FULL BENCH

Before S. S. Sandhawalia, C.J., S. S. Kang and G. C. Mital, JJ.

BIRU and another,—*Appellants.*

versus

SURAJ BHAN and others,—*Respondents.*

Regular Second Appeal No. 190 *of* 1971.

February 1, 1983.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 *of* 1948)—*Sections* 21 *and* 42—*Consolidation proceedings—Co-sharers having joint and indivisible rights—Each one of them—Whether necessary to be impleaded as a party in such proceedings and served individually—Adequate hearing given to one of such co-sharers—Whether could be deemed as a hearing to all the co-sharers.*

Held, that from the wide ranging jurisprudential principle that where there is identity and jointness of interest then any one of such persons might well represent the others and also bind them, it seems manifest that this principle would be equally, if not more strongly, attracted in the proceedings under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 as well. This statute is a piece of progressive agrarian legislation with some urgency of object to be achieved and not a mere slow motion picture. In view of the fact that consolidation proceedings all over the State may affect millions of right-holders of land and because of interminable litigation and clash of interest, it would be beyond the realm of practicability to demand the impleading of each individual or joint co-sharer to every proceeding. Even more doctrinaire may be the demand of not only impleading each such cosharer but effectively serving each of them and securing their representation. An overly meticulous approach to the problem imbued with overly legal formalism may ultimately nullify or frustrate the landable objects of the statute itself. If a hypertechnical view was to be taken then the absence of either impleading one of the cosharers or the inadvertent failure of service of any one of them may render the whole action beyond the provisions of the Act. Once that is so, such an action may well attract the jurisdiction of the civil Courts, which with their tardy process would hamstring the very purpose of expeditious compulsory consolidation of wasteful and uneconomic land-holdings. Similarly, not one but most of the proceedings under the Act involved a chain reaction effecting a large number of joint right-holders and to insist upon the impleading and service of each one of the co-sharers would in effect be creating impassable road-blocks in the achievement of the central

purpose and the object of the legislation. To insist that each one of the joint or individual right-holder must be both impleaded and served would be a counsel of perfection impossible of practical achievement. Therefore, the sound principle of effective representation by a co-sharer where his interests are common and identical with others is doubly attracted and applicable to proceedings under the Consolidation Act. From this, it inevitably follows that it is neither within the letter nor spirit of sections 21 and 42 of the Act that every co-sharer must be mandatorily impleaded in proceedings thereunder. Indeed, the Act itself does not enjoin any such legal formality. However, this should not preclude a petitioner in a particular case to pin-point a right-holder who is to be adversely affected and, therefore, impleading him as a party in the application. On practical considerations this would in fact be apt but a faliure to do so does not in any way affect the validity or the legality of the proceedings. By virtue of the proviso to Section 42 of the Act and the larger principle of affording an opportunity to show cause to all persons adversely affected in quasi-judicial proceedings it is always necessary to afford them a hearing when action against them is envisaged. In the consolidation proceedings, therefore, in cases of co-sharers where their interests are joint and identical then an effective hearing given to one would, in the eye of law, be a hearing given to all, which in law would suffice. This salutary principle is, of course, subject to the rule that where such a hearing is vitiated by a fraud or collusion or the absence of any fair and real trial of the issue, then such a hearing would not be binding upon the other co-sharers. Thus, it is held that in proceedings under sections 21 and 42 of the Act, it is not necessary that all the co-sharers must first be impleaded and then served individually. It is held that an adequate hearing given to one or some of the co-sharers is in the eye of law a hearing of all the body of co-sharers in the absence of a fraud or collusion or the failure of any fair and real trial of the issue.

(Paras 12, 13 and 17).

Jamadhar Sheoji Ram *vs.* Smt. Daulati Bai and others, 1970 P.L.J. 475.

Jahaz Khan and another *vs.* The Additional Director, Consolidation of Holdings, Haryana and another, 1970 Rev. L. R. 574.

Het Ram and others *vs.* The State of Punjab and others, 1974 Rev. L. R. 28.

OVERRULED.

