is ancestral and the daughter is not under the customary rule entitled to succeed. But so far as the present case is concerned, it was never alleged nor proved that the property in dispute was ancestral *qua* the collaterals of the husband of the widow who is contesting the daughter's claim to her uncle's estate. After giving the matter my careful consideration, I am clearly of the view that the decision of the Courts below, cannot be sustained, either on principle or on authority.

I would accordingly allow this appeal set aside the judgments and decrees of the Courts below and dismiss the plaintiff's suit. However, I will make no order as to costs throughout.

R. S.

CIVIL MISCELLANEOUS

Before Mehar Singh, A.C.J., and A. N. Grover, J.

HARI SINGH AND OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1359 of 1964.

May 17, 1966.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Ss. 21, 23 and 28—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules (1949)—Rule 14—Provisions regarding delivery of possession in the Consolidation Scheme—Whether invalid—Levy of Consolidation fee—Whether a tax—S. 28—Whether unconstitutional because of excessive delegation—Rule 14—Whether discriminatory.

Held, that when the repartition is complete according to section 21 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, and the stage of delivery of possession arises, it is at that stage that all the owners and tenants affected by the repartition have the opportunity to agree to exchange possessions immediately, and if they do not agree, then only the provisions of

sub-section (2) of that very section come into operation and the Consolidation Officer can fix the date for exchange of possessions. Not until the repartition takes place can, unless there is a previous unanimous agreement, a stage arise for the agreement of the owners and tenants affected by the repartition in regard to the exchange of possession. Before that stage the scheme cannot provide exchange of possessions by a certain date or by a certain harvest, because that can only be done according to sub-section (1) of section 23 by the agreement of all the owners and tenants affected by the repartition. If such a thing was allowed, this provision of the statute would be stultified.

Held, that the levy of Consolidation fee of Rs. 5 per acre is valid as it is a fee and not a tax. One attribute of a fee is that it is ordinarily uniform and no account is taken of the varying abilities of different recipients of the benefit. This is exactly what is the case with the flat rate of consolidation fee in this case.

Held, that section 28(1) of the Act is terms gives guidance to the Executive Government what is to be the basis of the consolidation fee and that basis is specifically stated to be the cost of consolidation proceedings, so that a specific and definite basis is provided in the statute itself for the exercise of the power under the section. It cannnot, therefore, be said that the section gives unguided and uncanalised powers or arbitrary powers to the Executive Government to fix the consolidation fee, and on this account the delegation of the power is not excessive or unconstitutional.

Held, that the quality of land has nothing to do with the nature of Consolidation proceedings. Whether the land is of a good quality or of indifferent quality, same manner is adopted for consolidation and the same amount of labour is required roughly per acre. The quality of land or its productivity have nothing to do with the manner and method of consolidation and the labour requisite for that purpose. Hence rule 14 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, prescribing the levy of a flat rate of Rs. 5 per acre as Consolidation fee is not discriminatory.

Case referred by the Hon'ble Mr. Justice R. S. Narula, on 17th November, 1965 to larger Bench for decision owing to the importance of the questions of law involved in the case. The case was finally decided by the Division Bench consisting of the Hon'ble Mr. Justice Mehar Singh, Acting Chief Justice and the Hon'ble Mr. Justice A. N. Grover on 17th May, 1966.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the illegal scheme of Consolidation of the petitioners' village Dhanwanpur, tehsil and district Gurgaon.

RAM SARUP AND SURINDER SARUP, ADVOCATES, for the Petitioners.

M. R. SHARMA AND RAM RANG, ADVOCATES, for the Respondents.

ORDER OF THE DIVISION BENCH

MEHAR SINGH, A.C.J.—This is a petition under Articles 226 and 227 of the Constitution by 39 petitioners of village Dhanwanpur of District Gurgaon, to which the first four respondents are the State of Punjab, the Settlement Officer (Consolidation), Narnaul, the Consolidation Officer, Gurgaon, and the Assistant Consolidation Officer, Gurgaon, and the other respondents are the co-villagers of the petitioners. The petition arises out of the consolidation of holdings in the village of the petitioners and respondents other than respondents 1 to 4 under the provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (Act 50 of 1948), and the petitioners question the legality and validity not only of the scheme of consolidation prepared under the provisions of the Act on various grounds but also the repartition that has taken place pursuant to the scheme.

