Ajit Singh

Vs

State of Punjab & Anr.

Civil Appeal No. 1018 of 1966

(CJI K. Subha Rao, M. Hidayatullah, S. M. Sikri, R. S. Bachawat, J. M. Shelat JJ)

02.12.1966

JUDGMENT

SIKRI, J. –

This appeal by special leave is directed against the judgment of the Punjab High Court dismissing a petition filed by the appellant under art. 226 of the Constitution, praying that the scheme of consolidation of village Ropalon, Tahsil Samrola, District Ludhiana, be quashed. The scheme which was sought to be quashed was made under the provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, hereinafter referred to as the Act. On May 2, 1961, a notification was issued under section 14(1) of the Act, which provided for a declaration of the intention of the State Government to make a scheme for the consolidation of holdings in the estates. Section 14(2) of the Act provides for the appointment of a Consolidation Officer and the preparation of a scheme by him. One Gurkirpal Singh, purporting to act as the Consolidation Officer, prepared a draft scheme and published it on November 8, 1961, under section 19(1) of the Act. On January 6, 1962, or January 16, 1962, the scheme was confirmed by the Settlement Officer under section 20(3) of the Act. After the confirmation, the Consolidation Officer after obtaining the advice of the landowners of the estate carried out repartition under section 21(1) and the boundaries of the holdings as demarcated were published in the prescribed manner in the estate on February 21, 1962. It appears that the Punjab High Court granted a stay order and no further proceedings under the Art could be taken. No possession has been transferred pursuant to the re-partition. On May 11, 1962, a notification was published in the Gazette, purporting to appoint Shri Gurkirpal Singh as Consolidation Officer in respect of the estate Ropalon with effect from November 4, 1961. On March 10, 1965, Ajit Singh, appellant before us, filed the petition under art. 226 of the Constitution. In the High Court, as before us, it was urged on behalf of the appellant that :

(1) there could be no retrospective appointment of a Consolidation Officer; and

(2) Compensation must be paid to the appellant for the land reserved in the scheme for various purposes in accordance with the second proviso to Art. 31A(1) inserted by the Seventeenth Amendment.

We need not mention the other grounds raised before the High Court as they have not been raised before us.

The High Court held that although there could be no retrospective appointment of a Consolidation Officer, the objection could not be sustained because of laches of the appellant. On the second point,

the High Court held that the second proviso to Art. 31A(1) was prospective and not retrospective and did not affect the scheme in question as the rights under the scheme became vested as soon as the scheme was sanctioned by the Settlement Officer. The High Court also expressed a tentative view that the reservation of lands for common purposes in accordance with the scheme and the Act did not amount to "acquisition" within the contemplation of the second proviso to art. 31A(1). The High Court accordingly dismissed the petition.

Mr. B. R. L. Iyengar, the learned counsel for the appellant, has urged the following points before us;

> (1) Gurkirpal Singh, when he commenced consolidation proceedings and prepared and published the draft scheme of consolidation did not have legal authority to do so. The scheme being invalid could not be made valid by being enforced by the Settlement Officer.
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> (2) The notification appointing Gurkirpal Singh Consolidation Officer retrospectively with effect from November 4, 1961, was invalid, as neither the Government nor its delegate, Harcharan Singh, P.C.S., Officer on Special Duty, could appoint a Consolidation Officer retrospectively.
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> (3) In the second proviso to Art. 31(A)(1), the expression "acquisition" means substantial taking over the benefits of property and conferring it on the State.
>
> (4) Acquisition means the entire process terminating with possession and extinction of the title of the individual.

There seems to be substance in the first two points. It seems to us clear that before a person can start acting as a Consolidation Officer he must be appointed as such. Before he is appointed he has no authority to exercise any of the functions of a Consolidation Officer. What he does purporting to act as a Consolidation Officer has no binding force on the owners and other persons affected in the estate. The Government cannot by appointing him retrospectively clothe him with authority retrospectively. This can be done only by the Legislature subject to the provisions of the Constitution.

