MISCELLANEOUS CIVIL

Before M. L. Verma, J.

KARTAR SINGH AND OTHERS,—*Petitioners*

versus

PUNJAB STATE AND OTHERS,—*Respondents.*

C.W. No. 1845 of 1972

July 24, 1974.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948—Section 42—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949—Rule 18—Proceedings under section 42 initiated by State Government—Whether can be barred by time—Plea of limitation not taken before Director Consolidation—Whether can be raised in Writ proceedings—Number of right-holders likely to be affected by an order under section 42 being large—Personal notice on each one of the right-holder—Whether essential.

Held, that section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, clearly provides that the State Government can review, amend or even reverse a scheme of consolidation even if it has been confirmed under the Act. Neither the provisions of this section nor of rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 prescribe any limitation for initiating such proceedings by the State Government under this section. Hence where proceedings are initiated by the State Government under section 42 of the Act, the same cannot be said to be barred by time.

Held, that when no objection of bar of limitation for an application under section 42 of the Act is taken before the Director Consolidation, such an objection can not be raised in Writ proceedings. The Director can decide the objection of limitation if raised and can even condone delay if he thinks that there is sufficient cause for not making the application within time.

Held, that in view of the Provisions contained in the proviso to section 42 of the Act, no order directing variation of scheme or repartition amending allotments of some of the right-holders can be passed without giving to the interested parties a notice to appear and opportunity to be heard, except where the State Government feels that the proceedings had been vitiated by unlawful considerations. All that is necessary under this proviso as well as in accordance with the principles of natural justice is that the right-holder likely to be affected by the order should have notice and opportunity

of being heard in the matter. If he has been given such notice and he has also been afforded an opportunity of hearing, his non-appearance at the time of passing an order is immaterial and does not affect the validity of the order. The proviso, however, does not necessarily imply that the requirement of personal service of individual notice on all the interested right-holders is pre-emptory. In the absence of any statutory provision directing individual notice to each and every right-holder or personal service of the same, the matter regarding the contents of notice and the manner of effecting service on the right-holders has to be left to the judicial discretion of the authority concerned. Hence where there are many right-holders likely to be affected by the variation or amendment of the scheme under section 42 of the Act, the Additional Director in the exercise of his judicial discretion can direct the notice to be served upon them by proclamation in the village.

Petition under Articles 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 order of the Additional Director, Consolidation of Holdings, Punjab, Chandigarh, dated December 31, 1971 (Annexure 'A') and further praying that during the pendency of this petition the operation of the impugned order be stayed.

S. K. Jain, Advocate, *for the petitioners.*

A. S. Cheema, Advocate, *for the respondents.*

Puran Chand, Advocate.

P. S. Mann, Advocate.

JUDGMENT

VERMA, J.—The circumstances as narrated in this writ petition and also in Civil Writ No. 2293 of 1972, regarding *Ganda Singh and another* v. *Punjab State etc.* (hereinafter called the second petition) and which necessitated the filing of these writ petitions, may be briefly stated as under:

2. Consolidation of holdings commenced in village-Mohi Khurd (hereinafter called the village) in the year 1954 and the same were concluded in the year 1967, the repartition having been finally sanctioned and published. Some right-holders, who were political followers of Shri Atma Singh, the then Revenue Minister, made application to him on April 1, 1971, for revocation of the scheme. The said application was referred to the Additional Director, Consolidation of Holdings, Punjab, at Chandigarh (hereinafter called the

Additional Director) and he sent the Assistant Consolidation Officer for enquiry to the village. The said Assistant Consolidation Officer submitted his report on April 20, 1971, and the Additional Director declined to revoke the scheme. He, however, gave general instructions, without assigning any reason, to the Assistant Consolidation Officer and also to the Consolidation Officer to go to the village, and after satisfying each and every right-holder, to make a proposal for necessary amendment of the scheme. Thereupon, the Consolidation Officer submitted a proposal for amendment of the scheme and the Additional Director, by his order, dated December 31, 1972 (hereinafter called the impugned order) directed changes in the allotments of some of the right-holders, who included the three petitioners, who are real brothers, and also Ganda Singh and his son, Ishar Singh, who are petitioners in the second petition. All of them will hereinafter be called the petitioners. Aggrieved by the impugned order, the petitioners moved these petitions for issuance of an order, writ or direction in the nature of *certiorari*, quashing it (the impugned order), which was challenged as illegal, void and *ultra vires* mainly on the following grounds:—

