

revenue to the Government in spite of the fact that the amount of land revenue might have been assessed.

(6) In view of the nature of a *muafi* grant, the *muafidar* is a landowner who does not pay the land revenue and, therefore, is not liable to pay any surcharge under the 1954 Act or special charges under the 1958 Act. The demand for such amounts made from the petitioner-Dera is, therefore, illegal and has to be quashed.

(7) For the reasons given above, I accept this writ petition and quash the demand for the payment of surcharge and special charges made from the petitioner-Dera for the Kharif crop 1970. As the point was not free from difficulty, the parties are left to bear their own costs.

K.S.K.

LETTERS PATENT APPEAL

Before Harbans Singh, C.J., and R. S. Sarkaria, J.

RANBIR SINGH, ETC.—Appellants.

versus

MANGAL SINGH, ETC.—Respondents.

Letters Patent Appeal No. 227 of 1967.

January 3, 1972.

Patiala and East Punjab States Union Holdings (Consolidation and Prevention of Fragmentation) Act (V of 2007 Bk)—Section 29—Prohibition on alienation under—Whether begins immediately after the publication of notification for consolidation—Pendency of consolidation proceedings—Whether provides an additional condition to such prohibition.

Held, that the object of section 29 of Patiala and East Punjab States Union Holdings (Consolidation and Prevention of Fragmentation) Act, 2007 Bk is that as soon as the notification for consolidation under section 14(1) of the Act is issued and the intention of the Government to effect consolidation in a particular village becomes known, the landowners may not enter into *mala fide* and bogus transactions in order to affect the places where their major portions are located. If a transaction is a genuine one,

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the Consolidation Officer can give permission on being satisfied in this respect. What is meant by the opening part of section 29 is that the restriction or prohibition mentioned in the section begins immediately after the issue of the notification. The words "and during the pendency of the consolidation proceedings" do not provide an additional condition attached for the restriction in section 29 to come into force, but are there to give an indication of the period during which this restriction is to remain in force. In other words, this restriction begins as soon as the notification is issued or published in the Gazette and continues "during the pendency of the consolidation proceedings" and the restriction ceases as soon as it can be said that the consolidation proceedings are no longer pending.

(Paras 8, 9 and 11)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of the Hon'ble Mr. Justice R. S. Narula, passed in Civil Writ No. 183 of 1966 on 14th April, 1967.

C.M. 2018/1968.

Application under section 151 & Order I, Rule V, 10 C.P.C. praying that—

- (1) *Mst. Bhagwan Kaur, widow of Mangal Singh, village Bassi, Tehsil Sirhind, District Patiala.*
- (2) *Dalip Singh, son of Mangal Singh, village Bassi, Tehsil Sirhind, District Patiala.*
- (3) *Shrimati Kisso alias Kishan Kaur, wife of Gurmej Singh, village Bhasarpur, P.O. Kartarpur, District Jullundur, (d/o Mangal Singh).*
- (4) *Mst. Gejo alias Gurmej Singh, wife of Nazar Singh, resident of village Rukna Mungra, P.O. Ferozepur Cantt. (d/o Mangal Singh).*

the above noted persons be ordered to be brought on record as legal heirs of respondent No. 1, Mangal Singh, who died on 3rd September, 1968.

H. S. Wasu, Advocate, with L. S. Wasu, Advocate, for the appellants.

G. S. Grewal, Advocate, for the respondents.

JUDGMENT

HARBANS SINGH, C.J.—This appeal under Clause 10 of the Letters Patent involves the interpretation of section 29 of the Patiala

and East Punjab States Union Holdings (Consolidation and Prevention of Fragmentation) Act, 2007 Bk (hereinafter referred to as the Pepsu Act). This section runs as follows:—

“After a notification under sub-section (1) of section 14 has issued and during the pendency of the consolidation proceedings no landowner 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 so as to affect the rights of any other landowner under the scheme of consolidation.”

Section 30 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the Punjab Act), exactly corresponds to section 29 of the Pepsu Act.

