

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan and Prem Chand Pandit, JJ.

JIWAN SINGH AND OTHERS,—Petitioners.

versus

CONSOLIDATION OFFICER, SUNAM, AND
ANOTHER,—Respondents.

Civil Writ No. 448 of 1961.

1962
April, 10th

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Ss. 20, 21, 22 and 23—“Finally confirmed”—Meaning of—Holdings allotted under repartition—Possession of—When can be transferred.

Held, that section 23(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act talks of a scheme or repartition as “finally confirmed.” The word “finally” finds no mention in section 20 or 21 which deal with the scheme and the repartition respectively. The phrase “finally confirmed” in section 23(1), therefore, must have been used to denote something more than mere confirmation. The combined reading of section 20, 21 and 22 makes it clear that a scheme is finally confirmed when it has passed the stage of sub-section (3) of section 20 and repartition is finally confirmed when all objections, appeals and further appeals against its confirmation have been disposed of. The *terminus a qua* in section 23(1) *qua* the scheme as finally confirmed is the publication of the scheme under sub-section (4) of section 20 and *qua* the repartition as finally confirmed is the preparation of the records of right.

Held, that in the case where there is no agreement between the owners and the tenants, possession in the case of holdings allotted under repartition can only be transferred after the commencement of agricultural year next following the preparation of the records of rights.

Case referred by Hon'ble Mr. Justice Prem Chand Pandit, on 14th December, 1961, to a larger Bench for decision of important questions of law involved in the case.

The case was finally decided by a Division Bench consisting of Hon'ble Mr. Justice Daya Krishan Mahajan and Hon'ble Mr. Justice Prem Chand Pandit, on 10th April, 1962.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of Certiorari, Mandamus, Prohibition or any other appropriate writ, order or direction be issued restraining the respondent from enforcing the exchange of possession.

G. S. GREWAL, ADVOCATE, and B. S. BINDRA, ADVOCATE,
for the Petitioner.

S. D. BAHRI, ADVOCATE, for the Respondents.

ORDER

MAHAJAN, J.—This is a petition under Article 226 of the Constitution and is directed against the threatened action of the consolidation authorities to transfer possession from the old holdings to the new holdings as carved out after the repartition during the consolidation proceedings on the ground that such a transfer of possession is in contravention of the provisions of section 23 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948,—hereinafter referred to as the Act.

Mahajan, J.

This matter came up in the first instance before my learned brothers and by his order, dated the 14th of December, 1961, he referred it to a larger Bench and that is how it has been placed before us.

Two questions require decision in this petition. Those questions are :—

- (1) What is the stage at which the possession can be transferred by the consolidation authorities under section 23(2) of the Act from the old holdings to the new holdings carved out in the confirmed

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scheme or in the repartition? The possible stages are—

- (i) after the scheme is confirmed;
- (ii) after the repartition;
- (iii) after the decision of the appeals, etc., against the scheme and the repartition; and
- (iv) after the preparation of the record of rights under section 22 of the Act.

- (2) Whether a number of individuals can collectively file a writ petition under Article 226 of the Constitution against a common grievance and for the same relief?

In order to arrive at a correct decision on the first question, it is necessary to go through the scheme of the Act and also to set out some of the relevant provisions of the Act and the Rules made thereunder.

The Act has been enacted as the preamble will denote to provide for the compulsory consolidation of agricultural holdings and for preventing the fragmentation of agricultural holdings and for the assignment or reservation of land for common purposes of the village. Consolidation of holdings is defined in section 2(b) in the following terms :—

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

Section 2(k) of the Act provides that words and expressions used in this Act but not defined, have the meanings assigned to them in the Punjab Land Revenue Act (17 of 1887). Section 14 provides that the Government may of its own accord or on application declare its intention to make a scheme for consolidation of holdings for the estate or estates or part thereof; and for that end in view

section 15, 16, 16-A and 17 provide for various matters such as compensation, occupancy tenancies, partition of joint lands and joint occupancy tenancies, amalgamation of public road, etc. Section 19 provides for the publication of the draft scheme; and section 20 provides the procedure to be followed for the confirmation of the scheme and is in these terms :—

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[His Lordship read section 4 and continued.]

It will be profitable at this stage also to notice the Rules in connection with the preparation of the scheme of consolidation. They are Rules 4, 5 and 6 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, and are in these terms :—

[His Lordship read Rules 4, 5 and 6 and continued:]

Section 21 of the Act deals with the repartition. The Rules relating to repartition are Rules 7, 8 and 9. Section 21 and the Rules are in the following terms :—

[His Lordship read section 21 and rules 7, 8 and 9 and continued:]

Section 22 deals with the preparation of the record of rights so as to give effect to repartition as finally sanctioned under section 21. Then follows section 23, which deals with the right to possession of new holdings. This section is in the following terms :—

[His Lordship read section 23(1) and (2) and continued:]

The last provision which need be noticed is section 24. It provides as to when the scheme comes into force and is in these terms :—

[His Lordship read section 24 and continued].

