Ganga Jiwan *v.* Deputy Commissioner, Gurgaon and another

Narula, J.

(vii) that the Gram Panchayat cannot levy any *Tehbazari* in respect of the property belonging exclusively to the petitioners or their *Mandir;*

(viii) that if the Gram Panchayat is advised that the amount in question has been recovered by the petitioners on the basis of some kind of a quasi-contract purporting to be on behalf of the Panchayat or that the petitioners have recovered something which is the exclusive right of the Gram Panchayat to obtain, they can approach a Civil Court to decide the matter and cannot ask the Collector to decide that issue.

As a result of my above findings I hold that the notice 'A' issued by the Collector and the orders 'C' issued by him are both wholly without jurisdiction and void and ineffective.

I, therefore, allow this writ petition, set aside and quash the notice, dated 15th July, 1964 (annexure 'A' to the writ petition) and the order, dated 28th February, 1965, (annexure 'C' to the writ petition). The petitioners would be entitled to get their costs from respondent No. 1 in his official capacity. Respondent No. 2 will bear its own costs.

B.R.T.

CIVIL MISCELLANEOUS.

Before Inder Dev Dua and Prem Chand Pandit, JJ.

AJIT SINGH,—*Petitioner.*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ No. 663 of 1965.

1965

October, 5th.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Ss. 14(2) and 24—Consolidation scheme prepared by an officer on whom requisite authority is conferred later on retrospectively—Whether liable to be quashed—The Constitution (Seventeenth Amendment) Act (1964)—Proviso added to Article 31-A.—Effect of—Whether retrospective—Rights under the scheme of consolidation—When become vested rights—Assignment of land for common purposes—Whether acquisition—Constitution of India (1950)—Article 226—Petition under—Whether must be dismissed on grounds of delay—Petition alleging infringement of fundamental rights—Whether cannot be

dismissed on ground of laches and delay—Writ of certiorari—*Whether discretionary*—Ratio decidendi *of a decision—How to be discovered—Pleadings—Construction of—Interpretation of Statutes—Provision of a statute—Whether prospective or retrospective in operation—How to be determined—Words and Phrases —"Vested rights"—Meaning of.*

Held, that a scheme of consolidation prepared by the Consolidation Officer is only a draft scheme which has to be sanctioned by the Settlement Officer after deciding all objections that may be preferred, both written and oral. Such a draft scheme cannot be set aside on the ground that it was prepared by an Officer on whom the powers of a Consolidation Officer were conferred later on retrospectively, particularly when the challenge is made more than three years after the scheme was published under section 20(4) of the Act and repartition had taken place on the basis of the published scheme.

Held, that the proviso added to Article 31-A of the Constitution by the Constitution (Seventeenth Amendment) Act, 1964, is not retrospective in its operation. Its language does not suggest, *prima facie*, that it was intended to be retrospective in operation. When construed along with the amendment in clause (2) of Article 31-A, which makes the amended definition of the expression "estate" expressly retrospective, the conclusion becomes almost irresistible that the draftsman did not intend the further proviso to be retrospective, and the implication to the contrary would accordingly seem to be wholly misconceived. The existence of Explanation added to the amended Ninth Schedule to the Constitution also leads to the conclusion that the proviso is prospective and not retrospective in its operation.

Held, that the rights under the scheme of consolidation become vested as soon as it is sanctioned by the Settlement Officer, and the further proceedings of repartition etc., merely relates to the carrying out or enforcement or execution of the scheme. The fact that it may be open to the higher authorities in certain circumstances to vary or modify the scheme, or to replace it by a fresh scheme, would not by itself affect the question, that the scheme as sanctioned finally determines the rights of the parties which become vested from that stage onwards.

Held, that the reservation of land for common purposes in which the entire village community including the original holder is interested as equal sharer, and is entitled to secure the benefit thereof in common with all the co-beneficiaries does not amount to acquisition of land by the State within the contemplation of the second proviso added to Article 31-A of the Constitution by the Constitution (Seventeenth Amendment) Act, 1964. The State Government or the Panchayat are merely empowered to manage and appropriate the income accruing from the property for the benefit of the village community, including the original holder, and for no other purpose. It is only the right to transfer, or, to

the exclusive use or appropriation, of which the original holder has been deprived.

Held, that the objection of undue delay in making petitions under Article 226 of the Constitution pertains to the discretion of the High Court when exercising its writ jurisdiction. Article 226 in terms prescribes no constitutional limitation in regard to time. There is, however, a self-imposed restriction which is inspired, in part, by the consideration that time of the highest Court of record in the State is not wasted by invoking its extraordinary jurisdiction after inordinate delay and that the party feeling aggrieved by an illegal order etc. should be reasonably prompt and vigilant in approaching the High Court. It is obvious that this restriction is recognised as essential in the interest of the cause of substantial justice and it operates on a consideration of all the facts and circumstances of a given case. In other words its operation pertains to the sphere of the Court's discretion. The discretion has, however, to be exercised judicially and not arbitrarily; it is legal and qualified and not fanciful or absolute; and its exercise is designed to further the legislative purpose and to promote the cause of justice. The same rule applies to petitions alleging infringement of fundamental rights granted by the Constitution. The violation of a fundamental right arouses the Court's anxiety with somewhat greater jerk in order to give relief to the aggrieved party, but this can by no means be construed to confer on such party an absolute right to approach the High Court at his sweet will after as long a delay as he chooses.

Held, that the order for the issue of the writ of *certiorari* is, except in those rare cases where it may go as of course, strictly, in all cases, a matter of discretion which has to be exercised judiciously and reasonably in the background of facts on consideration of the consequences flowing from its exercise one way or the other. Where the petitioner's grievance is based on a bare technicality and no substantial injustice is shown to have been done to him, the High Court will be disinclined to interfere.

Held, that to discover *ratio decidendi* of a decision is clearly ethical and is creative evaluation as opposed to mechanical application of a precedent, because Judges are not expected to formulate a rule or exception upon which they have acted with a precision expected of a draftsman of a statute. The style of many judges may perhaps forbid this. The judicial formulation is invariably embedded in the entire judgment and passages in the rest of it may reveal the judges' intended meaning more clearly than even a careful formulation taken in isolation.

Held, that the pleadings should not be construed too narrowly or too technically, and if the respondents have not been misled or prejudiced, it is desirable that the pure questions of law should be decided on merits.

Held, that every statute is *prima facie* prospective unless by express language or necessary implication it is made to have

retrospective operation. This rule of *prima facie* prospectivity is founded on sense of fair-play and is rooted in judicial foreboding or premonition that retrospective laws are characterised by want of notice and lack of knowledge of past conditions, and that such laws disturb feelings of security in past transactions. The same rule applies to the construction of the constitutional instruments. The construction of express language does not, normally, pose any serious problem. It is in cases where recourse is to be had to the arguments of necessary implication that difficulty usually arises. In dealing with the problem of retrospectivity in such cases it is not at all easy to establish definite criteria upon which judicial decisions can be foretold. A law is usually not supposed to act unreasonably upon the rights of those to whom it applies, which seems to mean, that, it should not be presumed ordinarily to interfere with, or divest, a vested right. In this view, statutes affecting inchoate rights, or remedial in nature, are often intended to operate retrospectively. Same is the case with statutes dealing with procedure. But here again, normally, steps already taken are not affected unless a contrary intent is plainly manifested. The Court has thus in each case to find out the legislative intention, the various rules of construction serving merely as aids to the Court in search for such intention. In this judicial search, the presumption which may appropriately be kept in view is that the law-maker has a definite purpose in every enactment and has adopted and formulated the subsidiary provisions in harmony with that purpose, that these are needful to accomplish it, and, that if that is the intended effect, they will conduce to effectuate it. The purpose, by and large, serves as a touch-stone and the key to the legislative intent.