But the appellant cannot succeed on these grounds because the High Court, in its discretion, has held that the appellant is not entitled to rely on these objections because of laches. We cannot say that the discretion has been exercised wrongly. After the notification was published on May 11, 1962, appointing Gurkirpal Singh retrospectively with effect from November 4, 1961, it must have been clear to the appellant that Gurkirpal Singh had not been appointed Consolidation Officer before he started preparing consolidation proceedings. No adequate explanation has been given for the delay. Further it has not been shown that there has been any manifest injustice.

Coming now to the third point raised by Mr. Iyengar, we may first mention that it was held by this Court in Ranjit Singh v. State of Punjab ([1965] 1 S.C.R. 82) that the Act was protected from challenge by Art. 31A. It is necessary to set out the relevant constitutional provisions. The relevant portion of art. 31A reads as under :

"31A. (1) Notwithstanding anything contained in article 13, no law providing for -

> (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights.....

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31 :

Provided that.....

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

(2)(b) the expression 'rights' in relation to an estate shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue".

Relevant portions of articles 19 and 31 may also be set out because the learned counsel have laid stress on the language employed therein.

"19. (1) All citizens shall have the right -

(f) to acquire, hold and dispose of property.

31. (1) No person shall be deprived of his property save by authority of law.

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned 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; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

(2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property".

It would be noticed that art. 31A(1)(a) mentions four categories; first acquisition by the State of an estate; second, acquisition by the State of rights in an estate; third, the extinguishment of rights in an estate, and, fourthly, the modification of rights in an estate. These four categories are mentioned separately and are different. In the first two categories the State "acquires" either an estate or rights in an estate. In other words, there is a transference of an estate or the rights in an estate to the State. When there is a transference of an estate to the State, it could be said that all the rights of the holder of the estate have been extinguished. But if the result in the case of the extinguishment is the transference of all the rights in an estate to the State, it would properly fall within the expression "acquisition by the State of an estate". Similarly, in the case of an acquisition by the State of a right in an estate it could also be said that the rights of the owner have been modified since one of the

rights of the owner has been acquired.

It seems to us that there is this essential difference between "acquisition by the State" on the one hand and "modification or extinguishment of rights" on the other that in the first case the beneficiary is the State while in the latter case the beneficiary of the modification or the extinguishment is not the State. For example, suppose the State is the landlord of an estate and there is a lease of that property, and a law provides for the extinguishment of leases held in an estate. In one sense it would be an extinguishment of the rights of a lessee, but it would properly fall under the category of acquisition by the State because the beneficiary of the extinguishment would be the State.

Coming now to the second proviso to art. 31A, it would be noticed that only one category is mentioned in the proviso, the category being "acquisition by the State of an estate". It means that the law must make a provision for the acquisition by the State of an estate. But what is the true meaning of the expression "acquisition by the State of an estate". In the context of art. 31A, the expression "acquisition by the State of an estate" in the second proviso to Art. 31A(1) must have the same meaning as it has in cl. (1)(a) to art. 31A. It is urged on behalf of the respondents before us that the expression "acquisition by the State of any estate" in art. 31A(1)(a) has the same meaning as it has in Art. 31(2A). In other words, it is urged that the expression "acquisition by the State of any estate" means transfer of the ownership or right to possession of an estate to the State Mr. Iyengar on the other hand urges that the expression "acquisition by the State" has a vary wide meaning and it would bear the same meaning as was given by this Court in The State of West Bengal v. Subodh Gopal Bose ([1964] S.C.R. 587), Dwarkadas Shrinivas of Bombay v. The Sholapur Spinning & Weaving Co. Ltd. ([1954] S.C.R. 674) Saghir Ahmad v. State of U.P. ([1955] 1 S.C.R. 707) and Bombay Dyeing and Manufacturing Co. Ltd. v. The State of Bombay ([1958] S.C.R. 1122). In these cases this Court had given a wide meaning to the word "acquisition". In Dwarkadas Shrinivas of Bombay v. The Sholapur Spinning & Weaving Co Ltd. ([1954] S.C.R. 674) Mahajan, J., observed at page 704 as follows :

> "The word 'acquisition' has quite a wide concept, meaning the procuring of property or the taking of it permanently or temporarily. It does not necessarily imply the acquisition of legal title by the State in the property taken possession of".

