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BHAGAT RAM & ORS.

v.

STATE OF PUNJAB & ORS.

December, 2, 1966

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[K. SUBBA RAO, C. J., M. HIDAYATULLAH, S. M. SIKRI,
R. S. BACHAWAT AND J. M. SHELAT, JJ.]

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948)—Scheme reserving land for income of Panchayat—If acquisition—If hit by second proviso to Art. 31A(1) of the Constitution of India.

C

A scheme under the East Punjab Holdings (Consolidation and Prevention of Fragmentation Act) for consolidation of an estate was prepared in 1959. The petitioner, who held land within the ceiling limit, challenged it on the ground that in so far as it makes reservation of land for the income of the Panchayat, it was hit by the second proviso to Art. 31A(1) of the Constitution.

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HELD (*per* Subba Rao C.J., Sikri and Bachawat, JJ.). The essential difference between "acquisition by the State" on the one hand and "modification or extinguishment of rights" on the other, is that in the first case, the beneficiary is the State while in the second, the beneficiary is not the State. As the beneficiary in the instant case was the Panchayat which falls within the definition of the word "State" under Art. 12 of the Constitution, the reservation in the scheme was contrary to the second proviso and must be modified appropriately. [144 D-H]

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The repartition under s. 21 of the Act would not amount to "acquisition" within the second proviso to Art. 31A, because, under ss. 23A and 24 of the Act, till possession has changed, the management and control do not vest in the Panchayat and acquisition would not be complete. Therefore, it could not be said that the acquisition had already taken place before the Seventeenth Amendment, which introduced the second proviso to Art. 31A(1), came into force, and that the scheme was not hit by that proviso. [146 E-H]

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Ajit Singh v. State of Punjab [1967] 2 S.C.R. 143, followed.

Per Hidayatullah and Shelat, JJ : Since the land of the petitioner was reduced to something below the ceiling fixed by law, compensation at a rate which was not lower than the market value must be paid to him. [147 C-F]

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ORIGINAL JURISDICTION : Writ Petition No. 125 of 1966.

Petition under Art. 32 of the Constitution of India for the enforcement of fundamental rights.

Hardev Singh and *S. S. Khanduja*, for the petitioners.

K. L. Gossain, *O. P. Malhotra* and *R. N. Sachthey*, for the respondents.

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The Judgment of SUBBA RAO C. J. and SIKRI and BACHAWAT JJ. was delivered by SIKRI, J. The separate Judgment of HIDAYATULLAH and SHELAT, JJ. was delivered by HIDAYATULLAH.

Sikri, J. This is a petition under art. 32 of the Constitution challenging the scheme made in respect of the consolidation of village Dolike Sunderpur. We have today delivered judgment in *Ajit Singh v. State of Punjab*⁽¹⁾ and most of the points in this appeal are covered by the decision in that case. Two points remain to be dealt with in this case.

The first question that arises is whether the scheme in so far as it makes reservations of land for income of the Panchayat is hit by the second proviso to art. 31A. The scheme reserves lands for phirni, paths, agricultural paths, manure pits, cremation grounds, etc., and also reserves an area of 100 kanals 2 marlas (standard kanals) for income of the Panchayat. We have already held in *Ajit Singh's*⁽¹⁾ case that acquisition for the common purposes such as phirnis, paths, etc., is not acquisition by the State within the second proviso to art. 31A. But this does not dispose of the question whether the reservation of land for income of the Panchayat is acquisition of land by the state within the second proviso to art. 31A. We held in that case that there was this essential difference between "acquisition by the State" on the one hand and "modification or extinguishment of rights" on the other that in the first case the beneficiary is the State while in the latter case the beneficiary of the modification or the extinguishment is not the State. Here it seems to us that the beneficiary is the Panchayat which falls within the definition of the word "State" under art. 12 of the Constitution. The income derived by the Panchayat is in no way different from its any other income. It is true that s. 2(bb) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, defines 'common purpose' to include the following purposes :

"... providing income for the Panchayat of the village concerned for the benefit of the village community."

Therefore, the income can only be used for the benefit of the village community. But so is any other income of the Panchayat of a village to be used. The income is the income of the Panchayat and it would defeat the whole object of the second proviso if we were to give any other construction. The Consolidation Officer could easily defeat the object of the second proviso to art. 31A by reserving for the income of the Panchayat a major portion of the land belonging to a person holding land within the ceiling limit. Therefore, in our opinion, the reservation of 100 kanals 2 marlas for the income of the Panchayat in the scheme is contrary to the second proviso and the scheme must be modified by the competent authority accordingly.

(1) [1967] 2 S.C.R. 143

A This takes us to the second question raised by the State, in the alternative. On behalf of the State it has been argued that acquisition had already taken place before the Seventeenth Amendment came into force, and, therefore, the scheme is not hit by the second proviso to art. 31A. The relevant facts are contained in the affidavit of Jaswant Singh Bhutani, Officer on Special Duty, and are as follows :

B “The village was notified for consolidation *vide* Punjab Government Notification No. 57/G/17041-A dated 1-9-1956 which was duly published and a proper notice under rule 4 of the Consolidation Rules was issued which was also published in the village in the prescribed manner.