Taking up the first question first, it will be proper to examine the respective contentions of the learned counsel for the parties.

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The contention advanced on behalf of the learned counsel for the petitioners is that if there is no agreement for transfer of possession of the allotted holdings as is contemplated by section 23(1), possession of such holdings can only be transferred by the Consolidation Officer under sub-section (2) of section 23 of the Act. He can transfer possession of the holdings if allotted under the scheme of consolidation as finally confirmed from the commencement of the agricultural year next following the date of the publication of the scheme under section 20(4). In case the allotment is under repartition as finally confirmed, the transfer of possession can only be from the commencement of the agricultural year next following the date of the preparation of the new record of rights under sub-section (1) of section 22.

On the other hand, the learned counsel for the State did not dispute the correctness of the contention of the learned counsel for the petitioners so far as it relates to the transfer of possession of holdings allotted under a scheme as finally confirmed but he does not accept the contention so far as it relates to the transfer of possession of holdings allotted under repartition as finally confirmed. With reference to the latter contention of the petitioners' learned counsel, it is urged that under sub-section (2) of section 23 the only requirement is that the possession can be transferred from the commencement of the agricultural year next following either the date of the publication of the scheme or the preparation of the new record of rights. It is not necessary for the transfer of possession in the case of allotment of holdings under a repartition that the record of rights has been prepared under section 22(1). In both cases the common requirement is the commencement of the agricultural year next following the publication of the scheme under section 20(4) of the preparation of the record of rights under section 22(1). All that is necessary is that there should be allotment of holdings either under the scheme or repartition. The difference in either of the contentions is that the *terminus a quo* with regard to the transfer of possession of holdings allotted under the scheme,

according to the learned counsel for the petitioners, is the date of the publication of the scheme under section 20(4) and this date has no reference to the transfer of possession of holdings allotted under repartition with regard to which the *terminus a quo* is the preparation of the record of rights. In other words, there is a different *terminus a quo* so far as the allotment of holdings under a finally confirmed scheme and the allotment of holdings under a repartition is concerned. Whereas, according to the contention of the learned counsel for the State once the holdings have been allotted whether under the scheme or under the repartition as finally confirmed possession can be delivered under section 23(2) from the commencement of the agricultural year next following the finally confirmed scheme or the preparation of the new record of rights under section 22(1).

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It may be pointed out that in order to arrive at a correct decision as to the interpretation of section 23 the provisions of sections 20, 21, 22 and 24 have to be kept in view. These provisions are not happily worded and there is an apparent conflict amongst them. For instance, section 23(1) talks of a scheme or repartition as finally confirmed. The word 'finally' finds no mention in section 20 or 21 which deals with the scheme and the repartition respectively. These sections only provide for the confirmation of the scheme or the repartition. Therefore, the words 'finally confirmed' in section 23(1) must have been used to denote something more than confirmation and that can be the stage after the decision of all objections, appeals and further appeals against the repartition. So far as the scheme is concerned, there is no provision for the decision of the objections or of any appeal or further appeal. Even the objections to it have not to be decided but they have only to be considered before the confirmation of the scheme. So it would seem that the phrase 'as finally confirmed' so far as it relates to a scheme can only mean the consideration of the objections, if any to it and their disposal. Section 22 talks of a repartition 'as finally sanctioned' under section 21. Section 21 does not

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talk of any final sanction of the repartition. Therefore, all that can be said is this that the phrase 'as finally sanctioned' in section 22(1) denotes a repartition where all the objections against it and appeals and further appeals provided in sub-sections (3) and (4) of section 21 have been finally disposed of. It would appear from this construction that the record of rights have only to be prepared after the objections, appeals and further appeals against the repartition have been disposed of. If that be so, then there can be no transfer of possession in pursuance of a 'finally confirmed scheme' to use the language of section 23(1), till the objections etc. under section 21 are decided, for possession in case of lack of agreement on the part of the owners and tenants can only be transferred after the preparation of the new record of rights, (see sub-section (2) of section 23,) unless the contention of the learned counsel for the State is accepted as correct that this date is an alternative to the date of the publication of the scheme even as regards the allotment of holdings under a repartition. If on the other hand, possession in case of repartition can only be transferred after the preparation of the record of rights and the record of rights can only be prepared after objections, etc., to the repartition as provided in section 21 have been disposed of, the provisions of section 24(1) would become redundant, because section 25(1) contemplates transfer of possession before the objections, appeals and further appeals contemplated by section 21 have been decided. Therefore, what emerges from the combined reading of sections 20, 21 and 22 is that a scheme is finally confirmed when it has passed the stage of sub-section (3) of section 20 and a repartition is finally confirmed when all objections, appeals and further appeals against its confirmation have been disposed of. It is in this background that the question in dispute has to be approached. Whatever interpretation is placed on section 23(2), it is bound to come in conflict with either sections 20, 21, 22 or section 24.

