

Gram Panchayat, Village Kanonda, Tehsil Bahadurgarh, District Rohtak, Through Its Sarpanch,

Vs

Director, Consolidation of Holdings, Haryana, Chandigarh and Others

Civil Appeal No. 584 of 1982

(K. N. Saikia, K. Ramaswamy, Smt. M. S. Fathima Deevi JJ)

24.10.1989

JUDGMENT

SAIKIA, J. –

1. This appeal by special leave is from the judgment of the High Court of Punjab and Haryana at Chandigarh dated September 21, 1979 in Civil Writ Petition No. 2247 of 1979 allowing the petition and setting aside the order of the Director, Consolidation of Holdings dated February 8, 1979.
2. The appellant Gram Panchayat, hereinafter referred to as the 'Panchayat', was the owner of 1200 bighas of land in village Kanonda, Tehsil Bahadurgarh, District Rohtak. A scheme of consolidation of holdings, hereinafter referred to as 'the Schedule', of the village was confirmed on January 15, 1974 under Section 20 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (50 of 1948), hereinafter referred to as 'the Act'. The Panchayat, therefore, moved an application under Section 42 of the Act on September 20, 1977 for setting aside the Scheme, objecting to the utilisation of the land of value of - /2/- (two annas) and allotments made to the other right holders for their benefit. On January 24, 1979 a Mushtehri Mundadi was made for information of all the villagers concerned, but the right holders were absent and ex parte proceedings were taken against them. The Panchayat's case was that under the said Scheme the panchayat land was consolidated, repartitioned and allotted to persons who did not have any right to hold the land. Besides, the land of Dharat containing two wells and a big house being religious place of worship was also partitioned under the Scheme and consequently the Panchayat has been reduced to a landless person, financially weakened and rendered incapable of rendering service in the village.
3. After hearing the parties the Director in his order dated February 8, 1979 observed that it was evident from the perusal of the record that the Scheme of Consolidation of the village was confirmed on January 15, 1974 whereas the application had been filed on September 20, 1977 and as such the application had been filed too late. After the expiry of six months period the application was time barred. However, he said in his order :

"In this case only to benefit some land owners, the land of the value of two annas has been allotted due to which the deserving persons have been left over and they have not been given even Abadi plots. Apart from this the Panchayat had no other land to cultivate, due to which the Panchayat is unable to develop the agricultural schemes and in these circumstances of the matter I condone the delay in filing the present application."

4. He accordingly set aside the Scheme and remanded the case to the Consolidation Officer under Section 21(2) of the Act with some directions. Against that order the respondents moved the High Court of Punjab and Haryana in Civil Writ Petition No. 2247 of 1979 urging, inter alia, that the Director of Consolidation of Holdings had condoned the delay without there being any ground for the same and that, in doing so, he had acted illegally and with material irregularity. The High Court held that from the observations of the Director it was evident that the delay was condoned on extraneous considerations as no reason whatsoever was given by the applicant in the application filed before him under Section 42 of the Act as to why it was filed after period of limitation. In that view of the matter, holding that the Director of Consolidation of Holdings had acted illegally and with material irregularity in condoning the delay, the High Court by the impugned order dated September 21, 1979 allowed the writ petition and quashed the order of the Director of Consolidation of Holdings dated February 8, 1979.

5. Mr. A. B. Rohtagi, the learned counsel for the appellant, submits that the High Court erred in setting aside the Director of Consolidation's order applying to the confirmation of the Scheme within the period of limitation of six months as prescribed in the Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, hereinafter referred to as 'the Rules', inasmuch as that rule speaks only of orders and not of confirmation of the Scheme; and that a Full Bench of the Punjab and Haryana High Court in Jagtar Singh v. Additional Director, Consolidation of Holdings, Jullundar (AIR 1984 P&H 216 : 1984 Punj LJ 222 : (1984) 86 Punj LR 364) taking the view that the bar of limitation under Rule 18 does not apply to those petitions under Section 42 in which the legality or validity of a scheme prepared or confirmed or repartition made in challenged has overruled Chhaju Ram v. State of Haryana (Chhanju Ram v. state of Harayana, AIR 1982 P&H 148 : 1981 Punj LJ 408) and that Full Bench decision has since been followed in Joginder Singh v. Director, Consolidation of Holdings (1988 Punj LJ 535). Mr. Rohtagi further submits that on merits also there was ample justification for the Director to have taken the view it did inasmuch as Panchayat lands were taken into consolidation and repartitioned and allotted to persons who has no right to obtain the land thereby impoverishing the Panchayat and rendering it incapable of giving any help to the villagers.