(Case referred by a Single Judge Hon'ble Mr. Justice Gokal Chand Mittal to a larger Bench on 6th November, 1981 for the decision of an important question of law involved in the case. The larger Bench consisting of Hon'ble the Chief Justice Mr. S. S.

Sandhawalia, Hon'ble Mr. Justice S. S. Kang and Hon'ble Mr. Justice G. C. Mital again referred the case to the Single Judge on 1st February, 1983, after answering the relevant question for decision of the case. The Single Judge Hon'ble Mr. Justice Gokal Chand Mital finally decided the case on 22nd March, 1983).

Regular Second Appeal from the decree of the court of Shri V. D. Aggarwal, Additional District Judge, Jind, dated the 7th December, 1980 reversing that of Shri B. R. Gupta, Sub-Judge 1st Class, Narwana, dated the 22nd February, 1969 dismissing the suit of the plaintiff and leaving the parties to bear their own costs, throughout.

H. S. Hooda, Advocate, *for the appellants.*

K. K. Mehta, Advocate with I. K. Mehta, Advocate, *for the respondents.*

JUDGMENT

S.S. Sandhawalia, C.J.

(1) Whether proceedings under section 21 and 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 envisage that each one of the co-sharers who have joint and indivisible rights must be impleaded as a party and individually served therein is the spinal question which has necessitated this reference to the Full Bench. In essence the issue is whether the impleading of one of the co-sharers or an adequate hearing given to any one of them can be deemed (barring fraud or collusion on his part) as a hearing to all the co-sharers.

(2) The matrix of facts directly relevant to the question may be noticed briefly. Consolidation proceedings in village Karsindhu, Tehsil Narwana provides the base for this protracted litigation. The Consolidation Officer under section 21 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, hereinafter called the Act, proposed allotment of *abadi* plot No. 644 to Telu, Mange and Biru and *abadi* plot Nos. 651 and 657 to Suraj Bhan and

Shiv Ram, respectively. After hearing the parties, the Consolidation Officer under section 21(2) of the Act passed an order finally allotting *abadi* plot Nos. 651 and 657 to Telu, Mange and Biru and plot No. 644 was divided into two parts one of which was allotted to Suraj Bhan and the other to Shiv Ram. Against the aforesaid order Suraj Bhan and Smt. Lado, widow of Sheo Chand filed a joint appeal under section 21(3) of the Act which was dismissed by the Settlement Officer by his order dated the 29th July, 1964, annexure P.2. In this appeal only Telu was impleaded as a respondent and he alone was present at the time of hearing. Against the said order two separate appeals were filed...—one by Suraj Bhan and Smt. Lado, widow of Shiv Chand and the other by Sheo Ram. In both these appeals also, Telu Ram alone was impleaded as the respondent. The Assistant Director heard both the appeals together and allowing the same by his order dated the 4th of January, 1965, restored the allotments proposed under section 21(1). Against the aforesaid order, Telu Ram preferred a petition under section 42 of the Act on his own behalf as also on behalf of Mange which was dismissed by the Additional Director,—*vide* his order dated the 3rd of February, 1966 (Exhibit D.1).

(3) The present suit giving rise to the proceedings was preferred by Biru and Mange seeking a permanent injunction to restrain Suraj Bhan and Sheo Ram from interfering in their possession of Baras Nos. 651 and 657, two-third share of which was owned and possessed by them. The plaintiff also challenged the orders of the Consolidation Authorities by which the said two plots were allotted to the defendants as void and ineffective against their rights as those orders were obtained behind their back. Telu Ram was impleaded as a proforma defendant. The suit was contested by Suraj Bhan and Sheo Ram and they pleaded that in consolidation proceedings two plots were finally allotted to them and they had taken possession thereof under those orders. They also pleaded that the Civil Courts had no jurisdiction to try the suit. The trial Court held *inter alia* that the Civil Courts had jurisdiction to try the suit in as much as the plaintiffs had no notice of the adverse orders passed by the Consolidation Authorities varying the allotment of plots from 651 and 657 to that of 644 and hence the said orders were totally without jurisdiction and not binding on the plaintiffs. The suit was accordingly decreed. Aggrieved by the judgment and decree and contesting defendants appealed and the learned Additional District Judge, Jind, allowed the same,—*vide* judgment dated the 7th of December, 1970 and dismissed the suit on the finding that the plaintiffs were sufficiently represented by

Telu and, therefore, it must be presumed that they had requisite notice of the proceedings which went against their interest. In coming to this conclusion basic reliance was placed on *Teg Pal* v. *State of Punjab* (1). This is a plaintiffs' second appeal which earlier came up before my learned brother G. C. Mital, J., sitting singly. Noticing an acute conflict of precedent within this Court, he referred the matter for an authoritative decision by the Full Bench,—*vide* his elaborate and lucid referring order.