In his situation, the first question that requires determination is as to what is the rule of construc-

tion when two provisions of a statute come in conflict with each other. In this connection, reference may be made to the two rules of construction to be found in Maxwell on Interpretation of Statutes. The first rule is—

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“Where a general intention is expressed, and also a particular intention which is incompatible with the general one, the particular intention is considered an exception to the general one. Even when the later, or later part, of the enactment is in the negative, it is sometimes reconcilable with the earlier one by so treating it.”

The second rule is—

Where there are two sections dealing with the same subject-matter, one section being unqualified and the other containing a qualification, effect must be given to the section containing the qualification.”

This rule is based on the decision of the Court of Appeal in *Moss v. Elphick* (1). To the similar effect are the observations in Craies on Statute Law, Fifth Edition, at page 203.

Section 23 is a specific section dealing with the matter as to when possession can be transferred. Section 24 deals with the coming into force of the scheme and proceeds on the assumption that the persons entitled to possession of holding under the Act have entered into possession of the holdings respectively allotted to them. Therefore, in order to find out when a person is entitled to possession of the holdings allotted to him, one has necessarily to go back to section 23. Section 23 in terms takes one back to section 22, 21 and 20; and I have already indicated as to when the scheme is finally confirmed and a repartition is finally confirmed. Therefore, according to sub-section (1) of section

(1) (1910) 1 K.B. 465.

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23, the agreement of the owners and the tenants affected by the scheme of consolidation or the repartition must be after the scheme or the repartition is finally confirmed and that would be, so far as the scheme is concerned, after the stage contemplated in sub-section (3) of section 20; and, so far as the repartition is concerned, the final disposal of the objections, appeals and further appeals provided for in section 21. Till then there can be no question of final confirmation of the scheme or the repartition. Therefore, if the scope of sub-section (1) of section 23 is kept in view, then sub-section (2) of section 23 presents no difficulty. The *terminus a quo* in this section qua the scheme as finally confirmed is the publication of the scheme under sub-section (4) of section 20 and qua the repartition as finally confirmed is the preparation of the record of rights. It is significant to observe again that the record of rights can only be prepared after the repartition has been finally sanctioned under section 21. I have already indicated in the earlier part of this judgment when a repartition is finally sanctioned, and that is when the objections, appeals and further appeals to the confirmation of the repartition have been finally disposed of. If this view is adopted it would be more in consonance with the scheme of the Act. I cannot conceive that the object of the Act is to put the owners and tenants in possession of their holdings when their rights to those holdings are still the subject-matter of dispute. If the contention of the learned counsel for the State is accepted, this result would necessarily follow because, according to him, possessions can be transferred before the objections, appeals and further appeals provided in section 21 *qua* repartition are decided. The decision of the appeal of one rightholder may affect a number of other rightholders and the decision of another appeal of another rightholder may affect the rightholders in the first appeal and some other rightholders with the result that the possessions may keep on altering as and when the appeals are settled. This situation cannot be countenanced. The object of the Act is to consolidate the holdings and then transfer possession of the consolidated holdings on to the owners and

tenants entitled to the same. The object is not to keep on shifting their possession from time to time on the exigencies of the decisions of the appeals under sub-sections (3) and (4) of section 21.

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There is also another way of looking at the matter. Supposing, before the appeals are decided an owner or a tenant has been put in possession of the new holding and he has effected improvements thereon. Further complications will arise if on the decision of an appeal against the allotment made to him, his allotment is cancelled. The construction which the learned counsel for the State wants me to put would retard the incentive of the people to improve their lands for they would not be certain so long as appeals and further appeals are pending as to whether they would be entitled to the holdings of which the possession has been delivered to them, as the daimocles' swords would all the time be hanging on their heads because the finality to the repartition will only arise when the appeals and further appeals have been finally disposed of.