6. Mr. Harbans Lal, learned counsel for the respondents submits that the Full Bench decision that the limitation under Rule 18 does not cover an order confirming a scheme is not tenable inasmuch as confirmation of a scheme is only by an order of confirmation has, therefore, to be made within six months thereof; and that even assuming that there was no bar of limitation, an application has to be made within a reasonable time which, according to learned counsel, would be 'about two years'; and that by any standard the appellant's application under Section 42 was belated and could not have been allowed. Lastly, counsel submits that there were three earlier applications dismissed by the Director under Section 42 of the Act, including one by the Panchayat itself, and the Director had no power to review his own order.

7. The questions to be decided therefore are, whether for the purpose of limitation under Rule 18 of the Rules confirmation of a scheme would be an order as envisaged in the rule; if it was not an order, whether the Director was justified in setting aside the scheme and remanding the matter to the Consolidation Officer; and whether the Director's order was one of review of his earlier order and as such beyond his jurisdiction.

8. To decide the first question we may conveniently refer to the provisions of the Act and Rule 18 of the Rules.

9. Section 42 of the Act empowers the State Government to call for proceedings under the Act. It says :

"42. Power of State Government to call for proceedings. - 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 cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration."

From a perusal of this section there arises no doubt that under it the State Government may for the stated purpose call for proceedings wherein any order is passed, scheme prepared or confirmed or repartition made by any officer under this Act. Under the proviso the State Government shall not vary or reverse any order or scheme or repartition without giving the interested parties opportunity of being heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration. There is therefore no doubt that this section envisages proceedings wherein order is passed, scheme prepared or confirmed or repartition made. These are the distinct proceedings for the purpose of exercising jurisdiction under this section.

10. Rule 18 deals with limitation for application under Section 42, and it reads :

"18. Limitation for application under Section 42. - An application under Section 42 shall be made within six months of the date of the order against which it is filed :

Provided that in computing the period of limitation, the time spent in obtaining certified copies of the orders and the grounds of appeal, if any, filed under sub-section (3) or sub-section (4) of Section 21, required to accompany the application shall be excluded :

Provided further, that an application may be admitted after the period of limitation prescribed therefor if the applicant satisfies the authority competent to take action under Section 42 that he had sufficient cause for not making the application within such period."

From a perusal of this rule there arises no doubt that for applying this rule the application has to be one under Section 42 of the Act and it has to be against an order and under the first proviso a certified copy of the order is required to accompany the application and in computing the period of limitation of six months, the time spent in obtaining the certified copy is to be excluded.

11. While the Division Bench comprising P. C. Jain and Tewatia, JJ. of the Punjab and Haryana High Court in the instant case applied the period of limitation to the confirmation of the scheme and in that view of the matter set aside the Director's order, the Full Bench comprising P. C. Jain, Acting C.J., Tewatia and Tiwana, JJ. held :

"A bare perusal of Rule 18 of the Rules would show that it provides limitation only for petitions filed against orders passes. There is no reference in the Rules to a scheme prepared or confirmed or repartition made. The fact that in Section 42 of the

Act the words 'scheme prepared or confirmed or repartition made' have been added as a result of amendment, cannot justify the conclusion that in Rule 18 of these words have also to be read."

We respectfully agree with this view. Rule 18 has to be interpreted as we find it and the words of the rule are simple, precise and unambiguous and no more is necessary than to understand these words in their natural and ordinary sense. Two different meanings cannot be given to the same word 'order' namely, that in Section 42 it does not include scheme prepared or confirmed or repartition made; while in Rule 18 it would include them. The Full Bench therefore rightly held that Rule 18 of the Rules does not apply to those proceedings in which the legality or validity of the scheme prepared or confirmed or repartition made is challenged. The Full Bench rightly approved the decision in *Haqiqat Singh v. Addl. Director, Consolidator of Holdings* (AIR 1981 P&H 204 : 83 Punj LR 472 : 1981 Rev LR 290) wherein it was held that a reading of Section 42 as well as the scheme of the Act unmistakably pointed out that the statute made a clear distinction between order passes by an officer under the Act and the performance of duties by the authorities under the Act in the matter of preparation and confirmation of scheme of consolidation and repartition made in pursuance thereof. So it could not possibly be held that preparation or confirmation of a scheme and the repartition carried would fall within the scope of 'order' as used in Rule 18 of the Rules. The rule did not come into play when a petitioner challenged either the scheme of consolidation including its preparation or confirmation of the repartition made in pursuance thereof. The amendment made this position clear.