(1) That the impugned order was announced orally and without writing the same;

(2) That two of the right-holders, viz., Budhu and Chanan Singh, whose allotments had also been changed, were dead on the date of the impugned order and their legal representatives had not been brought on record;

(3) That no notice, much less valid, had been given to the petitioners, or to Rattan Singh (Respondent 8 in the second petition), who is son of Ganda Singh as he (Rattan Singh) was employed in the Army; and

(4) That no variations in the allotments of the right-holders could be effected without amending the scheme and publishing the same, and that no reasons were assigned for directing the amendment of allotments of the right-holders.

3. Written statements were filed by the State of Punjab and the Additional Director as well as by Chetu Singh and Jaimal Singh respondents in this petition. No written statement was filed in the second writ petition. The material allegations of the petitioners were controverted and it was pleaded, *inter alia*, that since the right-holders were not satisfied with the scheme and wanted its revocation, proceedings were instituted and firstly the Assistant

Consolidation Officer was deputed to go to the village and make necessary proposal for amendments after contacting the right-holders and thereafter the Consolidation Officer was also deputed for the purpose and he submitted his report on April 12, 1970, and the case was then entrusted to the Additional Director for decision under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter called the Act). It was thereafter that some of the right-holders of the village had submitted an application to the Revenue Minister for revocation of the scheme. The Additional Director did not consider it desirable to revoke the scheme as a whole and passed order on that application accordingly, though he directed that modification or amendment of the allotments of some of the right-holders, which would appear to be just, could be made. Since the matters in controversy arising between the parties in this petition and the second petition are identical and the same are against the impugned order. both these petitions are being disposed of by one judgment.

4. There is no doubt, indeed there is no dispute, that the impugned order was passed by the Additional Director under the powers available to him under section 42 of the Act. Shri S. K. Jain, learned counsel for the petitioners, impeached the validity of the impugned order with the contentions:—

(a) That the application made by some of the right-holders on April 1, 1971, to the Revenue Minister was barred by time;

(b) That Chanan Singh and Budhu had died and their legal representatives had not been brought on record before the passing of the impugned order; and

(c) That no notice of amendment of the allotments, as required by law, was given to the petitioners.

5. In view of the pronouncement of the Supreme Court in *Johri Mal* v. *The Director of Consolidation of Holdings, Punjab and another* (1), that the power conferred on the State Government under section 42 of the Act is not controlled by section 36 and the procedure of publication and hearing objections contemplated by sections 19 and 20 of the Act is not necessary, the learned counsel for the petitioners did not press the ground mentioned at (4) in

(1) 1967 P.L.R. 824.

para 2 above that the amendment of allotments could not be directed without amending the scheme in whole and publication of the same. He also did not press any other ground, and rightly in my opinion, for attacking the impugned order. For the reasons to be recorded hereunder, I feel that none of the three contentions raised by the learned counsel for the petitioners is well founded.

6. The scheme was finalised and published in the year 1967. The application was moved by the right-holders to the Revenue Minister for revocation of the scheme on April 1, 1971. According to rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, the period of limitation for such an application was six months. Therefore, the aforesaid application, moved by the right-holders to the Revenue Minister, was clearly barred by time. But, then for two reasons, the contention of the learned counsel for the petitioners that the impugned order was bad on account of the aforesaid application having been barred by time, cannot be accepted. Firstly, no objection that the said application was time-barred was taken before ihe Additional Director. He could decide the question of limitation, if the aforesaid objection had been raised before him and he could even condone the delay if he thought that there was sufficient cause for not making the application within time. Therefore, when no objection of bar of limitation had been taken before the Additional Director, I do not think that the said objection can be raised in the writ petitions. Similar view was taken in *Bhagat Singh* v. *Additional Director, Consolidation of Holdings, Punjab, Jullundur and others* (2). Secondly, the impugned order, when read carefully, goes to show that proceedings had been instituted by the State Government before the right-holders had moved the application, referred to above, to the Revenue Minister. The Assistant Consolidation Officer had been asked to go to the village and contact the right-holders for making necessary amendments and he sent his report on November 28, 1969, i.e., about 1½ years before the making of that application to the Revenue Minister. Even the Consolidation Officer had made his report with regard to amendment of certain allotments on April 12, 1970, i.e., about one year prior to the making of the aforesaid application. In view of these matters, there can be no escape from the conclusion that the proceedings under section 42 of the Act had been instituted by the State Government earlier to the making of the application, and the application was made during the pendency

