

LETTERS PATENT APPEAL

Before Mehar Singh and Inder Dev Dua, JJ.

GURDAS SINGH AND OTHERS,—Petitioners

versus

THE DIRECTOR OF CONSOLIDATION OF HOLDINGS,
PUNJAB, AND OTHERS,—Respondent.

Letters Patent Appeal No. 100 of 1961.

1963

Jan., 28th

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—S. 18—Reservation of land for School, for road to be constructed by Public Works Department and for water channels without payment of compensation—Whether permissible—Conflict between administrative convenience and constitutional guarantee—Which is to prevail.

Held, that reservation of land for the purposes of a school or a road which has to be constructed by the Public Works Department from one village to another and a part of which will serve as a *phirni* is not permissible under clause (c) of section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 without payment of compensation. Nor is reservation of land for water channels permissible as it cannot be described to be a common purpose within the Act. Landowners who want to take water from canal through channels can make their own arrangements and those who do not so desire cannot be forced to part with their land.

Held, that in case of conflict between administrative convenience on the one hand and constitutional guarantee and rule of law on the other, the latter must prevail over the former. Every Court, as indeed all authorities and departments of the Government in the country, are expected, and indeed bound, to uphold the constitutional mandates and enforce the rule of law, no matter how great the administrative inconvenience.

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice Dulat, dated the 6th February, 1961, passed in Civil Writ No. 278 of 1960.

D. N. AGGARWAL AND R. N. AGGARWAL, ADVOCATES, for the Petitioners.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL AND H. S. GUJRAL, ADVOCATE, for the Respondents.

ORDER

Dua, J.

DUA, J.—This Letters Patent Appeal under clause 10 of the Letters Patent is directed against an order of a learned Single Judge dismissing the appellants' writ petition.

For the purposes of the present appeal, it is not necessary to state the facts in detail. Suffice it to say that the petitioners challenged the consolidation proceedings with respect to reservation of 9 *kanals* 9 *marlas* for the Government Primary School, of about 110 *kanals* 5 *marlas* for the construction of 11 *karams* wide road to be constructed by the Public Works Department from Jandu Singh to Kartarpur, and of 191 *kanals* and 17 *marlas* (the respondents admit the area to be 91 K. 17 M.) for water channels and claimed relief by way of writ in the nature of *certiorari*, *mandamus* or *prohibition* or other suitable writ, order or direction.

The learned Single Judge in his order dealt with only one of these items, namely, that of 110 *kanals* 5 *marlas* reserved for the construction of road by the Public Works Department. This was held to be for a public purpose because, according to the learned Judge, it had been denied on behalf of the respondents that the whole of this land had been taken away from the rightholders and given to the Public Works Department.

On appeal, it has been argued that the three items mentioned above were challenged in the writ petition and the petitioners' allegations were admitted by the respondents in the return. It has been urged in this connection that the learned Single Judge was not quite correct in holding that the respondents had denied the petitioners' assertion.

Here it would be desirable to reproduce paragraphs 7, 8, and 9 of the writ petition as also replies to these paragraphs in the return:—

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Writ petition 7. "That the scheme provides reservation of 9 *kanals* 9 *marlas* for the Government Primary School which existed before the commencement of consolidation. The respondents have no authority to reserve this area for the said purpose, without payment of compensation to the landowners and without acquiring the land under Land Acquisition Act.

8. That the scheme provides reservation of area to the extent of 110 *kanals* 5 *marlas* for 11 *karam* wide Jandu Singh to Kartarpur Road, which is proposed to be constructed by the Public Works Department and will pass through the village of the petitioners. This can also not be done, without payment of compensation and acquisition according to law.
9. That the respondents have provided in the Scheme reservation to the extent of 191 *kanals* 17 *marlas* of land for water channels. Such reservation is not a common purpose and the area should have been deducted proportionately from the holdings of the landowners who wanted to take water from canal through such channels."