12. In a subsequent decision reported in *Joginder Singh v. Director, Consolidation of Holdings* (1988 Punj LJ 535), decided on August 8, 1988, where the direct holders had not challenged any order of the consolidation authorities but had attacked the validity of the scheme and the repartition, it was rightly held that the bar of limitation of six months in Rule 18 was not attracted to the facts of that case.

13. Mr. Harbans Lal submits that the above decisions require reconsideration. We do not agree. We have perused the provisions of the Act and Rule 18. The Act provides for the compulsory consolidations of, and for prevention of fragmentation of, agricultural holdings in the State of Punjab and for the assignment or reservation of land for common purposes of the village. It appears that prior to the Act there were two methods of consolidation in vogue in the Province, one through the Revenue Department and the other through the Cooperative Department but the progress of consolidation was very slow and lengthy and the Act sought to remedy those defects. Section 19 of the Act provides for publication of draft scheme and on such publication any person likely to be affected by such scheme, shall, within 30 days of such publication, communicate in writing to the Consolidation Officer any objection relating to the scheme. The Consolidation Officer, shall, after considering the objections, if any received, submit the scheme with such amendment as he considers necessary together with his remarks on the objections to the Settlement Officer (Consolidation). Thus, in this section we do not find any provisions for any order being passed. Section 20 deals with confirmation of the scheme. Under sub-section (2) thereof if any objections are received to the draft scheme published under sub-section (1) of Section 19 and also if no written or oral objections to the draft scheme are received under sub-section (3) of that section by the Settlement Officer (Consolidation) he shall confirm the scheme. Under sub-section (3) if any objections are received to the draft scheme published under sub-section (1) of Section 19 or if any written or oral objections are received by the Settlement Officer (Consolidation) before the confirmation of the draft scheme by him the Settlement Officer (Consolidation) may after taking the objections into consideration together with the remarks thereon of the Consolidation Officer and also after considering the written

or oral objections either confirm the scheme with or without modifications, or refuse to confirm it. In case of such refusal the Settlement Officer (Consolidation) shall return the draft scheme, with such directions as may be necessary to the Consolidation Officer, for reconsideration and resubmission. Under sub-section (4) upon the consideration of the scheme under sub-section (2) or (3) the scheme as confirmed shall be published in the prescribed manner in the estate or estates concerned. Thus, this section also does not envisage passing of any order with reference to any person affected by the scheme. It may be true, as Mr. Harbans Lal submits, that the confirmation may be done in the form of an order. However, the word 'order' has not been used by the legislature in this section.

14. Section 21 deals with repartition. Under sub-section (1) of this section, the Consolidation Officer shall, after obtaining the advice of the land owners 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. There is no provision of passing of any 'order' under this sub-section. Under sub-section (2) any person aggrieved by the repartition may file written objection within 15 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. Thus this sub-section envisages passing of orders on the objections after hearing the objectors. Sub-section (3) provides that 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. This sub-section also clearly envisages passing of an order on appeal by an aggrieved person as above. Sub-section (4) provides that 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 60 days of that order appeal to the Assistant Director of Consolidation and under sub-section (5) any appeal against an order of the Settlement Officer (Consolidation) pending under sub-section (4) immediately before the commencement of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act, 1962, either before the State or any officer to whom the powers of the State or any officer to whom the powers of the State or any officer to whom the powers of the State Government in this behalf have been delegated, shall be decided by the Assistant Director of Consolidation.