He further observed at p. 705 :

> "I prefer to follow the view of the majority of the Court, because it seems to me that it is more in consonance with juridical principle that possession after all is nine-tenths of ownership, and once possession is taken away, practically everything is taken away, and that in construing the Constitution it is the substance and the practical result of the act of the State that should be considered rather than its purely legal aspect".

Bose J., observed at p. 734 as follows :

> "In my opinion, the possession and acquisition referred to in clause (2) mean the sort of 'possession' and 'acquisition' that amounts to 'deprivation' within the meaning of clause (1). No hard and fast rule can be laid down. Each case must depend on its own facts. But if there is substantial deprivation, then clause (2) is, in my judgment, attracted. By substantial deprivation I mean the sort of deprivation that substantially robs a man of those attributes of enjoyment which normally accompany rights to, or

> an interest in, property. The form is unessential. It is the substance that we must seek".

Let us now see whether the other part of the second proviso throws any light on this question. It would be noticed that it refers to ceiling limits. It is well-known that under various laws dealing with land reforms, no person apart from certain exceptions can hold land beyond a ceiling fixed under the law. Secondly, the proviso says that not only the land exempted from acquisition should be within the ceiling limit but it also must be under personal cultivation. The underlying idea of this proviso seems to be that a person who is cultivating land personally, which is his source of livelihood, should not be deprived of that land under any law protected by art. 31A unless at least compensation at the market rate is given. In various States most of the persons have already been deprived of land beyond the ceiling limit on compensation which was less than the market value. It seems to us that in the light of all the considerations mentioned above the words "acquisition by the State" in the second proviso do not have a technical meaning, as contended by the learned counsel for the respondent. If the State has in substance acquired all the rights in the land for its own purposes, even if the title remains with the owner, it cannot be said that it is not, acquisition within the second proviso to art. 31A.

But the question still remains whether even if a wider meaning is given to the word "acquisition" what has been done by the scheme and the Act is acquisition or not within the meaning of the second proviso. In other words, does the scheme only modify rights or does it amount to acquisition of land ? The scheme is not part of the record, but it appears that 89B-18B-11B (Pukhta) of land was owned by the Gram Panchayat prior to consolidation, which was used for common purposes. Some further area was reserved for common purposes as khals, paths, khurrahs, Panchayat ghars and schools, etc., after applying cut upon the rightholders on pro-rata basis. It does not appear that any land, apart from what was already owned by the Panchayat, was reserved for providing income to the Panchayat. Therefore, in this case we are not concerned with the validity of acquisition for such a purpose.

Rule 16(ii) of the Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, provides :

> "In an estate or estates where during consolidation proceedings there is no shamlat Deh land or such land is considered inadequate, land 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. Proprietary rights in respect of land so reserved (except the area reserved for the extension of abadi of proprietors and non-proprietors) shall vest in the proprietary body of estate or estates concerned and it shall be entered in the column of ownership of record of rights as (Jumla Malkan wa Digar Haqdaran Arazi Hasab Rasad Raqba). The management of such land shall be done by the Panchayat of the estate or estates concerned on behalf of the village proprietary body and the panchayat shall have the right to utilise the income derived from the land so reserved for the common needs and benefits of the estate or estates concerned".

It will be noticed that the title still vests in the proprietary body, the management of the land is done on behalf of the proprietary body, and the land is used for the common needs and benefits of the estate or estates concerned. In other words a fraction of each proprietor's land is taken and formed into a common pool so that the whole may be used for the common needs and benefits of the estate,

mentioned above. The proprietors naturally would also share in the benefits along with others.

In Attar Singh v. The State of U.P. ([1959] Supp. 1 S.C.R. 928 at p.938) Wanchoo J., speaking for the Court, said this of the similar proviso in a similar Act, namely the U.P. Consolidation of Holdings Act (U.P. Act. V of 1954) as amended by the U.P. Act XVI of 1957 :

> "Thus the land which is taken over is a small bit, which sold by itself would hardly fetch anything. These small bits of land are collected from various tenure-holders and consolidated in one place and added to the land which might be lying vacant so that it may be used for the purposes of section 14(1)(ee). A compact area is thus created and it is used for the purposes of the tenure-holders themselves and other villagers. Form CH-21 framed under r. 41(a) shows the purposes to which this land would be applied, namely, (1) plantation of trees, (2) pasture land, (3) manure pits, (4) threshing floor, (5) cremation ground, (6) graveyards, (7) primary or other school, (8) playground, (9) Panchayatghar, and (10) such other objects. These small bits of land thus acquired from tenure-holders are consolidated and used for these purposes, which are directly for the benefit of the tenure-holders. They are deprived of a small bit and in place of it they are given advantages in a much larger area of land made up of these small bits and also of vacant land".

