

PETITIONER:
ROOP CHAND

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT:
10/10/1962

BENCH:
SARKAR, A.K.
BENCH:
SARKAR, A.K.
DAS, S.K.
KAPUR, J.L.
HIDAYATULLAH, M.
DAYAL, RAGHUBAR

CITATION:
1963 AIR 1503 1963 SCR Supl. (1) 539
CITATOR INFO :
D 1967 SC 295 (56)
D 1977 SC2313 (20)
D 1991 SC2137 (5)

ACT:
Consolidation of Holdings-Appeal to State Government-Power to hear appeal delegated to officer-Decision of such officer-Revision of decision by State Government-Legality of-Fundamental rights-If infringed by illegal order of State Government-East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (Punj. 50 of 1948), ss. 21 (4), 41 (1), 42-Constitution of India, Art. 32.

HEADNOTE:
Under the E. P. Holdings Consolidation and Prevention of Fragmentation) Act, 1948, a scheme, for consolidation of holdings was framed for the petitioner's village and a repartition of the lands was proposed. The petitioner objected to the repartition and contended that under the scheme he was entitled to retain his plots Nos. 635 and 636 and to get some more land adjacent to them in exchange for other lands belonging to him. This contention was rejected by the Consolidation Officer. The petitioner filed an appeal before the Settlement Officer
540

but the appeal also failed. Against this the petitioner filed an appeal before the State Government under s. 21 (4) of the Act, which was heard by Shri Brar, Assistant Director, Consolidation, to whom the power to hear such appeals had been delegated under s. 41 (1). Shri Brar allowed the appeal and the petitioner became entitled to retain plots Nos. 635 and 636. Respondent No. 2 to whom these plots had been given on repartition moved the State Government under s. 42 to revise the order made by Shri Brar, and the State Government set aside the order of Shri Brar and restored that of the Consolidation Officer. The petitioner filed a writ petition in the Supreme Court challenging the order of the State Government contending that under S. 42 it could not interfere with an order made

by itself or by an officer exercising powers of the Government delegated to him under s. 41 (1).

Held (per Das, Sarkar and Dayal, JJ.) that s. 42 did not empower the State Government to interfere with an order passed by an officer to whom the power to hear appeals filed under s. 21 (4) had been delegated by it under s. 41 (1). The words "any order passed by an officer under this Act, in s. 42 did not include an order passed by an officer in exercise of powers delegated to him by the Government under s. 41 (1). Section 21 (4) gives the power to the Government to hear appeals, and an order made in the exercise of that power, whether by the Government itself or by its delegate, would be an order of the Government. Section 42 was applicable to an order made by a subordinate officer exercising independent powers under the Act.

Lakha Singh v. Director, Consolidation of Holdings, Punjab, A. I. R. (1959) Punj. 157, disapproved.

The impugned order infringed the fundamental rights of the petitioner and he was entitled to a writ or direction from the Supreme Court. If the order was allowed to stand the petitioner would be deprived of plots Nos. 635 and 636 which were his property.

Per Kapur and Hidayatullah, JJ.-The State Government had jurisdiction to revise the order made by Shri Brar. Under s. 42 the Government had over-all control at all stages of the Consolidation proceedings. An officer to whom powers were delegated under s. 41, though exercising the powers of the Government was still an officer of the State Government and his order was subject to the power of revision under s. 42. The order made by Shri Brar under s. 21 (4) was an order of repartition and was liable to be revised under s. 42.

541

Lakha Singh v. Director, Consolidation of Holdings, Punjab, A. I. R. (1959) Punj. 157, approved.

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition No. 77 of 1957.

Petition under Art. 32 of the Constitution of India for the enforcement of Fundamental Rights.

Pritam Singh Safeer, for the petitioner.

S. M. Sikri, Advocate-General for the State of Punjab, N. S. Bindra and P. D. Menon, for the respondent No. 1.

N. S. Bindra and Govind Saran Singh, for respondent No. 2. 1962. October 10. The Judgment of Das, Sarkar and Dayal, JJ. was delivered by Sarkar, J. The judgment of Kapur and Hidayatullah, JJ. was delivered by Kapur, J.

SARKAR, J.-This petition under Art. 32 of the Constitution asks for a writ quashing an order purported to have been made under s. 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. It is said that the order was entirely without jurisdiction and if allowed to stand, it would deprive the petitioner of certain lands and so wrongfully affect his fundamental rights under Part III of the Constitution.

The question raised by this petition depends on a construction of certain provisions of the Act which we shall later quote. A general idea of some of the purposes and provisions of the Act will however be useful for deciding that question and may be given now.

