payment of compensation to any owner who is allotted a holding of less market value than that of his original holding and for the recovery of compensation from any owner who is allotted a holding of greater market value than that of his original holding. 16(1). 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 and his landlord in such proportion as may be agreed upon between the parties. (2) When the scheme is confirmed u/s 20 the land so allotted to the occupancy tenant ''and the landlord shall, notwithstanding anything to the contrary contained in the Tenancy Act in force in the estate or Mahal concerned or in any

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other law for the time being in force, be held by each of them respectively in full right of ownership, and the right of occupancy in the land allotted to the landlord shall be deemed to be extinguished. (4) The Consolidation Officer shall, after considering the objections if any, made to the proposals submit it with such amendments, if any, as he may consider necessary, to the Settlement officer (Consolidation).. together with the objections received, his recommendations there on and a statement of the amounts of compensation, if any. which in his opinion are payable, and of the persons by whom and the persons to whom such recompensation is payable. The decision of the Settlement officer (Consolidation) on the proposal and regarding the amount of compensation and the persons by whom such compensation, if any, is payable, shall, be final. 19(1). When the draft scheme of consolidation is ready for publication the Consolidation officer shall publish it in the prescribed manner in the estate or estates concerned. Any person likely to be affected by such scheme, shall, within thirty days of the date of such publication, communicate in writing to the Consolidation officer any objections relating to the scheme. The Consolidation officer shall, after considering the objections, if any, received, submit the scheme with such amendments as he considers to be necessary, together with his remarks on the objections, to the Settlement Officer (Consolidation). 20(1). The Chief Commissioner may by notification appoint one or more persons to be Settlement Officers (Consolidation) and, by like notification, specify the area in. which each such Officer shall have jurisdiction. The Consolidation Officers in the area under the jurisdiction on of the Settlement Officer (Consolidation) shall be subordinate to him subject to any conditions which may be prescribed. (2) If no objections are received to the draft sclieme published under sub-section (1) of Section 19 and also if no written or oral objections to the draft scheme are received under sub-section (3) by the Settlement Officer (Consolidation), he shall confirm the scheme. (3) If any objections are received to the draft scheme published under sub-section (1) of Section 19 or if any written or oral objections are received by the Settlement Officer (Consolidation) before the confirmation of the draft scheme by him, the Settlement Officer (Consolidation) may after taking the objections into consideration together with the remarks thereon of the Consolidation Officer and also after considering the written or oral objections, either confirm the scheme with or without modifications, or refuse to Confirm it. In case of such refusal, the Settlement Officer (Consolidation) shall return the draft scheme with such direction as may be necessary to the Consolidation Officer for reconsideration and resubmission. (4) Upon the confirmation of the scheme under sub-section (2) or (3) the scheme as confirmed shall be published in the prescribed manner in the estate or estates concerned. 21(1). The Consolidation Officer shall after obtaining the advice of the land owners of the estate or estates concerned, carry out repartition in accordance with the scheme of consolidation of holding confirmed u/s 10, and the boundaries of the holdings as demarcated shall be shown on the ''Shajra'' which shall be published in the prescribed mantter in the estate or estates concerned. (2) Any person aggrieved by the repartition may file a written objection within fifteen days of the

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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 bearing 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 subsection (3) or, if the order of the Consolidation Officer under subsection (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 subsection (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 filling the appeal in time. 22. (1) The Consolidation officer shall cause to be prepared a new record-of-rights in accordance with the provisions contained in chapter Iv of the Punjab Land Revenue Act, 1887 or the U.P. land Revenue Act, 1901 as the case may be in so far as these provisions may be applicable, for the area under consolidation, giving effect to the repartition and orders in respect thereof made under the preceding section. (2) Such record-of-rights shall be deemed to have been prepared u/s 32 of the Punjab Land Revenue Act, 1887 or Section 48 of the U.P. Land Revenue Act, 1901 as the case may be. 23. (1) If all the owners and tenants affected by the repartition as carried out under sub-section (1) of Section 21 agree to enter into possession of the holdings allotted to them there under, the Consolidation Officer may allow them to enter into such possession forthwith or from such date as may be specified by him. (2) If all the owners and tenants as aforesaid do not agree to enter into possession under sub-section (1), they shall be entitled to possession of the holdings and tenancies allotted to them from such date as may be determined by the Consolidation Officer and published in the prescribed manner in the estate or estates concerned; and the Consolidation Officer shall, if necessary, put them in physical possession of the holding to which they are so entitled, including standing crops, if any and for doing so may exercise the powers of a Revenue Officer under the Delhi Land Revenue Act, 1954. or the U.P. Land Revenue Act, 1901, as in force in the Union Territory of Delhi, as the case may be. (3) If there are standing crops on any holding of which possession has been given under sub-section (2), the Consolidation Officer shall determine in the manner provided under this Act the compensation payable in respect of such crops by the person put in possession, who shall, within six months of the date of possession, pay Kuch compensation to the person or persons from whom possession was transferred, and in case of default such compensation shall be recoverable from him as an arrear of land revenue. (4) If any person from whom compensation is recoverable under the scheme fails within 15 days of the date referred to in sub-section {2) to deposit such compensation in the prescribed

