CIVIL WRIT

Before Grover J.

FAUJA SINGH AND OTHERS,—*Petitioners.*

versus

THE DIRECTOR, CONSOLIDATION OF HOLDINGS, JULLUNDUR AND OTHERS,—Respondents.

Civil Writ Application No. 51 of 1957.

1957

Dec., 6th

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Section 42—Orders under—Nature of—Whether quasi-judicial or administrative—Whether can be challenged by writ of certiorari—*Director, Consolidation of Holdings—Whether can act contrary to law or scheme of Consolidation—Constitution of India (1950)—Article 226—Writ of Certiorari—Whether can issue to quash an order passed on wrong assumption of facts—Error apparent on the face of the record—Meaning of.*

Held, that an order passed under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentations) Act, 1948, is *quasi*-judicial in its nature and can be challenged by a writ of *certiorari.* The competent authority under section 42 has to determine the matter between two parties upon consideration of facts and circumstances and it can affect the rights of either party. The words "legality" and "propriety" and the words "order" and "case" occurring in section 42 clearly indicate that the power is revisional as is exercised by a *quasi*-judicial tribunal. The proviso occurring in section 42 has to be read along with the substantive part of the section and it makes it incumbent that parties should not only be given an opportunity to appear but that there should also be an opportunity to be heard as well, which again are the attributes of judicial process.

Held, that it is not open to the Director of Consolidation to act contrary to law or to show utter disregard of law. When the repartition as agreed to by all the right-holders had become final under the provisions of subsection (4) of section 21 of the Act, it was not open to the Director to make an order contrary to the scheme.

Held further, that an order made on wrong assumption of facts which are not borne out by the record can be quashed by a writ of *certiorari* as it amounts to an error apparent on the face of the record.

Petition under Article 226 of the Constitution of India, praying that the order of the Director of Consolidation of Holdings, dated the 15th December, 1956, be quashed.

M. L. SETHI, for Petitioners.

S. M. SIKRI, K. C. NAYAR and RAM SWARUP, for Respondents:

ORDER

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GROVER, J.—This is a petition under Article 226 of the Constitution in which the legality and validity of an order made by the Director, Consolidation of Holdings, Punjab, on 15th December, 1956, in the exercise of the powers delegated to him by the State Government has been challenged. The consolidation of holding in village Seron, tehsil Tarn Taran, district Amritsar, took place in the year 1952-53. A scheme had been framed and duly confirmed in the proceedings for repartition on 18th March, 1954, at a general meeting of the right-holders in the presence of the Assistant Consolidation Officer. Bhan Singh, who is respondent No. 2 in the present petition, expressed a desire that he should be given the entire *kalri* area in Patti Sheru which had been proposed in the scheme as block No. 4 in lieu of his land of superior quality. No right-holder had any objection to this suggestion and it was stated that Bhan Singh wanted to increase his area in that manner. There was a general agreement that the entire *kalri* area, as proposed, be given to Bhan Singh, and a large number of other right-holders agreed. The repartition was announced on 13th August, 1954, and on 30th August, 1954, the Consolidation Officer heard and decided

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all the objections which had been preferred by the various right-holders. It is common ground that Bhan Singh never filed any objection to the repartition. This was quite natural as he himself wanted a larger area of inferior land and persuaded the other right-holders to agree to the same. It seems, however, that Bhan Singh, later on changed his mind and filed some sort of appeal to the Settlement Officer which was dismissed as time-barred. It is not known what the grounds of appeal were and what his grievance was and against which order the appeal had been filed. It appears that some complaint was made by Bhan Singh, and others to the consolidation authorities and the Consolidation Officer, Flying Squad, enquired into the matter and reported that Bhan Singh, had not been fully compensated for his area of superior quality. On receipt of this report, it seems, that the Director, Consolidation, got a report from the Settlement Officer with regard to the proposals for redressing his grievance. When his proposal was received, the parties including the petitioners were heard and on 15th December, 1956, the Director made an order which is being attacked. In this order it was stated that the records had been seen and it was clear that Bhan Singh, did not receive a fair deal, whereas Fauja Singh, present petitioner No. 1, had received area of (A) Block much in excess of his claim. It was contended by Fauja Singh that Bhan Singh, etc., had willingly accepted the area allotted to them, but the Director observed as follows:—