Return 7. It is admitted that an area measuring 9 *kanals* 9 *marlas* was reserved for the Middle School and its playground in accordance with the provision

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of the scheme. Before consolidation area to the extent of 2 *kanals* 12 *marlas* existed in the *shamlat* Patti Raipur for Primary School which was kept intact during consolidation. As the ownership of the area measuring 9 *kanals* 9 *marlas* deducted from the rightholders including the petitioners proportionately, was shown as of 'Jamula Malkan Hasab Rasad Raqba' no compensation is payable. Moreover, this reservation is covered under section 18(c) of the Consolidation Act. The allegation is baseless and deserves no consideration.

8. It is admitted that an area measuring 110 *kanals* 5 *marlas* was reserved for Jhandu Singh-Kartarpur Road in accordance with the provisions of the scheme consented to by the rightholders present at the time of its publication. It is further stated that this road passes along the village of the petitioners and serves partly as *Phirni* of the village.

As this road is for the benefit of the village community and as the area reserved for it has been entered in the ownership of 'Jamula Malkan Hasab Rasad Raqba' without adversely affecting the ownership rights of the rightholders no compensation is payable.

9. The area left for water channels is 91 *kanals* 17 *marlas* and not 191 *kanals* 17 *marlas* as given in the petition. This area has been reserved to facilitate the irrigation for the landowners. The whole area of the village will be irrigated through these channels by which all

the landowners will be benefited. This area has also been entered in the ownership of 'Mushtarka Malkan' according to their respective shares."

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Construing the pleas before us according to the well-known rule of pleadings that a written statement must deal specifically with each allegation of fact or assertion of the opposite party in substance, the truth of which is not admitted, it does appear to us that the plea of reservation of 110 *kanals* and 5 *marlas* for a road proposed to be constructed by the Public Works Department has not been denied in the written statement and should be deemed to have been admitted. It has further been positively averred in the written statement that this road passes along the petitioners' village. The plea of the entry in the ownership column in revenue papers would appear to us to be of little avail. The respondents' learned counsel Shri Doabia has placed great reliance on a Full Bench decision of this Court in *Munshā Singh etc. v. The State of Punjab, etc.* (1), and reference has been made to the judgment of Tek Chand, J., at page 13 in support of the contention that land can legitimately be reserved for village roads including circular roads or for roads under development scheme with 12 *karams* width. Now in this very judgment the identical argument of the State counsel there based on the entry in the ownership column in the revenue papers was not accepted by itself to constitute a conclusive or an effective answer to the constitutional challenge on the ground of expropriation of rightholders' right to property. Again, taking land for a road to be constructed by the Public Works Department from Jhandu Singh to Kartarpur passing along the village in question may also by itself

(1) I.L.R. (1960) 1 Punjab 589=1960 P.L.R. 1.

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and without more not be considered to be a common purpose under the Consolidation Act so as to deprive the rightholders of their claim to compensation for such acquisition. Merely serving partly as a *phirni* of the village may not serve to save the entire reservation from the challenge. No attempt has been made on behalf of the respondents even to argue that the portion serving as the *phirni* is a permissible reservation within the Act. It would thus appear that reservation for the road is outside the Consolidation Act and, therefore, unauthorised. The matter also seems to be covered by a decision of a learned Single Judge of this Court in *Gurbux Singh etc. v. State etc.*, Civil Writ No. 435 of 1957 where it is laid down that section 18(c) of the Consolidation Act read with the rules framed under it does not justify reservation or taking away of any area for the purpose of adding it or joining it with a road which belongs to the District Board as the entire road will then vest in the District Board and it cannot be said that the lands which have been taken from the rightholders will still continue to vest in them. The relevant part of the scheme was quashed by the learned Judge. Letters Patent Appeal preferred against that decision was dismissed. In the opinion of the Letters Patent Bench there was no reason to think that the ownership of the new land had been kept apart from the ownership of the District Board land in which the new land was included.

