petition for revision as brought out in the authoritative pronouncement of the Supreme Court referred to above. Suffice it to say that the sanctity of the right of revision conferred by the Legislature within the scope of that right cannot be impaired by rules of the type that have been impugned in the instant case.

On account of the peculiar facts of this case no interference with the impugned orders of the revisional authority is called for in this petition. The writ petition, therefore, fails and is dismissed, but without any order as to costs.

K. S. K.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and R. S. Narula, JJ.

NIRBHAI SINGH AND OTHERS,—*Petitioners.*

versus

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

Civil Writ No. 2124 of 1863.

March 23, 1966.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Object of —S. 14—Draft Scheme—Land held by a person as owner and as tenant-at-will—Whether can be considered as one unit for consolidation purposes—Agricultural holding—Whether includes land occupied by tenant—Consolidation authorities—Whether competent to determine questions of title.

Held, that the Act, as its Preamble shows, was brought on the statute book in order to provide for the compulsory consolidation of agricultural holdings and for preventing their fragmentations and also for the assignment or reservation of land for common purposes of the village.

Held, that only the land-owners' holdings can be consolidated under the Act and not the land in possession of tenants which does not fall within the definition of holding. The land held by a person as an owner cannot be considered as one unit with the land held by him as tenant-at-will for purposes of consolidation.

Nirbhai Singh, etc. *v.* The State of Punjab, etc. (Dua, J.)

Held, that the conclusion that the land in possession of a tenant is his "holding" within the meaning of the Act involves a determination of a question of title which the consolidation authorities are not empowered to do. Such power cannot be assumed to inhere in the administrative authority under the said Act.

Case referred by Hon'ble Mr. Justice Inder Dev Dua on October 7th 1965, to a larger bench for decision of the important question of law involved in the case. The case was finally decided by Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice R. S. Narula on March 23rd, 1966.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of certiorari mandamus *or any other appropriate writ order or direction be issued quashing the draft scheme sanctioned by the respondent No. 3 on the recommendation of the respondent No. 4 on the 11th of October,* 1963, *of village Nihalgarh, tehsil Sunam, district Sangrur.*

T. S. MANGAT, ADVOCATE, for the Petitioners.

M. R. SHARMA, ADVOCATE, *for* ADVOCATE-GENERAL, for the Respondents.

ORDER OF THE DIVISION BENCH.

The Order of the Court was delivered by—

DUA, J.—This petition under Article 226 of the Constitution for quashing the draft scheme prepared by the Consolidation Officer, Sangrur, and sanctioned by the Settlement Officer, Consolidation of Holdings, Sangrur, has been placed before us pursuant to my order of reference dated 7th October, 1965.

The petitioner claiming to be land-owners of village Nihalgarh, tehsil Sunam, district Sangrur, plead that they are the owners of three-fourths share of the whole area of the village agricultural land, though they reside in village Dugal Khurd, tehsil and district Patiala. The work of consolidation proceedings started in their village in May, 1963 and the draft scheme was finally sanctioned under section 17 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act of 1948 (hereinafter called the Act) on 11th October, 1963. The principal ground on which the draft scheme has been challenged is founded on the provision contained therein that at the time of the repartition area under a person as an owner and area belonging to him as a tenant-at-will should be considered as one unit for the purpose of determining the major portion and for

the purposes of demarcation of the *taks* after repartition. The cut from the holding of the owner is also to be made on considering the area held as a tenant. According to the challenge, this provision is contrary to the object and scheme of the Act because the enactment is concerned only with the consolidation of agricultural holdings, which term does not include land occupied by a tenant.

In the return, this challenge is met in paragraph 4(i) in the following words:—

> "* * * * * before the publication of draft scheme, the Settlement Officer, Consolidation of Holdings, visited the village on 25th August, 1963, in connection with the application made by the respondents Nos. 2, 4, 9, 10, 11, 12 and 13 against the alleged provision of the scheme and the point was discussed in detail by the Settlement Officer, Consolidation of Holdings, in a general gathering held in the village itself. It was revealed that the tenants of the village were in actual possession for the last more than 12 years and they had not been paying any rent in any form to the landowners. This fact was also admitted by the landowners. Notwithstanding non-payment of any rent, the landowners have not sued against the tenants for recovery of rent, etc. Keeping in view the aforesaid reasons, it was provided in the draft scheme,—*vide* para IV(m) that the land held by a tenant as tenant-at-will and his original holdings would be consolidated in one unit and the major portions would also be determined accordingly. It may be submitted here that according to section 7-A (2) of the Pepsu Tenancy and Agricultural Lands Act, no tenant who immediately preceding the commencement of the Act has held any land continuously for a period of 12 years or more under the same landowner or his predecessor-in-title, shall be ejected from such tenancy. Thus these tenants could not be evicted from their tenancy under the law and they had become entitled to acquire proprietary rights in the lands. It may be submitted here that most of them (tenants) have already acquired such right by paying compensation through mutual agreement. Their demand for consolidating their land as owners and tenants was, therefore, highly genuine and convincing. On the other hand, the landowners did not even reside in the village and they were