(2) 1966 P.L.R. 496.

of those proceedings. The said application appears to have been disposed of by the Additional Director on April 27, 1971, with the observation that whole of the scheme could not be revoked. He, however, continued with the proceedings respecting the amendment or variation of those allotments, which were felt necessary and desirable. Section 42 clearly indicates that the State Government can review, amend or even reverse the scheme even if it has been confirmed, as it thinks fit. Neither section 42 nor rule 18 prescribes any limitation for instituting such proceedings by the State Government under section 42 of the Act. Since, as indicated above, it appears that the proceedings had been instituted by the State Government under section 42 of the Act even earlier to the making of the application by some of the right-holders to the Revenue Minister, it cannot be said that the same were barred by time.

7. It is correct that the allegation, that Chanan Singh and Budhu right-holders had died before the passing of the impugned order, has not been denied specifically in the written statements put in by four of the respondents. So, the point is whether the petitioners, who are neither related to Chanan Singh or to Budhu, nor are even co-sharers with them, can question the validity of the impugned order on the ground that they (Chanan Singh and Budhu) had died and their legal representatives had not been brought on record? My answer to this question is in the negative. It is the affected party who can impugn an order complained of in writ petition. The legal representatives of Chanan Singh or Budhu have not challenged the impugned order. It has not been alleged or shown that the variation of the scheme, amending the allotments of Chanan Singh and Budhu, had caused any damage or injury to their rights. On the other hand, it appears from the impugned order that the Consolidation Officer had gone to the village, heard each and every right-holder at the spot and then made proposal for amendment on April 12, 1970. That would imply that Chanan Singh and Budhu or at least their legal representatives were heard by him when he made the proposal for amendment. So, Budhu or Chanan Singh or their legal representatives had due notice of the proceedings relating to amendment of allotments. As such, there was no violation of natural justice or of the provisions of section 42 of the Act.

8. In view of the provision contained in the proviso to section 42 of the Act, which reads as under :

> "Provided that no order or scheme or repartition shall be varied or reversed without giving the parties interested

notice to appear and opportunity to be heard except in case where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration."

there can be no doubt that no order, directing variation of scheme or repartition amending allotments of some of the right-holders, can be passed without giving parties interested the notice to appear and opportunity to be heard, except where the State Government feels that the proceedings had been vitiated by unlawful considerations. All that is necessary under the said proviso as well as in accordance with the principles of natural justice is that the right-holder likely to be affected by an order should have notice and opportunity of being heard in the matter. If he had been given such notice and he had also been afforded such opportunity, his non-appearance at the time of passing the impugned order is immaterial and will not affect the validity of the order. It is, however, important to note that the aforesaid proviso does not necessarily imply that the requirement of personal service of individual notice on all the right-holders is pre-emptory. In absence of any statutory provision directing individual notice to each and every right-holder or personal service of the same, the matter regarding the contents of notice and the manner of effecting service on the right-holders has to be left to the judicial discretion of the authority concerned. The impugned order contained that firstly the Assistant Consolidation Officer was directed to go to the village and contact the right-holders for making necessary amendment. On receipt of his report, the Consolidation Officer was sent to the village and he was required to make proposal for necessary amendment after satisfying each and every right-holder and when he had heard them (each and every right-holder) at the spot, he made the proposal on April 12, 1970. The matter did not rest there. The Additional Director had gone to Sirhind in the month of November, 1971. He did not then feel satisfied that proper proclamation had been made in the village about his visit. Therefore, he adjourned the proceedings and directed that necessary proclamation should be made in the village, and the said proclamation had been made in the village more than 15 days before the date of the impugned order. The impugned order further contains that 40 right-holders did turn up and they admitted the publication of the said proclamation in the village and also that the Consolidation Officer had gone to the village and that he had proposed the necessary amendments of allotments with their consent. The proposed amendments of the allotments were also read out to them and they admitted the same

