

M/s. Zeraster
and Co.,
v.
The Commis-
sioner of
Income-tax,
Delhi etc.,
Hidayatullah, J.

If the Tribunal has to make a fresh enquiry leading to the admission of fresh evidence on the record, then this direction offends against the ruling of this Court in the *Jehangir Vakil Mills* case (1). If, however, the direction be interpreted to mean that the Tribunal in giving the finding must confine itself to the facts admitted and/or found by it, the direction cannot be described as in excess of the jurisdiction of the High Court. It would have been better if the High Court had given directions confined to the record of the case before the Tribunal; but, in the absence of anything expressly to the contrary, we cannot hold that the direction would lead inevitably to the admitting of fresh evidence. This, at least, now cannot be done, since the *Jehangir Vakil Mill* case (1) has prohibited the admission of fresh evidence. In our opinion, the present case does not fall within the rule in the *Jehangir Vakil Mills* case (1), and is distinguishable.

In the result, the appeal fails, and is dismissed with costs.

B.R.T.

FULL BENCH

Before G. D. Khosla, C.J., K. L. Gosain and D. K. Mamajan,
JJ.

KISHAN SINGH AND ANOTHER,—Petitioners.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ No. 1345 of 1959.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) (Second Amendment Validation) Act (XXVII of 1960)—Whether intra vires and saved by Article 31-A of the Constitution—General Clauses Act (X of

1960
August, 18th

1897)—Section 3(31)—Panchayat—Whether a 'local authority' within the meaning of Article 12 of the Constitution.

Held, that the East Punjab Holdings (Consolidation and Prevention of Fragmentation) (Second Amendment Validation) Act, XXVII of 1960, is saved by the provisions of Article 31-A of the Constitution of India and is *intra vires*.

Held, that a Panchayat is a 'local authority' within the meaning of Section 3(31) of the General Clauses Act, 1897, and is thus "the State" within the definition of Article 12 of the Constitution of India. The acquisition of an estate and vesting it in the Panchayat amounts to acquisition by the State which is permitted by Article 31-A of the Constitution. The transfer of rights to the Panchayat can also be considered as modifications of proprietary rights and such modification is also permitted by Article 31-A.

Petition under Article 226 of the Constitution of India praying that an appropriate writ, direction or order be issued quashing the scheme of consolidation of holdings of village Bhoot in its entirety and also the re-partition proceedings including the various orders passed in that connection and that of the Director of Consolidation of Holdings, dated 15th October, 1959, in which all other orders have merged and further praying that the scheme of consolidation be directed to be prepared in accordance with law and re-partition be carried out in accordance with the terms of the scheme.

H. S. GUJRAL, ADVOCATE, for the Petitioner.

SARVSHRI S. M. SIKRI, ADVOCATE-GENERAL, H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, AND L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE-GENERAL, for the Respondents.

ORDER

G. D. KHOSLA, C. J.—In this case we are concerned with the *vires* of the East Punjab

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Holdings (Consolidation and Prevention of Fragmentation) (Second Amendment Validation) Act, 1960. This is Punjab Act No. 27 of 1960. The Act was promulgated as the result of a Full Bench decision of this Court in *Munsha Singh and others v. The state of Punjab and others* (1).

The Judgment of the Full Bench contains a resume of the statutes and rules dealing with the question of consolidation of holdings, and I shall presently refer to the more relevant features of this legislation. The facts of the present case are that a scheme for the consolidation of holdings in village Bhoot in district Jullundur was prepared. Out of the consolidated pool of proprietary land, 20 acres of land was allotted to the Gram Panchayat for the common purposes of the village. No compensation was, however, paid to the proprietors for this land, and it is alleged that the deprivation of the use and management of these 20 acres is an infringement of the fundamental right of the petitioners, Kishan Singh and Shrimati Ishri, who are two of the proprietors of village Bhoot. The substance of the contention made on behalf of the petitioners is that they have been deprived of their property in manner not permitted by the Constitution. This argument was repelled on behalf of the State, and it was contended that Article 31A of the Constitution saves the Act and, therefore, the handing over of 20 acres of land to the Gram Panchayat under the impugned Act is perfectly legal.