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manner, it shall be recoverable from him as an arrear of land revenue and in such case the amount realised after deducting the expense, shall be paid to any person having the interest in the holding, 24. (1) As soon as the persons entitled to possession of holdings under this Act have entered into possession of the holdings, respectively allotted to them the scheme shall be deemed to have come into force and the possession of the allottees affected by the scheme of consolidation or, as the case may be, by repartition, shall 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 passed u/s 36 or 42 of this Act. (2) A Consolidation Officer shall be competent to exercise all or any of the powers of a Revenue Officer under the Delhi Land Revenue Act, 1954, or the U.P. Land Revenue Act, 1901, as in force in the Union Territory of Delhi, as the case may be, for purposes of compliance with the provisions of sub-section (1). 25. 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 1025 A of the scheme of consolidation as he had in his "original holding or tenancy as the case may be. 26. (1) If the holding of a landowner 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, mortgagee 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). 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 landowner or tenant having a right of occupancy therein under the scheme of consolidation. 36. A scheme for the consolidation of holdings confirmed under this Act, may, at any time, be varied or revoked by the authority which confirms it subject to any order of the Chief Commissioner that may be made in. relation thereto and a subsequent scheme may be prepared, published and confirmed in accordance

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with the provisions of this Act. 41. (1) The Chief Commissioner may for the administration of this Act, appoint such persons as it thinks fit, and may by notification delegate any of its powers or functions under this Act to any of its officers either by name or designation. (2) A Consolidation Officer or a Settlement Officer (Consolidation) may, with the sanction of the Chief Commissioner delegate any of its powers or functions under this Act to any person in the service of the Chief Commissioner. 42. The Chief Commissioner may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under this Act call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit: Provided that no order, scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard except in cases where the Chief Commissioner satisfied that the proceedings have been vitiated by unlawful consideration. 44. No civil wait shall entertain any suit instituted or application made, to obtain a decision or order in respect of any matter which the Chief Commissioner or any officer is. by this Act, empowered to determine ,decide or dispose of."

(6) The relevant rules of the Consolidation Rules of 1949 in force at that time are Rules 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, and 15. These read as under :-

"3.Any matter required to be published, or of which public notice is to be given, under the Act, shall be published by exhibiting copies thereof in the estate or estates concerned in Urdu, Hindi or Gurmukhi as may be deemed proper, and shall also so far as possible be announced in such estate or estates by beat of drum. 4. After the notification and publication under sub-section (1) of section 14, the Consolidation Officer shall visit each of the estate concerned after giving reasonable notice of his visit to the landowner A thereof and shall in consultation either with the village panchayat or where no village panchayat exists with a village committee specially chosen from among the landowners for this purpose by him, put up a scheme for the consolidation of holdings. 5. Every such scheme of consolidation shall contain the following particulars:- a statement of classification of land for the purpose of consolidation and the exchange ratio for conversion of one class into another; a statement of valuation of lands, wells, trees, etc., to be exchanged showing the compensation to be given to or received by the holders concerned; a brief statement as to the action, if any taken in pursuance of sections 17 and 18 of the Act; and such other particulars as may be considered expedient by the Settlement Officer in this behalf. 6. In addition to publication under the provisions of rule 4, the draft scheme of consolidation shall be read over and explained by the Consolidation Officer to the persons likely to be affected thereby specially collected for the purpose. If any right-holder desires to have a copy of the proposed consolidation scheme, it may be supplied to him or her as the case may be on payment of the prescribed fee. 7. 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

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of consolidation of holdings confirmed u/s 20, and shall prepare the following repartition papers:- (i) a map of the village showing all the existing field numbers, recognised roads, and irrigation channels and areas assigned for public purposes, such as burial grounds, disposal of animal carcasses, ponds or grazing areas, etc., with new field numbers superimposed upon it in red lines or other marking ; (ii) another similar village map exhibiting the position emerging as a result of repartition; (iii) a statement showing the names of the owners of holdings, with particulars of field numbers, shares, class of land, tenure, area, assessment and encumbrances, if any, after getting the record of rights up-to-date. a statement showing the names of owners with particulars of all different rights possessed by each individually; (v) a statement showing the compensation payable by or to an owner in order to adjust differences in the value of land exchanged u/s 15 of the Act or due to the existence of wells, trees, etc., under sub-section (4) of section 17; a statement showing the names of occupants or holders to whom the new consolidated holdings are allotted with particulars of field number, shares, class of land, tenure area, assessment and encumbrances, if any; and such other papers as may be considered expedient by the Settlement Officer (Consolidation) in this behalf. 8. The contents of the statements mentioned in items (iv) to (vii) of the preceding rule shall be read over and explained by the Consolidation Officer to the persons likely to be affected thereby specially collected for the purpose. 9. After repartition has been confirmed and appeal against it, if any, has been finally decided, the Collector of the district shall take necessary steps for the redistribution of the assessment of the estate concerned, in accordance with sub-section (2) of section 65 of the Punjab Land Revenue Act, 1887. 10. The Consolidation Officer shall serve a notice on the person or persons liable to eviction under sub-section (2) of section 23 requiring him within fifteen days of the receipt of the notice to vacate the land. If such notice is not complied with within the time specified therein, the Consolidation Officer may exercise the powers of a Revenue Officer under the Punjab Land Revenue Act, 1887, for the purpose and putting in physical possession of the holding the person entitled thereto. 11. In transferring a lease, mortgage, debt or other encumbrance under sub-section (1) of section 26, the Consolidation Officer shall- (1) if the new holding is of the same market value as the original one, transfer to the entire encumbrance attaching to the latter; if the new holding is of a substantially greater market value than the original one, transfer to the former holding the encumbrance attaching to the latter, subject, in the case of a lease, to the condition that the lessee shall pay to the owner such reasonable rent in excess of the rent already payable under the lease as may be fixed by the Consolidation Officer and in the case of any other encumbrance, subject to such reasonable reduction in the area or in the rate of interest as may be fixed by the Consolidation Officer, having regard to the substantially better security provided by the owner of the new holding. 13. If the lessee, mortgagee or other encumbrancer appears to the Consolidation Officer to be entitled to possession of a holding u/s 26. the Consolidation Officer, shall issue a notice to the owner to show cause within fifteen days of the receipt of the notice why the