(4) Perhaps at the very outset it is necessary to highlight that we are called upon to consider this issue (formulated in the opening part of the judgment) within the specific confines of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter called the Act). That this statute is part of a larger scheme of progressive agrarian legislation, does not seem to be in doubt. Its primary object as manifest from both its name and its preamble is to provide for prevention of the fragmentation of the agricultural holdings into uneconomic blocks and for the compulsory consolidation thereof within the whole of the State expeditiously. That this would necessarily involve millions of individual and joint agricultural holdings, is manifest. In construing a statute of this nature one cannot be wholly oblivious of its larger purpose or as it has sometimes been aptly said as the soul of the Act. It seems unnecessary to digress on this issue on principle because it has been authoritatively pronounced upon by the final Court in *State of Punjab (now Haryana) and others* Vs. *Amar Singh and another* (2) in these terms:—

> "..... Every such statute has a soul and an integrated personality—minor deformities may mar this unity, especially in which piecemeal amendments and unskilled drafting occur. The basic judicial approach must be to discover this soul of the law and strive to harmonise the many limbs to subserve the pervasive spirit and advance the social project of the enactment. Seeming confrontations between provisions must be resolved into a co-operative co-existence."

It is again this back drop of salutary rule of interpretation with regard to this Act that one may now turn to its particular provisions. As the argument has necessarily to turn on the

(1) 1970 P.L.J. 654.
(2) 1974 P.L.J. 74.

language of sections 21 and 42 of the Act, it seems to be apt to first quote their relevant parts:—

"21. (1) The Consolidation Officer shall, after obtaining the advice of landowners of the estate or estates concerned, carry out repartition in accordance with the scheme of consolidation of holdings confirmed under section 20, and the boundaries of the holdings as demarcated shall be shown on the *shajra* which shall be published in the prescribed manner in the estate or estates concerned.

(2) Any person aggrieved by the repartition may file a written objection within fifteen days of the publication before the Consolidation Officer who shall after hearing the objectors pass such orders as he considers proper confirming or modifying the repartition.

(3) Any person aggrieved by the order of the Consolidation Officer under sub-section (2) may within one month of that order file an appeal before the Settlement Officer (Consolidation) who shall after hearing the appellant pass such order as he considers proper.

(4) Any person aggrieved by the order of Settlement Officer (Consolidation) under sub-section (3), whether made before or after the commencement of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act, 1962, may within sixty days of that order, appeal to the Assistant Director of Consolidation.

(5) * * *

(6) * * *

(7) * * *

"42. The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under this Act, call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit:

Provided that no order or scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard except in case where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration."

It is evident from a plain reading of section 21 of the Act that its provisions do not prescribe any formal mode of pleadings for filing objections as also the appeals provided thereby. Therefore, to import any overly technical formality of pleadings into this sphere would indeed be pedantic. It was conceded before us that even though detailed rules have been framed under the Act, the framers thereof have also not chosen to prescribe any specific or formal mode for making resort to the proceedings under section 21 of the Act.

