determine Rs. 5 lakhs as compensation payable which will be distributed in the same proportion as the award already determined. The insurance company shall be liable to make the payment. The award is otherwise set aside and the matter is remitted to the Triubunal for fresh determination in the light of the guidelines given above. I have made this direction for remand only in view of the fact that the case is not relatively too old and the family's distress could be assuaged by the interim compensation determined and help the parties to arrive at a compensation which is reasonable and just by letting in appropriate evidence.

(9) The appeal is disposed of as above.

(10) For appearance of parties before the Tribunal at Fatehgarh Sahib on 10th June, 2011.

A. AGG.

Before Jasbir Singh & Augustine George Masih, JJ.

MAHATAM SINGH AND OTHER,—*Petitioners*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 15509 of 2007

20th May, 2011

Constitution of India, 1950—Art. 13, 14, 16, 19, 21, 31-A & 226/227—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948—Ss. 2(bb), 18, 21, 23-A—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Amendment Act, 2007—S. 42-A—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules,1949—RL.& 16(ii)—Insertion of Section 42A challenged as being illegal, arbitrary, unconstitutional and colorable increase of power—Petitioners contend amendment contemplates acquisition by State of land without paying any compensation and Section 21 of Consolidation Act, 1948 virtually obliterated—Nullifies directions given by Court in Gurjant Singh's case to redistribute Bachat Land among

proprietors who had contributed land for common purpose—Held amendment not colourable exercise of power—No challenge to competence of Legislature—No amendment made to definition of 'Common Purpose'—Only enlarges scope of definition of common purpose cannot be said to be against the spirit of Parent Act—Petition dismissed.

Held, That the competence of the legislature to enact Section 42-A is not under challenge, therefore, the law as laid down in S.S. Bhola's case (*supra)* has also not been violated. The contentions thus, of the petitioners are not accepted.

(Para 13)

Further held, that Section 2 (bb) which defines 'Common Purpose'. Definition has a very sweep. Common purpose, according to the definition, means any purpose in relation to any common need, convenience or benefit of the village and includes the purposes which follow. These purposes when seen and analyzed, a common current flowing through this stream is, the common need and convenience of benefit of the village, which is the guiding force. To give effect to these common purposes and others which may crop up with the changes which have come about with the passage of time and advancement in all spheres, leading to change of habits and basic needs and amenities required for common purposes, which is an ever increasing and now with the expanded and increased role, functions and responsibilities of the Panchayats with the Constitution (Seventy-third amendment) Act, 1992, the 'common purposes' is a growing field which, when it falls within this definition, would require land. The definition thus cannot be termed as a restrictive one but is an ever expanding and need based common purposes of the village.

(Para 24)

Further held, that the amendment which has been brought about, is consistent with the provisions of the Constitution and the Legislature also has the competence to enact the same, which is not under challenge. It cannot be disputed that in exercising legislative powers, the Legislature can enact law with retrospective effect which may have the effect of making the decision of this Court in the case of Gurjant Singh's case (*supra)* ineffective but in the light of the affidavit, dated 4th August, 2010 filed by

the State of Punjab during the course of hearing stating therein that all judgments, decrees, orders or decisions of any Court or any authority or any officer where partition of *Jumla Malkan* lands has been implemented/ given effect to before the date of notification of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Amendment Ordinance 2007, i.e. 22nd May, 2007, the amendment would not be applicable. The stand of the State is very reasonable, just and equitable which cannot be faulted with.

(Para 25)

Further held, that in view of the above, the vires of Section 42-A in the East Punjab Holding (Consolidation and Prevention of Fragmentation) Amendment Act, 2007 (Punjab Act No. 6 of 2007) (Annexure P-1) inserted after Section 42 and before Section 43 in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 are upheld and we hold that the Act is valid. However, its applicability will be as per the affidavit, dated 4th August, 2010 filed by the State of Punjab, as mentioned above.

(Para 26)

M. L. Sharma, Advocate, Ashok Aneja, Advocate, P. S. Goraya, Advocate, R. K. Garg, Advocate, Jatinder Singla, Advocate, R. K. Sharma, Advocate, R. S. Chauhan, Advocate, Sarjit Singh, Sr. Advocate, Vikas Singh, Advocate, M.L. Saggar, Sr. Advocate, G..P. Vashisht, Advocate, Sanjay Vij, Advocate, J. S. Thind, Advocate, G.. S. Brar, Advocate, Sanjeev K. Patial, Advocate, H.N.S. Gill, Advocate, J.S. Toor, Advocate, S.S. Salar, Advocate, Onkar Singh, Advocate, Geeta Sharma, Advocate, Atul Lakhanpal, Sr. Advocate, with Arjun Lakhanpal, Advocate, B.S. Sewak, Advocate, K.S. Chahal, Advocate, Sanjay Gupta, Advocate, Amarjit Markan, Advocate, M.S. Kang, Advocate, S.D. Sharma, Sr. Advocate, with Bindu Goel, Advocate, Harsh Bunger, Advocate, Vikram Singh, Advocate, S.P. Sharma, Advocate, *for the petitioner(s)*.