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lessees, mortgagee or other encumbrancer, as the case may be, should not be put in possession of such holding. If the owner fails to show cause or if the Consolidation Officer is satisfied that the cause shown by the owner is not adequate, he shall put the lessee, mortgagee or other encumbrancer as the case may be into possession of the holding, and the record of rights in response of the holding shall be corrected accordingly. 15. Where any of the land-owners is a minor, the Consolidation Officer may after making such enquiries as may be necessary and by an order in writing, appoint a guardian ad litem. Similar action may be taken in the case of widows, absentees, soldiers or others, if considered necessary."

(7) The only provision of the Punjab Land Revenue Act which is relevant is Section 3(3) which defines the word "holding" and lays down that it means a share or portion of an estate held by one land owner or jointly by two or more land-owners. "An estate" u/s 3(1) of this Act means any area: (a) for which a separate re cord-of-rights has been made: or (b) which has been separately as sessed to land-revenue, or which would have been so assessed that the land revenue had not been released, compounded for or redeemed; or (c) which the State Government may, by general rule or special order, declare to be an estate. According to this Act "land-owner" does not include a tenant or an assignee of land revenue, but does include a person to whom a holding has been transferred, or an estate or holding has been let in farm, under this Act for the recovery of an arrear, and every other person not hereinbefore in this clause mentioned who is in possession of an estate or any share or portion thereof, or in the enjoyment of any part of the profits of an estate. The contention of the plaintiffs in the three suits was that once the consolidation proceedings were completed neither the Consolidation Officer nor the Chief Commissioner had any power or juris- c diction to interfere with the possession of the people who had obtained possession of land on repartition and any order passed at that stage was without Jurisdiction. The contention of the defendants in the three cases, on the other hand, was (a) civil court have no Jurisdiction to try the suit; and (b) that it was obligatory on the part of the authorities concerned with the consolidation proceedings to transfer the encumbrance on a particular holding to the new holding and put the person in whose favor the encumbrance existed in possession of the new holding of land on which the encumbrance stood transferred on consolidation of holdings and if the consolidation authorities had failed to do so the person in whose favor the encumbrance existed prior to consolidation could move the appropriate authority and that authority could at any time undo the mischief that had been perpetrated by an encumbrance not being transferred and put the person who was entitled to possession in possession of the land on which the encumbrance should have been transferred in consolidation proceedings. It was also urged on behalf of the defendants that pre- consolidation tenancies even of non-occupancy tenants were encum brances on those holdings and on consolidation or repartition the tenancies had to be transferred to the new holdings of the land-owners ^ and the non-occupancy

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tenants were entitled as of right to be put into possession of equivalent land as tenants. This could be done not only by the Consolidation Officer but also by the Chief Commissioner by virtue of the residuary power vesting in him u/s 42 of the Consolidation Act. Their order was final and could not be called in question in a civil court by virtue of section 44 of the consolidation Act.

(8) The scheme of the Consolidation Act and the Rules is that with a view to provide for compulsory consolidation of agricultural holdings I and for preventing the fragmentation of agricultural holdings the Chief Commissioner has first to make up his mind that it is necessary to carry out consolidation of holdings in any estate or group of estates or any part thereof. This the Chief Commissioner may do on his own motion or on an application made in this behalf. Once he has made up his mind he has to make a declaration of his intention to have consolidation carried out in an estate or a part of an esiate by issuing a notification and by publication in the manner prescribed in the Rules in the estate or estates concerned of his intention to make a scheme for the consolidation of holdings in such a estate or estates or part thereof. On such publication of the intention of the Chief Commissioner he has to appoint a Consolidation Officer. The Consolidation Officer so appointed has then to obtain the advice of the land-owners to the estate concerned in the prescribed manner and prepare a scheme for the consolidation of holding in that estate. The scheme so prepared has to provide for the payment of compensation to any owner who is allotted a holding of less market value than that of his original holding and for the recovery of compensation from any owner who is allotted a holding of greater market value than that of his original holding. The scheme is to be prepared after the intention of the Chief Cornmis sioner to carry out consolidation is published in accordance with Rule 3 of the Consolidation Rules and advice has been obtained by the Consolidation Officer in accordance with the provisions of Rule. 4. The proposed scheme itself must contain a statement of classification of land for the purpose of consolidation and the exchange ratio for conversion of one class into another, a statement of wells, trees, etc. to be exchanged showing the compensation to be given to or received by the persons concerned, a brief statement as to the action, if any, taken in pursuance of Sections 17 and 18 of the Consolidation Act, and such other particulars as may be considered expedient by the Settlement Officer in this behalf. The Settlement Officer really comes in subsequent to the proceedings taken by the Consolidation Officer for he has to confirm the scheme of consolidation. At the stage of the draft scheme it is the Consolidation Officer who is required to pub lish the draft scheme in accordance with Rule. 3. Any person likely to be affected by the draft scheme is enjoined within 30 days of the publication to file in writing his objections relating to the scheme. The Consolidation Officer after considering the objections, if any, has to submit the scheme with such amendments as he considers necessary together with his remarks on the objections to the Settlement Officer. The Settlement Officer who is appointed by the Chief Commissioner for the purpose of consolidation only by a notification after considering the proposals of the Consolidation Officer and his

