

In the Rangoon case, the property was not being sold at the instance of the decree-holder, who had bid at the auction sale, the interpretation placed by that Court on Order 21, rule 72 would be fully justified. But, in the present case, by reason of section 73 of the Code of Civil Procedure, Tara Chand had made an application for execution of the decree in his favour and in execution the property in dispute had been put to auction sale. Therefore, the provisions of Order 21, rule 72, clearly come into play. That being so, no fault can be found with the decision of the Courts below.

The result, therefore, is that this appeal fails and is dismissed with costs.

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R.S.

CIVIL MISCELLANEOUS

*Before Shamsher Bahadur, J.*

ARJAN SINGH, AND OTHERS,—*Petitioners.*

*versus*

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

Civil Writ No. 1218 of 1964.

March 25, 1966

*East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—S. 14(2)—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949,—Rule 4—Whether ultra vires the Constitution and section 14(2)—Provision for constituting village committee for consultation by Consolidation Officer—Whether gives arbitrary power and is ultra vires.*

*Held*, that under section 14(2) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, the power of the Consolidation Officer in framing a scheme is far from being unfettered as the scheme is to be the product of his meetings with the landowners and non-proprietors and a consultation with the committee which he is to constitute for this purpose.

*Held*, that sub-section (2) of section 14 of the Act does not require that the manner of choosing the consultative committee is to be prescribed by rules; it is only the manner in which advice of the landowners is to be sought that is the

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subject-matter of prescription. That mode has been prescribed and the consolidation officer is to make a visit to each of the estates concerned after giving reasonable notice of his visit to the landowners and non-proprietors.

*Held*, that the choice of representatives of landowners, the Harijans, the non-proprietors and the co-operative farming societies is *prima facie* restrictive and in the nature of things the Consolidation Officer may in positive constitute a consultative committee by agreement of the classes who are to be represented in it.

*Held* that there is suitable machinery in the Act itself to enable any aggrieved person to attack the provisions of the scheme and the repartition carried out in accordance therewith. There are provisions with regard to appeals and revisions on matters relating to repartition as also the framing of the scheme. The legislation or the statutory rules are not, therefore, open to the vice of the arbitrariness or discrimination. Rule 4 cannot be struck down as being in violation of the Constitution or any of the provisions of the Act.

*Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, or any other appropriate writ, order or direction be issued quashing the scheme of Consolidation of village Solkhian, tehsil Rupar, district Ambala and Amending Act No. 39 of 1963 and Rule 4 be declared ultra vires and unconstitutional.*

H. S. WASU, B. S. WASU AND L. S. WASU, ADVOCATES, for the Petitioners.

J. N. KAUSHAL, ADVOCATE-GENERAL WITH M. R. AGGNIHOTRI, ADVOCATE, for the Respondents.

### ORDER

SHAMSHER BAHADUR, J.—This judgment will dispose of Civil Writs Nos. 1218 and 1294 of 1964, both giving rise to a common question of law raised by Mr. Wasu, the learned counsel for the petitioners.

Shorn of elaboration, the point contended for is that rule 4 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, runs counter to and is in fact *ultra vires* of subsection (2) of section 14 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter called the

Act), as also of the Constitution. Sub-section (2) of section 14 of the Act, after its amendment by Punjab Act No. 7 of 1955, reads thus:—

“On such publication in the estate concerned the State Government may appoint a Consolidation Officer who shall after obtaining in the prescribed manner the advice of the landowners of the estate or estates concerned, *and of the non-proprietors and the Gram Panchayat, if any constituted in such estate or estates under the Gram Panchayat Act No. IV of 1953*, prepare a scheme for the consolidation of holdings in such estate or estates or part thereof as the case may be.”

This sub-section means that after the Government has notified its intention to bring an estate or estates under consolidation, a Consolidation Officer has to be appointed for whom it is mandatory to take the advice in the prescribed manner. The advice is to be that of landowners of the estate or estates concerned and after the Amending Act No. 7 of 1955, also of the non-proprietors and the Gram Panchayat. Before the Amending Act of 1955, the Consolidation Officer was enjoined to take the advice only of the landowners of the estate or estates and after the amendment the advisory body was to be added by representatives of non-proprietors and the Gram Panchayat.

The rule-making power under the Act is contained in section 46, sub-section (2) of which says:—

“In particular and without prejudice to the generality of the foregoing power, the State Government may make rules providing for—

- (a) . . . . .
- (b) . . . . .
- (c) . . . . .
- (d) the procedure to be followed in the preparation of the scheme under sub-section (2) of section 14;
- (e) to (k) . . . . .”.

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Under the rule-making power of sub-section (2) of section 46 of the Act, rule 4 has been framed which says that:—

“After the notification, and publication by the State Government, of its intention to make a scheme for the Consolidation of Holdings under sub-section (1) of section 14, the Consolidation Officer shall visit each of the estates concerned after giving reasonable notice of his visit to the landowners and non-proprietors thereof and shall, in consultation with the village committee constituted by him for this purpose, put up a scheme for the consolidation of holdings, . . .”.

The mode of obtaining advice under sub-section (2) of section 14 of the Act has to be prescribed and under the rule it is stated that the Consolidation Officer is to visit each of the estates concerned after giving reasonable notice of his visit to the landowners and non-proprietors thereof. These landowners and non-proprietors in their entirety are free to meet the Consolidation Officer who in consultation with the Committee appointed by him is to put up a scheme for the consolidation of holdings. It would be apparent that the power of the Consolidation Officer in framing a scheme is far from being unfettered as the scheme is to be the product of his meeting with the landowners and non-proprietors and a consultation with the committee which is to be constitute for this purpose. The committee which is to be formed by the Consolidation Officer under rule 4 is to consist of not less than three members and it has to include:—

- “(i) members of the Gram Panchayat, if any, constituted under the Punjab Gram Panchayat Act, 1952 (No. IV of 1953) and representatives of landowners;
- (ii) a representative each of Harijans and other non-proprietors if not already included in the Panchayat;
- (iii) a representative each of the Co-operative Farming Societies, if any.”