> "* * * but so far as the consent of the applicant is concerned, I *do not think* he could have agreed willingly to accept area of inferior quality and surrender claim for area of superior quality to the extent of 75 *kanals* and had it

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been so he would not have agitated the matter subsequently."

The Director had stated in the earlier part of his order that the shortage to Bhan Singh was of 75 *kanals* standard. He took action under section 42 of the Act and ordered that Bhan Singh should surrender a total area of 37 *kanals* and 14 *marlas* which was to be allotted to Fauja Singh, who was to surrender like area which was to be allotted to Bhan Singh. Faju Singh and others, who have been affected by the order, have thus moved this Court as stated above being aggrieved by the order of the Dirctor.

Respondent No. 1, the Director, Consolidation of Holdings, has filed a return; but respondents Bhan Singh and Bhagwan Singh have not filed any written statement or affidavit in reply. Mr. M. L. Sethi, who appears for the petitioners, has attacked the order of the Director on various grounds. His first contention is that the statement in the order of the Director to the effect that the shortage to Bhan Singh was of about 75 *kanals* standard was not supported by the facts stated in paragraph 3 of the written statement of respondent No. 1. It is stated therein that the respondents got 55 *kanals* 14 *marlas* area of the superior quality less than they originally owned. This area given to them was of inferior quality. It is, however, pointed out on behalf of the petitioners that the area which had been allotted according to valuation was almost the same, the difference being only 12 *marlas* as admitted in paragraph 3 of the written statement. Mr. Sethi contends that the order of the Director is vitiated as he has assumed the shortage in Bhan Singh's land to be 75 *kanals* standard which was wholly incorrect. The second contention of Mr. Sethi is

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that there is absolutely no material on the record to show that Bhan Singh had not agreed willingly to accept area of inferior quality. No copy of the application made by Bhan Singh to that effect has been produced. Moreover, Bhan Singh, never filed any objections before the Consolidation Officer and although he may have tried to reopen the matter at a later stage before the Settlement Officer, he could not be allowed to go back on the agreed repartition. It is suggested that the Director merely assumed or formed his own opinion without there being any material being placed before him that the settlement effected in March, 1954, was not voluntary. According to Mr. Sethi, this again would vitiate the order being an error apparent on the face of the record. The third submission on behalf of the petitioners is that, according to the scheme as framed, the holdings of the petitioners on consolidation could not be split up into four or five parcels which would be the result of the impugned order. This was alleged in paragarph 7(ii) of the petition which is supported by an affidavit. In reply to the same it was stated in the written statement that the scheme provisions could not stand in the way of an order under section 42 of the Consolidation Act. This position had been taken to meet the objection that by the order of the Director, the holdings of the petitioners would be split up in four or possibly five parcels which was contrary to the scheme. It is argued, therefore, that the Director's order is contrary to the scheme and consequently it was illegal and invalid on the face of it.

On behalf of the respondents it has been urged that the order challenged by the present petition was not a *quasi* judicial order, the proceedings under section 42 of the Act being merely administrative and therefore the order cannot be