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comments if any, on the objections and after taking into consideration all these confirm the scheme with or without modifications or refuse to confirms the same. If he refuses to confirm the same he returns it to the Consolidation Officer to prepare a fresh draft scheme and the whole process is gone through all over again. Once the scheme B. is confirmed by the Settlement Officer it is again published in accordance with Rule 3. This is the second stage at which again persons likely to be affected bythe scheme of consolidation have notice of the scheme and can object to it or any part of it. Once all these objections etc. are settled the Consolidation Officer then prepares proposals for repartition in accordance ;with the confirmed scheme of Consolidation of holdings. It will be relevant to note that the repartition proposals have to contain all the particulars and items as set out in. Rule 7. The repartition, proposals are also published and as provided by Rule 8 the Consolidation Officer has to explain the same to the persons likely to be affected by the repartition proposals specially collected for that purpose the repartition proposals which are to be explained in this manner, infer alia, have to contain a statement showing the names of the occupants or holders to whom the new consolidated holdings are allotted with particulars of field number, shares, class of land, tenure, area, assessment and encumbrances, if any. It is thus obvious that even if the scheme of consolidation of holdings does not contain particulars about encumbrances, which normally it should contain, the repartition proposals have to clearly set out the same. The purpose behind explaining the repartition, proposals as well as the scheme whether the scheme is in draft form or is the scheme as finally confirmed is to let everyone who is likely to be affected nave notice of what his new holding is going to be so that if he is, in any way, adversely affected he may file objections or make representations which objections or representations as provided in the Rules as well as the Act have to bs considered respectively by the Consolidation Officer or the Settlement Officer at the relevant stage. Once the land has been put into hotchpotch, the scheme of consolidation of holdings prepared and confirmed, the repartition proposals published and adopted, the repartition is then carried out by evicting persons from lands in their possession and putting them into possession, of the lands to which they are entitled in accordance with the confirmed scheme and the repartition proposals framed there under. As provided by Section 23 of the Consolidation Act if all the owners and tenants affected by the repartition agree to enter into possession of tb holdings allotted to them there under, the Consolidation. Officer may allow them to enter into such possession forthwith or from such date as may bs specified by him. If all the owners and tenants as aforesaid do not agree to enter into possession they shall be entitled to possession of the holdings and tenancies allotted to them from such date as may be determined by the Consolidation Officer and published in the prescribed, manner in the estate or the estates concerned. The Consolidation Officer has the power to put persons in physical possession of the new holdings and even decide question of standing crops. As soon as the persons entitled to possession or holdings have entered into possession respectively allotted to them the scheme shall !be deem-rd to have come into force and the possession of the

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allottees affected by the scheme of consolidation or by repartition, shall remain undisturbed until a fresh scheme is brought into force and a change is ordered in pursuance of the provisions of sub-sections (2), (3) and (4) of Section 21 or an order passed u/s 36 or 42 of the Consolidation Act. Section 25 provides that the rights of the land-owners and tenants after consolidation are the same on the new land allotted to them which they had prior to consolidation on the lands formerly in their occupation or under their allotment. No formal document is necessary for transfer of ownership or other rights. Thus, the effect of consolidation is a change in possession and with the possession go the respective rights that the persons held over the land formerly under their occupation or under th:ir allotment. Basically, the Act and the Rules deal with the question of possession. The other rights follow possession.

(9) Mr, Liladhar, the learned counsel for the tenants urged that the consolidation of holdings contemplated by the Consolidation Act and the Rules framed there under is only confined to and affect the landowners and in some cases the occupancy tenants also. According to him non-occupancy tenants have no say in the consolidation proceedings at any stage and are not persons who fall within the ambit of the various provisions of the Act and the Rules. Therefore, he urges, if a non-occupancy tenant has not been mentioned either in the scheme or in the repartition, proposals he can at the stage when possessions of new holdings are being delivered or even thereafter move the relevant authorities to put him into possession of land .equivalent to the land that he was cultivating prior to the repartition being effected. This .the tenant can do at any stage after repartition proposals have been finalised. It was further contended that inasmuch as consolidation of holdings is confined to land-owners a non-occupancy tenant could not intervene in the consolidation proceedings at the stage of the proceedings u/s 21 of the Consolidation Act, namely, when the Consolidation Officer carries out repartition on the advice of the land owners in accordance with the scheme of consolidation of holding confirmed u/s 20 of the Act. If the scheme or repartition proposals provide for giving land to non-occupancy tenants also, then there is no difficulty . If, however, the scheme or the repartition proposals do not make any provision for the nonoccupancy tenants the lacuna is to be filled in by either moving the Consolidation Officer and asking him to put the non-occupancy tenants in possession of the land they would be entitled to cr by invoking the residuary powers of the Chief Commissioner u/s 42 of the Consolidation Act. No arguments were addressed on the question of the Jurisdiction of the civil courts to examine the validity of the impugned order. All that the learned counsel urged was that the nonoccupancy tenants can invoke the provisions of Section 26 of the Consolidation Act which recognises their rights and so, possession could be claimed by them under that provision either by an order of the Consolidation Officer acting u/s 26 or by an order of the Chief Commissioner acting u/s 42 of the Consolidation Act can give effect to the provisions of Section 26.