In other words, a proprietor gets advantages which he could never have got apart from the scheme. For example, if he wanted a threshing floor, a manure pit, land for pasture, khal, etc., he would not have been able to have them on the fraction of his land reserved for common purposes.

Does such taking away of property then amount to acquisition by the State of any land ? Who is the real beneficiary ? Is it the Panchayat ? It is clear that the title remains in the proprietary body and in the revenue records the land would be shown as belonging to "all the owners and other right holders in proportion to their areas". The Panchayat will manage it on behalf of the proprietors and use it for common purposes; it cannot use it for any other purpose. The proprietors enjoy the benefits derived from the use of land for common purposes. It is true that the non-proprietors also derive benefit but their satisfaction and advancement enures in the end to the advantage of the proprietors in the form of a more efficient agricultural community. The Panchayat as such does not enjoy any benefit. On the facts of this case it seems to us that the beneficiary of the modification of rights is not the State, and therefore there is no acquisition by the State within the second proviso.

In the context of the 2nd proviso, which is trying to preserve the rights of a person holding land under his personal cultivation, it is impossible to conceive that such adjustment of the rights of persons holding land under their personal cultivation in the interest of village economy was regarded as something to be compensated for in cash.

In this view of the matter it is not necessary to deal with the fourth point raised by the learned counsel for the appellant because it does not matter whether the acquisition is complete or not, as even if we hold that the acquisition is not complete and it has yet to be completed, the second proviso to art. 31A(1) would not prevent the State from proceeding with the acquisition.

In the result the appeal fails and is dismissed, but there would be no order as to costs.

HIDAYATULLAH, J. –

This is an appeal against the judgment and order of the High Court of Punjab, October 5, 1965,

dismissing a petition under Arts. 226 and 227 of the Constitution filed by the appellant to quash the consolidation of village Ropalon, Tehsil Sarmrala, District Ludhiana. He challenged the consolidation mainly on two grounds which alone were pressed before us in this appeal. The first was that the Consolidation Officer (Gurkirpal Singh) was not appointed under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, till after the repartition was concluded. The consolidation work done by him was, accordingly said to be without jurisdiction and a nullity. The second ground was that there were 89 bighas, 18 biswas and 18 biswanis of pukhta lands with the Gram Panchayat prior to the consolidation proceedings but under the consolidation an additional 123 kanals and 14 marlas were taken from the common pool and were given to the Panchayat and a pro rata cut was applied to the land of all the landholders. The appellant contended that, as he was a small landholder and his land had also been taken without the payment of compensation, as required under Art. 31-A(1), 2nd proviso, the acquisition was illegal and confiscatory. The opposite party joined issue on both the points and also submitted that on fresh measurements 123 kanals and 14 marlas land was found to be in excess.

The High Court rejected the first contention on the ground of laches on the part of the appellant and also on merits. We see no reason to differ. The State Government acting under s. 41 delegated its powers under ss. 14(1) and (2) of the Consolidation Act to one Harcharan Singh. Section 14(2) gives powers to appoint a Consolidation Officer. Harcharan Singh was, therefore, competent to appoint a Consolidation Officer. It is fairly obvious that Gurkirpal Singh would not act as Consolidation Officer unless appointed to act as such by Harcharan Singh. The affidavit of the State does not state that an order was passed and relies on the notification. No doubt a notification was issued by Harcharan Singh as late as May 3, 1962, appointing Gurkirpal Singh as Consolidation Officer with effect from November 4, 1961, but section 14(2) only speaks of appointment of a Consolidation Officer and does not lay down that it shall be by notification. In this respect it differs from some other sections such as section 20 of the Act under which Settlement Officers (Consolidation) are to be appointed by notification. It is true that the original order appointing Gurkirpal Singh was not produced but there is a presumption that he must have been so appointed because he would not act without a proper appointment. The notification which is produced would itself be redundant if an order appointing Gurkirpal Singh before he began to act as Consolidation Officer had, in fact, been passed. The only defect is that the original order is not available but as the petition was filed more than three years after the completion of the consolidation the objection can hardly be entertained in the face of the presumption under section 114 of the Indian Evidence Act. We would, therefore, not entertain the objection. It is a moot point, however, whether Harcharan Singh could make up his lapse (if any) by a subsequent and a retrospective notification. As we do not entertain the objection we do not consider that question.