Shortly put, one of the objects of the Act appears to be to pool together the entire lands held

542

by different persons in a village and redistribute the same among them on a more utilitarian basis in accordance with a scheme framed for the purpose. The final result that the Act achieves is that instead of his original holding a person is given some other holding. Section 14 gives the State Government the power to declare by notification its intention to frame a scheme for the consolidation of holdings in any area and thereupon to appoint a Consolidation Officer who is to prepare the scheme. Section 19 provides for the publication of the draft scheme prepared by the Consolidation Officer and for objections thereto being made by the persons likely to be affected. It also provides that the Consolidation Officer will submit the scheme with the objections and his suggestions with regard to them to the Settlement Officer and for republication of the scheme with such amendments as may have been made. Section 20 empowers the State Government to appoint Settlement Officers (Consolidation), in this judgment referred to as Settlement Officers. It further provides that if no objections are received to the draft scheme when first published or to the amended scheme when republished, the Settlement Officer shall confirm the scheme and if any objections are received, he may after considering the objections, confirm the scheme with or without modification. It lastly provides that upon confirmation the scheme shall be published again. Sub-section (1) of s. 21 provides that the Consolidation Officer shall carry out a re-partition in accordance with the scheme as confirmed under s. 20. Sub-section (2) provides that any person aggrieved by the repartition may file an objection before the Consolidation Officer. Sub-section (3) gives to the person aggrieved by the order of the Consolidation Officer made under subsect. (2), a right to file an appeal before the Settlement Officer. Sub-section (4) provides that "any person aggrieved by the order of the Settlement Officer (Consolidation) under subsection (3) may within

543

sixty days of that order, appeal to the State Government." Section 22 requires the Consolidation Officer to prepare a new record of rights giving effect to the repartition as finally sanctioned under s. 21.

A scheme under the Act had been framed for village Palrikalan where the petitioner held some lands. The petitioner had no objection to the scheme as such but he had taken objection to the re-partition made under it by the Consolidation Officer on the ground that the repartition was not in accordance with the scheme. The petitioner contended that under the scheme he was entitled to retain plots Nos. 635 and 636 which originally belonged to him and to get some more land adjacent to them in exchange for other lands held by him in the village while under the repartition made by the Consolidation Officer he was being deprived of those plots and was being given lands elsewhere. With the merits of this and the rival contention we are not concerned in this petition.

The petitioner's contention was rejected by the Consolidation Officer and he filed an appeal under s. 21(3) before the Settlement Officer but that appeal also failed. The petitioner thereafter went up in appeal under s. 21(4) against the order of the Settlement Officer.

Now, s. 21(4) provided for an appeal to the State Government but the petitioner's appeal was heard by Shri Brar, Assistant Director, Consolidation of Holdings, Ambala to whom the Government's powers and functions concerning the appeal had been delegated under s. 41 (1) which is in these

terms :

S. 4-1(1) : "The State Government may for the administration of this Act, appoint such persons as it thinks fit, and may by notification delegate any of its powers or functions under this Act to

544

any of its officers either by name or designation."

Shri Brar allowed the petitioner's appeal. As a result of his decision the petitioner became entitled to retain plots Nos. 635 and 636 which he originally owned and Hari Singh, respondent No. 2, to this petition who had on the repartition been given by the Consolidation Officer those plots along with some more adjacent lands, was to be deprived of them. Hari Singh being dissatisfied with the order of Shri Brar moved the Government under s. 42 of the Act and the impugned order was thereupon made. That order set aside the order of Shri Brar and restored that of the Consolidation Officer. As a result of this order, therefore, the petitioner was to be deprived of plots Nos. 635 and 636.

It is now necessary to set out s. 42 on the interpretation of which this petition depends. That section was amended by Act 27 of 1960 with retrospective effect and it is the amended section that has to be considered by us. The amended section is in these terms

S. 42. "The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under this Act call for and examine the records of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit."

The petitioner's contention is that an order which can be interfered with under s. 42 is an order passed under the Act by any officer in his own right and not an order made by the Government itself or by an officer exercising powers of the Government upon delegation under s. 41 (1).

545

The question really is as to the meaning of the words "any order passed..... by any officer under this Act" in s. 42. Do these words include an order passed by an officer in exercise of powers delegated to him by the Government under s. 41 (1) ? We do not think, they do.