(10) In support of his contention Mr. Liladhar invited our attention to four

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decisions of the Punjab High Court. We shall deal with them one by one. Before, however, dealing with these authorities it would be relevant to test the contention put-forth by the learned counsel by examining the Provisions of Section 26 of the Consolidation Act. According to Section 26 if the holding of landowner 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 has to bs transferred and attached to the holding or tenancy allotted under the scheme or to such part of it as the Consolidation Officer may have determined in preparing the scheme. This obviously has a reference to the scheme that is prepared by virtue of the provisions of Section 14(1) of the Consolidation Act. In other words all the encumbrances have to be shown at the time when the scheme is prepared. In any case, as is obvious by Reading of Rule 7 all encumbrances have to be shown in the repartition proposals. Therefore, there seems to be no force in the contention that the tenancies will be left out of the scheme or at any rate from the repartition proposals. Section 26 really gives effect to what has to be done by virtue of the provisions of Section 14 to section 23 and the relevant rules in that behalf. Section 26 doss not confer any independent right on anybody but merely reiterates what is required to be done to effectually carry out consolidation proceedings. It is in this light that we will now examine the four cases cited by Mr. Liladhar.

(11) The first case cited was the decision in Bhagat Singh v. Additional Director, Consolidation of Holdings, Punjab, Jullundur and others 1966 P.L.R. 496.C A Bench of the Punjab High Court held that if a person did not avail of the remedies given to him u/s 21 of the Consolidation Act that did not estop him from filing a revision u/s 42 of the Act before the State Government which has ample power to interfere in suitable cases. The Bench also held that Rule 18 of the Consolidation Rules prescribed a period of limitation for filing a revision u/s 42 of the Act and where such a petition was filed after the period of limitation the delay could be condoned and the period extended if sufficient cause was shown but where the question of the revision being barred by time was not raised before the Director the same could not be raised before the High Court for the first time in writ proceedings. This rule was enunciated in a writ petition challenging the order of the Director, Consolidation of Holdings, Punjab, Jullundur. The order was assailed in the writ jurisdiction of the High Court on the contention that the revision petition u/s 42 of the Act had been fled after limitation and so, the Director had erred in law in entertaining the same; and inasmuch as the person in whose favor the Directors, order had been made had neither filed any objections u/s 21(2) before the Consolidation Officer nor any appeal u/s 21(3) and 21(4) to the authorities concerned, he could not invoke the provisions of Section 42 of the Act. The point of limitation was not allowed to be raised, as already noticed, as it had not been raised before the Director in the proceedings u/s 42 of the Act. With regard to the other contention the Bench held that the powers u/s 42 were independent of the remedies of objections and

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appeals provided in sub-sections (2), (3) and (4) of Section 21. The power of the State Government to interfere u/s 42 could not be fettered merely because in an appropriate case an aggrieved party had not filed objections or appeal. This, decision, Therefore, is no authority for the contention that Section 26 confers any independent right nor does it solve the main problem in this case as to till what stage the authorities undir the Consolidation Act and the Chief Commissioner can interfere with possessions already one; given in pursuance of the repartition.

(12) The next case cited was Badan Singli v. The State and others, 1967 P.L.R. 773 Mahajan, J. in a writ petition which came up before him gave the opinion that a mortgagee has no right to interfere in. the allotment of "taks" as between the owners his only right is under Section-26 of the Act and that is that the mortgage charge will go on the tak that is allotted to the right holder on whose land he is the mortgagee. He has no right to call in question the order of the authorities fixing the tak in between the right holders or withdrawing one tak from one right holder and giving it to the other right-holder. This rules also does not advance the proposition, propounded by Mr. Uladhar. The statute envisages the transfer of an encumbrance to the new holdings and obviously a mortgagee or tenant has no right to intervene and state which holding should be given to which land-owner. All that the mortgagee or a tenant can ensure is that his rights are secured by transfer of the encumbrance to the new holding to which the encumbrance is transferred.

(13) The third case cited was a decision in Hartej Bahadur Singh Hari Singli v. The State of Punjab and others, A. i. R. 1964 P&H 417 This bench decision has no relevance to the facts of the present case. Similarly, the fourth decision cited, in re: Suraj Prakash Kapur v. The State of Punjab and another, 1957 P. L.R. 103 also has no relevance. All that has been said in this case is that the word "encumbrance" has no strictly technical meaning. It only means an estate burdened with obligations or responsibilities or with a claim which is attached to the property. It is common case of the parties before us that tenancy rights is an encumbrance and as observed by the Bench in Surtij Prakash Kapur''s case the tenancy rights would be an encumbrance within the meaning of Section 26 of the Consolidation Act.

