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answer" the interrogatories. The mere grant of leave to deliver interrogatories does not amount to such an "order". There is, however, no specific form in which an order under Order XI, Rule 11 of the Code has to be passed. Nor does rule 11 envisage any magic incantation which alone may be treated as an order to answer the interrogatories. It is enough if the intention of the order can be clearly spelt out of the direction given by the Court. We cannot lose sight of the fact that in the present case in spite of the interrogatories having been delivered to the petitioner sometime in September, 1973, he had failed to answer them. Even then, if the order of the Rent Controller had stopped with dismissing the objections of the petitioner against the interrogatories, there would have been much force in what the learned counsel has submitted. Unfortunately for the defendant, the learned Rent Controller did not stop with dismissing the objection petition, but added the above mentioned specific direction which could only be made under Order XI, Rule 11 of the Code. The mere fact that instead of directing the defendant in so many words to file replies to the interrogatories, the Court ordered that the defendant was being given one more opportunity to file the replies, does not, in the circumstances of this case, amount to no order having been passed by the Court as envisaged by Order XI, Rule 11 of the Code. I am unable to find any escape from holding that the last sentence in the order of the trial Court, dated December 14, 1973 (already quoted in an earlier part of this order) clearly amounted to an order to answer the interrogatories. That order was admittedly not complied with. The defendant-petitioner omitted to answer those interrogatories. The impugned order has, therefore, not been passed without complying with Order XI, Rule 11 of the Code. The order was within the jurisdiction of the Rent Controller. That being so, there is no ground to interfere with the same. This revision petition must, therefore, fail and is accordingly dismissed, though without any order as to costs.

N. K. S.

LETTER PATENT APPEAL

Before R. S. Narula, C. J. and Harbans Lal, J.

THE STATE OF PUNJAB AND ANOTHER,—Appellants.

versus

SOHAN ETC.,—Respondents.

Letters Patent Appeal No. 528 of 1975.

January 28, 1976.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948)—Section 2(c) and (i), 3 to 5, 13, 14

and 35—All steps necessary to apply Chapter II not taken—State Government neither determining 'standard area' under section 5—Bar of Section 13—Whether applicable.

Held that all necessary steps to apply the provisions of Chapter II of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 in any estate or group of estates or any part thereof can be taken by the State Government under section 35 only after consolidation of holdings has been effected under Chapter III and it shows that Chapter II of the Act has no application to any estate or part or group of estates, till consolidation of holdings has been fully and completely effected therein and necessary steps are thereafter taken under section 35. If no such steps are taken by the State Government, Section 13 does not come into the picture. Similarly, if 'fragment' referred to in section 13 of the Act has not been specified and, therefore, the 'standard area' to which bar in section 13 has to apply has not been determined, the said bar does not apply.

(Paras 9 and 10).

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice Ajit Singh Bains, passed in Civil Writ No. 1869 of 1975, on 1st September, 1975.

I. S. Tiwana, Deputy Advocate-General, Punjab, for the Appellants.

J. N. Seth, Advocate as amicus curiae, for the Respondents.

JUDGMENT

R. S. Narula, C. J. (Oral).

(1) In this appeal under Clause X of the Letters patent against the judgment of a learned Single Judge of this Court, dated September 1, 1975, allowing the petition of the writ petitioner-respondents under Articles 226 and 227 of the Constitution of India and quashing the Notification of the State Government under section 4 of the Land Acquisition Act, 1894 (hereinafter called the Act), dated August 30, 1974 (annexure P-1), we have been somewhat handicapped on account of the respondents not having put in appearance despite service of notices of this appeal on them. At our request, however, Mr. J. N. Seth, Advocate, who happened to appear for them before the learned Single Judge, has been kind enough to assist us as Amicus Curiae.