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quashed by means of *certiorari*. Reliance for this purpose has been placed on the observations of Bishan Narain, J., in *Tara Singh* v. *Director, Consolidation of Holdings, Punjab* (1). In that case it was held that section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, gave independent power to the State Government to intervene *suo motu* at any stage of the consolidation proceedings and the power of the Government to pass any order it thought fit could not be cut down or limited by section 21 of the Act. It was further observed that the power exercised by the State Government under section 42 was in the exercise of its executive and administrative functions. In that case the State Government had declared its intention to make a scheme for consolidation of holdings in village Jhander, tehsil Tarn Taran, district Amritsar. There had been some dispute regarding the retention or abolition of a pathway in the course of consolidation proceedings and Tara Singh, petitioner, moved the Government to interfere in the matter under section 42 of the Act. The Development Minister, after having inspected the records and after hearing the parties, passed a certain order to which objection was taken by Tara Singh by means of petition under Article 226 of the Constitution. The petitioner's grievance was that the Punjab Government had no original jurisdiction to hear objections of that kind and the Government had acted in excess of its jurisdiction in passing the order for dismantling the existing road. In that connection it was held by the learned Judge that section 42 gave independent power to the Government to intervene *suo motu* at any stage of consolidation proceedings. It seems that in the course of arguments a

(1) 1957 P.L.R. 199.

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point had been raised that the State Government had not issued any notification under section 41 of the Act delegating its powers under section 42 to the Development Minister and therefore the Minister had no power to pass the impugned order. This point was examined at length and observations were made to the effect that under section 42 of the Act the State Government acted in exercise of its executive and administrative functions. It was also stated that under the proviso to section 42 the power which the Government exercised was executive or administrative in nature, although the exercise of that power had to be in a *quasi*-judicial manner, i.e., impartially and after giving the parties an opportunity of being heard. The real question that arose before Bishan Narain, J., was whether in the absence of any notification under section 41, the Minister could exercise powers under section 42. The provisions of the Constitution were examined and it was held that under Article 166(3) of the Constitution the Governor could allocate his business to any Minister he liked and the matter of consolidation having been allotted to the Development Minister the latter had jurisdiction to pass orders under section 42 of the Act. It seems to me that the question whether an order of the nature made as in the present case under section 42 of the Act can be quashed by *certiorari* or not was not decided by Bishan Narain, J., and the observations made with regard to the nature of the power under section 42 of the Act were made in the light of the peculiar facts of the case. It has, therefore, to be examined whether the impugned order of the Director, Consolidation of Holdings, dated 15th December, 1956, is of such a nature that it can be quashed by *certiorari.*

An examination of the provisions of the Act will show that after a scheme is confirmed under

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section 20 and published in the prescribed manner any person who may be aggrieved by the repartition may file written objections within the specified time before the Consolidation Officer "who shall after hearing the objector pass such orders as he considers proper confirming or modifying the repartition." A right of appeal is conferred by subsection (3) of section 21 against an order of the Consolidation Officer and the appellate authority who is the Settlement Officer is enjoined to pass orders after hearing the appellant. There is a further right of appeal given against the order of the Settlement Officer to the State Government and the period of limitation is also prescribed for such an appeal. Section 42 of the Act is as follows:—

> "42. 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 :
>
> Provided that no order shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful considerations."

Now such orders the legality or propriety of which is being examined and which have been made under section 21 of the Act must necessarily involve a process which a judicial or a quasi-judicial

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tribunal alone can employ. The words "legality" and "propriety" and the words "order" and "case" occurring in section 42 clearly use such terminology and phraseology as are employed in identical provisions occurring in other statutes which have given revisional powers to judicial or *quasi*-judical tribunals. The proviso occurring in section 42 has to be read along with the substantive part of the section and it makes it incumbent that parties should not only be given an opportunity to appear but that there should be an opportunity to be heard as well, which again are the attributes of judicial process. In the Administration of Evacuee Property Act, 1950, section 27 gave power of revision to the Custodian-General in the following terms:—

> "27. The Custodian-General may at any time, either on his own motion or on application made to him in this behalf call for the record of any proceeding in which any Custodian has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit:
>
> Provided that the Custodian-General shall not pass as order under this sub-section prejudicial to any person without giving him a reasonable opportunity of being heard.'