Regarding the other two items, the respondents' learned counsel has argued that these points were not urged before the learned Single Judge. The appellants' counsel has on the other hand contended that these points were actually canvassed before the learned Single Judge and that the respondents having admitted the petitioners' allegations it is unlikely that he could have omitted to

press them. In the alternative, it has been submitted that on admitted pleas this question would be one of law and should be allowed to be raised on appeal, particularly because it relates to fundamental rights. It is undoubtedly true that pleadings contained in paragraphs 7 and 9 of the writ petition can hardly be considered to have been specifically denied and the counsel appearing for the petitioners before the learned Single Judge should have been expected to press the points; but at the same time I am unable to hold that the learned Single Judge could have omitted to deal with the points if they had been effectively argued before him. However, the question relates to a fundamental right and, therefore, it has been considered by us to be more appropriate to allow this point to be raised. Lord Tomlin, while preparing the opinion of the Judicial Committee in *The Official Liquidator of M. E. Moola Sons, Ltd. v. Perin R. Burjoree* (2), quoted the following observations of Lord Watson from *Connecticut Fire Insurance Co. v. Kavanagh* (3):—

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“When a question of law is raised for the first time in a Court of last resort upon the construction of a document or upon facts either admitted or proved beyond controversy, it is not only competent but expedient in the interests of justice to entertain the plea. The expediency of adopting that course may be doubted when the plea cannot be disposed of without deciding nice questions of fact in considering which the Court of ultimate review is placed in a much less advantageous position than the Courts below. But their Lordships have no

(2) A.I.R. 1932 P.C. 118.

(3) (1892) A.C. 473 at page 480.

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hesitation in holding that the course ought not in any case to be following unless the Court is satisfied that the evidence upon which they are asked to decide, establishes beyond doubt that the facts if fully investigated would have supported the new plea.”

We are aware of the rule of practice, that usually a point not raised before a learned Single Judge is ordinarily not allowed to be raised on a Letter Patent Appeal, but on the facts and circumstances of this case, in view of a fundamental right being involved, we have allowed this point to be raised.

In so far as the question relating to reservation for Government Primary School is concerned, the point again does not seem to us to be *res integra* but is covered by authority. In *Jai Singh etc. v. The State of Punjab, etc.*, Civil Writ No. 1413 of 1961, a learned Single Judge of this Court held reservation for the purpose of water works, Government School and Veterinary Hospital to be outside the provisions of the Act or the rules made thereunder and, accordingly, quashed the same. A Letters Patent Appeal against that decision is stated to have been dismissed *in limine*.

Regarding reservation of 91 *kanals* 17 *marlas* for water channels as admitted in the written statement, here again it appears that it cannot be described to be a common purpose within the Act. Landowners who was to take water from canal through channels can make their own arrangements and those who do not so desire cannot be forced to part with their land. On behalf of the respondents, nothing convincing has been urged as to how this reservation can be considered to be a common purpose if a large number of rightholders did not want to utilise it.

This Court is not unmindful of the administrative inconvenience which is likely to result

from our decision, but then in case of conflict between administrative convenience on the one hand and constitutional guarantee and rule of law on the other, the latter must prevail over the former. This Court, as indeed all authorities and departments in this Republic, are expected, and indeed bound, to uphold the constitutional mandates and enforce the rule of law, no matter how great the administrative inconvenience. This position has to be clearly kept in the forefront by all administrative agencies who may, at times, by stress of administrative emergencies feel tempted—though unconsciously—to ignore the constitutional mandates or give it secondary importance for the sake of administrative convenience. Allegiance to the Constitution which is supreme in our country demands due resistance to such temptations.

For the foregoing reasons, we are constrained to allow this appeal and setting aside the order of the learned Single Judge allow the writ petition in part and quash the scheme only in respect of the three items mentioned above. In respect of the water channel 91 *kanals* 17 *marlas* are to be taken to have been reserved as admitted in the written statement. There would be no order as to costs of this appeal.

MEHAR SINGH, J.—I agree.

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B.R.T.

CRIMINAL MISCELLANEOUS

Before H. R. Khanna, J.

SURAM SINGH,—Petitioner.

versus

THE GRAM PANCHAYAT, SAMTANA KALAN AND
ANOTHER,—Respondents.

Criminal Miscellaneous No. 716 of 1962.

*Punjab Gram Panchayat Act (IV of 1953)—S. 23—
Gram Panchayat—Whether can impose a recurring fine
day till encroachment is removed.*

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