C The Scheme was prepared by the Consolidation Officer under the Act in consultation with the rightholders and Advisory Committee of the village on 15-1-1959 and the rightholders were invited to file objections under section 19(1) of the Act against the draft scheme as required within 30 days of the said publication. The objections were

D tendered which were duly considered and after consideration of the same the scheme was confirmed under section 20(3) of the Act by the Settlement Officer, Consolidation of Holdings, on 11-3-1959. The confirmed scheme was also published in the village under section 20(4) of the Act on 25-3-1959. That an area measuring 100 kanals 2 marlas (standard) was reserved for the

E income of the Panchayat according to the requirements of the village. So far as the reservation for the common purposes of the village was concerned, neither the petitioner nor any rightholders of the village filed any objections against the said reservation. In pursuance of the same, the

F repartition of the land was effected on 30-4-59 and the plots of land were allocated to the rightholders as required under the Act. There were 90 objections against repartition under section 21(2) of the Act and all of them have been disposed of. In the meantime, some of the rightholders in village Dolike Sunderpur went to the High Court and filed a writ petition No. 531/1959 and the Hon'ble

G High Court by its judgment and order dated 25-11-1959 quashed the scheme but upon a Letters Patent Appeal filed by the respondents herein, the High Court restored the scheme. The possessions were not transferred in view of the stay orders obtained by the rightholders of that village from the High Court.”

H It is clear from this affidavit that possession has not been transferred in pursuance of the repartition. The learned counsel for the petitioners relies on this fact and says that in view of s. 23A and s. 24 the “acquisition” does not take place till all the persons entitled

to possession of holdings under the Act have entered into possession of the holdings. Sections 23A and 24 read as follows :

"23A. 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, shall vest in the Panchayat of that village which shall also be entitled to appropriate the income accruing therefrom for the benefit of the village community, and the rights and interest of the owners of such lands shall stand modified and extinguished accordingly.

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 affected by the scheme of 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-section (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)."

It seems to us clear from these provisions that till possession has changed under s. 24, the management and control does not vest in the Panchayat under s. 23A. Not only does the management and control not vest but the rights of the holders are not modified or extinguished till persons have changed possession and entered into the possession of the holdings allotted to them under the scheme. Mr. Gosain, the learned counsel for the State, tried to meet this point by urging that by virtue of repartition under s. 21, the rights to possession of the new holdings were finalised and could be enforced. This may be so; but this cannot be equivalent to "acquisition" within the second proviso to art. 31A.

In the result we hold that the scheme is hit by the second proviso to art. 31A in so far as it reserves 100 kanals 2 marlas for the income of the Panchayat. We direct the State to modify the scheme to bring it into accord with the second proviso as interpreted by us, and proceed according to law. There would be an order as to costs.

Hidayatullah, J. This is a petition under Art. 32 of the Constitution challenging the scheme made in respect of the consolidation

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A of the village Dolike Sunderpur. We have in our judgment, in the companion case, dealt with the second proviso to Art. 31A(1) (a). Here too land is reserved for the Panchayat. We have indicated in our judgment in the companion case that no matter for what purpose the acquisition takes place, if the land of a tenant cultivating the land is reduced to something below the ceiling fixed

B by law compensation at a rate which is not lower than the market rate must be paid to him. We have also indicated how this compensation must be worked out. When the Constitution speaks of market value, it is not possible to find compensation in advantages which might accrue indirectly.

C Our brethren have held that the reservation of 100 *kanals* 2 *marlas* to enable the Panchayat to raise an income is contrary to the second proviso and that the scheme must be modified accordingly. Our approach to the problem is different. We have shown in the judgment in the companion case that the test is the deprivation of land which makes the land of a cultivating tenant go below the ceiling fixed for such land by law. If this happens then compensation

D for the acquisition of land which brings down the holding to something below the ceiling must be paid at rates which are not below the market rate. We would accordingly have made the declaration and left the party concerned to demand compensation for land by which his ceiling is reduced. There is no question of looking to the end to which the income may be used and to differentiate between deprivation of one kind and deprivation of another kind. According

E to us the ceiling fixed by law is not to be reduced by acquisition by the State unless compensation at market rate is paid. No other compensatory factor can be taken note of under the proviso. Nor can it avail that the land of which the tenant is deprived is to be put to some other use by the Panchayat thereafter. Such acquisition without compensation is unconstitutional and we cannot add a proviso

F of our own to the proviso enacted in the Constitution. We would accordingly allow the petition making a declaration on the lines indicated and leaving the party to demand compensation if his land is reduced below the ceiling.

In the circumstances we would award no costs.

ORDER

G The scheme made in respect of the consolidation of village Dolike Sunderpur is hit by the second proviso to Art. 31A of the Constitution in so far as it reserves 100 *kanals* 2 *marlas* for the income of the Panchayat. The State is directed to modify the scheme to bring it into accord with the second proviso as interpreted in the majority judgment⁽¹⁾ in Civil Appeal No. 1018 of 1966 and

H to proceed according to law. There would be no order as to costs.

V.P.S.

(1) [1967] 2 S.C.R.143.