It will be pointless to mention numerous authorities which have finally settled the matter that when the Custodian-General exercised powers of revision under the aforesaid section, he was acting as a *quasi*-judicial tribunal and that his orders could be quashed by *certiorari*. I can see very little difference between the language of section 27 of

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Act XXXI of 1950, and the language employed in section 42 of the Act. Under the Motor Vehicles Act, 1939 (No. IV of 1939), appeals are provided by section 64 and section 64A provides for a revision in the following terms:—

> "64 A. The State Transport Authority may, either on its own motion or on an application made to it, call for the record of any case in which an order has been made by a Regional Transport Authority and in which no appeal lies, and if it appears to the State Transport Authority that the order made by the Regional Transport Authority is improper or illegal, the State Transport Authority may pass such order in relation to the case as it deems fit:
>
> Provided further that the State Transport Authority shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard."

There can be no doubt that the powers exercised by the State Government under section 64A are of a *quasi*-judicial nature which have to be exercised in accordance with the established principles of natural justice (vide *Mahabir Motor Company* v. *Bihar State* (1), a judgment of Das, C. J., and Imam, J.). It will be seen again that the language of section 64A is very much similar to that of section 42 of the Act.

In *Hari Vishnu Kamath* v. *Syed Ahmad Ishaque and others* (2), their Lordships of the

(1) A.I.R. 1956 Pat. 437.
(2) (1955) S.C.A. 105.

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Supreme Court held that the decisions of election tribunals were subject to the jurisdiction of the High Court in *certiorari* and that *certiorari* could be issued for correcting various errors enumerated by their Lordships, one of those errors being an error in the decision or determination itself which must be a manifest error apparent on the face of the proceedings. It was further stated that what an error apparent on the face of the record was could not be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.

In *Province of Bombay* v. *Khushaldas* (1), Kania, C. J., observed at page 226:—

> "It seems to me that the true position is that when the law under which the authority is making a decision, itself requires a judicial approach, the decision will be *quasi*-judicial. Prescribed forms of procedure are not necessary to make an inquiry judicial, provided in coming to the decision the well-recognised principles of approach are required to be followed."

Mahajan, J., at page 232 referred to the classic definition of the term "judicial" as given by May C. J., in the following terms in *The Queen* v. *The Corporation of Dublin* (2):—

> "It is established that the writ of certiorari does not lie to remove an order merely ministerial, such as a warrant, but it lies to remove and adjudicate upon the validity of acts judicial. In this connection the term 'judicial' does not

(1) A.I.R. 1950 S.C. 222.
(2) (1878) 2 L R. Ir. 371.

> necessarily mean acts of a Judge or legal tribunal sitting for the determination of matters of law, but for the purpose of this question a judicial act seems to be an act done by competent authority, upon consideration of facts and circumstances, and imposing liability or affecting the rights of others."

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In the present case the competent authority under section 42 has to determine the matter between two parties upon consideration of facts and circumstances and it can affect the rights of either party.

The learned Deputy Advocate-General invited my attention to the "Principles of Administrative Law" by Griffith, wherein it is stated at page 140 that a *quasi*-judicial decision pre-supposes an existing dispute betwee two or more parties and involves (1) the presentation (not necessarily orally) of their case by the parties to the dispute, and (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence, but that it does not necessarily involve, if the dispute is a question of law, the submission of legal arguments and never involves a decision which disposes of the whole matter by a finding upon the facts in dispute and on application of the law of the land to the facts so found including where required a ruling upon any disputed question of law. In the case of administrative decision, there is no legal obligation upon the person charged with the duty of reaching the decision to consider and weigh submissions and arguments, or to collate any evidence, or to solve any issue. The grounds upon which he acts, and the means which he takes to inform