The petitioners claim that consolidation of holdings started in their village in the year 1962, but in the return on behalf of respondents 1 to 4 it is pointed out that that is not so. It is said that the notification under section 14 of the Act for consolidation of holdings in the village was issued on June 1, 1963, the scheme was published by the Consolidation Officer under section 19(1) of the Act on January 8, 1964, and it was confirmed by the Settlement Officer (Consolidation) under section 20(3) of the Act on February 18, 1964. Thereafter, pursuant to the scheme, repartition was published in the village by the Consolidation Officer under section 21(1) of the Act on March 28, 1964, and it was confirmed under section 21(2) on July 26, 1964. The possessions, in accordance with the repartition, so it is stated in the return of those respondents, were transferred on June 19 and 20, 1964. The petitioners alleged that in fact the possessions of their original lands were not disturbed by the time they filed the petition in this Court on July 2, 1964. Subsequently they moved an application that their possessions be not disturbed and on July 24, 1964, a Division Bench of this Court ordered that *status quo* shall be maintained. Even at the hearing the counsel for the petitioners has categorically stated that the petitioners still continue to be in possession of their original holdings.

A considerable number of grounds have been taken in the petition challenging the legality and validity of the scheme as also of the

repartition, but at the hearing the learned counsel for the petitioners has only confined himself to two grounds of attack on the same as taken in the petition. Those two gounds are stated in paragraph 10, read with paragraph 32, and paragraph 18 of the original petition. The ground taken in paragraphs 10 and 32 is that there are two Pattis in the village under the names of Patti Nathwa and Patti Khushiram. In Patti Nathwa the Shamilat area came to about 25 Killas. Out of that area, 12 Killas have been reserved for industrial area. This leaves a balance of 13 Killas and the petitioners aver that out of this area of 13 Killas, an area of 9 Killas has been illegally allotted to Lieut. Harika Singh, respondent, an influential person in the village, and another area of 4 Killas has been allotted to Mange, respondent. The petitioners further say that this was done without their knowledge and without consultation of the proprietors of this particular Patti. To this the reply in the return of respondents 1 to 4 is that out of the Shamilat or common land area of Patti Nathwa, 25 Bighas and 7 Biswas of land, situate on the boundary of Gurgaon town, has been reserved as an industrial area in the scheme, which was prepared in consultation with the right-holders and members of the Advisory Committee. The remaining area of the Shamilat or common land, in the direction of the village, is at a far off place and the right-holders did not desire that to be included in the industrial area. Lieut. Harika Singh, respondent, was allotted part of that area as it formed his first major portion of sixth block. Mange, respondent, was given some area of that as out of *'bachat'* because he could not be given area out of the sixth block at his first major portion, as no area was available there. The ground taken by the petitioners in paragraph 18 of the original petition is that some 16 Killas of land has been reserved for Panchayat Farm. Village Dhanwanpur has, along with village Kherki, a common Panchayat. Their grouse is that by such reservation for the Panchayat Farm, the benefit of such reserved land will not be limited to residents of village Dhanwanpur alone, and will also go to the residents of the neighbouring village Kherki. They take the stand that the residents of village Kherki ought not to be allowed to benefit at their cost. To this the reply in the return of respondents 1 to 4 is that according to section 23-A of the Act, the income accruing from the land so reserved for the Panchayat will be utilised for the benefit of the village community. These are, as already stated, the only two grounds that have been urged by the learned counsel for the petitioners at the hearing in so far as the original petition of the petitioners is concerned.