Reeta Kohli, Addl. A.G., Punjab. S.S. Bhinder, Advocate, S.S. Hira, Advocate, Amrik Singh, Advocate, Navjeet Sodhi, Advocate, H.K. Aurora, Advocate, Munish Gupta, Advocate, *for the respondent(s)*.

AUGUSTINE GEORGE MASIH, J.

(1) By this one order we proppse to dispose of a bunch of 53 writ petitions challenging the vires of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Amendment Act, 2007 (Punjab Act No. 6 of 2007) and the consequential instructions, order and letters issued by the Authorities under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948.

(2) CWP Nos. 15509 of 2007, 9161 of 2010, 18510 of 2007, 14342 of 2010, 13998 of 2010, 10826 of 2010, 19255 of 2007, 16542 of 2007, 3928 of 2008, 2073 of 2008, 4300 of 2008, 10190 of 2008, 868 of 2008, 4538 of 2008, 8116 of 2008, 21101 of 2008, 878 of 2008, 4402 of 2008, 15196 of 2008, 8117 of 2008, 4212 of 2009, 19544 of 2007, 14567, 4537, 14483 and 14961 of 2010, 2176 and 5826 of 2008 are cases where only the vires of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Amendment Act, 2007 (hereinafter referred to as 'the Consolidation Act, 2007') (Punjab Act No. 6 of 2007),—*vide* which Section 42-A stands inserted after Section 42 and before Section 43 in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as 'the Consolidation Act, 1948') have been challenged being illegal, arbitrary, unconstitutional and in colourable exercise of the powers by the State. In CWP Nos.14481 of 2010, 15858 of 2010, 12307 of 2009, 15926 of 2010, 12322 of 2010, 19201 of 2008, 7110 of 2009, 11163 of 2009 and 11960 of 2009 apart from challenging the vires, challenge has been posed to instructions dated 14th November, 2007 and letter dated 14th July, 2009. In CWP Nos. 15689 of 2008, 840 of 2008, 5517 of 2008, 3492 of 2009, 18494 of 2010, 4547 of 2010, 13157 of 2008, 19265 of 2007, 7410 of 2008, 5947 of 2008, 4554 of 2010, 5166 of 2009, 8051 of 2008, 4659 of 2010, 5413 of 2008 and 16874 of 2007 not only the vires but challenge has been also made to the orders passed by the Director, Consolidation rejected the claim of the petitioners in the light of the amendment under challenge in these writ petitions.

(3) It is the contention of the petitioners that the above impugned Act, which came into force on 23rd July, 2007, is ultra vires to the Constitution being not protected under Article 31-A (i) (a) of the Constitution

of India as the same is not agrarian and non-beneficial to the villagers as also the proprietors of the village. By this amendment, proprietary rights of the land owners in the village stand extinguished and it amounts to acquisition of land without paying any compensation. This is in violation of Article 31-A of the Constitution of India and contrary to the judgment of the Supreme Court in the case of **Bhagat Ram,** *versus* **State of Punjab and others (1).** It takes away the fundamental rights enshrined under Articles 14, 19 and 21 and 31-A of the Constitution of India. Section 42-A as introduced by the amendment is in direct conflict with Section 42 of the Consolidation Act, 1948. The amendment, which has been brought about by the Consolidation Act, 2007, is an act of colorable exercise of power by the Executive through the Legislature so as to perpetuate the illegality committed during the consolidation operations as contemplated under Section 21 of the Consolidation Act, 1948 read with Rule 7 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1948 (hereinafter referred to as 'the Consolidation Rules, 1949') was not given effect to and by this amendment, Section 21 has been virtually obliterated. The purpse as enumerated for bringing about the amendment in the Consolidation Act, 1948 is totally alien to the concept of the Parent Act as the scope of definition 'common purpose' as provided under Section 2 (bb) has been enlarged thereby making it unlimited, unbridled, absolute and non-agrarian. Although the definition has not been amended but the intent is apparent from the objects and reasons spelt out for bringing about the amendment which amounts to colourable exercise of powers. The amendment has also been challenged on the ground that it nullifies the direction given by this Court in its judgment in the case of **Gurjant Singh,** *versus* **Commissioner, Ferozepur Division (2),** wherein the Court directed that the authorities under the Consolidation Act, 1948 should redistribute the Bachat land amongst the proprietors according to their shares throughout the States of Punjab, Haryana and villages forming part of Union Territory, Chandigarh, who had contributed their land for common purposes. This judgment was challenged before the Hon'ble Supreme Court by the State of Punjab wherein the objections only with regard to certain observations, where time was specified for completing this exercise was fixed, were raised. The same were deleted from the passage of the impugned judgment

(1) AIR 1967 SC 927

(2) 2000 (2) PLR 347

by the Supreme Court, rest of the directions issued by this Court were accepted by the State of Punjab and, therefore, by this impugned amendment, the effect of the directions has not only been nullified rather the same have been violated, which is not permissible in law. The amendment is so worded so as to make it retrospective in operation which has the effect of taking away the vested rights of the land owners. Even the rights created and settled by any judgment, decree, order of decision of any Court, authority or officer has been taken away, which is illegal and violates the principle of separation of powers as provided under the Constitution.