Now, there cannot be much doubt that s. 42 makes a distinction between the Government and an officer, because under it the Government is given power to interfere with an order passed by an officer and, therefore, it does not authorise the Government to interfere with an order made by itself. As we understood the learned Advocate-General of Punjab, who appeared for the respondent State of Punjab, he conceded that position. He said that the Government could no doubt have itself heard an appeal preferred under s. 21 (4) instead of getting it heard by an officer/ to whom it delegated its power, and if it did so, then it could not under s. 42 interfere with the order which it itself passed in the appeal. We think that this is the correct position, and we wish to make it clear that we are not basing ourselves on the concession made by the learned Advocate-General. We feel no doubt that an order passed by an officer of the Government cannot be an order passed by the Government itself.

The question then arises, when the Government delegates its power, for example, to entertain and decide an appeal under s. 21 (4) to an officer and the officer pursuant to such delegation hears the appeal and makes an order, is the order an order of the officer or of the Government? We think it must be the order of the Government. The order is made under a statutory power. It is the statute which creates that power. The power can, therefore, be exercised only in terms of the statute and not otherwise. In this case the power is created by s. 21 (4). That section gives the power to the Government. it

546

would follow that an order made in exercise of that power will be the order of the Government for no one else has the right under the statute to exercise the power. No doubt the Act enables the Government to delegate its power but such a power when delegated remain,; the power of the Government, for the Government can only delegate the power given to it by the statute and cannot create an independent power in the officer. When the delegate exercises the power, he does so for the Government. It is of interest to observe here that Wills, J., said in *Huth v. Clarke* (1) that "the word delegate means little more than an agent". An agent of course exercises no powers of his own but only the powers of his principal. Therefore, an order passed by an officer on delegation to him under s. 41 (1) of the power of the Government under s. 21 (4), is for the purposes of the Act an order of the Government. If it were not so and it were to be held that the order had been made by the officer himself and was not an order of the Government-and of course it had to be one or the other-then we would have an order made by a person on whom the Act did not confer any power to make it. That would be an impossible situation. There can be no order except as authorised by the Act. What is true of s. 21 (4) would be true of all other provisions in the Act conferring powers on the Government which can be delegated to an officer under s. 41 (1). If we are wrong in the view that we have taken, then in the case of an order made by an officer as delegate of the Government's power under s. 21 (4) we would have an appeal entertained to and decided by one who had no power himself under the Act to do either. Plainly, none of these things could be done.

Again, if an order passed by an officer to whom a power had been 'delegated by the Government under s. 41(1) was an order passed by the officer then an order made by an officer to whom power under s. 42 had been delegated would be an order

(1) L. R. (1890) 25 Q. B. D. 391.

547

by an officer within the meaning of s. 42. That order would then be liable to be interfered with by the Government under s. 42 and if such interference is again not by the Government itself but by another officer as its delegate, then in that way the process of interference might be repeated for ever. Obviously an interpretation leading to such, a; result cannot be correct. It is of some interest to point out here that in the present case the order under s. 42, that is, the impugned order had not been made by the Government itself but by the Director, Consolidation of Holdings, to whom the Government's power under that section had been delegated.

It was however said by the learned Advocate General that this absurd result would not follow because power under s. 42 can be exercised only once in respect of the same order. We will assume that power can be exercised in respect of the

same order only once. But even so it seems to us that if the order by a delegate officer is an order within s. 42, then the power under that section can be exercised repeatedly. This will appear clearly if we take an illustration. Suppose delegate officer A makes an order under s. 21 (4). This order can be interfered with by the Government under s. 42. Now suppose the Government delegates its power under s. 42 to officer B and officer B then makes an order under s. 42 as delegate of Government. That would be an order made by a delegate officer and capable of being interfered with under s. 42. This exercise of power would be in respect of an order of officer B and therefore not in respect of the same order in respect of which power under s. 42 had been once exercised, namely, the order by officer A. Now assume this time delegate officer C exercises Government's power under s. 42. Again the order made by him would be interfered with under s. 42. Repeated exercise of power would be in respect of successive orders and never in respect of the same order. In this way finality in the matter

548

can never be reached. We must reject an interpretation which prevents finality being reached. On the interpretation that we have suggested the matter would be finally decided; the power under s. 42 cannot be exercised more than once in respect of the same matter.