(2) The facts of the case are brief and are beyond dispute. Out of an area of 5 kanals comprised in khasra No. 15/15/1 in khatauni

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No. 51 in village Chandeli, tahsil Garshankar, district Hoshiarpur, a plot of land measuring 1 *kanal* 12 *marlas* was notified under section 4 of the Act on August 30, 1974 (annexure P-1). The objections of the respondents under section 5-A of the Act, dated January 21, 1975 (annexure P-2), were not accepted and the Collector made a report against the petitioners on March 13, 1975. The acquisition notification under section 4 of the Act was impugned in the respondents' writ petition, dated April 10, 1975, on various grounds. The only ground out of those, on which the petition has been allowed, is mentioned in paragraphs 6 and 9(b) of the writ petition in the following words:—

“6. That the creation of a new *khasra* No. 15/15/1, Min North measuring 1 *kanal* 12 *marlas* out of 5 *kanals* is contrary to section 13 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) (Act 50 of 1948) as respondent No. 2 could not acquire so as to leave a fragment.”

“9(b) That the creation of new *khasra* No. 15/15/1, Min North out of *khasra* numbers carved during consolidation, is contrary to section 13 of the Act 50 of 1948.”

In reply to the above mentioned grounds, the Collector averred in his written statement as below:—

“6. That acquisition of the land in question is being done out of necessity. All acquisitions are not barred by the provisions of section 13 of Act No. 50 of 1948. Further action according to the Sub-section (2) of section 13 of the Act No. 50 of 1948 (Consolidation of Holdings Act) can be taken in regular initiation of proper proceedings.”

“9(b). It is incorrect for the reasons given in para 7.”

The reference to paragraph 7 of the written statement in paragraph 9(b) quoted above appears to be intended to refer to paragraph 6 thereof, as nothing stated in paragraph 7 of the return is relevant to the point in issue.

(3) In his judgment under appeal the learned Single Judge has observed that from a mere reading of section 13 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter called the Consolidation Act), it is clear that the State

Government cannot acquire any land so as to leave a fragment and inasmuch as acquisition of a plot measuring 1 *kanal* 12 *marlas* in area out of the total area of 5 *kanals* comprised in *khasra* No. 15/15/1, amounts to the acquisition of a fragment, the impugned notification has to be set aside. It is in this view of the matter that the writ petition was allowed by the learned Single Judge and the impugned notification was quashed as being violative of section 13 of the Consolidation Act (reproduced below), leading to the filing of this appeal by the State of Punjab and the Collector, Garhshankar, District Hoshiarpur:—

“13. (1) Notwithstanding anything contained in any law for the time being in force no land shall be acquired by the (State) Government or any local authority or sold at any sale held under the orders of any court so as to leave a fragment.

(2) If any land acquired by the State Government or any local authority is in excess of its requirements, it shall be offered for sale in the first instance to the owners of contiguous survey numbers or recognised sub-divisions of survey numbers at the price at which it was acquired under sub-section (1).”

(4) Mr. I. S. Tiwana, learned Deputy Advocate-General for the State, has taken us through the scheme of the Consolidation Act. The Consolidation Act is divided into five chapters. The First Chapter consists of only two sections. The First section is itself divided into three parts. Sub-section (1) of section 1 gives the Consolidation Act its name. Sub-section (2) of section 1 of that Act defines the extent of the application thereof to the whole of the State of Punjab. Sub-section (3) of section 1 of the Consolidation Act then reads as under:—

“This section shall come into force at once and the remaining provisions of the Act shall come into force in such area and from such date as the (State) Government may by notification appoint in this behalf, and different dates may be appointed for the coming into force of different provisions of the Act.”

Section 2 contains the definitions of the various expressions used in the Consolidation Act. Clause (c) of section 2 of the Consolidation

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Act defines "fragment" to mean "a plot of land of less extent than the appropriate standard area determined under this Act".

"Standard Area" is defined in clause (i) of that section to mean "in respect of any class of land, the area which the State Government may from time to time determine under section 5 as the minimum area necessary for profitable cultivation in any particular notified area and includes a standard area revised under the said section."