It may be mentioned at this stage that section 24 deals with the coming into force of the scheme and has nothing to do with the transfer of possessions as such. Moreover, as already indicated, the general provisions in section 24, which deal with the coming into force of the scheme, cannot override the specific provisions regarding transfer of possessions to new holdings, namely, section 23. Full effect has to be given to the specific provisions and while giving the same its full effect if certain general provisions are rendered superfluous, it will be of no material consequence because it is only in this way that the intention of the legislators can be given effect. It is a primary rule of construction that in such a situation the Court must try to discover the intention from the scheme of the Act; and from the scheme of the Act the only intention that can be gathered is that the possessions in case of repartition, where there is no agreement, between the owners and tenants will be transferred after the commencement of the

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agricultural year next following the preparation of the record of rights. It is not possible to give any other interpretation to section 23(2).

At this stage, it may also be profitable to refer how section 24 of the Act, as it finally stands, has emerged, Section 24 is the unamended Act No. 50 of 1948 was in these terms :—

“24. As soon as the persons entitled to possession of holdings under this Act have entered into possession of the holdings respectively allotted to them the scheme shall be deemed to have come into force.”

This section was amended by Punjab Act No. 39 of 1954 as under :—

“24(1) As soon as the persons entitled to possession of holdings under this Act have entered into possession of the holdings respectively allotted to them the scheme shall be deemed to have come into force ; and such possession shall not be affected by any order passed under section 36 or 42, except when a fresh scheme is to be brought into force.”

(2) * * * * *

By Punjab Act No. 46 of 1956, section 24(1) as it now stands was substituted and is to be deemed to have been substituted from December 27, 1954. In the earlier part of this judgment I have already reproduced the same. All that can be said is that this provision as it now stands does come in conflict with section 23(2) when it contemplates that there can be change of possession after repartition from old holdings to new before the preparation of the record-of-rights in case there is no agreement to that effect among the owners and tenants. Be that as it may so far as the language of the various sections and the scheme of the Act goes, the only interpretation that can reasonably be placed and would cause least hardship is the one which I have

already indicated. I would, therefore, hold that in the case where there is no agreement between the owners and the tenants possessions in the case of holdings allotted under repartition can only be transferred after the commencement of agricultural year next following the preparation of the record-of-rights.

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So far as the second question is concerned, it is not necessary to decide the same, though as at present advised we seem to differ from the view taken by a Bench decision of this Court in *Revenue Patwaris' Union v. State of Punjab* (2) particularly when in this Court the practice has been to entertain joint petitions by a number of persons. Moreover, there is an authority for the view that in certain circumstances, particularly like the one in the present case, a joint petition is competent. See, *inter alia*, *Annam Adinarayan and another v. State of Andhra Pradesh* (3); and *Quarabali v. Government of Rajasthan* (4). The learned Advocate-General was more anxious to get an authoritative interpretation as to the provisions of section 23 and, therefore, he does not want this matter to be held up on this technical ground and in my view rightly so, because as a matter of law if it is held and is being held that before the preparation of the record of rights possessions in case of repartition, where there is no agreement among the owners and tenants, cannot be transferred before the preparation of the record of rights the threatened action on the part of the consolidation authorities to transfer possessions before this requirement is fulfilled would be wholly illegal and would be of no consequence. If we were also required to settle this second point, the necessary corollary would be that the matter would have to be referred to a larger Bench and it may take sometime before the matter finally gets settled and in the meantime the consolidation authorities would be at sea. Therefore, we refrain from expressing any

(2) 1961 P.L.R. 530.

(3) A.I.R., 1958 A.P., 16.

(4) A.I.R., 1960 Raj., 152.

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opinion on the matter and would not, therefore, decide the second question, but leave it for decision in some appropriate proceedings.

The result, therefore, would be that this petition is allowed and a direction is issued to the consolidation authorities not to transfer possessions till the agricultural year next following the preparation of the record of rights in cases where there is no agreement between the owners and the tenants in the case of repartition.

The parties are left to bear their own costs.

Pandit, J.

PANDIT, J.—I agree with my learned brother that in cases where all the owners and tenants do not agree to enter into possession under Section 23(1) of the Act, possessions in the case of holdings allotted under repartition can only be transferred from the commencement of the agricultural year next following the preparation of the record-of-rights under Section 22(1) of the Act. This writ petition is consequently allowed.

K.S.K.

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Before S. S. Dulat and Prem Chand Pandit, JJ.

SODAGAR SINGH,—*Petitioner.*

versus

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

Civil Writ Application No. 1595 of 1960.

1962
 April 19th

Pepsu Panchayat Raj Act (VIII of 2008 Bk.)—S. 123—Order under—Whether should be passed after hearing the person concerned—Nature of such order—Whether administrative or quasi-judicial—Writ of certiorari—Whether can issue to quash such order.

Held, that there is nothing in section 123 or in any other connected provision of the Pepsu Panchayat Raj