were minor with the result that the appellant was declared *bhumidar* of the land against the express provisions of the Act. The respondents in the circumstances, in my opinion, were entitled to file a civil suit to establish their rights. I, accordingly, hold that the present suit was maintainable and the findings of the Courts below in this respect are correct.

The appeal, consequently, fails and is dismissed; but in the circumstances I leave the parties to bear their own costs.

B.R.T.

FULL BENCH

Before D. Falshaw, C.J., A. N. Grover and P. D. Sharma, JJ.

JIT SINGH,—*Appellant.*

Versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 131 of 1960.

1964

May, 5th.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948) as amended by Punjab Act XXXIX of 1963—Ss. 2(bb) and 18 (c)—Amendments made adding more purposes to the definition of Common Purposes—Whether valid—Consolidation authorities—Whether entitled to make reservations of land for those purposes without payment of compensation—S. 15—Scope of.

Held, that the amendments which have been made to section 2(b) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, by the Punjab Act XXXIX of 1963, adding more purposes to the definition of 'Common Purposes' are valid and the consolidation authorities are entitled to reserve lands for those purposes without payment of compensation to the right-holders. Since the Panchayat have been charged with the duty of maintaining various places and services as mentioned in

section 19 of the Punjab Gram Panchayat Act, 1952, round which the life of village community, which is primarily agricultural, is to revolve, there can be no manner of doubt that in the development of agricultural economy it is not only the land reforms *strictu sensu* which have to play the dominant part but also such institutions and measures as are conducive to the physical, social, educational and moral well-being of the members of the agricultural community. Since all the purposes which have now been added by the amending Act are for the improvement and progress of the village community which will make the agriculturists more efficient and better equipped for agricultural work and production, it cannot possibly be said that the object of the impugned legislation is divorced from agrarian reform.

Held, that section 15 of thd Act simply says that 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 for the recovery of compensation from any owner who is allotted a holding of greater market value than that of his original holding. This section, therefore, relates only to grant of compensation *inter se* between the owners and has nothing to do whatsoever with any compensation being awarded in the event of reservations being made for common purposes. Section 17 also can be of no avail to the appellants as that section contains the machinery for amalgamation of any road, street, lane, etc., or other land reserved for common purposes with any holding in the scheme. There can be no doubt that if the land is reserved in any consolidation scheme not in conformity with the provisions of the Act and the rules but in violation of them, that scheme will certainly be open to challenge, but so long as the land has been reserved in accordance with the aforesaid provisions, the land owners have no right to claim any compensation even if they are deprived of some portion of their holding.

Case referred by a Division Bench, consisting of Hon'ble the Chef Justice Mr. D. Falshaw and Hon'ble Mr. Justice A. N. Grover on 25th September, 1963 to a Full Bench, for decision of an important question of law involved in the case and the case was finally decided by the Full

Bench, consisting of the Hon'ble Chief Justice Mr. D. Falshaw, Hon'ble Mr. Justice A. N. Grover & Hon'ble Mr. Justice P. D. Sharma on 5th May, 1964.

Letters Patent Appeal under Clause 10 of the Letters Patent against the judgment of the Hon'ble Mr. Justice Gosain, passed in C.W. 792 of 1959. dated 19th January, 1960.

H. S. GUJRAL, ADVOCATE, *for the Appellant.*

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL, for the Respondent.

ORDER OF THE FULL BENCH

Grover, J.

GROVER, J.—These two appeals (Letters) Patent Appeals Nos. 131 of 1960 and 182 of 1960) filed under clause 10 of the Letters Patent against the order of Gosain, J., dated 19th January, 1960 have been referred for decision to a Full Bench owing to the pendency of a large number of petitions in this Court under Article 226 of the Constitution in which schemes of consolidation in various villages have been attacked on grounds of reservation of land under section 18(c) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, (hereinafter called the Act) for various common purposes.