to be correct. It is not disputed that Kartar Singh, who is one of the petitioners in this petition, and Ganda Singh, who is one of the two petitioners in the second petition, were among those 40 right-holders, who had appeared before the Additional Director and had then represented to him that the amendments of the allotments had been proposed by the Consolidation Officer with their consent and both of them had further admitted the said amendments of allotments to be correct. Kartar Singh is the brother of and co-sharer with the other two petitioners in this petition and Ganda Singh is the father of Ishar Singh, the other petitioner, and Rattan Singh (Respondent 8) in the second petition. There is nothing on record to show that the said Ishar Singh and Rattan Singh were right-holders. It has been observed in *Bhagwana and others* v. *The State of Punjab and others* (3), in which reference to other judgments of this Court has also been made, that where one of several joint landowners had been served with a notice of petition under section 42 of the Act and one of them was present at the hearing of the petition, it would amount to providing an opportunity to make sufficient effective representation against the petition. In view of the judgment in *Bhagwana's case* (supra), when Kartar Singh, who is brother and co-sharer with the other petitioners in this petition, and Ganda Singh, who is father of Ishar Singh petitioner and Rattan Singh, respondent in the second petition, had appeared before the Additional Director and had accepted that due proclamation of the notice had been made in the village on December 12, 1971, and they further admitted that amendments of the allotments had been proposed by the Consolidation Officer with their consent and they had also agreed to the same at the time of passing the impugned order, it is not open to the petitioners or their counsel to contend that the petitioners had not been given notice or that they had no opportunity of being heard in the matter of variation of the scheme to the extent of amendments of allotments of some of the right-holders.

9. Shri S. K. Jain, learned counsel for the petitioners, has argued, and as a matter of fact this was his main argument, that notices must have been served personally on all the right-holders, whose allotments had been changed, and that the notices must have contained the extent of amendments proposed to be effected in their allotments before the impugned order could be passed. He conceded that a public notice by proclamation, when the whole scheme is

(3) 1966 P.L.R. 307.

proposed to be revoked, was sufficient. But he maintained that when the scheme was to be varied by amending allotments of some of the right-holders, it was essential that individual notices should be served personally on each and every right-holder, whose allotments were proposed to be varied. So, in a way, according to him, there will be two kinds of notices, i.e., in the case of revocation of the scheme a public notice by proclamation would do, but in the event of variation of scheme amending allotments of some of the right-holders, it would be the individual notice to the affected right-holders that should be considered sufficient. I am unable to agree with him and I think, there can be no reason or warrant to introduce the distinction in the matter of issuance of notices of revocation of the scheme or variation in the allotments, as suggested by the learned counsel for the petitioners. The language of proviso to section 42 of the Act, reproduced above, requires the issuance of notice to appear and affording an opportunity to be heard to the parties concerned. It, however, does not provide the manner in which the said notice has to be served, nor does it provide the contents of such a notice. Since the right-holders, whose allotments were required to be varied or amended, were many, not less than 110, I think, the Additional Director exercised the discretion, vested in him, judicially by directing the notice to be served upon them by proclamation in the village. Further, as pointed out above, the impugned order shows that the interested parties had been contacted by the Assistant Consolidation Officer and also by the Consolidation Officer while proposing the necessary amendments of the allotments. Ganda Singh did appear before the Additional Director, and there is nothing on record to show that his son Ishar Singh petitioner or Rattan Singh, respondent in the second petition was right-holder or even co-sharer with him. The facts of the case regarding *Mall Singh* v. *The State of Punjab*, (4) were different. In the said case, no notice had been served on Mall Singh and he was again not a party to the appeal of Sucha Singh. In the case in hand, not only that Kartar Singh and Ganda Singh had admitted the proclamation of the notice before the Additional Director, they had further consented to the amendments of the allotments before the Consolidation Officer as well as before the Additional Director. It is, therefore, apparent that Ganda Singh and Kartar Singh had due notice of the proceedings relating to the amendments of the allotments and they had ample opportunity to be heard and, in fact, they had appeared before the Additional Director. It is correct that the observations