Held, that it is not easy to assign the precise meanings to the term 'vested right,' and there does not seem to be any fixed rigid legal principle which can safely be pursued to an inevitable conclusion. Vested right apparently means no more than right which under particular circumstances will, on equitable grounds, be protected from legislative interference; being a right resting on equities, it must, from its very nature, have reasonable limits and restrictions in the background of general welfare and public policy, which seeks the equal and impartial protection of the interests of all.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, mandamous or any other appropriate writ, order or direction be issued, quashing the scheme of consolidation of Village Ropalon, Tehsil Samrala, District Ludhiana.

M. R. SHARMA, ADVOCATE, for the Petitioner.

J. N. KAUSHAL, ADVOCATE-GENERAL WITH M. R. AGNIHOTRI, ADVOCATE, for the Respondents.

ORDER

Inder Dev Dua, J.

DUA, J.—Three writ petitions have been heard together but main arguments have been addressed in *Ajit Singh* v. *State* (C.W. 663 of 1965), the facts of which may briefly be stated:—

The petitioner claiming to be a land-holder of Village Ropalon, Tehsil Samrala, District Ludhiana, has approached this Court under Articles 226 and 227 of the Constitution alleging that the officer on Special Duty purporting to exercise the powers of the Punjab Government issued a notification on 2nd May, 1961, for the purpose of carrying out *de novo* consolidation of holdings in his village although this village had already been consolidated on co-operative basis in the year 1940. After this notification Shri Gurkirpal Singh, giving himself out as a Consolidation Officer, prepared the scheme of consolidation of holdings under section 14(2) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (hereinafter described as the Act). Up to 3rd May, 1962, Shri Gurkirpal Singh was not invested with the powers of the Consolidation Officer, with the result that he was wholly incompetent to take any action under setcion 14(2) of the Act. When this matter was brought to the notice of the State Government, one Shri Harcharan Singh, P.C.S., Officer on Special Duty, Consolidation Department, Punjab, made a futile attempt to remove the lacuna by issuing a gazette notification which was published in the Government Gazette, on 11th May, 1962. This notification, as reproduced in the petition, reads as under:—

"No. 57/6228:—In exercise of the powers under sub-section (2) of section 14 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, as delegated to me by Punjab Government Gazette Notification No. 6408-DIII-60/5011, dated the 29th July, 1960, I, Harcharan Singh, P.C.S., Officer on Special Duty, Consolidation Department, Punjab, hereby appoint Shri Gurkirpal Singh as Consolidation Officer, with headquarters at Ludhiana, in respect of the following estates of below-noted Tehsils notified,—*vide* Notification Nos. given below for the purpose of performing under the provisions

of the said Act, all the functions of the said officer, with effect from 4th November, 1961:—

* * * *

S. No.	Notification	No. 7702	dated 2nd May, 1961.
27	Rupalon	146	

* * * *

In this writ petition, the consolidation proceedings are challenged in the first instance on the ground that there could be no retrospective appointment of a Consolidation Officer. Any scheme prepared during the period when Shri Gurkirpal Singh was not possessed of the powers of a Consolidation Officer is wholly ineffective and without jurisdiction. Reference in the writ petition is made to a Full Bench decision of this Court in *General S. Shiv Dev Singh and another* v. *The State of Punjab and others* (1). The second challenge is based on the 17th Amendment of the Constitution, according to which, it is argued, compensation must be paid to the petitioner, who is a small landholder, for acquisition of his land which is reserved for various common purposes. The third ground of challenge urged before us is that there was no occasion for consolidation because the village had already been consolidated in 1940 and the present consolidation is a *mala fide* act on the part of the authorities. Connected with this challenge is the attack on the ground that in certain instances there has been no consolidation, but fragmentations have instead been brought about on account of certain plots having paths passing through them.

On behalf of the respondents, a preliminary objection has been raised which is based on delay and laches on the part of the petitioner. It is urged that the consolidation scheme of this village was confirmed by the Settlement Officer, Consolidation of Holdings, under section 20(3) of the Act on 6th January, 1962 and the present petition filed on 10th March, 1965 deserves to be thrown out on ground of laches alone. On the merits, retrospective appointment of Shri Gurkirpal Singh as Consolidation Officer has been justified, *inter alia,* on the strength of a Single Bench decision of this Court in *Chaudhri Basti Ram, etc.* v. *State of Punjab, etc.* C.W. 1774 of 1962. It has also been pleaded that the impugned consolidation was fully justified and it is denied that there has been any fragmentation as

(1) I.L.R. 1959 Punj. 1445=1959 P.L.R. 511.

Ajit Singh v. State of Punjab and another

Inder Dev Dua, J.

alleged by the petitioner. The previous consolidation, it is urged, does not operate as a bar to the present proceedings. The 17th Amendment of the Constitution is, according to the respondents, unavailing to the petitioner because it does not affect the present case. These are the points which have been canvassed before us.

Dealing first with the preliminary objection of undue delay, it has consistently been held that this is a matter which pertains to the discretion of the High Court when exercising its writ jurisdiction. Article 226 in terms prescribes no constitutional limitation in regard to time. There is, however, a self-imposed restriction which is inspired, in part, by the consideration that time of the highest Court of record in the State is not wasted by invoking its extraordinary jurisdiction after inordinate delay and that the party feeling aggrieved by an illegal order, etc., should be reasonably prompt and vigilant in approaching this Court. It is obvious that this restriction is recognised as essential in the interest of the cause of substantial justice and it operates on a consideration of all the facts and circumstances of a given case. In other words its operation pertains to the sphere of the Court's discretion. The discretion has, however, to be exercised judicially and not arbitrarily; it is legal and qualified and not fanciful or absolute; and its exercise is designed to further the legislative purpose and to promote the cause of justice. It is true that the Supreme Court has in *Madhya Pradesh* v. *Bhai Lal*, C.A. 362-77 of 1962, observed that delay of more than the prescribed period of limitation for seeking relief from Civil Courts is ordinarily considered unreasonable, but this observation does not seem to me to lay down that no delay short of such period can be considered to be undue for seeking relief on writ side, and indeed the effect of delay, as I understand the position, has to be determined in each case in its own background and setting. It is noteworthy that in this very decision it has been clarified that no hard and fast rule can be laid down on this subject.

It has, however, been suggested that in a case where fundamental right is involved, the question of delay is wholly immaterial. I am unable, as at present advised, to subscribe to such a broad and unqualified rigid proposition. In my view the violation of a fundamental right

Ajit Singh
v.
State of Punjab and another

Inder Dev Dua, J.

arouses this Court's anxiety with somewhat greater jerk in order to give relief to the aggrieved party, but this can by no means be construed to confer on such party an absolute right to approach this Court at his sweet will after as long a delay as he chooses. In cases of consolidation of holdings, it must be remembered, quite a large number of land-holders are affected by the scheme and some of them may have either parted with possession of their property in pursuance of the scheme or have on the new holdings made some investments, or some other third party's interest has intervened, which must necessarily be prejudicially affected; undue delay on the part of the petitioner would, therefore, seem to me in such cases to be a very strong factor in dissuading this Court from permitting its extraordinary jurisdiction to be invoked. As stated by Gajendragadkar C.J., speaking for a Bench of five Judges of the Supreme Court, in *Smt. Narayani Debi Kaitan* v. *The State of Bihar and others* C.A. No. 140 of 1964 decided last year on 22nd September, 1964, "it is well-settled that under Article 226, the power of the High Court to issue an appropriate writ is discretionary. There can be no doubt that if a citizen moves the High Court under Article 226 and contends that his fundamental rights have been contravened by any executive action, the High Court would naturally like to give relief to him; but even in such a case, if the petitioner has been guilty of laches, and there are other relevant circumstances which indicate that it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the petitioner, ends of justice may require that the High Court should refuse to issue a writ. There can be little doubt that if it is shown that party moving the High Court under Article 226 for a writ is, in substance, claiming a relief which under the law of limitation was barred at the time when the writ petition was filed, the High Court would refuse to grant any relief in its writ jurisdiction. No hard and fast rule can be laid down as to when the High Court should refuse to exercise jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the Court, in this matter too discretion must be exercised judiciously and reasonably. "In the case just cited, the aggrieved party was complaining against the acquisition of property. In other words, the grievance did apparently