(5) Chapter II deals with the "determination of standard areas and treatment of fragments". This Chapter consists of sections 3 to 13. Section 3 provides that the State Government may, after such enquiry as it deems fit, specify any estate or sub-division of an estate as a notified area for the purposes of this Chapter of this Act. Sub-section (1) of section 4 empowers the State Government to provisionally settle for any class of land in any notified area, after such enquiry as it deems fit, the minimum area that can be cultivated profitably as a separate plot. Sub-section (2) of section 4 enjoins on the State Government the duty to publish by notification or in such other manner as may be prescribed the minimum areas provisionally settled by it under sub-section (1) and invite objections thereto. It is after following the procedure laid down in sub-sections (1) and (2) of section 4 that the State Government is required to consider the objections, to make such enquiry as it deems fit and then to determine the standard area for each class of land in such notified area. Such standard area can again be revised by the State Government under sub-section (2) of section 5 in the manner laid down in section 4 and section 5(1). Public notice of any standard area determined under sub-section (1) or revised under sub-section (2) of section 5 has to be given under sub-section (3) of that section. On notification of a standard area under sub-section (3) of section 5 for a local area, all fragments in the local area are required by section 6(1) of the Consolidation Act to be entered as such in the record-of-rights. Section 7 prohibits the transfer and lease of land in fragments. Section 8 prohibits the transfer or partition of land in any notified area so as to create a fragment. It is in that context that section 13 prohibits the acquisition of any land by the State Government or a local authority so as to leave a fragment.

(6) Chapter III of the Consolidation Act, commencing with section 14 and ending with section 36, deals with the procedure and scheme for the consolidation of holdings. The process of consolidation starts

with a notification under section 14(1) which provision reads as below:—

“With the object of consolidating holdings in any estate or group of estates or any part thereof for the purpose of better cultivation of lands therein, the (State) Government may of its own motion or on application made in this behalf declare by notification and by publication in the prescribed manner in the estate or estates concerned its intention to make a scheme for the consolidation of holdings in such estate or estates or part thereof as may be specified.”

It is on the publication of a notification under the above mentioned provision in the concerned estate that the Government can appoint a Consolidation Officer under sub-section (2) of section 14 to proceed with the process of consolidation. After providing in sections 14 to 34 of Chapter III the detailed machinery for the consolidation of holdings section 35 in that Chapter states as under:—

“In any estate or group of estates or any part thereof where consolidation of holdings has been effected under this Chapter, the (State) Government shall, as soon as may be, take all necessary steps to apply the provisions of Chapter II”.

Section 36 authorises the State Government to vary or revoke a scheme which might have been prepared, published or confirmed under the Consolidation Act.

(7) Chapter IV of the Consolidation Act starting with section 37 and ending with section 40 deals with the powers of the Consolidation Officer to enter upon, survey and demarcate land, with penalty for injury to or removal of survey marks, with duty to furnish information of such injury or removal and with the authority of officers to summon any person. Chapter V contains the general provisions regarding the appointment of officers and staff and delegation of powers (section 41); the power of the State Government to call for the record and revise orders passed under that Act (section 42); the provision for appeal and revision and correction of clerical errors (sections 43 and 43-A); and the bar to the jurisdiction of the Civil Courts and indemnity for acts done under this Act (sections 44 and 45). Section 46 empowers the State Government to make rules for carrying out

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the purposes of the Consolidation Act, and section 47 enumerates the earlier enactments which have been repealed by the Consolidation Act.

(8) After referring to the detailed scheme of the Consolidation Act in the manner indicated above, Mr. Tiwana has made threefold submissions in support of this appeal. His first contention is that though the extent of the Consolidation Act has been defined by sub-section (2) of section 1, only such provisions (except section 1) can come into force in any particular area with effect from any particular date for enforcing which in that particular area a notification under sub-section (3) of section 1 is issued. Only one notification under section 3(1) of the Consolidation Act has so far been issued. By that notification (Punjab Government notification No. 10978-D-49/7553, dated 19th December, 1949, published in Government Gazette, dated 23rd December, 1949, at page 1165) which is reproduced below, the provisions of sections 2 and 14 to 47 of the Consolidation Act, i.e., all the provisions except Chapter II containing section 13 were brought into force in the whole of the State with effect from January 1, 1950:—

“In exercise of the powers conferred by sub-section (3) of section 1 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, the Governor of East Punjab is pleased to order that Sections 2 and 14—47 of the said Act shall come into force in the whole of East Punjab with effect from the 1st January, 1950.”