Before the facts are set out, it is necessary to notice the provisions in the Act and the amendments made therein from time to time which are relevant, together with the previous decisions of this Court which necessitated those amendments. According to the preamble, as it stood before the amendment by Punjab Act 27 of 1960, the Act was meant to provide for the compulsory consolidation of agricultural holdings and for preventing the fragmentation of agricultural holdings. Section

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2(b) defined "common purpose" to mean any purpose in relation to any common need, convenience or benefit of the village. Section 18(c) provided: —

> "Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Consolidation Officer to direct—
>
> (c) that if in any area under consolidation no land is reserved "for any common purpose including extension of the village *abadi,* or if the land so reserved is inadequate, to assign other land for such purpose."

On 19th April, 1957, the Governor of Punjab amended the existing rule 16 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules by renumbering it as rule 16(i) and also by adding as rule 16(ii), according to which in an estate or estates where during consolidation proceedings there is no *shamilat deh* land or such land is considered inadequate, shall be reserved for the village Panchayat, and for other common purposes, under section 18(c) of the Act, out of the common pool of the village at a scale prescribed by Government from time to time. The management of such land was to vest in the Panchayat of the estate or estates concerned on behalf of the village proprietary body and the Panchayat had the right to utilise the income derived from the land so reserved for the common needs and benefits of the estate or estates concerned.

In *Munsha Singh* v. *The State of Punjab and others* (1), a number of right-holders of village Majatri of Tehsil Kharar moved a petition in this

(1) I.L.R. (1960)1 Punj. 589=1960 P.L.R. 1.

Court under Articles 226 and 227 of the Constitution praying that consolidation proceedings taken in that village be quashed. The reservations which had been made under the consolidation scheme relating to the aforesaid village under section 18(c) were numerous, the items being similar to those for which reservations have been made in the present cases, namely,—

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1. Village roads including Circular Road.
2. Road under the Development Scheme with 12 *karams* width.
3. Water tanks.
4. Manure.
5. *Hadarori.*
6. Latrines.
7. Primary school and playground for children.
8. Fuel plantation.
9. Cattle ground.
10. Cremation ground for Harijans and others.
11. Graveyard.
12. Grazing ground for cattle.
13. Area given to civil Panchayat.
14. Area for extension of *abadi* given to the non-proprietors.

On the dismissal of that petition by me on 23rd May, 1958 an appeal was filed which later on was referred to a Full Bench, consisting of A. N. Bhandari, C.J., Dulat, Tek Chand, R. P. Khosla and Dua, JJ. It is apparent from the judgments delivered by the learned Judges that the items which were subjected to serious attack on behalf of the petitioning appellants were the areas given to the Panchayat and to the non-proprietors for extension of the *abadi* (items 13 and 14); apart from items 1 and 2 which were only subjected to

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some criticism. It was held by the Full Bench (R.P. Khosla, J. dissenting) that rule 16(ii) went far beyond the scope of the Act or of section 18(c) which did not authorise the giving of land to the Panchayat so that it may utilise it for raising income; which in its turn may be spent for the common needs and benefits of the village. Dulat, J. made it quite clear that the other items, apart from the above item, which had been included in the area reserved for common purposes, had been objected to; but those objections had neither been seriously pressed nor did they seem to be well-founded. According to him, all those items directly concerned the reservation of land for common purposes which the Act authorised.

The judgment of the Full Bench was delivered on 5th November, 1959 and the Act was amended by Punjab Act 27 of 1960. By this Act the scope of the preamble was enlarged by adding the words "and for the assignment or reservation of land for common purposes of the village." The change made in the definition of "common purpose" in section 2(bb) was that the following purposes were included:—

"(i) extension of the village abadi; and
(ii) providing income for the Panchayat of the village concerned for the benefit of the village community."

Section 23-A was added for the first time. All these amendments; of course; were with retrospective effect. In a later case *Kishan Singh and another* v. *The State of Punjab and others* (2), the validity of section 18(c) and section 2(bb) as also the other amendments made by Punjab Act 27 of 1960 was challenged. A Full Bench, consisting of

(2) I.L.R. (1960) 2 Punj. 904=1960 P.L.R. 840.