While the petition of the petitioners has been pending, on May 24, 1965, the learned counsel for the petitioners made an application for filing additional grounds in support of the petition. Mainly two additional grounds have been taken in that application. The first of those grounds attacks the provision in item 13 of the scheme as illegal and void. Item 13 of the scheme reads—"The possessions in the village will be exchanged after the cutting of Rabi harvest, 1964. No right-holder will be allowed to cultivate his old holdings after the cutting of the Rabi harvest of 1964. Cultivation will be done in the new blocks". The legality of this item in the scheme is questioned on the ground that it is contrary to the provisions of section 23(1) of the Act, even as amended in the year 1962 by Act 25 of 1962. In the return of respondents 1 to 4 to this application it is stated that that item was provided regarding the transfer of possessions in the scheme because it was prepared with the general consent of the right-holders and further that in fact not only have the possessions according to the repartition changed on June 19 and 20, 1964, but after that record-of-rights have also been prepared. The second new ground taken in the application has been that under Rule 14 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, a consolidation fee of Rs. 5 per acre is to be charged from the right-holders, which has been recovered from the petitioners. Rule 14 has been made under section 28 of the Act which provides that 'the cost of consolidation proceedings shall be assessed in the prescribed manner'. The petitioners aver that the provisions of section 28 of the Act and Rule 14 of the 1949 Rules are hit by Article 265 of the Constitution because of excessive delegation. It is stated that there is no proportion to the amount of work required to be done in each case and the fee charged, and that the charge of flat rate of fee is illegal. To this the reply on the side of respondents 1 to 4 is that the benefit of the consolidation is directly proportionate to the area consolidated, and that consolidation fee is charged in proportion to the size of the holding consolidated, the rate being Rs. 5 per acre. In this manner, the recovery of consolidation fee is linked with the area consolidated or, in other words, benefit restored, and there is elements of *quid pro quo* in the charge. This last statement then explains that in the financial year ending 1961-62, an area of 159.76 lac acres was consolidated, the fee at the rate of Rs. 5 per acre, came to Rs. 728.12 lacs. Ghair Mumkin area, a type of uncultured land, was not taken into consideration being exempt from charge. The actual total expenditure incurred in the consolidation of that area was

Rs. 978.65 lacs. So that there was a loss to the State on the consolidation of holdings in that year of Rs. 250.53 lacs. This deficiency was met partly from the Central and partly from the State grants. With this return of respondents 1 to 4 is appended a statement of three years giving actual realisation of consolidation fee for each year at the rate stated and the actual cost. The statement is Annexure R-1. In the year 1962-63 the area consolidated was 22.15 lac acres, consolidation fee collected at the rate of Rs. 5 per acre was Rs. 110.75 lacs, and the actual expenditure was Rs. 124.16 lacs. This left a loss of Rs. 13.41 lacs which was contributed by the Central and State Governments. At the actual cost of consolidation it worked to Rs. 5.61 per acre. In the year 1963-64, 12.41 lac acres area was consolidated, the actual fee recovered at the rate of Rs. 5 per acre was Rs. 62.05 lacs, and the actual expenditure incurred was Rs. 78.93 lacs, leaving a balance of Rs. 16.88 lacs to be contributed by the Central and the State Governments. This worked to Rs. 6.03 per acre as cost of consolidation. In the year 1964-65 the total area consolidated was 8.79 lac acres, the fee recovered at the rate stated was Rs. 43.95 lacs, and the actual expenditure incurred was Rs. 82.89 lacs, leaving an excess expenditure of Rs. 38.94 lacs, subscribed by the Central and the State Governments. This worked to Rs. 9.35 per acre as cost of consolidation. It means that over the four years between 1961-62 and 1964-65, in each year, the cost of consolidation per acre was far higher than the rate of the consolidation fee of Rs. 5 per acre. It has been contended that section 28 of the Act and rule 14 of the 1949 Rules are invalid on account of the vice of excessive delegation.

It is only these four matters that have been subject of the argument at the hearing of this petition. In regard to the first of these four grounds, the return of respondents 1 to 4 is clear that no advantage was given, at the cost of other right-holders, to Harika Singh and Mange, respondents. The first of those two respondents was allotted 9 Killas of land at his 6th major block, and the second was allotted 4 Killas as from *Bachat* or out of surplus because he could not be fitted at his major portion. This the learned counsel for the petitioners has not been able to controvert. The petitioners have not made a correct statement in paragraph 10 of their petition that all this was done surreptitiously and without any basis. This is a matter on the merits of the repartition for which the proper forum for complaint is the appeal and then an approach to the State Government under section 42 of the Act. It has been stated on behalf of

the petitioners that their appeal was pending when this petition was filed, but that they do not seem to have pursued the matter there, nor taken it to the State Government under section 42 of the Act. Even on merits there is no substance in this ground.

On the second of these four grounds, no doubt there is one Panchayat for petitioners' village Dhanwanpur and the neighbouring village Kherki and land carved out for Panchayat farm vests in that Panchayat, but under section 23-A of the Act such land vests in the Panchayat to entitle it "to appropriate the income accruing therefrom for the benefit of the village community,—", and it is obvious that the expression "village community" in this provision is the village community from the area of which the land has been carved out as the Panchayat farm, in other words it is the village community of the village of the petitioners that is meant by this expression according to the provisions of this section. If the Panchayat misuses its powers in this respect, then the villagers of village Dhanwanpur may have some other remedy, but this does not invalidate any part of either the scheme or the repartition. The second ground is also without substance.