As regards the second point it may be pointed out that on an earlier occasion the Consolidation Act was challenged as ultra vires the Constitution inasmuch as it sought to deprive the landholders of their property and Art. 31 was invoked. Before the judgment of this Court could be delivered the Seventeenth Amendment of the Constitution came into force. Counsel in that case were invited to reopen the argument if they desired but declined. The Court, therefore, considered the validity of the Consolidation Act and upheld it on the ground that it was a measure of agrarian reform and was protected even before Art. 31-A was amended by the Seventeenth Amendment Act. The judgment of this Court is reported in Ranjit Singh and Others v. State of Punjab and Others ([1965] 1 S.C.R. 82) and it expressly refrained from making any allusion to the Seventeenth Amendment. At the hearing of this appeal no attempt was made to question the Consolidation Act and it must, therefore, be assumed to be validly enacted and to be constitutional.

The question that remains is whether the appellant, who is a small landholder holding land within the ceiling and has lost some of it, is entitled to compensation at market rate as required by the second proviso to Art. 31-A as now incorporated in the Constitution. To understand this we shall refer first to what is being done under the Consolidation Act and then consider whether the Act is unsupportable in view of the second proviso to Article 31-A(1) as contended. The Consolidation Act is passed to provide for the compulsory consolidation of agricultural holdings and to prevent their fragmentation. Section 18 of the Act provides that notwithstanding anything contained in any law for the time being in force it shall be lawful for any Consolidation Officer to direct inter alia :

> "(a) that any land specifically assigned for any common purpose shall cease to be so assigned and to assign any other land in its place;
>
> #(b) . . . . .##
>
> (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.
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> Section 46 of the Consolidation Act empowers the State Government to make rules for carrying out the purposes of the Act and in particular to provide for :
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> "(e) the manner in which the area is to be reserved under section 18 and the manner in which it is to be dealt with and also the manner in which the village abadi is to be given to proprietors and non-proprietors (including scheduled castes, Sikh backward classes, artisans and labourers) on payment of compensation or otherwise;"

In furtherance of this power two rules have been framed which are numbered 16(i) and 16(ii). These rules provide for the reservation of the abadi for the proprietors as well as the non-proprietors and for reservation of land for the Gram Panchayat. On the present occasion we are concerned with sub-rule (ii), which was added on April 9, 1957 by the Punjab Government to the rules framed under the Act. It reads :

> "16(ii) In an estate or estates where during consolidation proceedings there is no shamlat deh land or such land is considered inadequate, land shall be reserved for the village Panchayat, 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. Proprietary rights in respect of land, so reserved (except the area reserved for the extension of abadi of proprietors and non-proprietors) shall vest in the proprietary body of the estate or estates concerned, and it shall be entered in the column of ownership of record of rights as (jumla malikan wa digar haqdaran arazi basab rasad raqba). The management of such land shall be done by the Panchayat of the estate or estates concerned on behalf of the village proprietary body and the Panchayat shall have the right to utilize the income derived from the land so reserved for the common needs and benefits of the estate or estates concerned".

The rule was declared ultra vires by the Punjab High Court in Munsha Singh v. State of Punjab (I.L.R. [1960] 1 Punjab 589). The sub-rule was, however, saved by the second amending Act (27 of 1960) which gave legal cover to the sub-rule by including a definition of "common purpose" to the following effect :-

"2(bb) 'Common purpose' means any purpose in relation to any common need, convenience or benefit of the village and includes the following purposes :-

(i) extension of the village abadi;

(ii) provide income for the Panchayat of the village concerned for the benefit of the village community;

(iii) village roads and paths; village drains; village wells, ponds or tanks; village water-courses 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-work or tube-wells, whether such schools, play grounds, dispensaries, hospitals, institutions, waterworks or tube-wells may be managed and controlled by the State Government or not".