15. Thus, the above sub-sections clearly envisages passing of orders by the respective authorities.

16. We have already extracted Section 42 of the Act and Rule 18 of the Rules. It would be clear that though Section 42 envisaged orders, preparation or confirmation of scheme and repartition separately, Rule 18 provides for limitation only in respect of an application under that section in a proceeding where an order was passed. There is the maxim expression *unius est exclusio alterius* - expression of one thing is the exclusion of another. Mention of one thing implies the exclusion of another. When certain persons or things are specified in a law an intention to exclude all others from its operation may be inferred. When mention has been made only of 'orders', the inference would be that preparation or confirmation of scheme and repartition are excluded. Again, *ex praecedentibus et consequentibus optima fit interpretatio*. The best interpretation is made from the context. As we have seen, while Sections 19 and 20 did not envisage passing of any order Section 21 envisaged passing of any orders. Section 42 deals with application against orders, preparation or confirmation of scheme and repartition. Rule 18 mentions only orders and hence by inference excludes

'preparation and confirmation of scheme and repartition'. We have accordingly no doubt in approving the Full Bench decision in Jagtar Singh v. Additional Director, Consolidation of Holdings (1988 Punj LJ 535).

17. Mr. Harbans Lal's submission that even if no limitation was prescribed the application of the Panchayat before the Director was inordinately delayed is not tenable. According to the learned counsel the period of two years would be reasonable period. We are unable to agree. In matters like consolidation of holdings by a scheme and the preparation and confirmation of the scheme and repartition thereafter the objections may arise at various stages for various reasons and it will not be possible to prescribe any hard and fast rule as to reasonable period after which an application could be made under Section 42 of the Act. The legislature itself did not do so. In the instant case the Panchayat filed the application on September 20, 1977 before the Director of Consolidation under Section 42 of the Act praying for the revocation of the Scheme and for directions for fresh valuation to be ordered and repartition effected through appropriate authorities stating that the Sarpanch was not given any Nishan Dehi or demarcation on the spot nor was issued any passbook, and the petition was not filed earlier because the new Sarpanch came to know all these only a month ago and so the petition was claimed to be in time. The original Sarpanch was a beneficiary out of the Panchayat land and he took no steps and the present Sarpanch took charge only a few months ago. There were lot of complaints about valuation and allotments to rightholders. Under the above circumstances when the Director himself considered it fit for granting the prayer, it cannot be said that the application was unreasonably delayed.

18. The next submission of Mr. Harbans Lal is equally untenable. It is true that in Harbhajan Singh v. Karam Singh (AIR 1966 SC 641 : (1966) 1 SCR 817), it has been held that there is no provision in the Act granting express power of review to the State Government with regard to an order made under Section 42 of the Act and in the absence of any such power the Director, Consolidation of Holdings could not have reviewed his previous order dismissing an application of the Panchayat under Section 42 of the Act, and if so done, the review order of the Director would be ultra vires and without jurisdiction. In the instant case it has not been shown to us that the Panchayat earlier moved any application under Section on the same subject matter and the instant order of the Director amounted to a review of his own order. There is no material to hold that the instant order of the Director is an order of review of his earlier order; and Mr. Rohtagi clearly denied that it was so.

19. In the result we allow this appeal, set aside the impugned order of the High Court and restore that of the Director, Consolidation. We, however, leave the parties to bear their own costs.

K. RAMASWAMY, J. (concurring) –

I wholly agree with my learned brother Saikia, J. with regard to the reasoning and the conclusions. He has succinctly stated the facts of the case and the relevant provisions of law and they need no reiteration. I would add only few points which I deem relevant to be dealt with. As regards the applicability of the limitation of six months period prescribed under Rule 18 for the exercise of the revisional power by the State Government under Section 42 of the Act, assailing legality or propriety of the scheme prepared or confirmation thereof or repartition made in pursuance thereof, it could be angulated from yet another perspective. Indisputably Section 42 was amended by the Amendment Act of 1960 incorporating after the words any order passed "(scheme prepared or confirmed or repartition made)". Rule 18 was made in exercise of the rule making power by the subordinate legislation. After the amendment of Section 42 was made to exercise the revisional power by the State Government against the scheme prepared or confirmed or repartition made,