No doubt, in so far as the third of these grounds is concerned, that item 13 in the scheme does provide for change of possessions according to the harvest stated in that item, and although it is stated in the return of respondents 1 to 4 that the scheme was prepared with the consent of all the right-holders, but this is what does not normally happen, and in this case no exceptional circumstances have been shown how each one of the right-holders in the village was consulted and his consent obtained to this provision in the scheme. All that is provided in sub-section (2) of section 14 of the Act is that the Consolidation Officer shall prepare a scheme for consolidation of holdings in an estate after obtaining in the prescribed manner the advice of land-owners of the estate or estates concerned and of the non-proprietors and the Gram Panchayat, if any, constituted in such estate or estates under the Gram Panchayat Act, 1953 (Act 4 of 1953). This does not mean that such a scheme is prepared with the consent of all the land-owners or right-holders in the estate. Now, it is obvious that if it could be established as a fact that all the right-holders or land-owners in the estate of village Dhanwanpur agreed to item 13 in the scheme, and although their consent which had been obtained long before the stage, envisaged by sub-section (1) of section 23 of the Act, arises, there seems to be

no difficulty why such consent should not be considered as consent or agreement within the meaning and scope of sub-section (1) of section 23 of the Act. But if that is not established, as in this case, it appears that no such consent or agreement of all the right-holders or landowners of the village was obtained, then such item in a scheme is contrary to the provisions of sub-section (1) of section 23 of the Act. The reason is quite simple, which is that when the repartition is complete according to section 21 of the Act, and the stage of delivery of possessions arises, it is at that stage that all the owners and tenants affected by the repartition have the opportunity to agree to exchange possessions immediately, and if they do not agree, then only the provisions of sub-section (2) of that very section come into operation that the Consolidation Officer can fix the date for exchange of possessions. Not until the repartition takes place can, unless, as stated, there is a previous unanimous agreement, a stage arises for the agreement of the owners and tenants affected by the repartition in regard to the exchange of possession. Before that stage the scheme cannot provide exchange of possessions, as has been done in item 13 of the scheme here, by a certain date or by a certain harvest, because that can only be done according to sub-section (1) of section 23 by the agreement of all the owners and tenants affected by the repartition. If such a thing was allowed, this provision of the statute would be stultified. Similar view has been taken by Narula, J., in *Sahi Ram* v. *State of Punjab*, *Civil* Writ 522 of 1965, decided on October 27, 1965. So item 13 in the scheme cannot be upheld as valid and legal. However, the effect of this conclusion has then to be seen. According to the return of respondents 1 to 4, possessions of those affected by repartition were exchanged on June 19 and 20, 1964. If that is so this Court will not interfere at this stage to undo such delivery of possessions in accordance with the repartition on such a technical conclusion and in a petition like this, when no question of injustice can possibly arise in the circumstances. If it is otherwise, as is contended by the learned counsel for the petitioners that the petitioners continued to be in possession of their old holdings, then if the petitioners did not agree to the exchange of possessions according to sub-section (1) of section 23, the Consolidation Officer will proceed to deliver possessions according to the repartition under sub-section (2) of section 23 of the Act. That is obvious on the face of it and no specific direction is necessary in this respect. So on the basis of the conclusion that item 13 in the scheme is not a legally valid item, no grant of relief to the petitioners in the circumstances of this case is called for.

There remains for consideration the last ground on behalf of the petitioners and that is with regard to the flat rate of fee of Rs. 5 per acre as consolidation fee. Section 28 of the Act reads—

> "28. (1) The cost of consolidation proceedings shall be assessed in the prescribed manner.
>
> (2) The cost of consolidation proceedings shall be recovered from the persons whose holdings are affected by the scheme of consolidation."

In the Rules of 1949, rule 14, sub-rule (i), which is the only sub-rule relevant for the present purpose, reads thus —

> "14. (i) The cost of consolidation proceedings shall be assessed village-wise at Rs. 5 per acre or portion of an acre of land other than Ghair Mumkim land, if the Wattbandi is carried out by the persons, whose holdings are affected and at Rs. 7-8-0 per acre if the Wattbandi is carried out by or on behalf of the Consolidation Officer, at the option or default of the persons whose holdings are affected."