Simultaneously a new section (s. 23-A) was inserted in the Consolidation Act to the following effect :-

"23-A. As soon as a scheme comes into force the management and control of all lands assigned or reserved for common purposes of the village under section 18 -

(a) in the case of common purposes specified in sub-clause (iv) of clause (bb) of section 2 in respect of which the management and control are to be exercised by the State Government, shall vest in the State Government; and

(b) in the case of any other common purpose, shall vest in the panchayat of that village;

and the State Government or the Panchayat, as the case may be, shall be entitled to appropriate the income accruing therefrom for the benefit of the village community, and the rights and interests of the owners of such lands shall stand modified and extinguished accordingly :

Provided that in the case of land assigned or reserved for the extension of village abadi or manure pits for the proprietors and non-proprietors of the village, such land shall vest in the proprietors and non-proprietors to whom it is given under the scheme of consolidation".

The preamble of the Consolidation Act was also amended suitably. All these amendments were with retrospective effect.

The Punjab Gram Panchayat Act, 1953 (4 of 1953) has been passed to provide for better administration in the rural areas of the Punjab by Panchayats. By section 19 of the Panchayat Act various administrative duties are assigned to the panchayat which is to look after matters like sanitation, drainage, supply of water, burial and cremation grounds, public health, schools and hospitals etc. and in particular it provides :

"(f) pounds for animals :

#. . . . . .##

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

(o) starting and maintaining a grain fund for the cultivators and lending them seed for sowing purposes on such conditions as the Gram Panchayat may approve;

. . . . .##

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

. . . . .##

(t) framing and carrying out schemes for the improved methods of cultivation and management of land to increase production".

The Punjab Legislature also passed the Punjab Village Common Lands (Regulation) Act (1 of 1954) with the object of regulating the rights in shamlat deh and abadi deh. The Regulation Act vests all rights of management in the shamlat deh in the village Panchayat and in the land in the abadi deh under a house owned by a non-proprietor. Section 4 lays down how the Panchayat is to deal with the matters and provides as follows :-

"All lands vested in a panchayat by virtue of the provisions of this Act shall be utilised or disposed of by the panchayat for the benefit of the inhabitants of the village concerned, in the manner prescribed".

Section 6 provides :

"Any income accruing from the use and occupation of the lands vested in a panchayat shall be credited to the panchayat fund and shall be utilised in the manner prescribed".

Section 7 finally provides as follows :-

"No person shall be entitled to any compensation for any loss suffered or alleged to have been suffered as a result of coming into force of this Act".

There is, however, on the statute book in the Punjab yet another Act which is intituled Punjab Security of Land Tenures Act, (10 of 1953) as amended by Act 57 of 1953 and Act 11 of 1955. By that Act security of land tenures, fixing of areas for 'self-cultivation' is provided and there is conferment of rights on tenants to purchase lands under their cultivation from landholders.

These Acts between them, therefore, provide for the establishment of Gram Panchayat which is to deal with the shamlat deh and to look after the social needs of a village, yet giving security to the tenants and allowing for consolidation of holdings, with a view to preventing fragmentation. The operation of these Acts is visible in the facts of this case, because the shamlat deh is altered and more land is granted in the consolidation to the village Panchayat ostensibly for the purpose of construction of Panchayat Ghar and a school and for various other common purposes. No compensation is paid for the lands which have been taken away from the landholders even though

they claim that their case is taken out of Arts. 31 and 31A and is covered by the second proviso to Art. 31-A(1) of the Constitution as framed by the Seventeenth Amendment.

These articles were amended by the First, the Fourth and the Seventeenth Amendments, but reference is made here to the articles (omitting portions not relevant to our purpose) as they stand after the Seventeenth Amendment :

"31. (1) No person shall be deprived of his property save by authority of law.

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of law which provides for compensation for the property so acquired or requisitioned and either fixed the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

(2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.