Ajit Singh
v.
State of Punjab
and another

Inder Dev Dua,
J.

centre round, what may perhaps be described as a fundamental right. That was a case from the Patna High Court which had refused relief on its writ side on the ground that the petitioner had made considerable delay in moving the High Court under Article 226. The impugned notification in that case had been issued on 9th November, 1960, and the petition for writ was presented on 28th January, 1963. The aggrieved party had undoubtedly been carrying on correspondence with the acquisition authorities, and, according to the Supreme Court, she may have expected that her efforts to move the said authorities for desisting from the acquisition of her property might succeed, but, the correspondence clearly showed, that she must have realised soon after the notification had been issued that the authorities were determined to proceed with the work of building constructions on her property which had been acquired; this apparently went against her in considering the factor of delay. There was of course another circumstance as well, namely, that construction was proceeding apace, and this too was considered relevant and material in deciding whether or not to grant relief under Article 226. But I have not been persuaded to hold that except for this latter circumstance the Supreme Court would have ignored the delay as irrelevant. To discover *ratio decidendi* is clearly ethical and is creative evaluation as opposed to mechanical application of a precedent, because Judges are not expected to formulate a rule or exception upon which they have acted with a precision expected of a draftsman of a statute. The style of many judges may perhaps forbid this. The judicial formulation is invariably embedded in the entire judgment and passages in the rest of it may reveal the judges' intended meaning more clearly than even a careful formulation taken in isolation. I am thus clearly of the view that according to the real ratio of the above decision even in case of a fundamental right a writ petition is open to dismissal by this Court in its discretion on the ground of undue delay or laches.

At ths stage, I may appropriately refer to a decision by a learned Single Judge in *Mussaddi and others* v. *The State of Punjab and others* (2), on the following passage

(2) 1961 P.L.R. 474.

from which, the petitioner's learned counsel has relied during his arguments in reply:—

> "There is another aspect of the matter which would make the question of laches wholly immaterial. It is well-settled by now that when such rights are affected as are covered by the Chapter on Fundamental Rights in the Constitution, laches in approaching the High Court under Article 226 would be wholly immaterial."

In the case cited, the learned Judge had earlier observed that he was not satisfied that the petitioner had no explanation for the delay, and after noticing in the order, the facts and circumstances of the reported case, he had expressly recorded that the petition before him did not deserve dismissal on the ground of laches alone. It is thus obvious that the expression of this opinion on the peculiar facts of that case was sufficient to dispose of the preliminary objection and the view expressed in the passage quoted may appropriately be described as obiter. No doubt the reported case related to the Pepsu Holdings (Consolidation and Prevention of Fragmentation) Act which is, for all practical purposes, similar to the one before us, but with respect we are not prepared, as at present advised, to subscribe to the broad and sweeping proposition of law enunciated before us, that merely because some sort of fundamental right is affected, the aggrieved party can approach this Court even after the expiry of a large number of years without furnishing any reasonable explanation for the inordinate delay.

In the case in hand, *prima facie* the writ petition is belated and liable to be thrown out on this short ground in so far as challenge to the scheme is concerned. But since, the matter has been argued at length on merits and several writ petitions have been presented in this Court raising the same point; and further since it has been urged that steps taken subsequent to the scheme are also open to attack, it is desirable and in the fitness of things as a special case to dispose of so far as possible the points urged on the merits. This decision is not intended to serve as a precedent for adopting similar course in any comparable circumstances.

Ajit Singh v. State of Punjab and another

Inder Dev Dua, J.

Coming to the merits, the first point to be dealt with relates to the retrospective appointment of Shri Gurkirpal Singh, as Consolidation Officer. It has been argued on behalf of the petitioner that a Consolidation Officer has to perform very important duties in the course of consolidation and under section 30 of the Act without the sanction of the Consolidation Officer, no landowner or tenant having a right of occupancy upon whom the consolidation scheme will be binding can transfer or otherwise deal with any portion of his original holding or other tenancy so as to affect the rights of any other landowner or tenant having a right of occupancy therein under the scheme of consolidation. Under section 30-A of the Act, even the right to cut trees from, and erect buildings or other structures upon, portions of original holdings included in the scheme is taken away, it being made exercisable only with the sanction of the Consolidation Officer, and a contravention of this provision is made punishable with fine extending to Rs. 500. An offence under this section has even been made cognizable. It has been contended that appointment of a Consolidation Officer with retrospective effect is likely to place a citizen in the unenviable and unhappy position of being liable to be punished for an act which was not an offence at the time of its commission because there was no Consolidation Officer lawfully appointed at the relevant time from whom sanction could be taken. This, according to the submission, is suggestive of the legislative intention negativing retrospective appointment of a Consolidation Officer. In support of this contention, reference has also been made to Rules 4, 10 to 13 and 15, made under the Act.

The submission as put is *prima facie* attractive and apparently sounds plausible. On deeper deliberation, however, I am disinclined to set aside the consolidation proceedings on this sole ground. As pointed out by the respondents' learned counsel, the scheme for the consolidation of holdings prepared by a Consolidation Officer as required by section 14(2) is only a draft scheme. This seems to be made clear by section 19, which provides for its publication, for objections against the scheme and, for the submission to the Settlement Officer (Consolidation) of the scheme—as finally amended in the light of the objections. Such amended scheme is again required to be published. Under section 20, the scheme has to be

Ajit Singh
v.
State of Punjab and another

Inder Dev Dua, J.

sanctioned by the Settlement Officer (Consolidation) appointed under sub-section (1) after consideration of the draft scheme, the objections and the remarks thereon by the Consolidation Officer and further objections, written or oral, received by the Settlement Officer, before its confirmation. The Consolidation Officer, it may be pointed out is subordinate to the Settlement Officer (Consolidation) having jurisdiction over this area subject to any conditions which may be prescribed. But in case the scheme is not confirmed with or without modifications it is to be returned to the Consolidation Officer for re-consideration and re-submission. On confirmation, the scheme, as confirmed, is again to be published in the prescribed manner and the Consolidation Officer is thereafter to carry out repartition under section 21, which section also provides for objections and appeals to higher outhorities. Under section 22, the Consolidation Officer causes to be prepared a new record of rights in accordance with Chapter IV, Punjab Land Revenue Act, so far as applicable, giving effect to the sanctioned re-partition. Section 23, empowers the Consolidation Officer to allow the owners and tenants to enter into possession of the new holdings. It is unnecessary to refer to Rules 4 and 5, made under the Act to which also the learned Advocate-General has made a passing reference. The foregoing provisions clearly suggest that so far as the preparation of the scheme is concerned, the final sanctioning authority is the Settlement Officer and the Consolidation Officer has to prepare merely a draft scheme, against which objections can be preferred, both written and oral, with the Settlement Officer. The learned Advocate-General has drawn our attention to a Bench decision of this Court by G. D. Khosla, Ag. C.J., and Bishan Narain, J., in *Bhagwat Dayal and others* v. *Union of India and others* (3), dated 8th April 1959, in which reference has been made to an earlier Full Bench decision of this Court, without giving its particulars, in which appointment of an Additional Director (Consolidation) to hear appeals under section 21(4) of the Act with retrospective effect was unheld. Our attention has also been drawn to a Single Bench decision of Shamsher Bahadur, J., in *Chaudhri Basti Ram, etc.* v. *State of Punjab, etc.*, civil writ No. 1774 of 1962, in which it has been observed that the definition of Consolidation Officer permits the State Government to authorise a person to act as such

(3) I.L.R. 1959 Punj. 1665=A.I.R. 1959 Punj. 544.