It is first contended by the learned counsel for the petitioners that section 28 of the Act gives unguided and uncanalised powers or arbitrary powers to the Executive Government to fix the consolidation fee, and on this account the delegation of the power is unconstitutional. This argument, to my mind, is obviously misconceived. The reason is that sub-section (1) of section 28 in terms gives guidance to the Executive Government what is to be the basis of the consolidation fee and that basis is specifically stated to be the cost of consolidation proceedings, so that a specific and definite basis is provided in the statute itself for the exercise of the power under section 28. This argument is obviously without any sound basis. It is next contended by the learned counsel for the petitioners that the levy of a flat rate of Rs. 5 per acre as consolidation fee is discriminatory inasmuch as it does not take into account the quality of land consolidated and the benefit derived by the landowner or the tenant affected by the consolidation. The learned counsel has explained that a person obtaining good quality of land giving considerable production has to pay a consolidation fee at exactly the same rate as a person getting in repartition poor quality of land with low productive capacity. He seeks to have assistance from the form of

rule 14 earlier to its present form. There appears a draft of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, in the East Punjab Government Gazette of July 22, 1949, at page 698. In the draft, rule 14 is in this form—

> "14. The cost of consolidation proceedings shall be assessed by the Settlement Officer either—
>
> (i) by levying on the area consolidated such acreage rate as shall be determined by the Provincial Government from time to time which may vary with the nature of the land; or
>
> (ii) by distributing it proportionately on each holding affected by the scheme on the basis of land revenue assessed, or, where the assessment is fluctuating on the average revenue assessed during the last three years on such holding."

It appears that subsequently this draft was duly approved taking the form of Rules of 1949. This rule was, however, amended by the Punjab Gazette notification No. 5426-D-51/117, dated January 11 and 14, 1952, appearing in the Punjab Government Gazette of January 18, 1952, at page 49, which amendment is in the same form as the present rule, except that there the flat rate of consolidation fee was Rs. 4 and now it has been raised to Rs. 5 per acre. It is the first draft with reference to which the learned counsel contends that it provided a more fair basis for distribution of the cost of consolidation, but it is obvious that it was rather complicated basis, which probably was found difficult of working in practice and hence abandoned for a flat rate so that those earlier notifications do not advance the argument on the side of the petitioners. In my opinion it is a misconception to say that the quality of land has anything to do with the nature of consolidation proceedings and the labour involved in the same, whether the land is of a good quality or of indifferent quality, same manner is adopted for consolidation and same amount of labour is required roughly per acre. The quality of land or its productivity have nothing to do with the manner and method of consolidation and the labour requisite for that purpose. So that this criterion suggested has no relation to the manner of doing the consolidation work; because it is no longer adopted in rule 14, that

does not invalidate that rule or section 28 of the Act under which the rule has been made. It has then been said that according to section 28 of the Act, cost of consolidation proceedings is to be realised from the owner or tenant of the land, but it is not worked out separately with regard to each right-holder. This argument unless it is connected with the previous argument with reference to the nature and quality of the land consolidated, does not seem to be clear, because the rate being Rs. 5 per acre, the calculation in the case of each owner or tenant affected by the repartition is as simple a calculation as can possibly be. Another aspect of the same argument has been that in the scheme of consolidation different qualities of land are valued at different rates and those should have been taken into consideration in making the basis of consolidation fee. This is another aspect of the first part of the argument having regard to the nature and quality of the land being consolidated. Like the previous notification about rule 14, the learned counsel has referred to section 33 of the Uttar Pradesh Consolidation of Holdings Act, 1953 (U.P. Act 5 of 1954), but that section merely provides that Assistant Consolidation Officer shall determine the estimated and final cost of consolidation as prescribed in the rules and distribute the same between the persons affected by the order of consolidation and further that one-half of the same shall be recovered in advance and the remaining one-half at the final stage. It is not clear how this provision has any reference to any argument on the side of the petitioners. The learned counsel has in this respect made reference to form 27-A of this Act, but that too is not of any assistance to him. It has then been said by the learned counsel that in the case of actual cost of consolidation being less than Rs. 5 per acre there is nothing for the refund of that excess to the persons who have paid the same, but sub-rule (vi) of rule 14 of the 1949 Rules says that the excess cost of the consolidation recovered from a person whose holdings are affected by the scheme of consolidation, shall be refunded under the orders of Settlement Officer to whom an application may be made for the purpose through the Patwari of the village, who is enjoined to forward the application after verification and report. So that even this stand on the side of the petitioners is not supported by the rule which makes a clear provision for the refund of the excess. However, as has already been shown from the return of the respondents 1 to 4, such a contingency does not arise, or rather has not so far arisen in the State, because the cost of consolidation has been exceeding per acre for that purpose.