. . . . . ."##

31A. Saving of laws providing for acquisition of estates, etc.

(1) Notwithstanding anything contained in article 13, no law providing for -

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

. . . . . .##

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31 :

. . . . . .##

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

(2) In this article, -

(a) the expression "estate" shall, in relation to any local area, have the same meaning

> as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include -
>
> (i) any jagir, inam or muafi or other similar grant and in the States of Madras and Kerala, any janmam right;
>
> (ii) any land held under ryotwari settlement;
>
> (iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;
>
> (b) the expression 'rights', in relation to any estate, shall include any rights vesting in a proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue".

The case of the appellant is that under the 2nd proviso to Art. 31-A(1), he is entitled to compensation because land under his personal cultivation is an estate, and land within the ceiling limit cannot be acquired without payment of compensation which is less than the market value of his land, notwithstanding any law enabling acquisition of land for the Panchayat. The State contends that no land has been acquired because all lands continue to be recorded in the names of the owners in proportion to the area originally held by them as provided by rule 16(ii) and the lands are to be used for the benefit of the proprietors. The appellant contends that this is acquisition all the same. A question thus arises : what is meant by 'acquisition' and 'to acquire' in the second proviso ?

To determine the correct meaning it is necessary to view Articles 31 and 31-A together. The State seeks to establish a contrast between acquisition and requisition and contends that "acquisition" means a total deprivation of the property for all time and "requisition" means either a partial deprivation or deprivation for a time. It submits that by the former there is a change of ownership and by the latter a change in possession or enjoyment without a change in ownership. This contrast the State seeks to establish from the way in which the words "acquisition" and "requisition" "acquired" and "requisitioned" are used in juxtaposition in the two Articles. We have, therefore, to examine the scheme of the two Articles to see if they throw any light upon the matter.

Before this is done it may be admitted that the distinction between "acquisition" and "requisition" is a real one and legislative practice in the past has clearly provided separately for acquisition and requisition in Acts which were even named acquisition and requisition Acts. The distinction was also made by the Government of India Act, 1935. Legislative practice, however, uniform is not always conclusive. We must discover from the Constitution itself, how the words are to be understood. What then are the indications in the Constitution ?

The first indication is in the legislative entry No. 42 in List 3 (Seventh Schedule) which was added by the Constitution Seventh Amendment. Before the Amendment the entry read :

> "42. Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given".

The entry now reads "Acquisition and requisitioning of property". These entries give an indication

that the Constitution continues to make a distinction between the two terms. Next Art. 31 begins by laying down in clause (1) that no person shall be deprived of his property save by authority of law and goes on to say in cl. (2) that no property shall be compulsorily acquired or requisitioned save for public purpose and save by authority of law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of compensation or specifies the principles on which and the manner in which, the compensation is to be determined and given. The words of the article refer to acquisition and requisition of property. Clause 2(A), which was added by the Fourth Amendment, uses different phraseology. This clause says that where a law does not provide for the transfer of ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property. This means that property shall not be considered to be compulsorily acquired or requisitioned unless the law provides for the transfer of the ownership or right to possession to the State or to a corporation owned or controlled by the State. The Gram Panchayat is a local authority and by virtue of the definition of "State" in Art. 12 stands included in that term. Therefore, a law providing for the transfer of ownership or right to possession to the Gram Panchayat is for the purposes of Art. 31-A(1) and (2), a law providing for the compulsory acquisition or requisitioning of the property.

The contention of the State is that in Art. 31(2A) we get the clue to the meanings of the words "acquisition" and "requisition" and that the former indicates the transfer of ownership and the latter the transfer of the right to possession. It is, therefore, submitted that the transfer of the use of the land to Gram Panchayat with the ownership still in the cultivators (as is shown by the entry of their names as owners of shamlat deh) and use of the land for their benefit indicate a requisitioning of the lands, that is to say, a transfer of the right to possession merely and not acquisition, that is to say, transfer of ownership. The conclusion is thus drawn that inasmuch as the second proviso speaks of acquisition and not requisition, it cannot apply to the case of the appellant and persons like him who are still regarded as owners of the lands although they may be deprived of the immediate right to possession by the handing over of land to the Panchayat for management. It is urged that such persons are not entitled to the advantage of the second proviso since their land is not acquired as contemplated therein. We cannot accept this argument.

