

The Indian Law Reports

CIVIL MISCELLANEOUS

Before D, Falshaw, C.J., and Harbans Singh, J.

THAKAR SINGH,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ No. 164 of 1962

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act (XXV of 1962)—S. 11(a)—Whether valid.

1963

October, 18th.

Held, that the validating provisions in section 11(a) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act, 1962, are valid and have validated all orders passed by the delegate of the State under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. A validating provision of this kind cannot be held to be invalid merely on the ground that it has validated certain orders which the courts had held to be invalid under the previous law.

Case referred by Hon'ble Mr. Justice Harbans Singh, on 25th February, 1963, to a larger Bench for decision owing to the importance of the question of law involved in the case. The Division Bench consisting of the Hon'ble Chief Justice Mr. D. Falshaw, and the Hon'ble Mr. Justice Harbans Singh, after deciding the question referred to them, returned the case to the Single Judge for decision on 18th October, 1963. The case was finally decided by the Hon'ble Mr. Justice A. N. Grover, on 24th July, 1964.

Petition under Article 226 and 227 of the Constitution of India praying that a Writ in the nature of Certiorari or any other appropriate Writ, Order or Direction be issued

quashing the impugned orders of Respondents Nos. 1 and 2, dated 6th September, 1961 and 29th April, 1959, respectively, and further praying that the operation of the impugned orders of respondents Nos. 1 and 2 and the petitioner's dispossession from the land in question be stayed till the final disposal of this writ petition.

H. S. WASU AND B. S. WASU, ADVOCATE, for the Petitioner.

L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE-GENERAL AND S. C. SIBAL, ADVOCATE, for the Respondents.

ORDER

Falshaw, C.J.

FALSHAW, C.J.—This is a writ petition which has been referred to a larger Bench by my learned brother for determination of the validity of certain provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act, 1962, Act 25 of 1962.

Before the amending Act was passed section 21(4) of the Act read—

“Any person aggrieved by the order of the Settlement Officer (Consolidation) under sub-section (3) may within sixty days of that order appeal to the State Government.”

Appeals filed under this sub-section were heard and decided by an officer to whom powers of the State Government were delegated, generally an Assistant Director of Consolidation.

The relevant portion of Section 42 reads:—

“The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed
.....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."

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The powers of the State for dealing with cases under this section were delegated to the Director or Additional Director of Consolidation.

The necessity for amending the Act arose out of the decision of the Supreme Court in *Roop Chand v. The State of Punjab and another* (1), in a petition filed in the Supreme Court under Article 32 of the Constitution. The decision mainly turned on the question whether an officer to whom the powers of the State had been delegated under section 21(4) of the Act could be regarded as an officer in the phrase "any order passed by any officer under this Act" appearing in section 42. It was held by the majority that when Government delegates its power under the provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act to an officer, and that officer in pursuance to such delegation hears an appeal and makes an order, the order of the officer is the order of the Government and the Government cannot interfere with it under section 42 of the Act.

In order to meet the ration of this decision and also with a view to validating past orders certain amendments have been introduced in section 21 by the amending Act and provision has been made for validation of earlier orders. Section 6 of the amending Act substitutes the following for section 21(4):—

"(4) Any person aggrieved by the order of the Settlement Officer (Consolidation) under sub-section (3), whether made before or

(1) 1963 P.L.R. 576.

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after the commencement of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act, 1962, may within sixty days of that order, appeal to the Assistant Director of Consolidation.

- (5) Any appeal against an order of the Settlement Officer (Consolidation) pending under sub-section (4) immediately before the commencement of the East Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act, 1962, either before the State Government 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.
- (6) The appellant authority may entertain an appeal under sub-section (3) or sub-section (4) after the expiry of the period of limitation prescribed therein if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
- (7) The State Government may by notification appoint any person to be an Assistant Director of Consolidation to exercise the powers under this section in respect of such area as may be specified in such notification."

The relevant validation provisions are contained in section 11 of the amending Act which read—

"Notwithstanding anything contained in the principal Act, or in any other law for the

time being in force or in any judgment, decree or order of any Court or other authority, where, at any time before the commencement of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act, 1962:—

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“(a) the State Government or an officer to whom powers of the State Government under section 42 have been delegated has passed an order against an order of the Assistant Director of Consolidation passed by him under sub-section (4) of section 21 of the principal Act, as a delegate of the State Government, the order under section 42 shall be, and shall be deemed always to have been, valid and shall not be questioned on the ground that it could not be made under that section against the order of the delegate of the State Government.”