> not willing to pay any C/H fee unless they were given possession of the land after the consolidation which was contrary to the provisions of the Consolidation Act. As such, the provision, impugned safeguards the interest of those tenants who are old tenants and the landowners have also not suffered as they are concerned with getting rent or no rent, as the case may be, and they still continue to be landowners in the records and their own land held by their old tenants have now been consolidated."

In paragraph 4(ii), it is further averred that "the tenants in this village are like the owners because they are not paying rent to the landowners. The land is almost cultivated by the tenants."

The arguments on behalf of the petitioners' learned counsel have proceeded on the facts admitted in the return and as reproduced above. The Act, as its Preamble shows, was brought on the statute book in order to provide for the compulsory consolidation of agricultural holdings and for preventing their fragmentations and also for the assignment or reservation of land for common purposes of the village. The clause relating to reservation, as it stands at present, was added retrospectively by Punjab Act No. 27 of 1960. In section 2 of the Act, which is the interpretation section, it is provided in clause (k) that words and expressions used in the Act but not defined, have the meaning assigned to them in the Punjab Land Revenue Act, 1887. In the Punjab Land Revenue Act, the term "holding" has been defined in section 3(3) to mean a share or portion or an estate held by one landowner or jointly by two or more landowners. The term "landowner", according to section 3(2) of this Act, does not include a tenant or an assignee of land revenue, but does include a person to whom a holding has been transferred, or an estate or holding has been let in farm, under this Act for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear and every other person not mentioned in this clause who is in possesion of an estate or any share or portion thereof, or in the enjoyment of any part of the profit of an estate. According to section 3(1), the term "estate" means any area for which a separate record-of-rights has been made, or which has been separately assessed to land revenue, or would have been so assessed if the land revenue had not been released, compounded for or redeemed or which the State Government may, by

general rule or special order, declare to be an estate. Coming back to the provisions of the Act, the term "land" as defined in section 2(d) means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings and other structures on such land. The term "owner", according to section 2(f), means in the case of unalienated land the lawful occupant and when such land has been mortgaged, owner means the mortgagor; in the case of alienated land, owner means the superior holder. The expression "Consolidation of Holdings" has also been defined in section 2(b) to mean the amalgamation and the redistribution of all or any of the lands in any estate or subdivision of an estate so as to reduce the number of plots in the holdings, and the term "fragment" has been defined in clause (c) to means a plot of land of less extent than the appropriate standard area determined under the Act provided that no plot of land shall be deemed to be a fragment by reason of any diminution in its area by diluvion. According to section 14(1) of the Act, which occurs in Chapter III dealing with Consolidation of Holdings, the State Government may of its own motion or on an application made in this behalf, 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, 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 urged on the basis of these provisions of law that it is only consolidation of holdings of the owners which is contemplated by the statutory scheme and the land held by a person as a tenant cannot be consolidated with his holding as an owner and that, therefore, the impugned scheme contravenes the legislative purpose underlying the Act and is thus liable to be struck down.

At this stage, I may advert to section 7-A (2) of the Pepsu Tenancy and Agricultural Lands Act, 1955. This section, so far as relevant, provides that no tenant, who immediately preceding the commencement of the President's Act has held any land continuously for a period of 12 years or more under the same landowner or his predecessor-in-title, shall be ejected on the grounds specified in subsection (1)—

(a) from any area of land, if the area under the personal cultivation of the tenant does not exceed fifteen standard acres; or

(b) from an area of fifteen standard arces, if the area under the personal cultivation of the tenant exceeds fifteen standard acres.

A proviso added to this sub-section exempts in certain circumstances widows, minors, unmarried women, members of the Armed Forces of the Union and persons incapable of cultivating land by reason of physical or mental infirmity. Sub-section (3) of this section provides for inclusion of land owned by the tenant and under his personal cultivation into the land cultivated by him as a tenant. Sub-section (1) provides for grounds for termination of tenancies in certain cases in addition to those provided by section 7, but that does not directly concern us in the present case.

It is contended that a tenant merely because he has been in possession for 12 years and has not paid any rent is not entitled to the protection of section 7-A because there are certain other conditions which have also to be taken into account for affording to him the exemption contained in section 7-A (2). In any case, he cannot be treated as the owner of holding for the purposes of the Act. The position taken in the return by the respondents would thus be untenable.

