

## CIVIL WRIT

*Before Harnam Singh and Kapur, JJ.*

**S. GURSARAN SINGH AND OTHERS,—Petitioners.**

*versus*

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

Civil Writ No. 86 of 1954

*East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Whether ultra vires the Constitution of India, Articles 14 and 31 (2).*

1954

July, 2nd

**Held**, that the Act did not contravene any of the provisions of Article 31(2) of the Constitution of India and **thus was not ultra vires the Constitution.**

*Held*, further that it does not infringe Article 14 of the Constitution. There is nothing to indicate that persons similarly circumstanced in the Punjab in regard to whose lands consolidation is to take place a different law has been made applicable. Merely because in regard to compulsory acquisition for public purposes under the Land Acquisition Act a particular procedure is prescribed is no reason for holding that the impugned Act introduces any discrimination in regard to the applicability or protection of laws.

*State of West Bengal v. Subodh Gopal Bose and others* (1), *Dwarkadas Shrinivas v. The Sholapur Spinning and Weaving Co. Ltd. and others* (2), *State of West Bengal v. Mrs. Bela Banerjee and others* (3) and *Veerappa Pillai v. Raman and Raman Ltd. and others* (4), referred to.

*Petition under Article 226 of the Constitution of India. praying as follows :—*

- (i) that a writ in the nature of certiorari may be issued and that the entire proceedings under the Act may be quashed after calling for the records of the case,
- (ii) that such other writs and directions may be issued as this Hon'ble Court may deem to be just and expedient,
- (iii) that in any case the amended scheme as confirmed may be set aside,
- (iv) that the necessary interim orders may be made restraining the respondents from disturbing possession of the petitioners pending the disposal of this petition, and
- (v) that the petitioners may be awarded costs of this petition.

A. N. GROVER, for the Petitioners.

S. M. SIKRI, Advocate-General and K. S. CHAWLA, Assistant Advocate-General, for the Respondents.

#### ORDER

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KAPUR, J. These are two rules obtained by four petitioners in the first case C.W.A. 36—54 and eight in the second C.W.A. 37—54 and counsel moves that the orders made in regard to consolidation of holding be quashed and that the State Government be directed to forbear from proceeding with the consolidation of holdings in Village Nowshehra Punuan in Tahsil Tarn Taran of Amritsar District.

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- (1) 1954 S.C.A. 66
  - (2) 1954 S.C.A. 132
  - (3) 1954 S.C.A. 41
  - (4) 1952 S.C.R. 563

On the 17th July 1951, a notification under section 14 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, Act L of 1948, was published for consolidation of agricultural holdings in Village Nowshehra Punuan. This village has got three tarafs and several pattis in each taraf which are—

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Serial No.	Name of Taraf	Name of Pattis in each Taraf
1	Risal	1. Jag
		2. Nand
		3. Mukand
		4. Mehan Das
		5. Lal Chand
		6. Chuhar Mal
		7. Madho
		8. Malla
		9. Mudke
		10. Chhina
		11. Dalu
		12. Gill
		13. Dhillon
2	Das	1. Das
		2. Mast
		3. Abdal
3	Sand	1. Jaimal
		2. Mansur
		3. Lal Chand
		4. Mehal
		5. Umar Shal

Descendants of Risal

Nominal Pattis of other peoples descendants who merged in Taraf "Risal".

Descendants of Kirta

Descendants of Sand.

On the 15th June 1953, Mr. K. K. Kalia, Consolidation Officer and Tahsildar, prepared a draft for consolidation of holdings under section 14(2) of the Act which is given at page 31 in Civil Writ Application No. 37 of 1954. This scheme was published in accordance with rule 3 of the Rules made under section 46 of the Act. There is no dispute that this was duly proclaimed. Later on this scheme of consolidation was amended and the amended scheme was sent to the Settlement Officer and was finally confirmed by him. The publication of this amended scheme was on the 2nd December, 1950, and after the expiry of thirty days which is

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the period prescribed for filing of objections, objections were filed which were rejected and the amended scheme was, therefore, accepted by the Settlement Officer and this is the scheme in accordance with which consolidation was being carried out till this Court ordered that possession of the petitioners be not disturbed pending the hearing of the petition.