(14) Basing his argument upon the decision of the Punjab High Court in Bhagat Singh''s ('') case above-referred to, Mr. Liladhar urged that non-filing of objections by the tenants at the earlier stage could not preclude them from moving the Chief Commissioner or the Consolidation Officer later on. As already observed earlier, the question is whether these authorities could be moved at any time or whether they could be moved only while the consolidation proceedings were still alive and had not completely concluded. Mr. Liladhar, in our view, cannot find any support for the contrary proposition enunciated by him From the decision of Dua, J. (as his Lordship then was) in Pat Singh ana''others v. Thz State of Punjab and oth",rs, 1963 P.L.R. 982 It was observed by the learned Judg'': the phrase "a; finally sanctioned" in Section 22 of the Consolidation Act

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denotes repartition where all the objections against it and appeals and further appeals have been disposed of and the possession in the case of holding allotted under the repartition can only be transferred after the commencement of agricultural year next following the preparation of the rccord-of-rights. These observations were made in the context of the case and it is significant that the provisions of Section 23 too were not agitated. No doubt, the repartition would not become final vis-a-vis those holdings about which disputes are pending before the Competent Authority as provided in Section 24 itself but that docs not mean that pending decision of the disputed cases title scheme will not be deemed to have come into force as soon as the persons entitled to possession of holdings have entered into possession thereof as postulated by Section 24 of the Act. One of the main arguments advanced before Dua, J. was that the action of the Director in ordering repartition in the village on 10th January, 1961, by virtue of the purported exercise of power u/s 42 of the Consolidation Act in spite of the completion of the consolidation of holdings in November or December, 1960 was arbitrary and without jurisdiction. Support for this contention was sought from the decision of the Punjab High Court in Bhikan and others v. The Punjab State and others 1963 P.L.R. 368 where Section 36 of the Act had come up for construction and it was held that the phrase "at any time" in See. 36 means at any time after preparation of the draft scheme but before repartition which takes place after all objections, appeals etc. are disposed of. The power u/s 36 cannot be exercised after the new record of rights comes into force." The learned Judge agreed with the rule laid down in Bhikan''s case but on a resume of the various stages of consolidation proceedings found as a fact that although the appeals u/s 21 had been disposed of but by the mere disposal of the appeals, the consolidation proceedings could not be held to have been concluded. Referring to the provisions of Section 21 it was observed that the phrase "as finally sanctioned" in Section 21 of the Consolidation Act denotes a repartition where all the objections against it and appeals and further appeals have been disposed of and that possession in the case of holdings allotted under repartition can only be transferred after the commencement of the agricultural year next following the preparation of the record-of-rights. Therefore the action of the Director u/s 42 could not be held to be without jurisdiction or as having been made after the consolidation had been completely finalised and concluded. This case, Therefore, is of no avail to the arguments advanced on behalf of the tenants. In any case, as observed by us earlier, the provisions of Section 23(2) were not noticed nor the effect of the provisions of Section 24 of the said Act.

(15) Referring to the decision of a Bench of the Punjab High Court in Lakha Singh and others v. Director, Consolidation of Holdings, Punjab Cliandigarh and others, 1959 P.L.R. 287 it was urged by Mr. Liladhar that the power of the Government, in the present case of the Chief Commissioner, cannot be fettered with any restrictions for the statute in terms authorises the Chief Commissioner to examine the legality or propriety of any order passed by any officer under the Act at any time. The Bench decision was really concerned with reconciling the

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Views of Bishan Narain, J. in Civil Writs Nos. 372 and 549 of 1956 decided on 9th April 1957 and 20th May, 1957 respectively with the opinion of Grover, J. in Civil Writ No. 236 of 1957, decided by him on 28th April, 1958. Grover, J. had taken the view that it was not open for the State Government or any otlier officer to exercise powers u/s 42 of the Act and set aside the previous order made in appeal u/s 21(4) which had become final. Agreeing with the contrary view taken by Bishan Narain, J. the Bench had held that the Government should have powers of review even of orders passed in its name by an officer with delegated powers u/s 20(4) in as much as the delegate would be an officer under the Act. The question, Therefore, as to at what stage the order can be passed did not come up for consideration and all that was held was that the power u/s 42 was a comprehensive power.

(16) It was next urged by Mr. Liladhar that under the Consolidation Rules the phrase "any person affected" meant only the land-owner and this is apparent from a reading of the Rules framed in Delhi in 1952 vide notification No. F-1.52 R&1 dated 25ih January, 1952 in which the mentioning of encumbrances in the scheme and the repartition proposals have been specifically provided for as opposed to there being no specific provision for them in the Consolidation Rules which were in force earlier. It was also contended that in view of the Rules in force at the relevant time the tenants thus had no right to file objections at all. We are not impressed by this argument for, as already noticed earlier, the phrase "any person affected" would include tenants also. The rule making authority had used "landowners" where they alone were to come into the picture and the phrase "any person affected" in other places and surely a meaning has to be given for the use of different phraseology in different rules. Indeed encumbrances are as integral part of the scheme and so mortgagees or tenants would be persons affected when the scheme is formulated u/s 14 and is published u/s 19(1) or when the repartition proposals are published and then after hearing objections are finalised u/s 21. Rule 13 of the Consolidation Rules is a qualifying rule and refers to Section 26. It dees not give a stage when objections can be filed. The scheme is confirmed after hearing objections of any person affected as provided by section 20(3) and (4) and the repartition proposals published u/s 21(1) are subject to objections u/s 21(2) in a manner similar to Section 19(1) and after disposal of these objections the repartition proposals become final u/s 21. At each of these stages the persons who have a right to object and can be heard are not merely land-owners but others also affected by the scheme or repartition. The scope of the objections that persons other than land-owners can raise may be limited but that does not mean that they have no right to object at all, as contended by Mr. Liladhar.