The learned counsel for the petitioner in this case has no objection to the amended provisions of section 21, which meet the reasons given by the learned Judges of the Supreme Court by providing for the decision of appeals under section 21(4) by an Assistant Director as such instead of as the delegate of the powers of the State under that section, but he objects to the validation of orders which became invalid as the result of the decision of the Supreme Court by the provisions of section 11(a) of the amending Act on the ground that the defect in these orders by reason of which they became invalid has not been removed. He has not, however, been able to cite a single authority in which a validating provision of this kind has itself been held to be invalid, and in my

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opinion the validating provision in this Act is no different in substance or in purpose from any similar validating provisions which have been made necessary in recent years in consequence of the decisions of Courts. There have in fact been so many such validating provisions with retrospective effect that some of them would certainly have been struck down by the Supreme Court if there had been any inherent defect in such a procedure.

On the other hand there are instances of validation by subsequent legislation of acts held by the Supreme Court to be invalid in which the validating legislation has been upheld by the Supreme Court itself. One such instance is in *Jadab Singh and others v. Himachal Pradesh Administration and another* (2), where an Act called the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act of 1954 had been held by the Supreme Court to be an invalid piece of legislation on the ground that the Himachal Pradesh Assembly which passed it was not properly constituted because the necessary changes in its constitution had not been made following integration of the State of Bilaspur in Himachal Pradesh. That decision of the Supreme Court was delivered on the 11th of October, 1958, and within a short time the President issued Ordinance No. 7 of 1958, validating the constitution and proceedings of the Assembly with retrospective effect simply by deeming the constitution of the Assembly and its proceedings to have been valid. The legality of this course was upheld.

Similarly in *M/s. West Ramnad Electric Distribution Co., Ltd. v. The State of Madras and another* (3), the Supreme Court had held the Madras Electricity Supply Undertakings (Acquisition) Act of 1949

(2) A.I.R. 1960 S. C. 1008.

(3) A.I.R. 1962 S. C. 1753.

to be invalid and a fresh Act containing certain retrospective validating provisions was enacted in 1954 and proceedings taken under notification promulgated under the earlier Act were held to have been validated by the latter Act.

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There is also the decision of a Full Bench in *Gulabrao Keshavrao Dhole v. Pandurang Bhanji Dhomme and others* (4), in which an election had been held to be invalid by a Full Bench of the Nagpur High Court on the ground that the electoral rolls prepared under the Act under which the election was held had not been properly prepared according to the provisions of the Act. An Ordinance No. 1 of 1954, later replaced by Act I of 1955, was enacted in which it was provided that the electoral rolls in question should be deemed to have been validly prepared, published and republished and that no election should be deemed to be or to have been invalid merely on the ground that the electoral rolls on the basis of which the election was held was invalid on all or any of the grounds specified in certain section. It was also provided that any order of Court declaring any election invalid merely on the ground that the electoral rolls were invalid on all or any of the grounds shall be deemed to be and always to have been of no legal effect whatsoever. This Act was held to be valid and it is quite clear that its whole object was merely to get over a decision of the Court. None of the defects revealed in the earlier decision were in fact removed, but always they were merely deemed to have been removed, and that was sufficient. There does not appear to me to be any difference in principle between those cases and the present one in which the validating Act provides that certain orders which had become invalid as the result of the decision of the Supreme Court were deemed to be and to be deemed always to have been valid. It seems to me

(4) A.I.R. 1957 Bom. 266.

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that even the technical objection raised by the learned counsel for the petitioner would have been met if a slightly different form of words had been used and the validating provision had provided that orders passed by the delegate of the State Government under Section 21(4) of the Act should be, and should be deemed always to have been, passed by the Assistant Director as such, or by any officer under the Act within the meaning of section 42. However, the effect is exactly the same and I am, therefore, of the opinion that the validating provisions in section 11(a) must itself be held to be valid and to have validated all orders passed by the delegate of the State under section 42 of the Act.

A large number of cases were put up along with this Writ petition including some Letters Patent Appeals as well as writ petitions. All of them may now be decided by the appropriate Benches including this Writ Petition itself in case any other points arise in it.

Harbans Singh, J.

HARBANS SINGH, J.—I agree.
 B.R.T.

CIVIL ORIGINAL

Before Shamsher Bahadur, J.

LAKHBIR SINGH,—*Petitioner.*

versus

MESSRS SARDAR TRADING CO., AND OTHERS,—

Civil Original Case No. 9-D of 1963

Patents and Designs Act (II of 1911)—S. 2(5)—“Design”—Meaning of—Essentials for its registration indicated—Carton in which shoulder pads are packed—Whether can be registered.

Held, that the object of protection is any particular shape, configuration, pattern or ornament “which in the finished article” are the striking features appealing to the

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May, 1st.