Ajit Singh
v.
State of Punjab
and another

Inder Dev Dua, J.

even though his appointment has not been notified and that Consolidation Officers, like all other officers serving under Government, take charge of their appointments long before these are notified in the official gazette and even earlier than their powers are notified or gazetted. Delayed notification or gazetting of powers, according to this decision, does not invalidate the authority of the officers or the acts done by them after assuming charge of their respective offices. In this unreported judgment, the Consoldation Officer in question had taken charge of his appointment, on 1st June, 1962, but it was notified on 3rd August, 1962. In the written statement filed in the present case, before us the position as stated in paragraph 4, is, to repeat the exact words, that "Shri Gurkirpal Singh, Consolidation Officer, was empowered to function as Consolidation Officer, with effect from 4th November, 1961,—*vide* notification No. 57-G/6228, dated 3rd May, 1962, under section 14(2) of the Act." It is not pleaded that Shri Gurkirpal Singh had been appointed Consolidation Officer, on 4th November, 1961, and only the notification regarding his appointment was delayed till 3rd May, 1962. The Single Bench decision in *Basti Ram's case* (Civil Writ No. 1774 of 1962), is thus of little assistance to the respondents. The decision in *Bhagwat Dayal's* case (3) would also seem to me to be distinguishable because the Statute which fell for construction in that case cannot be considered to be similar to the one before us. But this apart, this decision was reviewed and actually reversed by the same Bench in *Bhagwat Dayal, etc.* v. *Union of India* (4). From this judgment we find that the Full Bench decision, a wrong impression about which was the source of error necessitating review, is reported as *General Shiv Dev Singh* v. *The State of Punjab* (1), decided on 17th March, 1959, barely three weeks before the earlier decision in *Bhagwat Dayal's case* (3). The judgment on review prominently brings out the distinguishing features of that case; one of them being that the Collector's award under the Land Acquisition Act is considered to be final and binding even on the Government. We are on the present occasion not concerned with the correctness of that decision on the merits. Suffice it to say that in my opinion that decision does not serve as helpful precedent in considering the validity of a draft scheme prepared by a Consolidation Officer on whom the requisite authority has been later

(4) I.L.R. 1960 (2) Punj. 410.

Ajit Singh
v.
State of Punjab
and another
———
Inder Dev Dua,
J.

conferred retrospectively, when the said scheme has been duly confirmed by a duly authorised Settlement Officer and has in fact been duly worked out. It is noteworthy that during the course of arguments on review application reliance on behalf of the State was placed on an unreported decision, dated 8th January, 1960, by Bishan Narain, J., sitting singly in a consolidation matter in *Ramji Lal* v. *State of Punjab* (C.W. 828 of 1958), for declining interference under Article 226 on the ground that there was no manifest injustice, but the Division Bench speaking through Bishan Narain, J., distinguished that decision. In *Ramji Lal's case,* consolidation proceedings were started in 1957, the notification under section 14(1) of the Act having been issued on 17th July, 1957, and proclaimed in the village on 12th August, 1957. The scheme was prepared on 8th November, 1957 but the record did not show as to when it was confirmed by the Settlement Officer. A notification was issued on 27th November, 1957, appointing a Consolidation Officer, with effect from 12th August, 1957. It was in these circumstances that some right-holders invoked this Court's jurisdiction under Article 226 challenging the scheme. Following the ratio of the Full Bench decision in *Munsha Singh and others* v. *State, etc.* (5), allotment of 160 *kanals* for Panchayat in the scheme was held invalid; but the challenge to the scheme on the ground of its having been prepared by an unauthorised person did not find favour with the learned Judge and he declined to interfere under Article 226. The following observations may be reproduced with advantage:—

> "The scheme was prepared as far back as 8th November, 1957. Objections against the scheme were filed before the Settlement Officer who allowed some of the objections. This objection, however, that there was no Consolidation Officer who could have prepared the scheme was not taken before him. The re-partition proceedings were then started and proceedings are being carried on under section 21(1) of the Consolidation Act. The present petition was not filed in this Court till 12th August, 1958, that is, after the lapse of about nine months. It has not been alleged by the petitioners that the scheme is in any way unjust to the petitioners. There is no allegation that the valuation, etc., which formed

(5) I.L.R. 1960 (1) Punj. 589=1960 P.L.R. 1 =A.I.R. 1960 Punj. 317.

Ajit Singh
v.
State of Punjab
and another

Inder Dev Dua,
J.

part of the scheme, is unjust and erroneous. In my view the petitioners have not shown that they have suffered any manifest injustice because an authorised person had prepared the scheme which is being implemented in accordance with law. It must be remembered in this context that the same person who had prepared the scheme was subsequently appointed by the authorities to act as Consolidation Officer."

On Letters Patent Appeal by the State against the order invalidating allotment for Panchayat, Falshaw, C.J. and Grover, J. held the said allotment to have been validated retrospectively by the amendment effected by the Punjab Act 27 of 1960. The Writ petition was accordingly dismissed in its entirety. The writ petitioners did not prefer any appeal under the Letters Patent; indeed they did not even appear to contest the State Appeal which was disposed of *ex parte*. The decision in this case (C.W. 828 of 1958) clearly suggests that the impugned scheme before us need not necessarily be struck down on the authority of the Bench decision on review in *Bhagwat Dayal's case* (4).

Indeed even in regard to the appointment of Shri Gukirpal Singh as Consolidation Officer the writ petition is without doubt unduly belated, and the challenge to his appointment liable to be declined on account of undue delay and other reasons. It is common ground that the petitioner's village was notified for consolidation on 2nd May, 1961. As has been asserted in the written statement, and not denied on behalf of the petitioner, the draft scheme was published on 8th November, 1961, and confirmed by the Settlement Officer on 6th January, 1962. The confirmed scheme was published under section 20(4) on 17th January, 1962. Repartition on the basis of this scheme was carried out on 21st February, 1962, as is stated in the written statement. Shri Gurkirpal Singh's appointment as Consolidation Officer was notified on 11th May, 1962. It seems to us that in May, 1962 it must have been clear to the petitioner that Shri Gurkirpal Singh's appointment as Consolidation Officer was notified even after the repartition. It is not the petitioner's case before us that this fact was concealed from him or that he came to know of it much later. The present writ petition was presented to this Court more than three years after both the publication of

Ajit Singh
v.
State of Punjab and another

Inder Dev Dua, J.

the scheme under section 20 (4) and repartition on the basis of the published scheme. In the meantime, it is obvious, that various parties interested and affected by the scheme have changed positions. It is only one single individual who has approached this Court for setting at naught the proceedings relating to the draft scheme and the repartition. It is worth noting in this connection that in the writ petition the factum of the repartition having been carried out in February, 1962 has not been stated, nor even has the fact of the scheme having been confirmed by the Settlement Officer in January, 1962 been stated. The petitioner has, as is obvious, waited for more than three years in moving this Court under Article 226 for a relief, which must affect quite a large number of parties, who are not before us and, who have in all probability taken possession of their new holdings under repartition, after surrendering possession of their original holdings. This factor is not unimportant. The order for the issue of the writ of *certiorari* is, I may repeat, except in those rare cases where it may go as of course, strictly, in all cases, a matter of discretion which has to be exercised judiciously and reasonably in the background of facts on consideration of the consequences flowing from its exercise one way or the other. The petitioner's grievance, as put before this Court, is based on the barest technicality and no substantial injustice on the merits on this score has been made out on his behalf at the bar. It is not his case that he has suffered by virtue of the retrospective operation of sections 30 and 30-A of he Act or that he has been subjected to any other injury apart from what follows generally from the removal of technical defect from the draft scheme and the repartition proceedings by making retrospective appointment of Shri Gurkirpal Singh. We are, therefore, clearly disinclined in our discretion to interfere with the consolidation proceedings merely on the ground that Shri Gurkirpal Singh was appointed a Consolidation Officer retrospectively.