(2) In the case before us on 3rd July, 1956, a notification under sub-section (1) of section 14 of the Pepsu Act was published in the Official Gazette. This notification was not published in the village till 15th October, 1957. Meanwhile on 20th August, 1957, the appellant, Ranbir Singh, made transfer of certain land belonging to him in the village concerned to his sons by way of gift and mutations were effected. In dealing with the question as to the location of the major portion of Ranbir Singh etc., the Additional Director took into consideration these mutations. The party adversely affected, namely, Mangal Singh, filed Civil Writ No. 183 of 1966 challenging this action on the ground that, in view of section 29 of the Pepsu Act, no alienation of land could be taken into consideration for the purpose of consolidation without the sanction of the Consolidation Department. It is a common case that the Consolidation authorities did not apply their mind to the question whether it was a fit case for granting the sanction or not, but it was felt by the Additional Director that, inasmuch as the alienation took place before the notification was actually published in the village, section 29 of the Pepsu Act did not apply and, consequently, there was no question of granting any sanction.

(3) The learned Single Judge, after hearing the parties, came to the conclusion that section 29 of the Pepsu Act lays down a prohibition against any alienation made after the notification, being taken into consideration for the purpose of consolidation unless such an alienation is permitted by the Consolidation Department. Consequently, he accepted the writ petition, set aside the impugned order

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and directed that "they would now proceed with the matter in accordance with the provisions of section 29 as interpreted in this judgment". He left the parties to bear their own costs. Ranbir Singh being aggrieved has filed this Letters Patent Appeal.

(4) It is now well settled that consolidation proceedings cannot be treated to be pending unless at least the Consolidation Officer is appointed. See in this respect *Nanga and others v. The Additional Director of Consolidation of Holdings and others* (1). That was a case under section 32 of the Punjab Act, which is in the same terms as section 31 of the Pepsu Act. Section 32 of the Punjab Act is as follows :—

"After a notification under sub-section (1) of section 14 has issued, no proceedings under Chapter IX of the Punjab Land Revenue Act, 1887, in respect of any estate or subdivision of an estate affected by the scheme of consolidation shall, subject to the provisions of section 16-A, be commenced and where such proceedings were commenced before the issue of the notification they shall remain in abeyance, during the pendency of the consolidation proceedings."

In that case, however, admittedly the scheme had even been prepared by the Consolidation Officer on the date when the partition was effected.

(5) In *Balwant Singh and others v. The Financial Commissioner Punjab and others*, (2), which was another case of section 32 of the Punjab Act, the following observations were made by the learned Single Judge :

* * * * *

The starting point of consolidation is certainly the notification under section 14(1), which is issued by the State Government, but unless the Consolidation Officer is appointed and a scheme for repartition, as provided under section 14(2) is prepared, it cannot be said that any consolidation proceedings were pending."

(1) 1965 Curr. L.J. (Pb.) 31.

(2) 1969 P.L.J. 65.

(6) The question for determination, however, is what is the meaning of the opening part of section 29 of the Pepsu Act. This opening part of section 29 of the Pepsu Act runs as under :—

“After a notification under sub-section (1) of section 14 has issued and during the pendency of the consolidation proceedings * * *”

During this period, as indicated by the opening part of section 29 of the Pepsu Act, no landowner can, without the sanction of the Consolidation Officer, make any alienation to affect the rights of the other landowners under the scheme of the consolidation. One thing is clear that this section does not in any way affect the question of title. Any transfer can be made and the transferee will be given title, and all that is provided is that such a transfer will not be taken into consideration for affecting the rights of the landowners under the scheme of consolidation. It is well known that the scheme of consolidation normally provides that the landowner should be given his *tak* at his first major portion and if this percentage is not higher as compared with the other landowners, then he should be shifted to his second major portion and so on. Thus a transfer made during the pendency of the consolidation proceedings could be with a view to change the major portion from one place, where the landowner has inferior land, to another place, where he has got better quality land. It is to avoid such an eventuality that section 29 has been enacted.

(7) According to the learned counsel for the appellant what the opening part of section 29 of the Pepsu Act means is that not only a notification under section 14(1) should be issued, but the consolidation proceedings must also be actually “pending” at the particular time, to make the prohibition against transfer effective. According to him, if a notification has been issued but the consolidation proceedings cannot be said to be pending, then during this intervening period, i.e., between the notification in the Official Gazette and the appointment of the Consolidation Officer or even the preparation of the scheme, every landowner is at liberty to transfer his holding or any part thereof and that such a transfer must be taken into consideration by the Consolidation Officer and it is not for him to give or refuse permission for such a transfer.