The Consolidation Officer thus in this consultative committee has to have members of the Gram Panchayat, representatives of the landowners, Harijans and other non-proprietors unless they are members of the Gram Panchayat and of the co-operative farming societies. It is contended by Mr. Wasu that the committee which is to

be selected by a Consolidation Officer is really his creation in the sense that it is not chosen by the interests whom it purports to represent. The short answer to this submission is that sub-section (2) of section 14 does not require that the manner of choosing the consultative committee is to be prescribed by rules; it is only the manner in which advice of the landowners is to be sought that is the subject-matter of prescription. That mode has been prescribed and the Consolidation Officer is to make a visit to each of the estates concerned after giving reasonable notice of his visit to the landowners and non-proprietors. It may be desirable for the State Government to prescribe rules also for choosing the representatives of the landowners, the Harijans, the non-proprietors and the co-operative farming societies and the discretion may not be left in the hands of the Consolidation Officer, but there is no allegation that the Consolidation Officer in making his selection of the committee abused the power vested in him by the statutory rule and in absence of such allegation it cannot be said that arbitrary power has been left in the hands of the Consolidation Officer to be exercised in a capricious manner.

The choice of representatives of landowners, the Harijans, the non-proprietors and the co-operative farming societies is *prima facie* restrictive and in the nature of things the Consolidation Officer may in positive constitute a consultative committee by agreement of the classes who are to be represented in it.

A similar point was raised before me in *Joginder Singh v. The State of Punjab*, Civil Writ No. 1124 of 1964, decided by me yesterday, i.e. 24th March, 1966, and during the course of arguments today it has been pointed out that Narula, J. in *Sawan Singh v. State of Punjab* (1), had occasion to deal with this matter in detail last year. My attention has been drawn to paragraph 19 of the judgment of Narula, J. wherein it is mentioned that:—

“Though there does appear to be some kind of lacuna in rule 4(i) of the Consolidation Rules inasmuch as the Rules do not provide for any specific machinery or mode of election of a representative of the landowners for being appointed on the village committee, it appears to me that this neither invalidates nor makes the rules unworkable . . . If in any particular case the Consolidation Officer acts malafide

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(1) 1965 P.L.R. 1082.

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or arbitrarily in appointing a representative of the landowners and the objection of the aggrieved landowners in that respect is illegally turned down in proceedings under section 19 and/or section 42 of the Act, it would be for this Court to consider in an appropriate case whether to uphold or strike down the particular appointment."

If I may say so with respect, this perspective of the learned judge is unexceptionable and without allegation of any specific abuse of power by the Consolidation Officer it would be futile to decide the academic question raised at a time when consolidation operations themselves are coming to an end in the entire State.

Mr. Wasu was invited my attention to two decisions of the Supreme Court, the first one being *Kathi Raning Rawat v. State of Saurashtra* (2), where in the head-note (d) it is observed by Mr. Justice B. K. Mukherjea that:—

"On the other hand, if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the face of it to be discriminatory irrespective of the way in which it is applied."

The second authority is a judgment of Chief Justice Das in *Ram Krishna Dalmia v. Justice Tendolkar, etc.* (3), especially the observations at page 548, that "a statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply." It is sought to be argued that rule 4 by naming the Consolidation Officer as the sole maker of the consultative committee has brought about a discriminatory result and should be struck down. Far from giving an arbitrary or capricious power to the Consolidation Officer, the rule makes it imperative for him to make a selection of the consultative committee from the specific interests of the landowners,

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(2) A.I.R. 1952 S.C. 123.

(3) A.I.R. 1958 S.C. 538.

Harijans, non-proprietors and co-operative farming societies. Members of the Gram Panchayat are to be elected and there is no choice in this matter vesting in the Consolidation Officer. The members of the Gram Panchayat may in many cases be representatives of the various interests from whom a selection has to be made by the Consolidation Officer. No allegation has been made either in this case or in the petition which was decided by Narula J., about the arbitrary selection or choice of the Consolidation Officer. There is suitable machinery in the Act itself to enable any aggrieved person to attack the provisions of the scheme and the repartition carried out in accordance therewith. There are provisions with regard to appeals and revisions on matters relating to repartition as also the framing of the scheme. The legislation or the statutory rules are not, therefore, open to the vice of the arbitrariness or discrimination.

I see no reason, therefore, to accept the contention of Mr. Wasu that rule 4 should be struck down being in violation of the Constitution or indeed any of the provisions of the Act.

These petitions will, therefore, be dismissed without any order as to costs.

R.S.

REVISIONAL CIVIL

*Before Mehar Singh, J.*

MILKHA SINGH, AND OTHERS,—*Petitioners.*

*versus*

MAHARAJ KISHAN KESAR,—*Respondent.*

Civil Revision No. 32 of 1966.

April 4, 1966.

*East Punjab Urban Rent Restriction Act (III of 1949)—S. 13(2)(iv)—Abatement of nuisance at the stage of appeal—Whether can be taken into consideration while deciding the appeal against the order of eviction.*

*Held*, that if an order of eviction is made against the tenant on the ground of nuisance as provided in section 13(2)(iv) of the East Punjab Urban Rent Restriction Act, 1949, the Appellate Authority cannot take into consideration the plea of