The constitutionality of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, Act L of 1948, has been attacked on two grounds—(1) that it infringes Article 31 of the Constitution and (2) Article 14 of the Constitution. In order to determine its constitutionality it is necessary to refer to some of the provisions of this Act. Section 2(b) defines consolidation of holdings to mean—

“2(b) ‘Consolidation of Holdings’ means the amalgamation and the redistribution of all or any of the lands in an estate or sub-division of an estate so as to reduce the number of plots in the holdings;”

Section 2(j) defines ‘sub-division’ to mean a ‘*patti*’, ‘*taraf*’ or ‘*pana*’ in a record of rights. Section 14 gives power to Government to issue a notification of its intention to make a scheme for consolidation of holdings and under section 14(2) they can appoint a Consolidation Officer. Provision for compensation is made under sections 15(1) and 34(1) of the Act which run as follows:—

“15(1). 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.

34(1). The amount of compensation shall be assessed by the Consolidation Officer, as far as practicable, in accordance with the provisions of subsection (1) of section 23 of the Land Acquisition Act, 1894 (I of 1894)."

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Article 31(2) of the Constitution provides—

31(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given."

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Thus, there are two things necessary if immovable property is taken possession of by the State or under the orders of State that the law should provide for (1) compensation for the property taken possession of and (2) either fixation of the amount of compensation or specifying the principles on which and the manner in which the compensation is to be determined. As I read section 15(1) it does make a provision for the payment of compensation to any owner who is allowed a holding of lesser market value than that of his original holding and also provides that the scheme should have a provision for the recovery of compensation from one owner for payment to another. Although the amount of compensation is not fixed—as indeed it could not be—the principles on which and the

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manner in which the compensation is to be determined and given has been provided in section 34(1) of the impugned Act which provides that compensation shall be assessed by the Consolidation Officer as far as practicable in accordance with the provisions of section 23(1) of the Land Acquisition Act, which section provides for what it is to be taken into consideration for determining the compensation. It cannot be said, therefore, that this Act in any way contravenes the provisions of Article 31(2). Counsel referred to *State of West Bengal v. Subodh Gopal Bose and others* (1), *Dwarkadas Shrinivas v. The Sholapur Spinning and Weaving Co., Ltd. and others* (2), and *State of West Bengal v. Mrs. Bela Banerjee and others* (3). The impugned Act does not, in my opinion, fall within any of the cases which counsel has relied upon. As far as this case is concerned the only relevancy of *Subodh Gopal Bose's case* (1), is the meaning of the words 'taken possession of' and taking that to be applicable, the impugned Act does make a provision for compensation and the principles and the manner of its determination. The rule laid down in *Sholapur Spinning and Weaving Co.'s case* (2), is also not in any way contravened nor the rule laid down in *Mrs. Bela Banerjee's case* (3), where all that was held was that the compensation must be equivalent to what the owner has been deprived of. In the view that I have taken of section 15(1) and of section 34(1) of the impugned Act, none of these cases helps the petitioners. In my opinion, therefore, there is no contravention of Article 31(2) of the Constitution of India.

The contravention of Article 14 of the Constitution is based on the fact that although under the Land Acquisition Act there is a procedure for

(1) 1954 S.C.A. 66

(2) 1954 S.C.A. 132

(3) 1954 S.C.A. 41

reference to the District Judge and then an appeal to the High Court and the Supreme Court, no such provision is made in the impugned Act. Article 14 may be quoted—

“14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

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This Article provides for equality before the law and equal protection of the laws. It is not shown that in the State of Punjab there is any other law dealing with consolidation of holdings where a different procedure has been prescribed, nor has it been shown that in any other part of the State, the citizens have different rights in regard to consolidation. Now, the impugned Act is a Punjab Act which falls under item 18 in the State List which deals with lands. Equality before the law or equal protection of law must be taken in reference to the laws made by the Punjab Legislature in regard to the same subject for all citizens of this State. Mr. Grover referred to certain observations of Mahajan, J., and Mukherjea, J., in *Anwar Ali's case* (1). The former observed—

“It is designed to prevent any person or class of persons ~~for~~ being singled out as a special subject for discriminatory and hostile legislation. Democracy implies respect for the elementary rights of man, however, suspect or unworthy. Equality of right is a principle of republicanism and article 14 enunciates this equality principle in the administration of justice. In its application to legal proceedings the article assures to everyone the same rules of evidence and modes of

from

(1) 1952 S.C.R. 234 at pp. 313, 320

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procedure. In other words, the same rule must exist for all in similar circumstances. This principle, however, does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstance, in the same position."