(4) This challenge to the vires has been responded to by the State by asserting that the consolidation of the holdings was carried out as per the Consolidation Act, 1948 which stood completed around 1980. Under Section 23-A of the Consolidation Act, 1948, control and management of such lands which were reserved under Section 18 for common purposes as defined under Section 2 (bb) by making proportionate cuts out of the village landowners' holdings. As per Rule 16 (ii) of the Consolidation Rules, 1949, such land vest in the proprietary body of the village and has been entered in the column of ownership of record of rights as 'jumla Malkan Wa Digar Haqdaran Arazi Hassab Rasad Raqua'. Neither the Consolidation Act, 1948 nor the Consolidation Rules, 1949 provide for partition or distribution of this land amongst the proprietors of the village. The amendment stipulates that Jumla/Mushtarka lands shall be utilized and continue to be utilized for common purposes. The proprietary rights of the petitioners or any other land holder have not been away as alleged. The doubt expressed by the petitioners with regard to the land meant for common purpose to be used for commercial ventures has been dispelled and it has been reiterated that the said land would be used only for common purposes as provided in Section 2(bb) of the Consolidation Act, 1948. The control and management of these lands is with the Gram Panchayat or the State Government under Section 23-A and would continue as such, therefore, there was no question of transfer of the title or control and management of this land to any private individual or company or agency, as alleged. It is denied that the land is being acquired or the ownership rights of the proprietors of the land holders of the village stand extinguished by the said amendment. It has been denied that the ownership of the land would change in the name of the Government by virtue of the impugned amendment. The term 'Common Purposes' has

been defined under Section 2(bb) of the Consolidation Act, 1948 and no amendment has been brought about in the said definition. This definition is an inclusive definition which is not exhaustive but is open and wide, therefore, keeping in view the intent of the said definition, the present amendment has been brought about especially in the light of the future requirements which are likely to arise in view of the Constitution (Seventy-third Amendment) Act, 1992 by which more powers to the Panchayats stand devolved giving it larger role to play. Section 42-A of the impugned Act does not, in any manner, obliterate or render redundant Section 42 of the Consolidation Act, 1948. Section 42 can be invoked by the Government to examine and scrutinize any case for the purpose of propriety and an order can be made under this Section only if such impropriety or irregularity comes to its notice. No right of appeal/revision is available to an individual under Section 42 of the Act, however right of appeal as available with the individual land holders under Section 21 of the Act, is still intact. The allegation with regard to nullifying the directions issued by this Court in Gurjant Singh's case *(supra)* by the amendment and that the amendment is a colourable exercise of powers are denied.

(5) During the course of hearing, an affidavit dated 4th August, 2010 in CPW No. 13157 of 2008 was filed by the State of Punjab wherein it has been stated that wherever the order of partition of Jumla Malkan Lands has been implemented/given effect to before the date of notification of 'The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Amendment Ordinance 2007, i.e. 22nd May, 2007", the present amendment would not be applicable.

(6) Counsel for the parties in these writ petitions have refferred to various earlier judgments of this Court as well as the Supreme Court in support of their respective contentions, which have been noted above, but reference to all these judgments may not be necessary at this stage and the same would be referred to, as and when required considering their relevancd and applicability.

(7) An Amendment Bill was introduced in the Punjab Vidhan Sabha purporting to amend the Consolidation Act, 1948. The Bill was passed by the State Laegislature on 22nd May, 2007, on which day an Ordinance was promulgated called 'The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Amendment Ordinance 2007 (Punjab

Ordinance No. 3 of 2007) incorporating Section 42-A and was notified on 22nd May, 2007. Clause 1(2) of the Ordinance said that it shall come into force at once. The Bill passed by the Legislature received the assent of the Governor of Punjab on 19th July, 2007 and became The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Amendment Act 2007 (Punjab Act No. 6 of 2007) which was published on 23rd July, 2007. As per Section 1(2) of this Act, it shall come into force at once. As per Section 2, in the Consolidation Act 1948 after Section 42, Section 42-A stood inserted. Section 3(1) repealed The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Amendment Ordinance, 2007 and Section 3(2) saved anything done or any action takent under the principal Act, as amended by the Ordinance referred to in sub-section (1), and shall be deemed to have been done or taken under the principal Act, as amended by this Act.