On the view that we have taken, it is unnecessary to express any considered opinion on the plea that the functions of the Consolidation Officer being purely administrative, there can be no serious obstacle in law in the way of his appointment being made with retrospective effect. This question will have to be decided on a more appropriate occasion.

Ajit Singh
v.
State of Punjab
and another

Inder Dev Dua,
J.

This brings me to the challenge based on the 17th Amendment of the Constitution. This amendment, which was published in the *Gazette of India* on 20th June, 1964, *inter alia* adds a further proviso to Article 31-A of the Constitution and is in the following words:—

> "Provided further that where any law makes any provision for the acquisition in the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof."

This amendment has also substituted for the previous definition retrospectively the new definition of the word 'estate' by providing that this expression shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area. It is unnecessary to refer to the remaining definition of this expression because that does not concern us in the present case. The argument most emphatically urged on behalf of the petitioner founded on this amendment is that he is a small land-holder within the meaning of the Security of Land Tenures Act and, therefore, no part of his holding can be acquired without payment of compensation at the market value. It is common ground that the land which, according to the petitioner's learned counsel, has been acquired by the State and the acquisition of which is stated to be hit by this amendment, is the land which has been given to the local Panchayat for common purposes.

Before dealing with the merits of this challenge, I may appropriately refer to an objection raised on behalf of the respondents based on the inadequacy of particulars in the writ petition in support of the challenge. It is poined out that in paragraph 12 of the writ petition, all that has been stated is that in the proceedings held in pursuance of Co-operative Societies Act, 100 *bighas* of land were given to the

Ajit Singh
v.
State of Punjab and another

Inder Dev Dua, J.

local Panchayat for common purposes and in the scheme, another 100 *bighas* of land are being provided for the same purpose. This land, according to the averments, is being taken away from the common pool, and most of the proprietors including the petitioner owned land within the first ceiling. These avertments, according to the respondents' objection, do not bring the petitioner's case within the above inhibition. In the first instance, it is contended that there is no clear-cut affirmative assertion by the petitioner that the land said to be acquired is held by him in his personal cultivation, the only general assertion being that most of the proprietors, including the petitioner, owned land within the first ceiling. It is next pointedout that in order to bring his case within the inhibition relied upon, the petitioner should have pleaded in clear terms, specifying the land within the ceiling limit, the alleged acquisition of which has been objected to on the basis of the newly added proviso.

On behalf of the petitioner, it has been pointed out that 17th Amendment of the Constitution has been expressly mentioned in paragraph 12 of the writ petition and it is explicitly pleaded that if the land lying within the first ceiling has to be taken, then compensation not below the market rate must be provided in order to bring the law within the pale of constitutionality. The petitioner has expressly averred that he is being deprived of a part of his land without payment of compensation under colour of exercise of power under section 18(c) of the Act which has become void and unconstitutional, being repugnant to Article 31-A of the Constitution.

In my opinion, although the petitioner could have framed his pleadings with greater precision and given fuller particulars, nevertheless, I would be disinclined to shut out the petitioner on this ground alone. Pleadings, as is well-settled, should not be construed too narrowly or too technically, and if the respondents have not been misled or prejudiced, it is desirable that an objection like the present should, on the pleadings before us, be disposed of on the merits, the question being purely one of law. In coming to this conclusion, I have also been influenced by the fact that a number of writ petitions are pending in this Court in which similar objection has been raised.

Reverting to the 17th Amendment of the Constitution, the first question which arises for consideration is whether

Ajit Singh v. State of Punjab and another

this amendment is retrospective in its operation or is only intended to affect the acquisition made after 20th June, 1964.

Inder Dev Dua, J.

On behalf of the petitioner, in support of the argument of the retrospective effect of the newly added proviso, the petitioner's counsel has drawn our attention to the amendment of the 9th Schedule of the Constitution as effected by the 17th Amendment. The counsel has specifically relied upon the Explanation added to the Schedule after the additional entries, according to which any acquisition made under the Rajasthan Tenancy Act No. III of 1955 in contravention of the second proviso to clause (I) of Article 31-A has, to the extent of contravention, been declared to be void. The submission, as forcefully put by the learned counsel, is that this is clear pointer to the intention of the law-maker that the further proviso added to Article 31-A is to operate retrospectively. I am unable to uphold its retrospective character on the basis of this argument. Broadly speaking, the Acts and Regulations specified in the Ninth Schedule and the provisions thereof have been saved under Article 31-B against invalidity on the ground of inconsistency with the rights conferred by Part III of the Constitution. It is not understood how the Explanation in question which merely takes one item out of this saving provision can render any helpful guidance in considering whether or not the newly added proviso to Article 31-A is retrospective in its operation. There is presumably something peculiar to the Rajasthan Tenancy Act III of 1955 which necessitated the Explanation. On behalf of the petitioner the point has not been developed.

The petitioner's learned counsel has next laid some stress on the submission that the proviso in question must go in its entirety along with the definition of "estate" which has expressly been made retrospective. This submission is again unsupportable because if the new proviso was intended to be retrospective in its entirety, then there was hardly any occasion for specifically making only the amended definition of the expression "estate" retrospective. Indeed this argument has merely to be stated to be rejected.

A faint suggestion has been thrown that the newly added proviso is likely to create a situation which would be hit by Article 14 of the Constitution and, therefore, an interpretation should be placed which would avoid such a

Ajit Singh
v.
State of Punjab
and another

Inder Dev Dua,
J.

contingency. This suggestion has not been sought to be supported by any binding precedent or sound principle; needless to add that the counsel has not even cared to develop this point.

Reference has been made on behalf of the petitioner to some passages at page 58 from Interpretation of Statutes etc., by N. S. Bindra, specific reliance having been placed on *Balaji Singh* v. *Chakka Ganga Mamma etc.* (6), quoted in the book. Now, all that this decision lays down is that though an Act is not called a declaratory or explanatory Act, if from the words used therein the Cout can come to the conclusion that it is declaratory or explanatory, then retrospective effect will be given to such Act. The proposition stated is unexceptionable, but it is of no help to the petitioner. The newly added proviso by no means suggests that it is intended to be merely a declaratory or an explanatory provision. *L. Bappu Ayyar* v. *Renganayaki* (7) being similar in effect need not detain us. Finally, stress has been laid by Shri Sharma on the contention that the proviso in question cannot exist without the main section and, therefore, it must be deemed to be retrospective. Support for this broad submission has been sought from *Abdul J. Butt* v. *The State of Jammu and Kashmir* (8). At page 284, the following observation of Das, C.J. has been pressed into service:—

> "In the first place it is a fundamental rule of construction that a proviso must be considered with relation to the principle matter to which it stands as a proviso. Therefore, the proviso in question has to be construed harmoniously with the provisions of sub-section (1) to which it is a proviso."

I am wholly unable to draw any assistance from this observation for sustaining the submission. The learned Chief Justice had made the observation in question in an entirely different context and I am unable to appreciate how it can give any guidance on the retrospective or prospective nature of the proviso before us. Each case has to be determined on its own peculiar facts and circumstances after properly comprehending the legislative intent. The rule of harmonious construction renders no help to the petitioner.

(6) A.I.R. 1927 Mad. 85.
(7) A.I.R. 1955 Mad. 394.
(8) A.I.R. 1957 S.C. 281.