(8) If the opening part of section 29 of the Pepsu Act is to be interpreted in the manner stated by the learned counsel for the

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appellant, then the first part of it, namely, "After a notification under sub-section (1) of section 14 has issued" will become absolutely redundant. The same effect could have been given by the Legislature by starting this section from the words "during the pendency of the consolidation proceedings". Obviously no consolidation proceedings can be "pending" unless a notification has already been issued. Consequently, if the intention of the Legislature was that only an alienation during the pendency of the consolidation proceedings was prohibited, there was no necessity for adding the words "After a notification under sub-section (1) of section 14 has issued". We feel that if this interpretation put forward by the learned counsel for the appellant is accepted that will defeat the very object with which section 29 has been added. The idea is that as soon as the notification is issued and the intention of the Government to effect consolidation in a particular village becomes known, the landowners may not enter into *mala fide* and bogus transactions in order to affect the places where their major portions are located. If a transaction is a genuine one, then the Consolidation Officer can give permission if the transferor or the transferee satisfies him in this respect.

(9) To us it is clear that what is meant by the opening part of section 29 is that the restriction or prohibition mentioned in the section begins immediately after the issue of the notification. This issue of the notification has to be published in the Official Gazette. The issue of the notification is treated as one thing and publication in the village as another, as is clear from the wording of sub-section (1) of section 14 of the Pepsu Act, which runs as under :—

"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 Government 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."

(10) Thus the intention of the Government is to be indicated by two acts, first, by declaring this intention by a notification and, secondly, by publishing it "in the prescribed manner in the estate or estates concerned."

(11) The words "and during the pendency of the consolidation proceedings" do not provide an additional condition attached for the restriction in section 29 to come into force, but are there to give an indication of the period during which this restriction is to remain in force. In other words, this restriction begins as soon as the notification is issued or published in the Gazette and continues "during the pendency of the consolidation proceedings" and the restriction ceases as soon as it can be said that the consolidation proceedings are no longer pending.

(12) Main reliance by the learned counsel for the appellant for his contention is placed on *Balwant Singh's case*, (2), (supra). The facts of that case were peculiar. A notification was issued in the Gazette. No Consolidation Officer was appointed and nothing was done for more than two years when ultimately the original notification was withdrawn. During this period between the issue of the notification and its withdrawal partition proceedings which had started earlier were continued and actual possession was given by the Revenue Officer, under the Land Revenue Act, to the cosharers of their respective shares. The question before the learned Judge was whether these proceedings for partition were void in view of the restriction in section 32 of the Punjab Act. In view of these peculiar facts, after observing (which observations have been reproduced above), that the starting point of the consolidation is the issue of the notification under section 14(1) but the consolidation proceedings can be said to be pending only when the Consolidation Officer is appointed, it was observed by the learned Judge as follows :—

"The mere issue of the notification under section 14(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, without any further step having been taken will not make the consolidation proceedings pending in the village."

(13) There can be no quarrel with these observations as such, but the learned Judge nowhere discussed the question whether under section 32 of the Punjab Act the restriction will start as soon as the notification is issued or restriction will start only when the Consolidation Officer is appointed. As in that case even the notification had been withdrawn subsequently, it was, in fact, not necessary to decide when the restriction would have started. In any case,

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Balwant Singh's case (supra) is hardly an authority for the proposition which is being canvassed by the learned counsel for the appellant. In fact, this matter was never decided by the learned Judge.

(14) As detailed above, we are definitely of the view that the restriction in section 29 of the Pepsu Act against alienation begins as soon as a notification is issued and we, therefore, find no reason to differ from the finding arrived at by the learned Single Judge and dismiss this appeal. There will be no order as to costs.

SARKARIA, J.—I agree.

K.S.K.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

SHANTI DEVI,—Appellant.

versus

RAM NATH,—Respondent.

Civil Revision No. 361 of 1971.

January 6, 1972.

Hindu Marriage Act (XXV of 1955)—Section 13(1) (iii)—Wife's petition Hindu Marriage Act, 1955, in order to succeed, she has to establish that band—Court—Whether can direct the husband to undergo observation in a Mental Hospital—Refusal of the husband to undergo such observation—Adverse inference—Whether can be drawn.

Held, that when a wife applies for divorce under section 13(1) (iii) of Hindu Marriage Act, 1955, in order to succeed, she has to establish that the husband had been incurably of unsound mind for a continuous period of not less than three years immediately preceding the presentation of her petition. The real evidence on this point is of medical expert. If the medical expert says that he can only give definite opinion regarding the incurability of the husband's disease after observing him in a Mental Hospital for a specified time and the wife applies to the Court to direct the husband to undergo such observation, the request is reasonable and should be granted. If the husband is not prepared to go to the Mental Hospital, the Court cannot physically force him to do so. but it is for the Court to draw any adverse inference against him which is available under the law.