(5) Turning now to Section 42 of the Act, the position is somewhat identical, with the qualification which the proviso thereto prescribes, that before any order or scheme of partition is to be varied or reversed, parties interested should be given an opportunity of hearing. This obviously is only a statutory recognition of the elementary principles of natural justice, which might well have been imported into the provisions, even if it was not expressly so provided. What, is however, significant herein is the fact that neither Section 42 of the Act nor Rule 17 framed thereunder requires any formal pleading or an inflexible form for invoking the jurisdiction thereunder. It is true that Rule 17 does lay down the basic minimal information which must be provided in an application thereunder. Reliance was sought to be placed on clause (c) thereof for contending that every person, likely to be adversely affected, must be formally impleaded as a respondent in the application. I regret my inability to read this provision with any such formalism or strictitude. At the very best it is intended to provide the requisite information for the authority who may then choose to hear the person likely to be adversely affected, if the grant of relief becomes necessary by varying of reversing the earlier order or scheme of partition. It must be highlighted that though in exceptional cases resort to Section 42 might well be possible straightaway. Yet ordinarily this revisional jurisdiction is at the apex of as many as four remedies by way of objections or appeal provided under Section 21. Therefore, the Director has the power, if one may say so, to dismiss an application under Section 42 *in limine* without calling upon anyone of the persons likely to be affected. Such an

application is not a suit in which process must necessarily or normally issue to the defendants, who must be formally impleaded. Therefore, it seems manifest that Sections 21 and 42 do not in any way prescribe or mandate the formal impleading of every right-holder, whether joint or separate, who may likely to be affected by the proceedings. Indeed such a requirement would sound doctrinaire and impracticable in agrarian legislation with regard to proceedings which might well deal with the rights of every rightholder in the village estate, whether joint or separate, and, as already mentioned, with the millions of such rightholders all over the State.

(6) Once it is so, it is equally apt to recall that neither by legislative prescription nor by judicial mandate have the provisions of Civil Procedure Code been made applicable to consolidation proceedings. This has to be highlighted because in legal formalism one sometimes tends to subconsciously import even some of the technical provisions of the Civil Procedure Code. The counsel rightly pointed out that it has been authoritatively held in *Ramji Dass and another* Vs. *State of Punjab etc.* (3), that the rules of abatement prescribed by the Civil Procedure Code are not even remotely attracted in the consolidation field. Similarly it could not be disputed before us that the strict principles of Section 11 thereof, as also the intricacies of the rules of *res judicata,* would not be inflexibly attracted. It must, consequently, be held that proceedings under the Consolidation Act are primarily, if not entirely, free from the shackles of the formalism of civil procedure.

(7) Once that is so, then the larger principle that one or more co-sharers may adequately represent or be represented by the rest of them in the absence of any fraud or collusion, seems to rest firmly or a broader jurisprudential base. Before adverting specifically to precedent under the present Consolidation Act, it seems to be apparent that the basic rule is well settled in other fields of law as well. The concept or representation by one co-owner of the whole body of co-owners has been rightly highlighted by the Full Bench in *D. G. Venkataramu and others* v. *Managing Director, Pandavapura Sahakara Sakkare Karkhane Ltd. Pandavapura, and another,* (4). Silencing all earlier discordant notes overruling the earlier Division Bench in *Abdul Kabir and others,* v. *Mt. Jamila Khatoon and others,* (5) it

(3) 1969 P.L.J. 408.
(4) A.I.R. 1970 Patna 1.
(5) A.I.R. (38) 1951 Patna 315.

has been held that under Order 1, Rule 10, Civil Procedure Code, a suit by one co-owner for recovery of possession against a trespasser, in the absence of other co-owner (despite specific objections raised on this score) was maintainable and could be decreed. The principle that one co-owner is deemed to be in possession on behalf of the other co-owners and his possession in law is not regarded as adverse to other co-owners (unless there is proof of ouster) was reiterated. Within this jurisdiction that view has been followed in *Kirpa and another* v. *Raghbir Singh and another,* (6), and even earlier it appears to have been so held in *Gopal Singh* v. *Mehanga Singh,* (7).

(8) Again by way of analogy, reference may be made to a claim for the enhancement of compensation by way of an application under Section 18 of the Land Acquisition Act, by only one of the co-owners, having joint and undivided interest therein. It has been authoritatively held by the Division Bench in *Ch. Kehar Singh son of Ch. Dharam Singh and another* v. *Union of India and another,* (8) that such an application can be presumed to be on behalf of the other co-owners as well, whose interests are joint and indivisible and, consequently, they are equally entitled to share in the enhancement. Reliance was placed therein on an earlier judgment of the Division Bench in *State* v. *Narayani Pillai Kuttiparu Amma and another,* (9). Recently this view has been reaffirmed by the Letters Patent Bench in *Punjab State (now Haryana)* v. *M/s Globe Motors Ltd. and another,* (10).