(8) Tbe basic ground of challenge to the constitutional validity of the amendment is that it violates Articles 14, 19, 21 and 31-A of the Constitution of India. The primary plank of attack of the counsel for the writ petitioners is that by this amendment, the land stood acquired by the State without paying any compensation to the land holders as the ownership stands transferred and their proprietary rights stood extinguished which is not permissible in law as held by the Supreme Court in various judgments but reference to the judgment of the Hon'ble Supreme Court in the case of **Bhagat Singh** *(supra)* would be enough. There is no dispute with regard to the principle that the proprietary rights cannot be taken away or the land cannot be acquired without paying adequate compensation for the same. But in the case in hand, this contention of the petitioners is totally misplaces as Section 42-A which has been inserted after Section 42 of the Consolidation Act, 1948 does not indicate the same. For ready reference, Section 42-A of the Consolidation Act, 1948 is reproduced, which reads as follows :—

> "42-ANotwithstanding anything contained in this Act or in any other law for the time being in force, or in any judgment, decree, order or decision of any Court, or any authority, or any officer, the land reserved for common purposes whether specified in the consolidation Scheme or not, shall not be partitioned amongst the proprietors of the village, and it shall be utilized and continue to be utilized for common purposes."

(9) The language of the Section primarily prohibits partition of the land which has been reserved for common purposes, whether specified or not under the consolidation scheme, amongst the proprietors of the village. It does not touch the ownership of the land at all. However, under Section 23-A only the management and control of this land vests with the Panchayat or the State Government depending upon the purpose for which the land was assigned or utilized. Rule 16 (ii) of the 1949 Rules states that such lands vest in the proprietary body of the village and the entry in the revenue record would reflects the same.

(10) That apart, it is the specific stand of the State before this Court that the proprietary right of the land holders shall not be affected and the land shall continue to be the ownership of the proprietary body of the village as provided in Rule 16 (ii) of the Consolidation Rules, 1949. It has further been stated that only management vests with the Gram Panchayat or the State Government for the common benefits of the village community as provided under Section 23-A of the Consolidation Act, 1948, which would allay the doubts of the petitioners with regard to the acquisition of land by the State thereby extinguishing their rights of ownership over the land. This thus, results in failure of challenge to the vires of this amendment on the ground of violation of Articles 14, 19, 21 and 31-A of the Constitution.

(11) Section 42 of the Consolidation Act, 1948 operates in its sphere which confers powers on the State Government to call for proceedings at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartiton made by any officer under the Consolidation Act, 1948. Section 42 does not confer any right of appeal or revision on an individual but is a discretionary power with the Government. This power, under no circumstances, can be said to have been curtailed by the insertion of new Section 42-A by the impugned Consolidation Act, 2007, rather it has addressed and redressed a difficulty which had cropped up during the working of the Act with regard to lands which were reserved for common purposes but were not specified in the consolidation scheme. Such lands, as per Section 42-A, Shall be utilized and continue to be utilized for common purposes and will not be partitioned amongst proprietors of the village. These two Section operate in totally different spheres. Their scope, applicablity and field of operation are distinct as stated above and, therefore, the contention of the petitioners that with the amendment, Section 42 of the Consolidation Act, 1948 stands

obliterated, is without any basis. At the cost of repetition it is again reiterated that Section42 does not confer any right of appeal or revision on an individual and in case a person is aggrieved by re-partition, which is done under Section 21, the remedy is available in this very Section itself, wherein firstly an aggrieved person by the re-partition may file written objection within 15 days of publication which have to be considered and decided under sub-section (2). If any person is aggrieved by the order of the Consolidation Officer passed under sub-section (2), appeal has been provided under sub-section (4). There is, thus, ample remedies available to the aagrieved persons under the Act itself. The assertion of the petitioners that Section 42 stands obliterated by introduction of Section 42-A is under misplaced noion and belief which cannot be accepted.

(12) Another ground pressed into service by the petitioners is that it at is a colourable exercise of powers by the Executive through the Legislature but that also does not cut much ice. The Hon'ble Supreme Court in **S.S.Bhola and others** *versus* **B.D. Sardana and others (3),** has, in para-132, held as follows with regard to the colourable exercise of powers.

> "132.Colourable legislation would emerge only when a legislature has no power to legislate on an item either because it is not included in the list assigned to it under the respective entries in the Seventh Schedule to the Constitution or on account of limitations imposed either under Part III of the Constitution relating to Fundamental Rights or any other power under the Constitution. As the legislature enacts a statute on an assumption of such power, but when on examination, if it is found that it has travelled beyond its power or competence or in transgression of the limitations imposed by the Consititution itself, such an enactment is called a colourable legislation. It has reference only to the legislative incompetence and not to the power as such. If the legislature enacts law in the pretext of the exercise of its legislative power, though actually it did not possess such power, the legislation to that extent becomes void as the legislature makes its Act only in pretense of and in purported colourable exercise of its power."