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G. D. Khosla, C.J., Gosain and Mahajan, JJ., upheld the same. The matter came up for reconsideration, in view of the observations contained in the majority judgment of the Supreme Court in *Kochuni* v. *States of Madras and Kerala* (3), in *Jagat Singh and others. The State of Punjab and others* (4), before a larger Bench consisting of five judges. The argument canvassed on behalf of the State was that the law was saved by the provisions or Article 31A(1)(a) inasmuch as the act of setting aside the land reserved for providing income to the Gram Panchayat was nothing more than acquisition by the State of an estate which fell within the purview of that Article. The landowners contended that according to the majority judgment in *Kochuni's case* Article 31A could only save that legislation which had for its object agrarian reform Khosla, C.J., after referring to *Kochuni's case* and some later decisions of the Supreme Court, expressed the view that in all these cases where there was a question of acquisition, the aim of agrarian reform had not been deemed a condition precedent to the statute being declared *intra vires* and the observations in *Kochuni's case* did not go beyond the scope of that case. He proceeded, however, to decide the matter on the ground that the impugned provisions formed a part of the pattern of legislation aimed at agrarian reform. The concluding portion of his judgment is as follows:—

> "I am, therefore, of the opinion that the impugned Act has for its object agrarian reform and as such it cannot be declared invalid by anything contained in the decision of their Lordships of the Supreme Court in *Kevalappra Kottarthil*

(3) A.I.R. 1960 S.C. 1080.
(4) I.L. R. (1962)1 Punjab 685=1962 P.L.R., 241.

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Kochuni alias Moopil Nayar v. *The States of Madras and Kerala* (3)."

In my separate judgment I agreed that the impugned Act was valid as its object generally was to bring about a change in the village and agricultural economy, rendering it immune from attack by virtue of Article 31A(1)(a) of the Constitution. In my view, on a true and correct appraisement of the observations made and decision given in the majority judgment it was difficult to accept that legislation enacted to acquire an "estate" would be protected by that Article even if its object and purpose were completely divorced from agrarian reform. Tek Chand, J.'s conclusion may be reproduced in his own words:—

> "Following the rule in *Kochuni's case* and on the ground that the impugned Act has an agrarian reform as one of its objects, the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948) is not *ultra vires* of the Constitution, and I would dismiss the petition and would make no order as to costs."

DUA, J.—refrained from expressing any considered opinion on the question as to whether or not the existence of agrarian reform, as a legislative object, is an essential pre-requisite for the constitutional validity of law providing for acquisition of estates by the State within the contemplation of Article 31A(a) of the Constitution. He, however, agreed that the impugned statute was designed to facilitate agrarian reforms and that was enough for the disposal of the case. Shamsher Bahadur, J., while expressing inability to deny the cogency of the reasoning which weighed with the learned Chief Justice in coming to the

conclusion that agrarian reform has never been intended by the legislature to form an essential pre-requisite for imparting validity to legislation made under Article 31A(1)(a), considered it unnecessary to decide that question. He concluded by saying:—

> "The majority view of their Lordships of the Supreme Court in *Kochuni's case* however, having been so clearly expressed, the question whether or not agrarian reform should be a touchstone to test the validity of legislation is not open to debate at least by this Court. I am in complete agreement with the views which have been expressed by my learned brethren that the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act I, of 1948 is a measure designed to promote agrarian reform and its vires in any event cannot be challenged."

In *Gurudas Singh and others* v. *The Director of Consolidation of Holdings, Punjab and others* (5), Mehar Singh and Due, JJ.; had to decide a case in which in consolidation proceedings reservations had been made for the Government Primary School, for a road to be constructed by the Public Works Department from Jandusingha to Kartarpur and for water channels. The Bench held that no reservation could be made under section 18(c) of the Act for the aforesaid purposes so as to deprive the landowners of their claim to compensation for such acquisition. The Punjab Legislature then enacted Punjab Act 39 of 1963. In clause (bb) of section 2 of the Act, the following sub-clauses

(5) I.L.R. (1963) 2 Punj. 129=A.I.R. 1964 Punj. 117.

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(iii) and (iv) containing more purposes were added after sub-clause (ii) with retrospective effect:—

"(iii) village roads and paths; village drains; village wells; ponds and tanks; village watercourses or water-channels; village bus stands and waiting places, manure pits; *hada rori;* public latrines; cremation and burial grounds; Panchayat Ghar; Janj Ghar; grazing grounds; tanning places; *mela* grounds; public places of religious or charitable nature; and

(iv) schools and playgrounds; dispensaries; hospitals and institutions of like nature; water-works or tube-wells whether such schools; play-grounds; dispensaries; hospitals; institutions; water-works or tube-wells may be managed and controlled by the State Government or not."