Shri M. R. Sharma appearing for the State has concentrated his arguments on the contention that if the land held by a tenant is an estate or a part of an estate, then irrespective of his title, that land can be consolidated under the Act and it is wholly immaterial whether the tenanted land can or cannot be described as a holding within the contemplation of the Act. He has in this connection laid stress on the expression "any estate or group of estates or any part thereof" occurring in section 14(1) of the Act. He has also laid emphasis on the definition of the expression "Consolidation of Holdings" in section 2(b) and has very strenuously pressed that any land in an estate or sub-division of an estate can be consolidated so as to reduce the number of plots on the land. The word "holding" in the definition of Consolidation of Holdings, according to him, should not be given the meaning assigned to it in the Punjab Land Revenue Act. If a part of an estate can legally be consolidated, then, according to Shri Sharma, it is permissible to consolidate the land in the possession of a tenant along with his holding as a land-owner and frame a scheme under the Act on that basis.

After devoting my most anxious consideration and thought to the arguments addressed on behalf of the respondents, I am unable to uphold the plea taken by respondents Nos. 1 to 4 in their written statement and developed before us by Shri Sharma. Apart from the *prima facie* statutory intendment discernible on the plain language used in the Act, which, *inter alia* seeks to consolidate and to prevent fragmentation of agricultural holdings, the Act apparently seems to confine the consolidation proceedings only to the agricultural holdings. To accede to the contention raised by the respondents would, in my view, instead of consolidating the agricultural holdings tend to promote their fragmentation. By way of illustration if A who is landowner has also some area in his possession as a cultivating tenant and both of them are consolidated, and the owner of the area of which he is a tenant, has his holding consolidated at another place, then as soon as A ceases to be a tenant, the owner of that land would find his land clearly fragmented. Such a result is not easy to impute to the Legislature on any rational or logical basis consistently with the statutory scheme. The argument pressed by Shri Sharma that the word "holding" as used in the Act should not be given the meaning assigned to it in the Punjab Land Revenue Act is, in face of section 2(k) of the Act, unacceptable. The learned counsel has made no attempt to show any repugnancy in the subject or context justifying departure from the statutory defintion.

The submission that as the tenants were found to be in actual possession and, therefore, the land held by a tenant as such and his original holding were consolidated because of the provision contained in section 7-A(2) of the Pepsu Tenancy & Agricultural Lands Act is equally devoid of merit because mere possession without payment of rent does not, without more and as a matter of law, clothe the land in his possession with the character of a "holding" within the contemplation of the Act read with its definition in the Punjab Land Revenue Act. It has also to be remembered that the conclusion that the land in possession of a tenant is his "holding" within the meaning of the Act involves a determination of a question of title which the consolidation authorities have not been shown to be empowered to do. The consolidation authorities have to be legally clothed with this power before they can lawfully make an order which has the effect of determining such questions. Such power cannot be assumed to inhere in the administrative authority like the one we are concerned with, in a limited State like ours, which is governed by Rule of law. I thus unhesitatingly repel this submission.

The decision of the Supreme Court in *Atma Ram, etc.* v. *State of Punjab* (1), also cited by Shri Sharma does not lend any assistance to the counsel. The precise question which concerns us in the case in hand, was not in controversy before the Supreme Court for determination. It is argued that the word "estate" is held in this decision to included even portions or shares in an estate. That is, of course, so; but then there is a *non-sequitor* here. It is not understood how it is possible to found on this conclusion the argument that the land in possession of the tenant becomes his holding within the contemplation of the Act. There is apparent fallacy of reasoning here in which the conclusion or inference sought to be drawn does not follow from the premises.

For all the foregoing reasons, we are of the opinion that only the landowner's holding can be consolidated under the Act and not the land in possession of tenants which does not fall within the definition of holding. This writ petition accordingly succeeds and allowing the same, we quash the impugned part of the scheme (Annexure 'A') so far as it provides for consolidation of lands in possession of tenants which do not constitute holdings as defined for the purposes of the Act. In the circumstances of the case, there would be no order as to costs.

R. S.

APPELLATE CIVIL

Before P. D. Sharma, J

DHARAM PAUL AGGARWAL, AND ANOTHER,—*Appellants.*

versus

THE REGIONAL DIRECTOR, EMPLOYEES' STATE INSURANCE CORPORATION,—*Respondent*

F.A.O. 71 of 1962.

March, 23, 1966.

Employees' State Insurance Act (XXXIV of 1948)—S. 2(12)—Factory—Process connected with manufacture being carried on in three different houses—Premises—Whether must be in the same compound—Whether number should exceed 20 in each house or the total.

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(1) AI.R. 1959 S.C. 519.