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(3) (1997) 8 SCC 522

(13) In this case, there is no challenge to the competence of the Legislature to enact Section 42-A,—*vide* the impugned 'the Consolidation Act, 2007' but has been got legislated by the Executive so as to perpetuate the illegality committed by it while implementing the unamended Act. It has been contended that without amending the definition of 'Common Purpose', its scope has been widened by using words such as 'development' in the reasons and objects for bringing about the amendment in the Act. It has further been stated that the reasons for amendment not only enlarge the scope of the definition 'Common Purpose' but also incorporate the projects like focal points, grain markets etc. which are not meant for agrarian or common purpose but are commercial ventures. The submission, thus is that the very definition stands violated by this intention and when read in the context of the purpose, Section 42-A cannot said to be in consonance with the purpose for which Consolidation Act, 1948 was legislated. This assertion may appear to be attractive but in the light of the fact that Section 2 (bb) which defines 'Common purpose' has not been amended, mere mention of projects like focal points, grain markets etc. will not be enough to show that Section 42-A is against the spirit of the Parent Act i.e. Consolidation Act, 1948 and the purpose, for which it was enacted, nor does it enlarge the scope of the definition of common purpose unless it is itself amended. No purposes alien to the common purpose as defined can be imported which is not part of the substantive statute itself. Section 42-A, as introduced by the Consolidation Act, 2007, does not indicate any of these purposes. The preamble of the Act or the reasons or objects for bringing about the amendment are not relevant and are not to be referred to if the language of the Statute is clear and unambiguous. The literal interpretation should be the preferential mode for understanding the scope, applicability, purpose and effect of the Statute. Reference to supportive and explanatory text which is not part of the provisions of the Statute should not be resorted to. Here, there is no ambiguity or doubt which would require reference to the reasons or purposes for amendment. Further, the State of Punjab had categorically stated in the reply that this land would be used for no other purpose except for the common purpose as defined under the Act. A specific denial has come with regard to the assertion of the petitioners that the land would be used for commercial purposes or that the title or control or management of the land in question shall be transferred to any private individual or company or agency, which when tested in the context and as per the provisions of Consolidation Act, 1948 and the Consolidation Rules,

1949, appears to be correct. Under Section 18, lands are reserved for common purposes as defined under Section 2 (bb) by imposing proportionate cuts of the landowners' holding. Under Section 23-A, control and management of such lands vest with the Gram Panchayats or the State Government depending upon the purpose for which these lands were assigned or utilized. As per Rule 16 (iii), such lands vest in the proprietary body of the village and stands entered in the column of ownership of records of rights as 'jumla Malkan Wa Digar haqdaran Arazi Hassad Rasad Raqba'. The apprehension of the petitioners is misplaced and carry no weight. Further, the competence of the legislature to enact Section 42-A is not under challenge, therefore, the law as laid down in S.S. Bhola's case *(Supra)* has not been violated. The contentions thus, of the petitioners are not accepted.

(14) Now reverting to the contention of the petitioners that the impugned amendment violates the directions given by this Court in Gurjant Singh's case *(supra)* and has been enacted to nullify the effect of the directions given by this Court. For appreciating this contention of the petitioners, the directions as given by this Court in Gurjant Singh's case *(supra)* need to be referred to here. Para 17 of the said judgment reads as follows :—

> "17. Before we may part with this order, we would like to mention that several cases of this nature are being filed amost every day as is also informed to us by the learned Counsel representing the parties. It appears to us that gram panchayat even though conscious of the fact that such lands cannot possibly belong to it rakes up the issue primarily for the reason that some individuals have occupied the Bachat land. The present case also provides such an example. It has been repeatedly held by this Court and reference whereof has already been made above that the unutilised land after utilising the land ear-marked for the common purposes, has to be redistributed amongst the proprietors according to the share in which they had contributed the land belonging to them for common purposes. This exercise, it appears, has not been done throughout the States of Punjab and Haryana and villages forming part of Union Territory, Chandigarh even through there is a specific provision for doing that. We have already reproduced the relevant sections of the Act which in turn do contain the provision of re-partition. This

non-exercise of statutory provision has led to widespread litigation in State of Punjab and Haryana and villages forming part of Union Territory, Chandigarh. With a view to curb this unnecessary and avoidable litigation as also keeping in view the common good and benefit of proprietors who had contributed land belonging to them for common purposes, we not only direct in this case that the concerned authorities under the Act should redistribute the Bachat land amongst the proprietors according to their shares but this exercise must be done throughout the State of Punjab and Haryana and villages forming part of Union Territory, Chandigarh. A copy of this order, thus, be sent to the Chief Secretaries of Punjab and Haryana, Civil Secretariat, Chandigarh and Adviser to the Administrator, Union Territory, Chandigarh with a direction that proper instructions be passed on to the concerned authorities under the Statute to redistribute/re-partition Bachat land amongst the proprietors according to their shares. This exercise be done as expeditiously as possible and preferably within six months fore-partition must commence. Liberty to apply in the event of non-compliance of directions, referred to above."

(15) This judgment was challenged by the State of Punjab in the Hon'ble Supreme Court [Reported as **State of Punjab** *versus* **Gurjant Singh and others (4),** wherein the following order was passed :—

"**S. N. Variava, J.—**Leave granted.

2. Mr. Harish N. Salve, learned Solicitor General submitted that the State of Punjab taken objection only in regard to the following observations made in the impugned judgment: 2000 (2) PLJ 7.