(17) The position that emerges, Therefore, is that the powers of the Consolidation Officer to put parties into possession or pass an order to that effect can be exercised only in pursuance of and in accordance with Section 21(4) read with Section 23 of the Consolidation Act after preparing of the new record of rights u/s 22. This power cannot be exercised by him subsequently for the

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Consolidation Officer who is appointed under sub-section (2) of Section 14 becomes functus officio once the persons entitled to possession of holdings have entered into possession or have been held to be entitled to possession as provided in Section 24 and sub-section (2) of Section 23 respectively of the Consolidation Act. Of course, if possession is given contrary to the repartition proposals as finalised or there is an. order entitling a person to possession which is contrary to the repartition proposals as finalised such order can be set right by other authorities under the Act but not by a fresh determination by the Consolidation Officer u/s 26. Similarly, the powers of Chief Commissioner u/s 42 are limited and are governed by other provisions of the Act. The Chief Commissioner cannot by invoking Section 42 pass orders which no other authority under the Act could pass, or disturb the consolidation of holding, which is complete. To illustrate this, the question that was posed to Mr. Liladhar was whether the Chief Commissioner (now the Lt. Governor could today set aside the consolidation of holdings which took place say 50 years back on an application by an interested party or even suo moto. The learned counsel very rightly, agreed that he could not do so. Therefore, the only question is till what period of time can either the Consolidation Officer or the Chief Commissioner, as the case may be, interfere with the allotment of holdings or disturb the possession that has been given in purportedly carrying out the repartition .

(18) Mr. Liladhar''s arguments substantially have been what is contended in the minority opinion in the Full Bench decision of the Punjab High Court in Bhikan and others v. The Punjab State and others, 1963 P.L.R. 368. Khanna, J. dissenting with the majority view had observed while construing Section 36 of the Consolidation Act that the words "at any time" have teen incorporated in the Section with a view to provide for those eventualities wherein a scheme confirmed under the Act is found subsequently to be defective or not serve the main object of consolidation: such a defect may be detected immediately after the formation of the scheme or may come to light after the expiry of some months or even years. The learned Judge was of the view that the language of the section showed that the legislature wanted that the consolidation authority should not be helpless when it discovers a lacuna or a defect in a scheme already confirmed and for that purpose provided that the consolidation authority can vary or revoke the scheme at any time. According to his Lordship there was nothing in the section or the Act to warrant the proposition that the words "at any time" should not receive their literal meaning. The opinion of the majority is contained in the judgment of Tek Chand, J. with which Dua, J. concurred. It was held that the phrase "at any time" in the context cannot be construed as unlimited in point of duration, unregulated in point of intermittency, and unguided in point of frequency. The power to vary or revoke a scheme "at any time" must be read to mean "during the consolidation proceedings". The language of section 36 cannot be so construed as to vest in the authority confirming the scheme a residue of power to amend or end the scheme after any length of time and even recurrently. The phrase thus cannot be extended to a

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period after the Settlement Officer has ceased to function. The power under the section cannot be exercised after the new record of rights comes into force. We are in respectful agreement with the rule laid down by the Full Bench. Applying the ratio to Section 42 of the Act it must be held that the phrase "at any time" does not mean at any time und in point to duration, unregulated in point of intermittency or unguided in point of frequency. The power by the Chief Comissioner or by any authority under the Act to revoke a scheme or vary an order must lie read to mean during the consolidation proceedings. In other words, these powers cannot b3 exercised once the scheme is deemed to have come into force and the possession to the allottees covered by the scheme of consolidation or, a? the case may be, by repartition has been given subject, of course, to any changes that may be ordered in pursuance of the provisions of sub-sections (2), (3) and (4) of Section 21 or an order passed u/s 36 or Section 42 of the Act provided the order under Section. 36 is passed during the consolidation proceeding. The orders of the authorities under the Act including the order of the Chief Commissioner have to be passed to further the scheme and the repartition proposals and cannot be passed to order possession to be given to anyone who is not covered by Section 26(1) of the Consolidation Act for Section 26 really reiterates the effect of the consolidation of holdings which has to be carried out in the manner set out in Section 14 to 23 read with the relevant rules. The consolidation of holdings stands concluded as provided by Section 24 once the persons entitled to possession of holdings have entered into possession and thereafter the possession cannot be disturbed until a fresh scheme is brought into force or a change is ordered in pursuance of provisions of sub-sections (2), (3) and (4) of Section 21 or an order passed u/s 36 or Section 42 of the Act in proceedings that may be pending prior to the persons entitled to possession entering into possession or being held entitled to possession as provided in sub-sections (1) and (2) respectively of Section 23.