correspondingly, no amendment to Rule 18 was made bringing within its ambit scheme prepared or confirmed or repartition made in pursuance thereof. It is unnecessary to go into the question whether Rule 18 was declared to be intra vires or not. We proceed on the footing that Rule 18 is ultra vires and applies to the exercise of the revisional power by the State Government under Section 42. The omission to amend the rule is an indication of the legislative animation that the limitation of six months prescribed under the Rule 18 would be confined to be applicable only to "any order passed" by any officer under the Act. Thereby, by necessary implication the prescription of the limitation of six months for filing revision petition against the scheme prepared or confirmed or repartition made in pursuance thereof would stand excluded. It is no doubt true as contended for respondents that the Consolidation Officer who has prepared the scheme or confirmed it or modified or repartition made and when it is objected to by the affected party, has to consider the objections and, as a part thereof by necessary implication, has to assign reasons and the record must contain reasons. But the legislature made a dichotomy between the orders passed and scheme prepared or confirmation thereof or repartition affected in pursuance thereof. He is not free to take arbitrary decision. Assigning reasons are sine qua non for application of the mind though he does not appear to communicate the reasons therefor. But to an order passed assigning reasons in its support and communication thereof are necessary concomitants and this was made manifest when Sections 19, 20 and 21 are looked into. As regards the exercise of the power under Sections 19 and 20 the statute does not envisage passing any orders. But when exercise of the power in sub-section (2) of Section 21, the officer is enjoined to pass orders and appeals are provided within the prescribed limitation against those orders to the appellate forums. This, also, is an indication of the fact that the limitation of six months is confined to the orders to be revised under Section 42.

21. It is undoubted that the scheme prepared or confirmed or modified or repartition made in pursuance thereof are amenable to the revisional jurisdiction under Section 42. The State Government would consider the legality or propriety of the reasons or the grounds on which the scheme was initially prepared or confirmed or modified or repartition made in pursuance thereof. But that does not mean that it is an order made and the limitation of six months prescribed under Rule 18 would get attracted to the revision filed against the scheme prepared or modified or repartition made in pursuance thereof. Thus I have little hesitation to hold that the prescription of limitation of six months under Rule 18 would be confined only to order passed by any officer under the Act; it would not apply to the revision filed against the scheme prepared or confirmed or repartition made in pursuance thereof.

22. It is undoubted that when there is no limitation prescribed for exercise of the revisional power under Section 42 against the schemes prepared or confirmed or repartition made, it would be exercised within a reasonable time. What is a reasonable time is always a question of fact depending upon the facts and circumstances in each case. When legislation chose not to fix a particular period of limitation by judicial dicta it is not permissible to limit to a particular period. The long lapse of time may be a fact for the revisional authority to take into account in the light of the facts and circumstances obtainable in an appropriate case. No absolute or precise period of limitation could be predicated or laid. Take for instance the facts of this case. The previous Sarpanch is a beneficiary from the impugned order and has chosen not to taken steps to have the scheme impugned by filing a revision under Section 42 of the Act. The Gram Panchayat, being a juristic person, could not by itself except through the executive authority take any action against the scheme prepared by the Consolidation Officer to assail its legality or propriety by filing the revision. The revision petition was filed soon after the new Sarpanch came into office. Take another instance of a case where the officer concerned and the person benefited, in confabulation, have made a scheme and repartition affected in pursuance thereto and kept it in dark to the knowledge of the person affected by the

scheme prepared or the repartition made. Until the person affected had actual knowledge, it is not possible to become aware of it. The limitation begins to run from the date of the knowledge of the fraud so played. It is always open to the affected person to come forward and say that for the first time he became aware of the scheme prepared or repartition made in pursuance thereof only when his rights are sought to be interfered with or exercise of the enjoyment of the property is interdicted. Therefore immediately within a reasonable time thereafter he is to file a revision before the State Government. Having had the knowledge of the impugned action if he stood by the without taking any further action, it is always open to the other party to bring it to the notice of the State Government of the ground or the circumstances under which the revision petitioner when he became aware of the scheme prepared or the scheme prepared or the repartition made and he deliberately chose to acquiesce to it and if the State Government is satisfied of the same, unless satisfactory explanation for the delay is given, the State Government may decline to interfere with the impugned action or may decline to entertain the revision petition itself. Thus it could be seen that each case has to be angulated on its own given facts and circumstances as to the reasonable period of limitation within which the revisional power is to be filed. Even though more than 5 years time had elapsed from the date of the preparation of the scheme till date of the filing of the revision under Section 42, there is sufficient ground in this case for the new Sarpanch in not filing a revision within 6 months from the date of the original scheme and the State Government, is well justified in exercising the power under Section 42. The High Court is unjustified in interfering with the order passed by the Consolidation Officer. Accordingly, the appeal is allowed. No costs.

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