> "This exercise, it appears, has not been done throughout the State of Punjab and Haryana and villages forming part of Union Territory, Chandigarh even though there is a specific provision for doing that xx xxxx
>
> This exercise be done as expeditiously as possible and preferably within six months proceedings for repartition must commence. Liberty to apply in the event of non-compliance of directions, referred to above."

(4) 2002(2) PLJ 438

3. Learned counsel for the respondent submits that he has no objection in deleting the aforesaid portions from the impugned judgment. We allow these appeals to the extent of deleting of the above-said passage from the impugned judgment.

4. These appeals are disposed of accordingly.

Appeal disposed of ."

(16) A perusal of the judgment of the Hon'ble Supreme Court would show that the observation of this Court in Gurjant Singh's case with regard to there being specific provision for doing redistribution/re-partition of Bachat land stood deleted apart from the period fixed by this Court to complete the exercise and commence repartition.

(17) In Gurjant Singh's case *(supra)*, thid Court had gone ahead to issue directions to the States of Punjab, Haryana and Union Territory proceeding on the assumption that there was specific provision for redistributing/re-partition of the land, which was reserved for common purposes but were not specified in the Consolidation Scheme, amongst the proprietors according to their shares. The judgment further, when read in depth, points out that the Court had drawn this conclusion primarily taking into consideration Sections 18, 21, 23-A and 42 of the Consolidation Act, 1948. The judgment thus was on the basis of the interpretation of the provisions of the Act. It was not a case where certain provisions of the Act were held to be *ultra-vires* or were struck down.

(18) The Hon'ble Supreme Court in the case of **Indian Aluminium Co. and others** *versus* **State of Kerala and others (5),** has, after referring to the various earlier judgements of the Hon'ble Supreme Court on the test to determine limit of legislative action *vis-a vis* the Court's verdict or power to adjudicate, restated those principles in para-56 which reads as follows :—

"56. From a resume of the above decisions the following principles would emerge :

(1) The adjudication of the right of the parties is the essential function. Legislature has to lay down the norms of conduct or rules which will govern the parties and the transactions and require the Court to give effect to them;

(5) (1996)7 Supreme Court Cases 637

(2) The Constitution delineate delicate balance in the exercise of the sovereign power by the legislature, executive and judiciary;

(3) In a democracy governed by rule of law, the legislature exercises the power under Articles 245 and 246 and other companion articles read with the entries in the respective lists in the Seventh Schedule to make the law which includes power to amend the law.

(4) Courts in their concern and endeavour to preserve judicial power must be guarded to maintain the delicate balance devised by the Constitution between the three sovereign functionaries. In order that rule of law permeates to fulfil constitutional objections of establishing an egalitarian social order, the repective sovereign functionaries need free play in their joints so that the march of social progress and order remains unimpeded. The smooth balance built with delicacy must always be maintained;

(5) In its anxiety to safeguard judicial power, it is unnecessary to be overzealous and conjure up incursion into the judicial preserve invalidating the valid law competently made ;

(6) The court, therefore, needs to carefully scan the law to find out : (a) whether the vice pointed out by the court and invalidity suffered by previous law is cured complying with the legal and constitutional requirements; (b) whether the legislature has competence to validate the law ; (c) whether such validation is consistent with the rights guaranteed in Part III of the Constitution.

(7) The court does not have the power to validate an invalid law or to legalise impost of tax illegally made and collected or to remove the norm of invalidation or provide a remedy. These are not judicial functions but the exclusive province of the legislature. Therefore, they are not encroachment on judicial power.

(8) In exercising legislative power, the legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its charcter retrospectively. The changed or altered conditions are such that the previous decision would not have been rendered by the court, if those conditions had existed at the time of declaring the law as invalid. It is also empowered to give effect to retrospective legislation with a deeming date or with effect from a particular date. The legislature can change the character of the tax or duty from impermissible to permissible tax but the tax or levy should answer such character and the legislature is competent to recover the invalid tax validating such a tax on removing the invalid base for recovery from the subject or render the recovery from the State ineffectual. It is competent for the legislature to enact the law with retrospective effect and authorise its agencies to levy and collect the tax on that basis, make the imposition of levy collected and recovery of the tax made valid, notwithstanding the declaration by the court or the direction given for recovery thereof.

(9) The consistent thread that runs through all the decisions of this Court is that the legislature cannot directly overrule the decision or make a direction as not binding on it but has power to make the decision ineffective by removing the base on which the decision was rendered, consistent with the law of the Constitution and the legislature must have competence to do the same."

(19) Principles 8 and 9 would be relevant as far as the present case is concerned wherein it has been stated that the legislature cannot exercise its plenary powers under Articles 245 and 246 of the Constitution by merely declaring the decision of a Court of law to be invalid or to be inoperative in which case it would be held to be an exercise of judicial power which is not permissible. However, the Legislature can render judicial

decision ineffective by enacting a valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered condition should be such that the previous decision would not have been rendered by the Court, if those conditions had existed at the time of declaring the law as invalid.