(9) *The inter se* interests and liabilities of the co-sharers, as also other legal incidents ensuing therefrom were settled and summarised by the Division Bench in *Sant Ram Nagina Ram* v. *Daya Ram Nagina Ram and others,* (11) which has been recently reaffirmed by the Full Bench in *Bhartu* v. *Ram Sarup,* (12). Broadly the same principle seems equally to be extended in the realm of a co-tenant. Therein it has been held that a notice to one co-tenant was notice to all. Reference in this context may be made to the judgment of the Division Bench in *Bodardoja and others.* v. *Ajijuddin Sircar and*

(6) A.I.R. 1982 P.L.J. 76.
(7) 1968 P.L.R. 515.
(8) A.I.R. 1963 Pb. 490.
(9) A.I.R. 1959 Kerala 136.
(10) 1981 P.L.J. 73.
(11) A.I.R. 1961, Pb. 528.
(12) 1981 P.L.J. 204.

others, (13), resting itself on the rationale in *Harihar Banerji and others* v. *Ramshashi Roy and others,* (14).

(10) In the rent jurisdiction again it has been held in *Siri Kishan Dev* v. *Babu Nand Kishore, Advocate and another,* (15) that the payment by the tenant of rent, to one of the joint landlords is payment to all and there would thus be no arrears due from the tenant to the others. Similarly under the Punjab Security of Land Tenures Act, it has been opined in *Waryam Singh and others* v. *The Financial Commissioner, Haryana and others,* (16) that an application for the ejectment of the tenant is not required to be signed by all the joint landlords nor indeed be verified by all of them.

(11) Lastly the concept of representation of the whole estate by one or some out of the many legal representatives has not only been generally accepted but finally sanctified in *Harihar Prasad Singh and others* v. *Balmiki Prasad Singh and others,* (17). Therein it has been held that even where only some of the legal representatives of the deceased were brought on the record, they would represent the whole estate and the other legal representatives as well, and the judgment would be binding on all in the absence of any fraud or collusion or on the ground of very special circumstances, showing that indeed the trial had not been fair or real against the absent their at all or where there was a special case which was not and could not be tried in the proceedings. The rule deducible from the observations of the final Court appears to be that where the interest is common and identical, then one of such persons having such common and identical interest may well represent the others and also bind them. However, the inarticulate premise of this well settled rule is that there should be absence of a fraud or collusion and a fair and real trial of the issue. If the aggrieved party can establish that in fact the proceedings were vitiated by fraud or collusion or that there was no fair or real trial at all, then alone the representation concept can be ousted and the decision can be held to be not binding.

(12) From the aforesaid larger conspectus of the wide ranging jurisprudential principle that where there is identity and jointness

(13) A.I.R. 1929, Calcutta 651.
(14) A.I.R. 1918 Privy Council 102.
(15) 1970 Rent Control Journal 523.
(16) 1980 P.L.J. 332.
(17) A.I.R. 1975 S.C. 733.

of interest then any one of such persons might well represent the others and also bind them, it seems manifest that this principle would be equally, if not more strongly, attracted in the proceedings under the Consolidation Act as well. As has been noticed earlier, this statute is a piece of progressive Agrarian legislation with some urgency of object to be achieved and not as has been picturesquely said a mere slow motion picture. In view of the fact that consolidation proceedings all over the State may affect millions of right-holders of land and because of interminable litigation and clash of interest, it would be beyond the realm of practicability to demand the impleading of each individual or joint co-sharer to every proceedings. Even more doctrinaire may be the demand of not only impleading each such co-sharer but effectively serving each of them and securing their representation. An overly meticulous approach to the problem imbued with overly legal formalism may ultimately nullify or frustrate the laudable objects of the statute itself. It was pointed out on behalf of the respondents that if a hypertechnical view was to be taken then the absence of either impleading one of the co-sharer or the inadvertent failure of service of any one of them may render the whole action beyond the provisions of the Act. Once that is so, such an action may well attract the jurisdiction of the civil courts, which with their tardy process would hamstring the very purpose of expeditious compulsory consolidation of wasteful and uneconomic land-holdings. Similarly, it was rightly pointed out that not one but most of the proceedings under the Act involved a chain-reaction affecting a large number of joint rightholders and to insist upon the impleading and service of each one of the co-sharers would in effect be creating impassable road-blocks in the achievement of the central purpose and object of the legislation. A plausible and particular example given was that of the alignment of village paths which in the larger conspectus may involve not only all the right-holders of a village estate but even all the residents therein. To insist that each one of the joint or individual right-holders must for such a purpose be both impleaded and served would be a counsel of perfection impossible of practical achievement. I am, therefore, of the view that the sound principle of effective representation by a co-sharer where his interests are common and identical with others, is doubly attracted and applicable to proceedings under the Consolidation Act.

