

Harbans Singh Mann *v.* State of Punjab, etc. (Pandit, J.)

the election had been approved under section 20 would not make it valid. Moreover, an election which has been approved by the Government is always liable to be set aside either by means of an election petition or by taking action under rule 68.

It may be mentioned that it is not the case of the petitioner that rule 68 was *ultra vires* the provisions of the Act. Besides no *mala fides* were alleged against the Government when it took action under rule 68.

In view of what I have said above, this petition fails and is dismissed. In the circumstances of this case, however, I will make no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS

*Before Shamsheer Bahadur, J.*

RATTI RAM,—*Petitioner.*

*versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1551 of 1964.

May 12, 1966.

*East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Ss. 21(1) and 42—Order in defiance of the Scheme—Whether can be passed under S. 42—Repartition—Whether can be made in defiance of the Scheme.*

*Held*, that the repartition under sub-section (1) of section 21 of the Act has to be done in accordance with the scheme. Under this provision, the Consolidation Officer "shall after obtaining the advice of the landowners of the estate or estates concerned, carry out repartition in accordance with the scheme of consolidation of holdings confirmed under section 20" and unless the scheme is

altered or amended, its provisions cannot be departed from. The Additional Director, in proceedings under section 42 of the Act, cannot defy the provisions of the scheme on the ground that only re-adjustment was made between two right-holders in repartition proceedings.

*Petition under Articles 226/227 of the Constitution of India, praying that an appropriate writ, order or direction be issued directing Sardar Singh, respondent No. 3 not to transfer the land in dispute to third parties pending the decision of this writ petition.*

ANAND SARUP AND R. S. MITTAL, ADVOCATES, for the Petitioner.

T. S. MUNJRAL, ADVOCATE, FOR THE ADVOCATE-GENERAL AND P. S. DAULTA WITH A. S. NEHRA, ADVOCATES, for the Respondents.

#### ORDER

SHAMSHER BAHADUR, J.—This petition of Ratti Ram, under Articles 226 and 227 of the Constitution of India is concerned with the dispute between him and his brother Sardar Singh, the third respondent, in repartition proceedings.

Both the petitioner and the third respondent are equally entitled under the scheme for consolidation to be fitted at the same place. The scheme, however, provides that if two right-holders are thus equally entitled, the one who comes first in alphabetic order would be preferred to choose his parcel of land. On this principle of the scheme, Ratti Ram and his brother Sardar Singh, were made allotments in 1954. Sardar Singh, did not prefer any appeal against this order but applied to the Additional Director under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act sometime in 1957 for an alteration in his holding. The Additional Director was of the view that the quality of the land held by the two brothers and the improvements made by them had resulted in one brother benefiting at the expense of the other, and he thought that "equity and justice, therefore, demand that the brothers should not be benefitted at the expense of each other". Influenced by this consideration, the Additional Director decided, in his own words, to "defy the provisions of the scheme" and made certain adjustments in the holdings of the two brothers. By the order passed by the Additional Director on 18th of December, 1962, 11 Kanals and 6 Marlas of land was taken from Ratti Ram and transferred to Sardara Singh and *vice versa*.

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In this petition, it is argued by Mr. Anand Swaroop, for Ratti Ram petitioner, that the Additional Director had no jurisdiction to amend the scheme for the benefit of a single individual and indeed had no warrant to defy the provisions of the scheme. The Additional Director was fully conscious and alive to the situation that what he was attempting to do was in contravention of the provisions of the scheme. There is no authority in law to justify the course which the Additional Director adopted. The learned counsel for Sardar Singh and also the State counsel have sought to justify the action of the Additional Director on the ground that the Additional Director was really making re-adjustments between right-holders in repartition proceedings. No rule of limitation existed in 1957, when the application under section 42 of the Act was filed; rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, prescribing the period of six months having been incorporated on 18th of March, 1960. Though there is thus no substance in the contention that the Additional Director could not entertain the petition under section 42 filed in 1957, with regard to repartition effected in 1954, I think Mr. Anand Swaroop, however, is right in his submission that the repartition under sub-section (1) of section 21 of the Act has to be done in accordance with the scheme. Under this provision, the Consolidation Officer "shall after obtaining the advice of the landowners of the estate or estates concerned, carry out repartition in accordance with the scheme of consolidation of holdings confirmed under section 20" and unless the scheme is altered or amended its provisions cannot be departed from. It is the concern of this Court in *certiorari* proceedings to see that the authorities and tribunals exercising quasi-judicial powers are kept within their statutory bounds. There is no room for the contention raised on behalf of the respondent when the Additional Director himself has admitted that he was defying the provisions of the scheme that in effect the order of the Additional Director was merely a re-adjustment between two right-holders and not any serious departure from the scheme. The Additional Director may have granted redress if he was so minded by some procedure in accordance with law.

I feel constrained, therefore, to allow this petition and quash the order of the Additional Director. In the circumstances, I would not make any order as to costs.

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R. S.