(20) This decision has been further considered by the Hon'ble Supreme Court in the case of **S. S. Bhola and others** *versus* **B. D. Sardana and others (6).** Relevant part of para-174 reads as follows :—

> "174. At the outset it must be borne in mind that in the case of Sehgal as well as Chopra this Court had not invalidated any provisions of the recruitment rules but merely interpreted some provisions of the Rules for determining the *inter se* seniority between the direct recruits and the promotees. The Act passed by the legislature, therefore, is not a validation Act but merely an Act passed by the State Legislature giving it retrospective effect from the date the State of Haryana came into existence and consequently from the date the Service in question came into existence. The power of the legislature under Article 246(3) of the Constitution to make law for the State with respect to the matters enumerated in List II of the Seventh Schedule to the Constitution is wide enough to make law determining the service conditions of the employees of the State. In the case in hand there has been no challenge to the legislative competence of the State Legislature to enact the legislation in question and in our view rightly, nor has there been any challenge on the ground of contravention of Part III of the Constitution. Under the constitutional scheme the power of the legislature to make law is paramount subject to the field of legislation as enumerated in the entries in different lists. The function of the judiciary is to interpret the law and to adjudicate the rights of the parties in accordance with the law made by the legislature. When a particular Rule or the Act is interpreted by a Court of law in a specified manner and the law-making authority forms the opinion that such an interpretation would adversely affect the rights of the parties and would be grossly iniquitous and accordingly a new set of rules or laws is enacted, it is very often challenged

(6) (1997) 8 Supreme Court Cases 522

as in the present case on the ground that the legislatures have usurped the judicial power. In such a case the Court has a delicate function to examine the new set of laws enacted by the legislatures and to find out whether in fact the legislatures have altered and changed the character of the legislation which ultimately may render the judicial decision ineffective. It cannot be disputed that the legislatures can always render a judicial decision ineffective by enacting a valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively as was held by this Court in the case of **Indian Aluminium Co.** *versus* **State of Kerala.** What is really prohibited is that the legislature cannot in exercise of its plenary power under Articles 245 and 246 of the Constitution merely declare a decision of a Court of law to be invalid or to be inoperative in which case it would be held to be an exercise of judicial power. Undoubtedly under the scheme of the Constitution the legislature does not possess the same."

In para-193, it has been held as follows :—

"193. This case is to a great extent *in pari* materia with the case in hand where this Court had earlier interpreted the rules determining the *inter se* seniority between the direct recruits and promotees and thereafter the Haryana Legislature has enacted the Act giving it retrospective effect as a result of which earlier decisions of this Court in Sehgal and Chopra have become ineffective. In **Bhubaneshwar Singh,** *versus* **Union of India** a three Judge Bench of this Court held :

It is well settled that Parliament and State Legislatures have plenary powers of legislation on the subjects withing the field. They can legislate on the said subjects prospectively as well as retrospectively. If the intention of the legislature is clearly expressed that it purports to introduce the legislation or to amend an existing legislation retrospectively, then subject to the legislative competence and the exercise being not in violation of any of the provisions of the Constitution, such power cannot be questioned."

(21) The Court also further held that the exercise of rendering ineffective the judgments or orders of competent Courts by changing the very basis by legislation is a well-known device of validating legislation and such validation legislation which removes the cause of the invalidity cannot be considered to be an encroachment on judicial power."

(22) While applying the above principles as have been laid down by the Hon'ble Supreme Court, the directions issued by this Court in the case of Gurjant Singh's case *(supra)* were primarily based upon the interpretation of the Sections which existed when the said judgment was rendered.

(23) It would need to be noticed here that prior to the incorporation of Section 42-A, there was no provision under the Consolidation Act, 1948 which specifically dealt with the Bachat or surplus land and how the same was to be dealt with. The scheme of the Act as such did not provide an answer to this situation where the land is reserved for common purpose but has not been ear-marked for any specific common purpose. It would not be out of place to mention here that there is no provision under the Consolidation Act, 1948 or the Consolidation Rules, 1949 which provide for partition or distribution of land reserved for common purpose amongst the proprietors of the village and reason for this is not far to be found. The definition of 'common purpose' under Section 2(bb) is the answer, which is inclusive and wide enough, capable of taking care of any common need, convenience or benefit of the village and, therefore, leaves ample scope of utilizing this land in future with changed situations and circumstances. The Legislature was conscious of this and had appropriately defined common purpose. To appreciate this aspect reference to its provisions would be beneficial. Section 2(bb) which defines 'Common Purpose' reads as follows :—

> "2(bb).Common purpose means any purpose in relation to any common need, convenience or benefit of the village and includes the following purposes :—
>
> (i) extension of the village abadi.
>
> (ii) providing income for the Panchayat of the village concerned for the benefit of the village community.