The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act Act No. 50 of 1948) made provision for the consolidation of agricultural holdings and for preventing the

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fragmentation of agricultural holdings. Under section 18 of this Act some land out of the common pool could be reserved for common purposes. In the Act, as originally framed, "common purpose" was not defined, but clause (BB) to section 2 was added by Act 22 of 1954 and "common purpose" was defined as "any purpose in relation to any common need, convenience or benefit of the village. Earlier, by means of Punjab Act I of 1954, provision was made for vesting certain rights in Panchayats and in non-proprietors. The Punjab Village Common Lands (Regulation) Act, 1953 (Punjab Act I of 1954) in section 3 provided that all rights, title and interests included in the *shamilat deh* of any village would vest in the Panchayat having jurisdiction over the village, and that portion of the area in the *abadi deh* which was under the house owned by a non-proprietor would vest in that non-proprietor. Rules were framed under Act 50 of 1948. In 1957 the following sub-rule was added to rule 16 as originally framed:—

"16(ii). In an estate or estates where during consolidation proceedings there is no *shamilat deh* land or such land is considered inadequate, land shall be reserved for the village Panchayat and for other common purposes, under section 18(c) of the Act, out of the common pool of the village at a scale prescribed by Government from time to time. Proprietary rights in respect of land so reserved (except the area reserved for the extension of *abadi* of proprietors and non-proprietors) shall vest in the proprietary body of the estate or estates concerned and it shall

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be entered in the column of ownership of record of right as (Jumla Malkan Wa Digar Haqdaran Arazi Hasab Rasad Raqba). The management of such land shall be done by the Panchayat of the estate or estates concerned on behalf of the village proprietary body and the Panchayat shall have the right to utilize the income derived from the land so reserved for the common needs and benefits of the estate or estates concerned.”

The result of all this legislation was that whenever consolidation of holdings took place in a village and the scheme was under preparation, the question of reserving a certain area for the common use of the village was considered. It was frequently considered necessary to add to the already existing *shamlat* land and hand it over for management to the village Panchayat. The attack in the present case is directed against this type of action which deprives the proprietors of some portion of their proprietary land. This matter was considered by the Full Bench to which reference has already been made, and two points were raised on behalf of the petitioners in that case. It was urged in the first place that rule 16(ii) was beyond the scope of the Act under which it was framed and, therefore, was completely unauthorised. In the second place, it was urged that the Act itself was *ultra vires* the Constitution as it authorised the deprivation of property without the payment of any compensation. The learned judges of the Full Bench allowed the petition on the first ground and held that the rule was beyond the scope of the Act in as much as Act 50 of 1948 was intended merely “to provide for the compulsory consolidation of agricultural holdings and

for preventing the fragmentation of agricultural holdings"; it was not intended to provide authority for adding to the *shamlat* land or depriving the proprietors of any land owned by them. The matter was not considered from the second aspect and no decision of the vires of the Act was given. The Punjab Legislature, thereafter promulgated Act 27 of 1960 which is now being impugned. Section 2 of the amending Act is in the following terms:—

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"2. In the long title of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (herein after referred to as the principal Act), the words 'and for the assignment or reservation of land for common purposes of the village' shall be, and shall be deemed always to have been added at the end."

In view of this amendment, the first objection no longer holds good, and it was frankly conceded before us by Mr. Gujral, who appeared on behalf of the petitioners, that he could say nothing on this point. His argument was confined to the objection on the score of the constitutionality of the Act. His contention in the main is that the proprietors have been deprived of their land and no compensation has been paid to them; therefore, the Act infringes Article 31 of the Constitution. He drew our attention to an observation made by their Lordships of the Supreme Court in *Thakur Amar Singh Ji and others v. State of Rajasthan and others* (1). Their Lordships in that case were considering the Rajasthan Land Reforms and Resumption of Jagirs Act, and while discussing

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the scope of Article 31 A observed:—

“The object of Article 31A was to save legislation which was directed to the abolition of intermediaries so as to establish direct relationship between the State and the tillers of the soil, * * *.”