No other notification under sub-section (3) of section 1 of the Consolidation Act is claimed to have been issued whereby the provisions of sections 3 to 13 could have been brought into force in the State. Mr. Tiwana is, therefore, correct in his first submission to the effect that section 13 has not yet come into force and cannot, therefore, be invoked by the writ-petitioners.

(9) His second contention is that even if a separate notification for bringing into force the provisions of Chapter II of the Consolidation Act is published, all necessary steps to apply the provisions of Chapter II in any estate or group of estates or any part thereof can be taken by the State Government under section 35 only after consolidation of holdings has been effected under Chapter III. Section 35 has already been reproduced above. It no doubt shows that

Chapter II of the Consolidation Act has no application to any estate or part or group of estates, till consolidation of holdings has been fully and completely effected therein and necessary steps are thereafter taken under section 35. No such steps are claimed to have been taken by the State Government. So long as such steps are not taken, section 13 does not come into the picture.

(10) The third argument of Mr. Tiwana is even stronger and appears to be unassailable. Referring to the definition of "fragment" and "standard area" (quoted in an earlier part of this judgment) and the provisions of sections 3 to 5 contained in Chapter II of the Consolidation Act (summary of which has also been referred to above), he argues that no such thing as "fragment" referred to in section 13 of the Consolidation Act has yet been specified and, therefore, the "standard area" to which bar in section 13 of the Consolidation Act has to apply, has not so far come into existence. We agree with Mr. Tiwana in this respect also. The learned *amicus curiae* has tried to support the judgment of the learned Single Judge but has not been able to meet any of the three submissions of Mr. Tiwana. The judgment of the learned Single Judge cannot, therefore, be upheld. The learned Judge in chambers has assumed that appropriate "standard area" has been determined by the State Government under sections 3 to 5 of the Consolidation Act which may be deemed to be the "fragment" for purposes of section 13. He has also assumed that section 13 and other provisions of Chapter II seem to have already been brought into force though the notification dated December 19, 1949, under section 1(3) has specifically excluded those provisions from its ambit. He has further assumed without any allegation or proof that the State has taken appropriate steps under section 35. There is, in our opinion, no warrant for any of those assumptions. It was not even stated in the petition that the State Government has taken any step required under section 35 of the Consolidation Act or held any enquiry as envisaged under sections 3 and 4 or determined the standard area for the particular estate under section 5 so as to attract the bar under section 13. It is a matter of regret that the learned Advocate-General, who represented the State at the hearing of the writ petition did not point out that section 13 has not even come into force as yet.

(11) Even otherwise, no injustice appears to have been done to the petitioners by acquisition of a part of their alleged small holding. Clause "thirdly" of section 23(1) of the Land Acquisition Act contemplates payment of damages for severing the acquired land

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from their other land. This provision in itself shows that the Legislature, in the absence of any statutory bar, allows the State Government to acquire a part of the holding of a land-owner entitling him to claim damages arising out of the 'fragmentation' of his total holding in the ordinary sense of the word.

(12) No other point was argued before the learned Single Judge and the writ petition was not allowed on any other ground.

(13) The solitary ground, on which the petition was allowed, having been found to be erroneous, we allow this appeal, set aside and reverse the judgment and order of the learned Single Judge and dismiss the writ petition of the respondents, though without any order as to costs. This order is *ex parte* against the respondents as they have not put in appearance despite service of notices of this appeal on them.

N. K. S.

CIVIL MISCELLANEOUS

Before Bhopinder Singh Dhillon and Harbans Lal, JJ.

THE AMERHERI CO-OPERATIVE AGRICULTURAL SERVICE

SOCIETY AND ANOTHER,—Petitioners,

versus

THE STATE OF HARYANA, ETC.,—Respondents.

Civil Writ No. 518 of 1976.

March 31, 1976.

Punjab Co-operative Societies Act (XXV of 1961) (as amended in Haryana by Act 13 of 1971)—Sections 13(8) to 13(12)—Whether ultra vires—Notice of proposed amalgamation—Whether to be given to the society, its members and creditors—Such notice—Whether should contain necessary information regarding all societies likely to be affected.

Held that a bare reading of sub-section (8) of section 13 of the Punjab Co-operative Societies Act, 1961 would show that the Legislature has given sufficient guide-lines to the Registrar, Co-operative