Ajit Singh
v.
State of Punjab
and another
———
Inder Dev Dua,
J.

The counsel has then submitted that assuming the amendment to be merely prospective, even then the petitioner is entitled to the protection which the proviso affords against acquisition of property. In developing this argument, a passing reference has at the outset been made to section 6 of the General Clauses Act (Act No. X of 1897) which deals with the effect of repeal, but it is again not understood how this section supports the petitioner's submission.

Main reliance has, however, been placed by Shri Sharma on section 24 of the Act which may appropriately be read at this stage:—

"Coming into force of scheme

24. (1) As soon as the persons entitled to possession of holdings under this Act have entered into possession of the holdings, respectively, allotted to them, the scheme shall be deemed to have come into force and the possession of the allottees effected by the scheme of the consolidation, or, as the case may be, by repartition, shall remain undisturbed until a fresh scheme is brought into force or a change is ordered in pursuance of provisions of sub-sections (2), (3) and (4) of section 21 or an order passed under section 36 or 42 of this Act.

(2) A Consolidation Officer shall be competent to exercise all or any of the powers of a Revenue Officer under the Punjab Land Revenue Act, 1887 (Act XVII of 1887), for purposes of compliance with the provisions of sub-section (1)."

The submission pressed before us is that the Scheme comes into force only when the people get possession after orders, if any under section 36 or 42 of the Act are passed; the scheme, therefore, must be deemed to be still being worked out when the amended proviso was enacted; the mandate contained in the newly added proviso must accordingly be attracted to the acquisition covered by the scheme irrespective of the prior confirmation of the scheme by the Settlement Officer under section 20 of the Act. Assistance has been sought for this contention from a Full Bench decision

Ajit Singh
v.
State of Punjab
and another

Inder Dev Dua, J.

of the Patna High Court in *State of Bihar* v. *Dr. G. H. Grant* (9), and from *R. S. Seth Shanti Sarup* v. *Union of India* (10). It is emphasised that till the scheme is completely worked out and finalised, the newly added proviso must operate, even as a prospective piece of legislation.

The learned Advocate-General has in reply concentrated on the submission that in the case in hand, there is no acquisition by the State. The submission, according to him, would conclude the matter, but the counsel has also tried to controvert, on other grounds, the petitioner's submission. In so far as the main contention is concerned, the counsel has read out to us Article 31 of the Constitution dealing with compulsory acquisition of property, as originally enacted, and has then referred to its subsequent amendments. Article 31(1) lays down in clear terms that no person shall be deprived of his property save by authority of law. Here, a slight diversion may be permitted. Shri Kaushal has, while emphasising on this sub-clause, drawn our attention to the definition of "common purpose" in section 2(bb) of the Act. This expression in the absence of repugnancy in the subject or context, means any purpose in relation to any common need, convenience or benefit of the village and includes a large number of purposes, among them being "providing income for the Panchayat of the village concerned for the benefit of the village community." It is contended that reservation for the common purpose has been made under authority of law within the contemplation of Article 31(1). Reference has in this connection been made to section 18, and it has been pointed out that reservation can be made by the Consolidation Officer from time to time, though it is conceded that the said officer can only perform this function during the period that the draft scheme is being prepared; reliance has in particular been placed on clause (c) of this section which empowers assignment of other land for common purposes in case no land is reserved or the land reserved is inadequate.

Reverting to the main argument of the counsel, he has, in order to develop his argument, read out to us sub-article (2) of Article 31 as it originally stood. This sub-article had within its fold in addition to acquisition of property for public purposes also taking of possession of such property.

(9) A.I.R. 1960 Pat. 382.
(10) A.I.R. 1955 S.C. 624.

Ajit Singh v. State of Punjab and another

Inder Dev Dua, J.

This Article as amended excludes from its purview taking possession of property as such but instead compulsory acquisition and requisition have been included therein. The counsel has also in this connection read out Article 31(2-A) which lays down that where a law does not provide for the transfer of ownership or right to possession of any property to the State, or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property notwithstanding that it deprives any person of his property. In this connection, reference has been made to *G. Nageshwara Rao* v. *A.P.S.R.T. Corporation* (11) and *Guru Datta Sharma* v. *State of Bihar etc.* (12). In the background of these two decisions, the counsel has read out the further proviso added by the 17th Amendment, and emphasis has been laid on the fact that in this proviso, there is no reference to the right to possession of any property. According to this argument, it is only in case of acquisition by the State of any estate, where any land comprised therein is held by a person under his personal cultivation and is within the ceiling limit applicable to him under any law in force, etc., that provision for payment of compensation at a rate, not less than the market value thereof, has to be made. In the case in hand, it is very strongly urged, there is no acquisition because there is no transfer of ownership, notwithstanding that some persons may be considered to have been deprived of their property in the sense that they cannot use it the way they like. The counsel has next referred us to section 23-A added to the Act by Punjab Act No. 39 of 1963. According to this section, as soon as a scheme comes into force, the management and control of all lands assigned or reserved for common purposes of the village under section 18, vests in the State Government, in case of common purposes specified in section 2(bb) (iv) in respect of which the management and control are to be exercised by the State Government, and shall vest in the Panchayat of the village concerned in case of other common purposes. The State Government and the Panchayat, as the case may be, are entitled, by virtue of this provision, to appropriate the income accruing therefrom for the benefit of the village community, and the rights and interests of the owners of such lands stand modified and extinguished accordingly. This so argues the learned Advocate-General, supports his

(11) A.I.R 1959 S.C. 308.
(12) A.I.R. 1961 S.C. 1684.

Ajit Singh
v.
State of Punjab
and another

Inder Dev Dua, J.

contention that there is no acquisition within the contemplation of Article 31 and, therefore, there is no constitutional infirmity in reserving land for common purposes and vesting its management and control in the State Government or in the Panchayat of the village, as the case may be. Support for this contention has been sought from *State of West Bengal* v. *Subodh Gopal Bose* (13), *Dwarkadas Shrinivas* v. *The Sholapur Spinning and Weaving Co. Ltd.* (14), and *Saghir Ahmad* v. *The State of U.P., etc.* (15). The counsel has also tried to seek support from Basu's Shorter Constitution of India, 1964 Edition and has referred us to some passages at pp. 178 and 179. I, however, do not think that much assistance can be drawn from these passages except in so far as they are based on decisions of Courts.

The counsel has commented on and explained the Full Bench decisions of this Court relied upon on behalf of the petitioner in which the Act was subjected to constitutional challenge. In *Munsha Singh and others* v. *State of Punjab* (5), a decision by a Bench of five Judges, Tek Chand, J., in an elaborate judgment, took pains to consider the question as to when a person's property may be said to have been acquired by the State. The majority view struck down reservation of land for the village Panchayat in the Scheme under the Act. The learned Advocate-General has submitted that all the reasons given by Tek Chand, J., in his judgment do not constitute the ratio of the Full Bench, and to support this submission, he has referred to certain passages from the separate observations made by some of the other Judges. As a result of this decision, the Act was amended by Punjab Act No. 27 of 1960. The effect of this amendment also came up for consideration before a Bench of three Judges consisting of G. D. Khosla, C. J. and Gosain and Mahajan, JJ., in *Kishan Singh and another* v. *State of Punjab and others* (16), wherein it was held that village Panchayat being a statutory body, was a local authority, and, therefore, "State" by virtue of the definition in Article 12 of the Constitution, and the act of handing over the management and possession of the land of the proprietors to the village Panchayat amounted to acquisition by the State; transfer of rights to the Panchayat was

(13) A.I.R. 1954 S.C. 92.
(14) A.I.R. 1954 S.C. 119.
(15) 1955 (1) S.C.R. 707.
(16) I.L.R. 1960 (2) Punj. 904 F.B.)=A.I.R. 1961 Punj. 1.