(13) From the above, it inevitably follows that it is neither within the letter nor spirit of Sections 21 and 42 of the Act that

every co-sharer must be mandatorily impleaded in proceeedings thereunder. Indeed, as has been highlighted earlier, the Act itself does not enjoin any such legal formality. However, this should not preclude a petitioner in a particular case to pin-point a right-holder who is to be adversely affected and therefore, impleading him as a party in the application. On practical considerations this would in fact be apt but a failure to do so does not in any way affect the validity or the legality of the proceedings. By virtue of the proviso to Section 42 of the Act and the larger principle of affording an opportunity to show cause to all persons adversely affected in *quasi*-judicial proceedings it is always necessary to afford them a hearing when action against them is envisaged. In the consolidation proceedings, therefore, in cases of co-sharers where their interests are joint and identical then an effective hearing given to one would, in the eye of law, be a hearing given to all, which in law would suffice. This salutary principle is, of course, subject to the rule that where such a hearing is vitiated by fraud or collusion or the absence of any fair and real trial of the issue, then such a hearing would not be binding upon the other co-sharers.

(14) It is on the aforesaid principle that the long line of unbroken and consistent precedent that an adequate hearing to one co-sharer in consolidation proceedings binds the other is rested within this jurisdiction. More than two decades ago, in *Gurnam Singh etc.* v. *The State of Punjab etc.* (18), it was held as follows in the context of one co-sharer representing the others before the Minister of Consolidation:—

> ".....In the return which was filed by the State it is mentioned that Gurnam Singh was a co-sharer of all the persons who were alleged in paragraphs 6 and 7 of the petition not to have been heard before the impugned order was passed and that the interest of Gurnam Singh and his co-sharers is one and the same being joint. This statement is supported by what is to be found at page 8 of the Schedule attached to the order of the Minister. At any rate, the learned Single Judge had come to the conclusion on a question of fact that the petitioners were effectively represented before the Minister and the learned counsel for the appellants has failed to show us that that finding was not justified."

(18) L.P.A. No. 198 of 1961 decided on December 21, 1961.

That view has been consistently reiterated in *Rattan and another* v. *The State of Punjab and others,* (19); *Bhagwana and others* v. *The State of Punjab and others,* (20); *Gurdial Singh and others* v. *The State of Punjab and others* (21); *Kanshi Ram* v. *The State of Punjab and others,* (22) *Teg Pal and others* v. *The State of Punjab and others,* (23) and *Mohinder Singh and another* v. *State of Hary. and others,* (24). Though in the said judgments there appears to be no elaborate discussion on principle, yet it has been assumed and in our view rightly that it was axiomatic in consolidation proceedings that one co-sharer would represent the others and bind them in the absence of any fraud of collusion or in the absence of any fair and real trial of the issue. For the detailed reasons recorded earlier and on the basis of wider jurisprudential base for the rule, we would affirm the aforesaid decisions.