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himself before acting, are left entirely to his discretion. According to the Deputy Advocate-General, orders which are made under section 42 of the Act are of such nature as fall within the statement just mentioned with regard to administrative decisions. It is not possible for me to accede to the aforesaid contention, particularly when the order of the nature passed in the present case involved determination of questions of fact after hearing the parties and after taking their evidence. Moreover, such general observations are of no avail in deciding these matters when it has been held that the revisional authorities under the Administration of Evacuee Property Act, and the Motor Vehicles Act, the language of the relevant provisions of which is in *pari materia,* act in a *quasi*-judicial capacity. I am, therefore, of the opinion that the order made in the present case can be challenged by a writ of *certiorari.*

The next question that arises is whether any grounds have been made out for interference by *certiorari.* The submission of Mr. Sethi as has already been noticed is that there is wrong assumption of facts with regard to the shortage to Bhan Singh, as also the excess which had been received by the petitioners and with regard to the question of the previous consent of Bhan Singh to the repartition.

In *The New Parkash Transport Company Limited* v. *The New Suwarna Transport, Company Limited* (1), it was observed by Sinha J., at page 183 that error apparent on the face of the record in the context of the case must mean an assumption of facts which were not borne out by the record.

It is clear from the written statement of respondent No. 1 that the statement about shortage

(1) (1957) S.C.A. 178.

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to Bhan Singh of about 75 *kanals* and of the excess with regard to the petitioners which the Director of Consolidation made was apparently based on wrong assumption of facts and it has not been shown to me that it was not so. It is also apparent from the record that Bhan Singh had himself prayed for a larger area of inferior land and had put his signatures to the document, dated 18th March, 1954, which was signed by all the other right-holders. There was nothing to show that Bhan Singh ever made a grievance of it before the Consolidation Officer because admittedly he filed no objections before him, and there was absolutely no material before the Director to show that Bhan Singh had not agreed willingly to accept the area of inferior quality when he signed the aforesaid document. It is apparent from the order of the Director himself that there was no evidence or material before him on which he could give any such finding that Bhan Singh had not agreed willingly to accept the area of inferior quality. He merely says, "I do not think he could have agreed willingly to accept area of inferior quality and surrender claim for area of superior quality to the extent of 75 *kanals*." There is thus an error apparent on the face of the record. Moreover, it was not open to the Director of Consolidation to act contrary to law or to show utter disregard of law.

Mr. Sethi invited my attention to *Babu Ram Sharma* v. *State of Uttar Pradesh* (1), where Mootham and Gurtu, JJ., held that where the Regional Transport Authority and the State Transport Tribunal had arrived at a finding to the effect that the permit was obtained by fraud and misrepresentation which was not only unsupported by

(1) A.I.R. 1953 All. 641.

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any evidence but was contrary to evidence it amounted to an error of law apparent on the face of the proceedings and the order could be quashed by a certiorari. The observations made in that case are quite apposite here.

The repartition as agreed by all the right-holders had become final under the provisions of subsection (4) of section 21 and it was not open to the Director to make an order contrary to the scheme which he admittedly did by giving four plots to the petitioners in violation of the terms of the scheme. The position taken up in paragraph 7(ii) of the written statement of respondent No. 1 is not tenable inasmuch as it is stated that the scheme provisions could not stand in the way of an order under section 42 of the Consolidation Act. The scheme had never been amended as such or modified under any separate order made under section 42 of the Act and it seems to me very doubtful that in an individual case it is open to the Director to make an order in violation of the scheme which had been accepted by all the right-holders and on the basis of which complete repartition had taken place.

For all the reasons given above, the petition will be allowed and the order of the Director, Consolidation of Holdings, Punjab, dated 15th December, 1956, will be quashed and it is ordered accordingly.

The petitioners will be entitled to their costs in this Court.

REVISIONAL CIVIL

Before Falshaw, J.

UNION OF INDIA,—*Petitioner*

versus

AMAR NATH, ETC.,—*Respondents*

Civil Revision No. 19-D/56.

Constitution of India (1950)—Articles 14 and 372—Debts due to the State—Whether entitled to priority over