We think there are other reasons leading to the view that the order contemplated by s. 42 is an order made by an officer in his own right. The words "The State Government may..... call for and examine the record of any case pending before or disposed of by such officer" in the section clearly indicate that the records are not in the possession of the Government but are in the possession of somebody else in his own right and therefore it is that the Government is given power to "call for" those records. It would not be necessary to give the Government expressly the power to call for records if the records were with the Government's delegate, for such delegate would be even without such express power, within the control of the Government. The records with the delegate would really be records in the possession of the Government. Furthermore, the expression "call for" the records is one familiar to courts of law. It occurs in s. 115 of the Code of Civil Procedure where a superior court which therefore, is a different court, is given the power to call for the records of a subordinate court. It may reasonably be presumed that by using the familiar words "call for" the records, the legislature indicated that the officer whose order was to be interfered with under s. 42 was an officer exercising independent powers and therefore a subordinate officer and not an officer exercising powers delegated by the Government.

We do not think that *Lakha Singh v. Director, consolidation of Holdings, Punjab*(1) to which we were referred was correctly decided. There *Falshaw, J.*,

(1) A.I.R. (1959) Punj. 157.

549

with whom *Dua, J.*, agreed, approved of an earlier decision by *Bishan Narain, J.*, where the latter said that "under s. 40 (1) the Government can delegate its Viewers or functions only to one of its officers. It, therefore, follows that the Government's delegate under s. 20 (4) is an Officer and as he is appointed under this Act and has to perform duties relating to administration of this Act, he must be held to be an Officer under this Act." *Falshaw, J.*, as also *Bishan*

Narain., J., were dealing with the Pepsu Holdings (Consolidation and Prevention of Fragmentation) Act. This Act however contained the same provisions as the Act now before us though the sections were numbered differently. Apparently, the learned judges were of the view that the words "under this Act" in s. 41 of the Act before them which corresponds to s. 42 of our Act, referred to the word "Officer" and not to the word "order". But we do not think that that view solves the problem. The question is not whether the officer is one under the Act, which perhaps means mentioned in or appointed under the Act, but whether the order is by him in his own right as such officer? We may point out that the Act does not expressly say that an officer to whom Government may delegate its power under s. 40 (1) has to be an officer "under the Act". Falshaw, J., thought that the words "any order passed by any officer under this Act" in s. 41 of the Act before him should be read as "any order passed under any provision of the Act by any officer having power to pass any order under the Act". If they are so read, we think they would mean that the officer had power under the Act to Pass the order in his own right and not as delegate of the Government.

The learned Advocate-General said that when power is delegated to an officer under s. 40(1), he does not cease to be an officer and therefore an order passed by him is an order passed by an officer within s. 42. It seems to us that this is not at all

550

determinative. If the officer does not cease to be an officer because Government had delegated power to him, neither does he cease to be a delegate of the Government because he is an officer. The real question is different. It is whether the order made by the officer was made as a delegate of the Government or in his own right.

Then it was pointed out that the order in this case was the order of an officer and not of the Government at all, for if it had been the order of the Government it would have been made in the name of the Governor as required by the rules of the executive business framed under Art. 166 of the Constitution. But it seems to us that the form in which the order was made is immaterial. The order was not in fact made by the Government but by somebody else in exercise of the power which lay vested in the Government alone. We are not aware that such an order has to be in the name of the Governor. The question is, in whose right has an order to be made so that it may be interfered with under s. 42? It is of no help in answering that question to consider the form in which the order was made.

The learned Advocate-General then said that the words "under the Act" in the section referred to the word "order" only and not to the word "officer" and therefore the order contemplated by it may be one made by an officer to whom power was delegated by the Government for that would be an order contemplated by the Act and therefore an order "under the Act". We think that this is a pointless contention. When the Act permits an order to be made, it must at the same time indicate, as the present Act does, who is to make the order. Obviously, a man in the street cannot make an order under the Act. Therefore the question that has arisen in the present case cannot be answered simply by

551

saying that the words "under the Act" refer to the word "order" alone. It cannot be that an order under the Act can be made by any officer whatsoever. If the contention of the learned Advocate-General was right, then even an order made

by the Government itself under s. 21(4) would be liable to interference under s. 42, but as already stated he concedes that this cannot be done. Quite clearly s. 42 does not contemplate all orders whatsoever made under the Act.

The learned Advocate-General further said that when the legislature amended s. 42 by Act 27 of 1960 it had before it the decision in Lakha Singh's case (1) and as it did not expressly provide to the contrary, it must be deemed to have approved of the interpretation put upon the section r to s. 42 by that case. He referred us to a passage in Ramnandan Prasad Narayan Singh v. Mahanath Kapildeo Ram (1) in support of this contention. In that case a somewhat obscure text in a Bihar. Statute had been interpreted by the High Court of Patna consistently from the beginning, that is, from a time soon after its enactment, in a certain way and this Court held in view of the obscurity in the text and the inaction of the legislature over a number of years that it could be legitimately inferred that the High Court had correctly interpreted the intention of the legislature. Without being understood as saying that such all inference must always be made, we would like to point out that the present is all entirely different case. Here there is no unanimity of opinion as regards the interpretation of the, statute- concerned. At least one judge, namely Grover, J., was unable to accept the view that was adopted in Lakha Singh's case (1). That learned judge said, "The use of the expression "officer" by necessary implication means that the officer should have exercised power as, such and not by virtue of the., delegation made by the State Government.": see

(1) A.I.R. (1959) Punj. 157.