And Mukherjea, J., at page 320 said—

"It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed."

But both the learned Judges were careful to point out that this principle does not mean that every law must have universal application for all persons, and at page 320 Mukherjea, J., said that the principle underlying the guarantee in Article 14 is not that the same rules of law should be applicable to all persons or that the same remedies should be available to them irrespective of differences of circumstances and a little lower down his Lordship observed—

"As there is no infringement of the equal protection rule, if the law deals alike with all of a certain class, the legislature has the undoubted right of classifying persons and placing those whose conditions are substantially similar under the same rule of law, while applying different rules to persons differently situated."

Thus, there is no infringement of this Article if law deals alike with all persons belonging to a certain class nor does it prevent the legislature from placing those who are similarly circumstanced under the same rule of law. As I have said, there



is nothing to indicate that persons similarly circumstanced in the Punjab in regard to whose lands consolidation is to take place a different law has been made applicable. Merely because in regard to compulsory acquisition for public purposes under the Land Acquisition Act, a particular procedure is prescribed is no reason for holding that the impugned Act introduces any discrimination in regard to the applicability or protection of laws.

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It was next contended that after the draft scheme had been published in the manner prescribed and no objections were received, the Consolidation Officer could not make any amendments in the scheme, but I am unable to agree with this submission. The following portion of section 19(1) which was relied upon may be quoted—

“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.)”

As I understand this section it means that the Consolidation Officer has to take into consideration the objections, if any, received and even if none have been received, he can make such amendments as he thinks necessary and then submit his report, but I cannot imagine that once the draft scheme is published, it becomes beyond the power of the Consolidation Officer to make any amendments, the only requisite condition being that the amended scheme has to be published by the Consolidation Officer in the manner prescribed in rule 3 of the Rules.

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Mr. Grover further submitted that the amended scheme was not published in the manner prescribed which in my opinion is based on a misconception because we have found that on the 2nd December 1953, the amended scheme was published and the objections which were filed against this scheme were filed more than thirty days after the publication and were, therefore, barred by time and were consequently not taken into consideration. So neither of these two grounds in regard to the amended scheme has any force and the contentions must be repelled.

It was also submitted that at the time of the amendment of the scheme there was no consultation with the Panchayat or the consultative committee. Section 19 does not envisage any such consultation, nor is there anything in the rules which requires that a Consolidation Officer should consult the consultative committee before he amends the scheme. In their reply, however, the opposite party has stated that forty-six persons including Gursaran Singh, petitioner and Meja Singh, cousin of Kala Singh, petitioner and members of the village Panchayat and other members of the village advisory committee had unanimously agreed to the amendment in the original draft and had either signed or thumb-marked this amended scheme. Even if such consultation was necessary in this case it was done.

Objection was also taken on the ground that the amended scheme had been sent away to the Settlement Officer on the 21st December 1953, but it was returned for a certificate and on the ground that thirty days had not elapsed. As I have said above, there was a requisite certificate in regard to the publication, but it somehow or other was not sent with the amended scheme. But because the

amended scheme was sent earlier to the Settlement Officer does not take away from the validity of the amended scheme which depends upon the provisions of section 19 of the Act. The objections to the amended scheme in C.W. (Application) No. 6 of 1954, were filed by means of a telegram on the 12th January 1954, and the scheme was resubmitted on the 13th January 1954, but the telegram sent was more than thirty days after the publication of the scheme and was, therefore, barred by time.

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It was then submitted that the scheme was vague. In the first place, it has not been shown to be so, and secondly, this Court is not a Court of appeal against the administrative tribunal as was held in *Veerappa Pillai v. Raman and Raman, Ltd. and others* (1).

I would, therefore, dismiss this petition with costs and discharge the rule.

The facts and the questions raised in Civil Writ Application No. 37 of 1954, are the same and three of the petitioners signed the amended scheme. I would, therefore, dismiss that petition with costs and discharge the rule.

HARNAM SINGH, J.—I agree.

Harnam Singh,  
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