Ajit Singh
v.
State of Punjab
and another

Inder Dev Dua,
J.

also considered to be a modification of proprietary rights within the meaning of Article 31-A of the Constitution. Act 27 of 1960, providing authority for adding to or taking away from the already existing *shamilat deh* was held to be saved by Article 31-A, and it was so held largely because the Court was under the impression that the Supreme Court had upheld the constitutionality of section 3 of the Punjab Village Common Lands (Regulation) Act 1 of 1954. The following observations at page 3 of the report after referring to *Atma Ram* v. *State of Punjab* (17), are suggestive of this:—

> "After this decision, the Supreme Court held the Punjab Village Common Lands (Regulation) Act also to be *intra vires* and once the Punjab Village Common Lands (Regulation) Act is held valid, all objections against the impugned Act disappear, because the impugned Act does no more than the Punjab Village Common Lands (Regulation) Act. By S. 3 of that Act, the *Shamilat deh* vests in the village Panchayat."

In *Jagat Singh and others* v. *State of Punjab and others* (18), the constitutionality of the Consolidation Act, as amended, was again raised before me sitting singly, when it was represented that there was in fact no decision of the Supreme Court sustaining the constitutionality of the Punjab Village Common Lands Act as was erreneously assumed in *Kishan Singh's case.* The matter had accordingly to be referred to a Bench of five Judges. Mainly relying on the ratio of the Supreme Court decision in *K. K. Kochuni* v. *State of Madras* (19), the majority of the Judges upheld the constitutionality of Punjab Act No. 27 of 1960, principally on the ground that the impugned provision had for its object agrarian reforms. A recent decision of the Supreme Court in *Ranjit Singh* v. *State of Punjab* (20), has also been cited before us. In this decision the view taken by the Full Bench of this Court in *Jagat Singh's case* has been approved by the Supreme Court, but no opinion has been expressed on the effect of 17th Amendment of the Constitution. According to law, as it

(17) A.I.R. 1957 S.C. 519.
(18) I.L.R. 1962 (1) Punj. 685=A.I.R. 1962 Punj. 221.
(19) A.I.R. 1960 S.C. 1080.
(20) A.I.R. 1965 S.C. 632.

existed prior to the 17th Amendment, the provisions for assignment of land to village Panchayats for the use of the general community or for hospitals, etc., in the consolidation scheme has been held to be lawful and *intra vires*. The strict rule in *Kochuni's* case has been held inapplicable to a legislation, the general scheme of which pertains to agrarian reforms and under which something ancillary thereto in the interest of rural economy has to be undertaken to effectuate the reforms. The petitioner has strongly relied on this decision in support of the submission that the impugned assignment of land for common purposes amounts to acquisition and is covered by the amended proviso, whereas on behalf of the respondents, it has equally strongly been urged that this submission is unsupportable on the true holding or ratio of this decision as the concluding portion of the following passage shows:—

> "Further the village Panchayat is an authority for purposes of Part III as was conceded before us and it has the protection of Article 31-A, because of this character, even if the taking over *Shamilat Deh* amounts to acquisition."

During the arguments by the respondents' counsel it is again emphasized that the further proviso added by the 17th Amendment to Article 31-A is only prospective in its operation and does not affect the scheme already sanctioned by the Settlement Officer. For this submission, reliance has been placed on *Keshavan Madhava Menon* v. *The State of Bombay*, (21), *D.K. Nabhirajiah* v. *State of Mysore, etc.*, (22), *M/s. Pannalal Binjraj* v. *Union of India* (23), *Guru Datta Sharma* v. *State of Bihar and another* (12), *and Ranjit Singh* v. *Commissioner of Income-Tax* (24).

I have considered the matter from all its aspects and have devoted my earnest attention to the facts of the case and the arguments addressed at the bar. Dealing first with the question of the 17th Amendment of the Constitution, I do not think the further proviso added by it is intended to be retrospective in its operation. Every statute is *prima facie* prospective unless by express language or necessary implication it is made to have retrospective operation.

(21) A.I.R. 1951 S.C. 128.
(22) A.I.R. 1952 S.C. 339.
(23) A.I.R. 1957 S.C. 397.
(24) A.I.R. 1962 S.C. 92.

Ajit Singh
v.
State of Punjab
and another

Inder Dev Dua,
J.

Legislature in a democratic set-up like ours, which is governed by Rule of law, is, by and large, expected to speak and lay down mandates for future guidance, for the simple reason, that citizens are entitled to have due notice of the law which is to govern their conduct and dealings. This rule of *prima facie* prospectivity is founded on sense of fairplay and is rooted in judicial foreboding or premonition that retrospective laws are characterised by want of notice and lack of knowledge of past conditions, and that such laws, disturb feelings of security in past transactions. What I have just said about statutes in general, applies with equal force to the construction of the constitutional instruments. The construction of express language does not, normally, pose any serious problem. It is in cases where recourse is to be had to the arguments of necessary implication that difficulty usually arises. In dealing with the problem of retrospectivity in such cases, it is not at all easy to establish definite criteria upon which judicial decisions can be foretold. A law is usually not supposed to act unreasonably upon the rights of those to whom it applies, which seems to mean, that, it should not be presumed ordinarily to interfere with, or divest, a vested right. But here again, it is not easy to assign the precise meanings to the term 'vested right', and there does not seem to be any fixed rigid legal principle which can safely be pursued to an inevitable conclusion. Vested right apparently means no more than right which under particular circumstances will, on equitable grounds, be protected from legislative interference; being a right resting on equities, it must, from its very nature, have reasonable limits and restrictions in the background of general welfare and public policy, which seeks the equal and impartial protection of the interests of all. In this view, statutes affecting inchoate rights, or remedial in nature, are often intended to operate retrospectively. Same is the case with statutes dealing with procedure. But here again, normally, steps already taken are not affected unless a contrary intent is plainly manifested. The Court has thus in each case to find out the legislative intention, the various rules of construction serving merely as aids to the Court in search for such intention. In this judicial search, the presumption which may appropriately be kept in view that the law-maker has a definite purpose in every enactment and has adopted and formulated the subsidiary provisions in harmony with that purpose, that these are needful to

Ajit Singh
v.
State of Punjab
and another

Inder Dev Dua,
J.

accomplish it, and, that if that is the intended effect, they will conduce to effectuate it. The purpose, by and large, serves as a touch stone and the key to the legislative intent. The language of the 17th Amendment, so far as the further proviso is concerned, does not suggest, *prima facie*, that it was intended to be retrospective in its operation. No purpose suggesting retrospectivity has been seriously pointed out. When construed along with the amendment in clause (2) of Article 31-A, which makes the amended definition of the expression "estate" expressly retrospective, the conclusion becomes almost irresistible that the draftsman did not intend the further proviso to be retrospective, and the implication to the contrary would accordingly seem to be wholly misconceived. The existence of Explanation added to the amended Ninth Schedule to the Constitution by means of which acquisitions under the Rajasthan Tenancy Act No. III of 1955 in contravention of the newly added second proviso have been declared to be void, instead of assisting the petitioner's submission seems to me, on the other hand, some what to go against him. The second proviso must, therefore, be held to be prospective and not retrospective in its operation.