(19) In view of the discussion, hereinabove it is obvious that no independent right accrues to tenants or other persons u/s 26 of the Consolidation Act. If a person is not held entitled to possession as postulated by Section 26 in the first instance either when the scheme is formulated or the repartition proposals are made or implemented, there is no fresh determination of rights to be made u/s 26 by invoking Rule 13 of the Consolidation Rules. The determination takes place earlier and the Consolidation Officer has merely to carry out what has already been determined. Further under Rule 13 only the right of possession is to be settled and not the question of transfer of encumbrance or allotment. It follows, Therefore, that if no determination of rights can be made u/s 26 and consequently no appeal lies from any order purported to have been passed u/s 26 even the Chief Commissioner cannot by virtue of Section 42 make an order at that stage.

(20) It was urged by Mr. Dalal that tenants were estopped from agitate their rights once the consolidation of holdings has come into effect u/s 24 or if they have failed to raise objections at the earlier stages. The encumbrances have to

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be transferred from old holdings to new holdings, as postulated by Section 26, but this section does not give an independent right to move the authorities concerned after the stage of Section 24. The rights of mortgagees or tenants to be put into possession of the new holdings is recognised by Section 26 but the right to claim possession arises at the earlier stages. The Bench decision of this Court in Kacheru v. Risal Singh, ILR 1970, Delhi 29 (Volume 2, part I) to which one of us was a party does not militate against this proposition. What was held in that case was that it was settled law that on consolidation of holdings when new plots of land are given in lieu of the former ones held by a person. the rights and liabilities attached to the earlier holdings stand transferred to the new holdings. If the tenants had the right to get back their pre-consolidation holding that right would ensure to their benefit even after consolidation and would be applicable to the new holdings. The question raised before us now as to the point of time when the Chief Commissioner or the Consolidation Officer can pass an order to enforce that right was not in dispute. The statute itself provides that encumbrances of the old holdings would stand transferred to the new holdings but if these have not been done for any reason, the proper remedy is to scrap the consolidation proceedings and order de now consolidation of holdings rather than interfere with the settled state of things long atter the scheme of holdings has come into effect as postulated by Section 24.

(21) Mr. Sikri, who appears for the tenants in one of these appeals, urged that there was a concurrent finding of fact that the tenants had been dispossessed because of the process of consolidation after Rabi 1951 and so, inasmuch as the Delhi Land Reforms Act came into force on 20th July, 1954, the tenants who had certain rights under that Act first moved the Revenue Assistant and those proceedings must be regarded as proceedings taken to get back possession during consolidation. The dates are not very clear on the record but the argument is that till the scheme of consolidation is fully implemented and the purpose of consolidation is fulfilled and all the provisions of the statute are complied with by the Consolidation Officer he continued to be under obligation to put the tenants into the possession of new holdings in place of the old ones which they were cultivating. The Delhi Land Reforms Act, 1954, creates statutory rights and liabilities but invoking its provisions is misplaced for sub-section (2) of section 18 of this Act entitles a tenant or a sub-tenant to regain possession of land on making an application in this behalf to the Revenue Assistant if the tenant or sub-tenant was evicted from land after 1st July, 1950 on any ground other than for arrears of rent notwithstanding any decree or order of any court or appropriate authority. This subsection does not deal with dispossession as a consequence of the operation of law like the Consolidation Act. Apart from this the right given is to get back that very land from which the tenant or the sub-tenant was dispossessed or the holding to which the encumbrance is transferred as a consequence of the consolidation of holdings under the Consolidation Act, but is not attracted when the encumbrance has not been transferred. Mr. Sikri''s reliance, Therefore, on the Bench decision of this Court in the case of Kacheru,

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above referred to, is misplaced. Mr. Liladhar who appears for Amar Singh in one of the second appeals referred to, while urging the same argument as Mr. Sikri, to a decision of the Punjab High Court in R.S.A.81-D of 1961. Munshiv. Bhagwana, decided on 29th April, 1964in which after grant of bhumidari right to the land-owner under the Delhi Land Reforms Act he was issued notices in consolidation proceedings to hand over possession of land in dispute to the tenants on the ground that they were previously the tenants of the land in dispute. The Bhumidar had urged that the tenants had no right to interfere with his possession and had sought injunction by filing a suit. The trial Court held that :D/73-9 the owner was in cultivating possession since 1953-54 and so, was entitled to be declared bhumidar. In consequence the tenants- defendants were not entitled to forcibly dispossess the owner-plaintiff. On appeal the decision of the trial Court was upheld by the Senior Sub-Judge. The relief of injunction was refused by both the Courts below. On second appeal it was argued on behalf of the appellant that the courts below should have granted the relief of injunction restraining the defendants from recovering possession of the land in dispute through consolidation authorities. It was held that as the defendants were pre-consolidation tenants the Consolidation Authorities rightly ordered u/s 26 of the Consolidation Act that the defendants be put in possession of the land in dispute. The facts of this case are entirely different and are not attracted to the present set of appeals before us for it appears that the tenants had moved the Consolidation Authorities during consolidation proceedings and as so, already observed by us earlier, if the tenants move the relevant authorities during consolidation proceeding and prior to the stage of Section 24 of the Consolidation Act being reached, the Consolidation Authorities can pass orders to effectuate the intention postulated by Section 26 of the Act. This does not appear to have been done in the present set of cases before us.

(22) The result is that we dismiss the letters patent appeal and accept the two second appeals. In the circumstances of the case we make no orders as to costs.

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