(iii) village roads and paths; village drains, village well, ponds or tanks; village water courses or water channels; village bus-stands and waiting places, manure pits; hada rori, public latrines; cremation and burial grounds; Panchayat Ghar, Janj Ghar; Grazing grounds; tanning places; mela grounds; public places of religious or charitable nature; and

(iv) schools and play grounds, dispensaries, hospitals and institutions of like nature, water works or tubewells managed and controlled by the State Government or not."

(24) The above definition has a very wide sweep. Common purpose, according to the definition, means any purpose in relation to any common need, convenience or benefit of the village and includes the purposes which follow. These purposes when seen and analyzed, a common current flowing through this stream is, the common need and convenience or benefit of the village, which is the guiding force. To give effect to these common purposes and others which may crop up with the changes which have come about with the passage of time and advancement in all spheres, leading to change of habits and basic needs and amenties required for common purposes, which is an ever increasing and now with the expanded and increased role, function and responsibilities of the Panchayats with the Constitution (Secenty-third amendment) Act, 1992, the 'common purpose' is a growing field which when it falls within this definition, would require land. The definition thus cannot be termed as restrictive one but is an ever expanding and need based common purposes of the village. Some purposes as mentioned in this Section 2(bb) do indicate the reservation of land for future needs and requirements which gives an insight and reflection on the intention of the Legislature. Despite there being no provision of return of this type of land to the proprietors of the village by redistribution/repartition but in the absence of any specific provision dealing with the remaining land left out after earmarking the land for the common purposes as per the consolidation scheme, the concept of Surplus/Bachat land was coined and imported. This resulted in proprietors of the village claiming repartition/ redistribution of common lands which were not specified in the Consolidation Scheme. This concept although alien to the scheme of the Consolidation Act, 1948 but in the absence of there being any provision barring resort to such course, the same was accepted and given effect to.

(25) In Gurjant Singh's case, directions, reproduced above, were issued proceeding on this assumption, this we conclude, in the light of deletion of the pasage "This exercise, it appears, has not been done throughout the State of Punjab and Haryana and villages forming part of Union Territory, Chandigarh even though there is a specific provision for doing that" apart from another passage where directions for carrying out the exercise of repartition/redistribution within a specified time limit were given by the Hon'ble Supreme Court in the SLP preferred by the State of Punjab in Gurjant Singh's case *(supra)*. In other words, it can be said that directions were based on the interpretation of the provisions of the statute existent then. With the insertion of Section 42-A of the Consolidation Act, 1948, the legislature has addressed and redressed a difficulty which was earlier not dealt with under the Act and plugged the breach in the channel which un-intendedly creeped in stealthily, draining out the precious water meant for common purpose. Had there been Section 42-A at the time when Gurjant Singh's case was decided, the directions therein could not have been issued as there would have been a specific provision dealing with the land reserved for common purposes which was not specified in the consolidation Scheme. What Section 42-A provides is that land reserved for common purposes whether specified in the consolidation Scheme or not, shall not be partitioned amongst the proprietors of the village and it shall be utilized and continue to be utilized for common purposes notwithstanding anything contained in the Consolidation Act, 1948 or in any other law for the time being in force or in any judgment, decree, order or decision of any Court, or any authority, or any officer. When tested in the light of the principles, as have been laid down by the Hon'ble Supreme Court in **Indian Aluminium Co. and others** *(supra)* and **S. S. Bhola and others** *(supra)*, it cannot be said that in exercise of legislative powers, the legislature has over-ruled, revised or over-ridden a judicial decision which would be thus in violation of the legislative powers rather the Legislature had removed the basis on which the decision had been rendered, which is permissible within and as per the Constitutional Scheme of separation and balance of powers between the Sovereign Functionaries. The amendment, which has been brought about, is consistent with the provisions of the Consititutions and the Legislature also has the

competence to enact the same, which is not under challenge. It cannot be disputed that in exercising legislative powers, the Legislature can enact law with retrospective effect which may have the effect of making the decision of this Court in the case of Gurjant Singh's case *(supra)* ineffective but in the light of the affidavit dated 4th August, 2010 filed by the State of Punjab during the course of hearing stating therein that all judgments, decrees, orders or decisions of any Court or any authority or any officer where partition of **Jumla Malkan** lands has been implemented/given effect to before the date of notification of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Amendment Ordinance 2007 i.e. 22nd May, 2007, the amendment would not be applicable. The stand of the State is very reasonable, just and equitable which cannot be faulted with.

(26) In view of the above, the vires of Section 42-A in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Amendment Act, 2007 (Punjab Act No. 6 of 2007) (Annexure P-1) inserted after Section 42 and before Section 43 in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 are upheld and we hold that the Act is valid. However, its applicability will be as per the affidavit dated 4th August, 2010 filed by the State of Punjab, as mentioned above.

(27) In the light of the above, the instructions dated 14th November, 2007 and letter dated 14th July, 2009 as also the orders impugned in these writ petitions are upheld and the writ petitions filed by the petitioners stand dismissed.

(28) A photocopy of this order be placed on the files of other connected cases.

A. AGG.