For section 23-A; another section was substituted but it is unnecessary to set it out. Section 4 of this Act further validated all the reservations which had been made in the schemes which were covered by the amendment introduced.

The controversy before us now has entered on the validity of the aforesaid amendments which have been made by the Act of 1963. The principal contention of Mr. H. S. Gujral, learned counsel for the appellants, is that the purposes which have been added in the definition of "common purpose" with the exception of watercourses; channels; *hada rori;* manure pits; grazing grounds and tube-wells have nothing to do with agrarian reform and their inclusion would not be saved by Article 31-A

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(1)(a) of the Constitution. He has relied largely on the view expressed by most of the judges constituting the Full Bench in *Jagat Singh's case* while interpreting the observations in the majority judgment in *Kochuni's case* that in order to get protection under the aforesaid Article, the legislation must have as its object and purpose agrarian reform. In particular, objection has been taken to bus stands; waiting places; public latrines; cremation and burial grounds; Janj Ghar; *mela* grounds; public places of religious or charitable nature; schools and playgrounds; dispensaries and hospitals. It is said that although all these may be for the common good of the villagers but the State is under an obligation to provide these amenities and for that purpose it must pay compensation to the right-holders who would be deprived *pro tanto* of their share in the lands which will be reserved for the aforesaid purposes. Mr. Gujral has stressed the observations in the majority judgment in *Kochuni's case* that Article 31-A is concerned only with land tenure and that if an Act does not effectuate agrarian reform and regulate the rights *inter se* between landlords and tenants, it is not protected by that Article. The majority view in *Kochuni's case* has been fully discussed in the earlier Full Bench decision of this Court in *Jagat Singh's case.* When the reservation of a portion of proprietary land for providing income to the Gram Panchayat was held to be valid on the ground that the object of doing so pertained to agrarian reform, it is apparent that quite a wide and liberal connotation was given to those words. Indeed, as the words "agrarian reform" are not to be found in Article 31-A, we are not confined to their literal or narrow meaning. If the impugned legislation is meant to improve the standard of living and working in the villages, it would certainly have agrarian reform as its object, not in a narrow or

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pedantic sense but in a context in which the general good of the village agricultural community would be covered. It is well known that the objectives of the various Five Year Plans have been, firstly, to remove such impediments in the way of agricultural production as arise from the character of the agrarian structure and to create conditions for evolving as speedily as possible an agrarian economy with high levels of efficiency and productivity and, secondly, to establish an egalitarian society and eliminate social inequalities. The need for consolidation of holdings has been emphasised in all the Plans and the Planning Commission recommended that consolidation should be undertaken in Community Project areas as a task of primary importance to the agricultural programme (India 1960—Publication by Government of India). It has been stated that the main tests by which the success of Panchayati Raj will need to be measured from time to time are: (1) agricultural production; (2) development of rural industry; (3) development of co-operative institutions; (4) full utilisation of the local manpower and other resources; (5) development of facilities for education and adult literacy; etc. (Government of India Publication—Third Five Year Plan). Under the Punjab Gram Panchayat Act, 1952, the Village Panchayat is charged with numerous tasks which are given in section 19 and which include *inter alia* the maintenance of —

"19(1) (a) any public place including its sanitation and drains;

(b) wells, water-pumps; baolies; springs, ponds and tanks for the supply of water for drinking, washing and bathing;

(c) burial and cremation grounds;

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(e) buildings for the accommodation of travellers;

(f) pounds for animals;

(h) public health and sanitation;

(i) the organization and celebrations of public festivals, other than religious festivals;

(j) the improvement of the breeds of animals used for agricultural or domestic purposes;

(k) public gardens, playgrounds, establishment and maintenance of recreation parks, organization of games and sports; supply of sports materials and holding of tournaments;

(l) libraries and reading-rooms;

(n) the development of agriculture and village industries, and the destruction of weeds and pests;

(q) allotment of places for preparation and conservation of manure;

(s) the laying out of new roads and pathways and maintenance of existing ones; and

