

CIVIL MISCELLANEOUS

*Before Shamsher Bahadur, J.*AJAIB SINGH AND OTHERS,—*Petitioners.**versus*THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1205 of 1964.

1964

September, 2nd.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948) as amended by East Punjab Holdings (Consolidation and Prevention of Fragmentation) Validation Act (XXV of 1962)—S.23 (1)—Possessions—Whether can be changed after repartition even if appeals are pending.

Held, that the effect of the amending Act is to delete the words 'the scheme of consolidation' and to substitute therefor 'the repartition is carried out under sub-section (1) of section 21'. In case the transference of possession has not taken place, the Consolidation Officer under the amended Act can certainly allow possessions to be changed by agreement if possible and on a date specified by him, on the failure of the parties to agree to this course. It matters not whether the appeals are still pending under section 21 or other steps have yet to be taken. As soon as the repartition scheme is carried out the Consolidation Officer can assume the power to nominate a date for transference of possession. If repartition has been made after the amending Act, the operation of the law as inserted by the amending Act (XXV of 1962) at once becomes effective.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ, order or direction be issued to the respondent not to dispossess the petitioners except in accordance with Section 23 of the Act.

G. S. GREWAL, ADVOCATE, for the Petitioners.

B. S. BINDRA, ADVOCATE, for the Respondents.

ORDER

Shamsher
Bahadur, J.

SHAMSHER BAHADUR, J.—Ajaib Singh, and thirteen others, residents of village Kalyan Sukha, tehsil Nathana, district Bhatinda, feeling aggrieved by the order of the Consolidation Officer, Bhatinda, passed on 11th June, 1964, directing an immediate change of possessions in their holdings have sought the aid of this Court in having the order quashed under Articles 226/227 of the Constitution of India.

According to the petitioners the consolidation proceedings in village Kalyan Sukha were initiated as a result of the notification gazetted on 11th February, 1960. A consolidation scheme was thereafter prepared and confirmed by the Settlement Officer (Consolidation), Bhatinda, on 29th August, 1962. The scheme was unsuccessfully challenged in the High Court on account of certain reservations made for common purposes. Some appeals are also pending under section 21 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, according to the assertions made in the petition.

It is contended by the learned counsel for the petitioners that the transference of possessions could take place under section 23(1) of the Act as interpreted by the Division Bench of Mahajan and Pandit JJ. in *Jiwan Singh and others v. Consolidation officer, Sunam and another* (1). According to this authority where there is no agreement between the owners and the tenants, possession in the case of holdings allotted under repartition can only be transferred after the commencement of agricultural year next following the preparation of the record-of-rights. It is submitted by the counsel that record-of-rights not having been prepared as yet the order of the Consolidation Officer passed on 11th June, 1964, for immediate transference of possessions is illegal and invalid.

On behalf of the respondent it is submitted that the principle of law enunciated in *Jiwan Singh's Case* has become obsolete and inapplicable after the amendment introduced by the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Validation Act (Punjab Act, 25 of 1962), enacted on 13th December, 1962. As the question in dispute turns very largely on the interpretation of sub-section (1) of section 23 of the Act before and after the amending Act (25 of 1962) the provisions in the two enactments may be set out:—

<p><i>Before the amendment.</i></p> <p>23. (1) If all the owners and tenants affected by the Scheme of consolidation or as the case may be, repartition, as finally confirmed,</p>	<p><i>After amendment of Pb. Act 25 of 1962.</i></p> <p>If all the owners and tenants affected by the repartition as carried out under sub-section (1) of</p>
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(1) I.L.R. (1962) 2 Punj. 726=1962 P.L.R. 668.

Ajaib Singh
and others
v.
The State of
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agree to enter into possession of the holdings allotted to them thereunder, the Consolidation Officer may allow them to enter into such possession forthwith or from such date as may be specified by him.

section 21, agree to enter into possession of the holdings allotted to them thereunder, the Consolidation Officer may allow them to enter into such possession forthwith or from such date as may be specified by him.

It would be readily observed that the effect of the amending Act is to delete the words 'the scheme of consolidation' and to substitute therefor 'the repartition is carried out under sub-section (1) of section 21'. The repartition in the present instance was made after the Punjab Act 25 of 1962 was enacted. In any event the transference of possession not having taken so far the Consolidation Officer under the amended Act can certainly allow possessions to be changed by agreement if possible and on a date specified by him, on the failure of the parties to agree to this course. It matters not whether the appeals are still pending under section 21 or other steps have yet to be taken. As soon as the repartition scheme is carried out the Consolidation Officer can assume the power to nominate a date for transference of possession. This is what has precisely been done in the present instance.

Mr. Grewal, the learned counsel for the petitioner, submits that the amending Act has no retrospective operation and the provision with regard to transference is still that which is set out in the unamended sub-section (1) of section 23 of the Act under which the date of the scheme of consolidation is the relevant circumstance for consideration. [I am afraid this is not the right perspective in which the question has to be decided. If a repartition has been made after the amending Act and it has never been asserted that the case is otherwise the operation of the law as inserted by the amending Act (25 of 1962) at once becomes effective. There is no substance in the contention of the learned counsel. I would accordingly dismiss this petition and direct the parties to appear before the Consolidation Officer on 21st September, 1964. The Consolidation Officer will then proceed to deal with this matter in accordance with law. There would be no order as to costs of this petition.

R.S.