Article 31-A deals with a special subject, namely, the saving of laws providing for acquisition of 'estates'. This article saves any law from an attack under Arts. 14, 19 and 31 provided it is for the acquisition by the State of an estate or of any rights therein or the extinguishment or modification of any such rights. It will be noticed that here the article does not refer to property as such, but speaks of an estate as defined in the Article and also of rights in the estate. Estate is defined to include, among other things, "any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans". Applying the definition, the lands under cultivation must be regarded as 'estates'. Now the intention underlying Art. 31-A is to give protection to State action against Arts. 14, 19 and 31 so long as the acquisition is by the State of any estate or of any rights therein or the extinguishment or modification of any such rights. To this protection there is only one exception and that is to be found in the second proviso. It is that land under the personal cultivation of any estate holder of any kind which is within the ceiling limit applicable to such person, shall not be acquired, unless at least market value of the land is given as compensation. Such land can be acquired but only on compensation which is not less than the market value. The word "acquisition" used in the proviso must take its colour from the same word used earlier and not from the word as used in the earlier article in juxtaposition with the word requisition. The word must denote not only the acquisition of ownership, that is to say, the entire

bundle of rights, but also acquisition of some rights particularly an acquisition which leaves the person an owner in name only.

Article 31-A, it is submitted by the State, introduces two further concepts, viz., extinguishment of rights and modification of rights. In the case of extinguishment, if all the rights in the property are extinguished, the result would be nothing else than acquisition. For, no property can remain in suspense without the rights therein being vested in someone or the other. In this case the property goes to the Panchayat which is included in 'State'. In the case of modification of rights all the rights of ownership remain in the owner except that they would be modified by some statutory provisions. In such a case the conception either of acquisition or requisition may not apply. In the present case bits of properties are being taken from the lands belonging to the appellants and others and are thrown in a common lot. The ownership is supposed to be vested in a proprietary body consisting of several proprietors. The statute provides that though ownership is vested in the said proprietary body the management of the land would be with the Panchayat. The only obligation thrown on the Panchayat is that the income arising from such land should be utilized for the common benefit not only of the proprietors but also of non-proprietors in the Panchayat area. The result of these provisions is (1) that a proprietor is undoubtedly deprived of his property howsoever small a proportion it may be thereof; (2) the ownership in such a property is transferred to another body which under the statute is an entity different from the proprietor himself; (3) though the ownership is vested in such a proprietary body all rights with regard to the management and income thereof are vested in a Panchayat; and (4) the benefit of the income from such lands goes not to the proprietor but to all the proprietors as well as non-proprietors in the Panchayat area. Although the property is not actually vested either in the State Government or the Panchayat a device is being made in the Act to escape the concept of 'acquisition' to avoid the payment of compensation required under the second proviso to Art. 31A. In substance and in effect this is nothing but a colourable use of the provisions of Art. 31-A by making out a case of modification of rights when there is in reality an acquisition, mainly for the sake of avoiding compensation.

Therefore, when the State acquires almost the entire bundle of rights, it is acquisition within the second proviso and compensation at market rates must be given. It is not at all difficult to determine this compensation. The total land of the holder must be assessed at market value and the value of the dimunition of the area determined proportionately. The appellant is thus entitled to compensation and he cannot be deprived of land within his ceiling without payment of compensation calculated in the manner indicated. It is admitted that his land has been reduced to something less than the ceiling applicable to him.

It is contended that what is acquired is a small bit from each landholder and that is not of much significance. We do not know what rule is in contemplation. If it is the de minimis rule, we can only say that it would be a most unsatisfactory mode of avoidance of the constitutional provision. What is a small bit is a vary vague and uncertain expression. The safe rule is that the Constitution means what it says, that is, land within the ceiling is not to be touched unless compensation at market rate is given. We would, therefore, reject the plea that we should ignore these small bits of land especially as they will be used for the general good and will confer some benefit also upon those who will lose them.

We would accordingly allow the appeal with costs.

ORDER

In accordance with the Opinion of the majority Civil Appeal No. 1018 of 1966 is dismissed without costs.

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