(15) However, a hiatus has crept in some of the judgments with regard to the modus of effective representation to the body of co-sharers. In *Jamadar Sheoji Ram* v. *Smt. Daulati Bai and others,* (25) though the question was whether the estates of a person who was inadvertantly impleaded as a respondent, even though he was dead, would be bound because of the presence of only one of his legal representatives at the time of hearing of the petition under Section 42 of the Act, the Division Bench (to which I was a party) however, proceeded further to make the following observations as well:—

> ".....It is plain that the question of effective representation can only arise where the parties on whose behalf effective representation is claimed are parties to a proceeding. When they are not parties to a proceeding, there can be no question of an effective representation. Therefore, no amount of authority can convince us that when a person is not a party to the proceedings there can be an effective representation on his behalf. The learned Single Judge was perfectly right in his conclusion that the order passed without impleading the legal representatives of Chuhar Ram was a nullity. No order can be

(19) 1965 P.L.R. 276.
(20) 1966 P.L.R. 307.
(21) 1967 Curr. L.J. 602 (F.B.).
(22) 1970 P.L.J. 380.
(23) 1970 P.L.J. 654.
(24) 1970 P.L.J. 712.
(25) 1970 P.L.J. 475.

passed against a dead man. In fact, the order was passed against a dead man. That being so, this appeal fails and is dismissed. There will be no order as to costs."

The said views seems to have been reiterated in *Jahaz Khan and another* v. *The Additional Director, Consolidation of Holdings, Haryana and another,* (26) and again in *Het Ram and others* v. *The State of Punjab and others,* (27).

(16) Now a reference to the aforesaid judgments would indicate that the issue was not adequately debated at all before the respective Benches. The principle on which the theory of effective representation by one co-sharer of the others was not even considered far from being the same elaborated. The observation in *Jamadar Sheoji Ram's case* (supra) were made in the peculiar context of the glaring inadvertance of a dead man being impleaded as a respondent. These observations appeared to be somewhat over-extended and without more have been followed in the later decisions. As discussed at some length earlier, the Consolidation Act does not envisage any formal impleading of all the co-sharers under Sections 21 and 42 of the Act. Therefore, to read the requirement of a co-sharer being first necessarily impleaded before he can be effectively represented by another, would be untenable and contrary to the prescription of the statute itself. This apart, if once it is accepted as a sound principle that a hearing to one of the co-sharers would be effective representation to all the body of co-sharers, then it seems to be futile to make the further distinction, namely; whether all the co-sharers must be impleaded as parties or not. The very idea and purpose of formally impleading the parties in a case is to serve all of them and afford them an opportunity of hearing. If one of the co-sharers can effectively represent the whole body and an adequate hearing to him would bind the others, then the requirement of impleading each and every member of the body of co-sharers would obviously be an exercise in futility. In deed, any such concept of impleading all the co-sharers, first as parties to the proceedings, seems to run counter to the basic principle of effective representation by one co-sharer on behalf of the others. With the greatest respect, therefore the observations on this specific point in *Jamadar Sheoji Ram; Jahaz Khan and*

(26) 1970 Rev. L.R. 574.

(27) 1974 Rev. L.R. 28.

another, and; *Het Ram and others' cases* (supra) are not tenable and the same are hereby over-ruled.

(17) To conclude, the answer to the question posed at the very out-set is rendered in the negative and it is held that in proceedings under Sections 21 and 42 of the Act, it is not necessary that all the co-sharers must first be impleaded and then served individually. It is held that an adequate hearing given to one or some of the co-sharers is in the eye of law a hearing of all the body of co-sharers in the absence of fraud or collusion or the failure of any fair and real trial of the issue.

(18) It is not in dispute that apart from the aforesaid significant question, other issues may also well arise in this appeal. The case would, therefore, go back for a decision on merits in the light of the aforesaid answer to the referred legal question.

Sukhdev Singh Kang, J.—I agree.

Gokal Chand Mital, J.—I also agree.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia, C.J., J. M. Tandon and G. C. Mital, JJ.

STATE OF PUNJAB,—*Appellant.*

versus

GURCHARAN SINGH, *Respondent.*

Regular Second Appeal No. 1712 *of* 1973.

March 29, 1983.

Constitution of India 1950—*Articles* 14 *and* 16—*Grant of higher pay scale within the same service—Higher educational qualifications made the basis of such grant—Classification so made—Whether valid and constitutional.*

Held, that the classification on the basis of educational qualifications in the same service for purposes of promotion is sustainable on the anvil of the equality clause. Once it is held that it is so, it matters not whether it is made for purposes of a higher pay scale or