The contention that even while operating prospectively, this proviso covers the provision in the scheme, which affects small land-holders, is based on the argument that the scheme does not create any vested rights till after the entire scheme is worked out on the final conclusion of the repartition proceedings. According to the submission, the rights of the holders remain till then inchoate. Support for this submission has been sought from the scheme of the Act, and reliance has mainly been placed on sections 23-A and 24. Under section 24, the scheme is to be deemed to have come into force as soon as the persons entitled to possession of holdings under the Act have entered into possession. The possession of the allottees is to remain undisturbed until a fresh scheme is brought into force or a change is ordered in pursuance of provisions of sub-sections (2), (3) and (4) of section 21 or an order is passed under sections 36 or 42. Under section 23-A, as soon as the scheme comes into force, the management and control of all lands assigned or reserved for common purposes of the village under section 18—

(a) in the case of common purposes specified in section 2(bb) (iv) in respect of which the management

Ajit Singh
v.
State of Punjab
and another

Inder Dev Dua, J.

and control are to be exercised by the State Government, shall vest in the State Government; and

(b) in the case of any other common purpose, vest in the Panchayat of that village and the State Government or the Panchayat, as the case may be, are entitled to appropriate the income accruing therefrom for the benefit of the village community and the rights and interests of the owners of such lands stand modified and extinguished accordingly.

It is urged that it is only when the rights and interest of the owners of such lands stand modified and extinguished that a vested right comes into being; prior to that stage, the provisions in the scheme give rise to mere inchoate rights, which are open to variation without serious objection.

The question posed is certainly of considerable importance, and cogent arguments can be put forth both pro and con, but on proper balancing and adjusting the consideration for and against, in the light of the purpose and scheme of the Act, I am inclined, as at present advised, to hold, on the arguments addressed at the bar, that the rights under the scheme become vested as soon as it is sanctioned by the Settlement Officer, and the further proceedings of repartition, etc., merely relate to the carrying out or enforcement or execution of the scheme. The fact that it may be open to the higher authorities in certain circumstances to vary or modify the scheme, or to replace it by a fresh scheme, would not by itself affect the question, that the scheme as sanctioned finally determines the rights of the parties which become vested from that stage onwards. In the case in hand, it has not been shown that the original scheme, as sanctioned by the Settlement Officer, has been varied or modified. I would, therefore, refrain from expressing any opinion on the present occasion on a contingency which may arise out of variation or modification of a scheme. That contingency may have to be examined from aspects which it may not be easy to visualize in vacuum at this stage. As at present advised, therefore, and on the arguments addressed to us, I am unable to persuade myself to hold that the 17th amendment, in so far as it adds the further proviso, affects the scheme in question.

Ajit Singh
v.
State of Punjab
and another
————
Inder Dev Dua, J.

This brings me to the question whether the assignment of land for common purposes is acquisition. The controversy on this point seems to centre round Article 31(2-A) of the Constitution which lays down that where a law does not provide for the transfer of the ownership, or right to possession of any property, to the State or to a Corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property. The learned Advocate-General has submitted that providing for right to possession of any property means requisitioning of such property, and compulsory acquisition, according to this sub-article, is confined only to the transfer of ownership. In the case in hand, ownership has not been transferred in law and it is only the management and control which vests in the village Panchayat concerned or the State, as the case may be. This may amount to compulsory requisitioning, but the further proviso introduced by the 17th Amendment, with which we are concerned, hits only acquisitions by the State leaving requisitioning untouched. The petitioner's learned counsel has, on the other hand, placed his reliance on the observations of Tek Chand, J. in *Munsha Singh's case* and on the Supreme Court decision in *Ranjit Singh's case*, the relevant passage from which has been reproduced above. In this connection, it may be remembered that the further proviso introduced in Article 31-A(1) speaks of payment of compensation only in case of acquisition by the State of land within the ceiling limit applicable to the persons mentioned therein. Where such land is assigned to a village Panchayat or the State for the common purpose, it does not seem to me to provide technically speaking for the transfer of ownership, and indeed it is not the petitioner's case that title has actually passed to the Panchayat or the State. What is argued is that all the ingredients of ownership are taken away and what is left with the owner is merely the husk or the shadow. As at present advised, I find some difficulty in readily agreeing with this submission because the property, though vesting in the Panchayat, or the State Government, as the case may be, has been reserved for common purposes in which the entire village community including the original holder is interested as equal sharer, and is entitled to secure the benefit thereof in common with all the co-beneficiaries. The State Government or the

Ajit Singh *v.* State of Punjab and another

Inder Dev Dua, J.

Panchayat are merely empowered to manage and appropriate the income accruing from the property for the benefit of the village community, including the original holder, and for no other purpose. It is only the right to transfer, or, to the exclusive use or appropriation, of which the original holder has ben deprived.

The benefits of the use of the land reserved for common purposes are assured to the original holder in common with all the other members of the community. Whether this can be considered to be acquisition as distinguished from requisitioning is a question which does not seem to be capable of an easy answer. However, keeping in view the general scheme and purpose of the Act, the scales do seem to me *prima facie* to be somewhat inclined in favour of the view that the statutory vesting of the property in the State Government or the Panchayat, as the case may be, under the Act, when it is reserved for common purposes, is perhaps not intended to amount to acquisition within the contemplation of the second proviso added to Article 31-A by the 17th Amendment. But I should not like to express any considered opinion on this somewhat difficult and vexed point on the present occasion, leaving it to be settled if necessary in a more appropriate case.

In the result this petition fails and is dismissed but without costs.

In Civil Writ 1207 of 1965 Shri Harbhagwan Singh has practically nothing to add and indeed it is not disputed that this writ petition stands or falls with Civil Writ No. 663 of 1965. This writ petition will also stand dismissed but without costs.

In Civil Writ No. 1182 of 1965, a preliminary objection has been raised that Joginder Singh *mukhtiar-i-am* of the petitioner had previously filed in this Court a writ petition against the impugned orders of the Additional Director, dated 30th October, 1964 and of the Assistant Director, dated 5th March, 1958, which was dismissed *in limine* by a Division Bench on 21st January, 1965. This fact has been supressed by the petitioner; therefore, it is pressed that this Court should decline to go into the merit of the controversy. A copy of the order of dismissal which is attached with the

Ajit Singh
v.
State of Punjab
and another

Inder Dev Dua,
J.

return does show that the writ petition by Joginder Singh, son of Waryam Singh, (Civil Writ No. 182 of 1965) challenging orders dated 30th October, 1964 and 5th March, 1958 was dismissed *in limine*. In support of the contention that the earlier dismissal serves as a bar to the present petition, reliance has been placed on *Daryao and others v. State of U.P.* (25) *and Piara Singh* v. *The Punjab State and others* (26). The preliminary objection is worthy of consideration, but this apart, on the merits too we are not convinced that there is any distinguishing feature which would justify a different order. Shri V. C. Mahajan, has, however, referred to some observations of Fazl Ali, J. in his separate judgment in *Keshavan Madhava Menon* v. *The State of Bombay* (21) from which support is sought for the submission that pending finalisation of the scheme if the Constitution is amended, the amendment can be taken advantage of but, in my opinion that observation does not support the counsel. This petition thus also fails and is dismissed but without costs.

PREM CHAND PANDIT, J.—I agree.

B.R.T.

APPELLATE CIVIL.

Before S. K. Kapur, J.

JAI KISHEN,—*Appellant.*

versus

RAM CHANDER,—*Respondent.*

S.A.O. No. 44-D of 1964.

1965

October, 5th.

Delhi Rent Control Act (LIX of 1958)—Ss. 4 and 9—Tenant against whom decree for ejectment has been passed—Whether can make an application for fixation of standard rent.

Held, that an application validly presented by a person, who was a tenant, does not lose its validity merely because a decree of ejectment has been passed against him. Under section 4 of the Delhi Rent Control Act, 1958, every agreement for payment of rent in excess of the standard rent has to be construed as if it were an agreement for payment of the standard rent only. That being so, no tenant has any liability to pay to the landlord anything beyond the standard rent. A person, who had been a tenant, can, therefore, notwithstanding an order for ejectment, go to the Court and ask for the fixation of the standard rent. A

(25) A.I.R. 1961 S.C. 1457.
(26) I.L.R. 1962 (2) Punj. 583=1962 P.L.R. 547.