The learned counsel for the petitioners has then contended that according to the decision of their Lordships in *The Hingir-Rampur Coal Co. Ltd.* v. *The State of Orissa* (1), tax recovered by public authority invariably goes into the consolidated fund which ultimately is utilised for all public purposes, whereas a cess levied by way of fee is not intended to be, and does not become, a part of the consolidated fund. It is earmarked and set apart for the purpose of services for which it is levied. The learned counsel contends that in the present case it is not said by respondents 1 to 4 that the consolidation fee collected by the State does not go into the consolidated fund and form part of the general budget of the State. This is somewhat extraordinary approach because no occasion arose for respondents 1 to 4 to say any such thing, it having never been alleged by the petitioners that consolidation fee amount collected by the State is thrown into the consolidated fund and forms part of the general budget. So that nothing turns on this contention, it has not been shown that the consolidation fee collected for consolidation work goes to the consolidated fund of the State. It has already been amply shown above in the return of the State and Annexure R-1 to it that for four continuous years between 1961-62 and 1964-65, the amount spent by the State on consolidation of holdings has far exceeded the fee collected per acre at the rate of Rs. 5 for the area consolidated. So that in this case the amount of the fee collected has actually been expended on the service rendered by the State in carrying out the consolidation work. In addition to that the Central Government and the State Government have had to bear the excess of the cost in that respect. So that on the consideration of the case referred to above, the consolidation fee cannot be described as tax. In fact in *Sudhindra Thirtha Swamiar* v. *The Commissioner for Hindu Religious and Charitable Endowments, Mysore* (2), it has been pointed out that one attribute of a fee is that it is ordinarily uniform and no account is taken of the varying abilities of different recipients of the benefit. This is exactly what is the case with the flat rate of consolidation fee in this case. In consequence the learned counsel for the petitioners has not been able to show on any sound basis that the consolidation fee of Rs. 5 per acre is a tax and not a fee.

At the end of the arguments in this petition on behalf of the petitioners Mr. G. S. Grewal, Advocate, has intervened because he

(1) A.I.R. 1961 S.C. 459.
(2) A.I.R. 1963 S.C. 966.

says that he has exactly a similar petition pending in this Court in which he has questioned the legality and constitutional validity of the levy of a flat rate of Rs. 5 per acre as consolidation fee. His contention is that rule 14 of the 1949 Rules is violative of Article 14 of the Constitution. The ground given by him is that persons similarly situate are differentially treated inasmuch as in consolidation proceedings land is carved out and allotted to village Panchayat and also non-proprietors, who thus benefit by the consolidation, but do not pay any fee for consolidation, whereas the landowners or right-holders have to pay the fee. He contends that this discrimination is not justified and has no basis for it. The argument is apparently misconceived for the simple reason that the benefit of land to Gram Panchayat and non-proprietors goes under specific provisions of the Act and in so far as the matter of consolidation of holdings is concerned, that is only done so far as the holdings of the landowners or right-holders and the tenants are concerned. There is no holding of a Panchayat or a non-proprietor that is ever available for consolidation. So that there is no question of discrimination between those persons who do not own or possess as tenants any land in an estate and those who do so. This argument is also without any substance.

In the result, on the last and the fourth argument, the conclusion is that the levy of the consolidation fee of Rs 5 per acre is a valid levy as fee and it is not a tax.

All the four grounds against the scheme of consolidation and repartition in the village of the petitioners have not been accepted and consequently this petition fails and is dismissed, but, in the circumstances of the case, there is no order in regard to costs.

A. N. GROVER, J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before Mehar Singh, A.C.J. and A. N. Grover, J.

BAWA KULDIP SINGH,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 597 of 1965.

May 18, 1966.

Punjab Municipal Act (III of 1911)—S. 38(1)—Appointment of a Secretary to a Municipal Committee—Approval of the State Government—Whether to be