(x) measures to promote the moral, social and material well-being or convenience of the inhabitants of the Sabha area;"

and the Gram Panchayat has also to make provisions for—

"19(2)(b) medical relief and first aid;

* * * * *

(f) providing such educational facilities as may be deemed necessary and desirable; * * *"

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If the Panchayat has been charged with duties relating to all the aforesaid matters and if it is to be the pivot round which the life of village community, which is primarily agricultural, is to revolve, there can be no manner of doubt that in the development of agricultural economy it is not only the land reforms *strictu sensu* which have to play the dominant part but also such institutions and measures as are conducive to the physical, social, educational and moral well-being of the members of the agricultural community. It is not denied that all the purposes for which provision has now been made by the amending Act will promote the common good in every sense of the people living in the villages. After the decision in *Munsha Singh's case*; where hardly any objection was taken to items 1 to 13 set out in the earlier part of this judgment; any other position would have been wholly untenable.

There would have been hardly any room for argument if the observations in *Kochuni's case* as interpreted in *Jagat Singh's case* had not been pressed into service; but since all the purposes which have now been added by the amending legislation are for the improvement and progress of the village community which will make the agriculturists more efficient and better equipped for agricultural work and production; it cannot possibly be said that the object of the impugned legislation is divorced from agrarian reform. Thus it must be held that by virtue of Article 31-A(1)(a) of the Constitution the amending legislation is wholly immune from attack on the grounds on which it has been made.

A faint argument has been addressed on the basis of the language employed in section 15 of the Act that compensation is payable whenever

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any owner is allotted a holding of less market value than that of his original holding, but section 15 simply says that 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 for the recovery of compensation from any owner who is allotted a holding of greater market value than that of his original holding. This section, therefore, relates only to grant of compensation *inter se* between the owners and has nothing to do whatsoever with any compensation being awarded in the event of reservations being made for common purposes. Section 17 also can be of no avail to the appellants as that section contains the machinery for amalgamation of any road, street, lane etc., or other land reserved for common purposes with any holding in the scheme.

Lastly, Mr. Gujral has contended that section 18(c) confers uncontrolled and arbitrary power on the consolidation authorities to reserve any area for common purposes and to invent new heads of common purpose. Section 18(c) itself lays down the conditions under which reservation can be made. Reference has already been made to rule 16 which has been framed under the Act in connection with reservations and also to the definition of "common purpose" contained in section 2(bb), as amended. There can be no doubt that if land is reserved in any consolidation scheme not in conformity with the provisions of the Act and the rules but in violation of them, that scheme will certainly be open to challenge; but so long as the land has been reserved in accordance with the aforesaid provisions, the landowners have no right to claim any compensation even if they are deprived of some portion of their holding for reasons which have already been stated.

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In both the appeals reservation had been made for income to the Gram Panchayat, for extension of the abadi of the non-proprietors including Harijans, for Panchayat Ghar and for manure pits. It has also been stated that reservation had been made for village Paths. There can be no doubt, and indeed; it has not been disputed; that all these purposes would be covered by section 18(c) of the Act; read with the definition of "common purpose" given in section 2(bb) of the Act; as amended. Gosain, J. had upheld the reservation for all the purposes except the one relating to the area for providing income to the Gram Panchayat. In view of all the Full Bench decisions as also the provisions which now exist in the Act; the State appeal (L.P.A. 182 of 1960) is allowed and the order of Gosain, J. is set aside; with the result that the writ petition shall stand dismissed. There will be no order as to costs. L.P.A. 131 of 1960 is dismissed but there will be no order regarding costs.

P. D. SHARMA, J.—I agree.

Falshaw, C.J.

D. FALSHAW, C.J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and Daya Krishan Mahajan, JJ.

JAGAT NARAIN SETH AND OTHERS,—*Petitioners*

Versus

THE MUNICIPAL CORPORATION OF DELHI,—*Respondent.*

Civil Writ No. 267-D of 1959.

1964

May, 6th.

Delhi Municipal Corporation Act (LXVI of 1957)—S. 142—Tax on advertisements exhibited in cinema houses—Whether can be levied.

Held, that the Delhi Municipal Corporation is entitled to levy tax on advertisements exhibited on the screen in