Mr. Gujral argued that there were no intermediaries in the present case and the land had been taken not from intermediaries but from proprietors and handed over to the Panchayat. Their Lordship were, however, considering the facts of that particular case where the *jagirdars* were mere intermediaries between the Government and the actual occupiers of land. There is nothing in the judgment of the Supreme Court to indicate that Article 31A was confined only to the cases of *jagirdars* for intermediaries. “Intermediaries”, no doubt, fall within its scope, but the Article has much wider application, and, indeed, Venkatarma Ayyar J., who delivered the judgment in that case, pointed out that the restricted meaning of the word “Jagir” in Article 31A could not be given effect to. Mr. Gujral argued that this was clearly a case of deprivation, because although according to rule 16 (ii) the names of the proprietors continued to be shown in the proprietary column of the revenue records, the possession and management of the land was completely transferred to the Panchayat; the proprietors were, therefore, deprived of the use and management of the land and they had, therefore, no interest left in the land whatsoever.

Article 31A of the Constitution saves laws which provide for, *inter alia* :—

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

There can be no doubt whatsoever that what has been acquired in the present case is an estate. It has been held by a Full Bench of this Court in *Bhagirath Ram Chand v. State of Punjab and others*, (1), that Article 31A of the Constitution applies equally to an entire estate or to a portion of an estate. This decision was later approved by the Supreme Court in *Atma Ram v. State of Punjab* (2). It is also clear that the act of handing over the management and possession of the land to the Panchayat amounts to acquisition or modification of proprietary rights. It is clearly an acquisition by the State, because the definition of "the State" as given in Article 12 of the Constitution includes a "local authority" and a village Panchayat, which is a statutory body, is, undoubtedly, a local authority. Mr. Gujral made an attempt to show that the Panchayat was a corporation and not a local body and that acquisition for the benefit of a corporation cannot be said to be acquisition by the State. The village Panchayat, however, being a body which is under the control of Government and not a commercial corporation, comes within the definition of "local authority". A reference to the General Clauses Act, clause 31 of section 3 provides the definition for "local authority". "Local authority" is defined to mean "a Municipal Committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund". The Gram Panchayat Act makes provision for local funds which are managed by the village Panchayats, and a "Panchayat", therefore, clearly falls within the meaning of "local authority" given in clause 31 of

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(2) A.I.R. 1959 S.C. 519.

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section 3 of the General Clauses Act. That being so, it is clear that the vesting of the property in the local Panchayat amounts to acquisition by the State. Article 31A permits acquisition by the State of an estate or a portion of an estate without paying any compensation to the proprietor.

The transfer of rights to the Panchayat can also be considered as modification of proprietary rights, and such modification is also permitted by Article 31A. In *Atma Ram v. State of Punjab*, (1), the Supreme Court considered the constitutionality of the Punjab Security of Land Tenure Act. The Act was held to be valid. After this decision, the Supreme Court held the Punjab Village Common Lands (Regulation) Act also to be *intra vires*, and once the Punjab Village Common Lands (Regulation) Act is held valid, all objections against the impugned Act disappear, because the impugned Act does no more than the Punjab Village Common Lands (Regulation) Act. By section 3 of that Act, the *shamlat deh* vests in the village Panchayat. *Shamlat deh* is the property of village proprietors and its vesting in the Panchayat deprives the proprietors of their proprietary rights. The Punjab Village Common Lands (Regulation) Act makes no provision for the payment of compensation to the proprietors. All that the impugned Act does is that it provides authority for adding to or taking away from the already existing *shamlat deh*, and this can clearly be done.

I would, therefore, hold that Act 27 of 1960 is saved by the provisions of Article 31-A of the constitution and that, in the present petition, it must be dismissed. The bill have been order as to costs.

K. L. GOSAIN.—I agree.

D. K. MAHAJAN, J.—I agree.

(1) A.I.R. 1959 S.C. 519