(4) 1969 Revenue Law Reporter 114.

made in *Mange* v. *Additional Director, Consolidation of Holdings* (5) do give an indication that a notice in writing or even oral, containing the extent of the proposed amendments of the allotments should be served on interested parties before an order varying the scheme under section 42 of the Act is passed. But then the said case was not decided on the ground of absence of such a notice. The writ petition of Mange was dismissed solely on the point that the impugned order had not resulted in any miscarriage of justice. In view of the judgment of the Supreme Court in *Johri Mal's case* (supra) and the language of proviso to section 42 of the Act, all that is required is that the interested party should be given notice to appear and should be afforded an opportunity of hearing before variation of the scheme. On the facts and circumstances of the case in hand, I am satisfied that the petitioners had been given due notice to appear and that they were further afforded an effective opportunity of hearing by the Additional Director before passing the impugned order.

10. There is nothing on record, and the learned counsel for the petitioners could not refer me to any matter or circumstance, which can show that the amendments of the allotments of the petitioners had affected, much less materially, their rights or that it has resulted in miscarriage of justice. Rather, in view of the fact, as is evident from the impugned order, that the amendments of allotments had been proposed by the Consolidation Officer with the consent of the right-holders, and Kartar Singh petitioner as well as Ganda Singh petitioner in the second petition had appeared and admitted before the Additional Director, who passed the impugned order, that the amendments of the allotments were correct, there cannot be possibly any cause for grievance to the petitioners against the impugned order. The impugned order, the legality or validity of which has not been successfully questioned by the petitioners, cannot be set aside merely on the allegation of inconvenience or the like.

11. It, thus, follows from the discussion above that there is no merit in the contentions raised by the learned counsel for the petitioners and the same are overruled. The impugned order does not suffer from any inherent lack of jurisdiction or from any infirmity, which can call for vacation of the same in exercise of the extraordinary jurisdiction under Articles 226 and 227 of the

(5) 1967 P.L.R. 835.

Constitution of India. So, both the writ petitions are without substance and must fail. Consequently, I dismiss both the writ petitions with no order as to costs.

B. S. G.

Before D. S. Tewatia, J.

MANI RAM,—Petitioner

versus

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

Civil Writ No. 4429 of 1973.

August 1, 1974.

Land Acquisition Act (1 *of* 1894)—*Section* 9(3)—*Requirement of the service of notice on the occupier of land under acquisition—Whether mandatory—Failure to comply therewith—Whether renders subsequent acquisition proceedings invalid.*

Held, that under section 9(3) of the Land Acquisition Act, 1894, an obligation is cast upon the Collector to serve a notice on every occupier of the land which is to be acquired. The Collector must serve a notice on the occupiers of the land and the obligation cast upon him for this class of persons is absolute. Failure of the Collector in this behalf causes prejudice to the occupier of the land. Such a person would have no opportunity to make his claim to compensation known to the Collector, who would, on his own, give the award which may not measure up to the estimation of such occupier of the land. In that case, he will have to perforce initiate proceedings under section 18 of the Act in the Court of District Judge for enhancement of compensation and expend money and energy in claiming what he, if he had notice, would otherwise have claimed before the Collector and may well have been awarded by the Collector. The prejudice to such a party is obvious. Hence requirement of section 9(3) of the Act is mandatory and failure to comply therewith renders the subsequent land acquisition proceedings under the Act illegal and invalid.

Petition under Articles 226 *and* 227 *of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the Notifications, dated* 25*th August,* 1972 *and* 22*nd November,* 1972 *and directing the respondents Nos.* 1 *and* 2 *not to dispossess the petitioner from the land in dispute and further praying that the petitioner not be dispossessed from the land in dispute during the pendency of this writ petition.*