(2) [1951] S.C.R. 138, 144, 552

Lakha Singh's case.(1) p. 159. With this view we entirely agree. Furthermore, the present petition was pending in this Court when the Act was amended and the legislature might have thought that it was unnecessary to amend the statute to indicate that the view in Lakha Singh's case(1) was wrong for this Court would correct that error.

It was lastly said that it may so happen that an order under s. 21(4) might give rise to a chain of reactions which can only be coped with by an order made under s. 42. The precise contention is not very clear to us. This contention appears to have been accepted by Bishan Narain, J., in the judgment on which Lakha Singh's case(1) is based where he said "The changes in allotments in consolidation proceedings often produce a claim (sic) of reactions and affect a number of persons and the rights of parties cannot always be satisfactorily adjusted in an appeal under s. 20(4). In such cases s. 41 is the only provision which can be utilised to achieve this object." Section 41 referred to by the learned judge corresponds as we have earlier said to s. 42 of our Act. Suppose the position is that in view of the chain reactions started the order made under s. 21(4) was better recalled. Now suppose the order under s. 21(4) is made by the Government itself, then admittedly nothing can be done about it under s. 42 to give effect to any chain reactions. There is no reason to think that if that order happens to be made by an officer to whom Government's powers under s. 21(4) are delegated that should make any difference. The harm, it any in each case would be the same, and there is no reason why the legislature should have provided for a remedy in one case and not in the other. It might however be reasonably thought that when an appeal is being heard under s. 21(4) either by the Government or by an

officer, the authority concerned will before making the order in the appeal consider the chain reactions that the order might cause and then decide not to

(1) A.I.R. (1959) Punj.157.

553

make the order at all or to make the order and give effect to the chain reactions by interfering under s. 42 with other orders. Even on the interpretation that we suggest all necessary chain reactions might be given effect to. This reasoning does not assist the respondents at all.

We therefore think that the order impugned in this case which was made on July 21, 1956 under s. 42 was entirely without jurisdiction and must be treated as a nullity. No effect can be given to it and the petitioner is entitled to an order quashing it.

Then it is said that even so, no writ can be issued quashing the order as it cannot be said to affect the petitioner's right to property. The contention in short is that the order affects no fundamental right and therefore no petition under Art. 32 is maintainable. This objection to the petition is also without foundation. From what we have earlier said about the provisions of the Act it would appear that the object of the scheme is to give to a person affected by it right in the lands allotted to him under the repartition made pursuant to the scheme in the place of his right in lands which were pooled and which he previously held. Now under ss. 23, 24 and 25 taken together, the original right to lands come to an end and a right to the substituted lands spring up upon possession being delivered of the new allotments as mentioned in these sections. It is not necessary to refer to the provisions of these sections in detail for this, it is agreed, is the substance of them. It may be that possession has not yet been delivered in terms of the Act and, therefore, in a manner of speaking, the petitioner's original right to land has not yet come to an end nor has his new right come into existence. But it is obvious that if the impugned order is allowed to stand, then it is the intention of the respondent State and the respondent Hari Singh to carry it into effect. If the impugned order stands, Hari Singh

554

would be entitled to ask for delivery of possession of the lands given to him under that order and the respondent State would be bound to give him such possession. The petitioner would have no means of opposing possession being so given. Immediately upon such delivery of possession the petitioners original right to his lands would disappear. Therefore it seems to us that the inevitable result of the order is to affect the petitioner's right to property illegally. It may be that just now the right has not been affected and there is only a threat that it will be affected. But we think that the threat is sufficiently serious and the petitioner is not bound to wait till his right has actually been affected more particularly as it is not disputed that it would inevitably be affected.

in the result we would allow the petition and issue a writ quashing the order purported to be made by the Director, Consolidation of Holdings, Punjab on July 21, 1956, under s. 42 of the Act. The petitioner will be entitled to the costs of this petition.

KAPUR, J.-The decision of this case depends upon the construction of two provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, (Punj. 50 of 1948), hereinafter termed "the Act"; those provisions are ss. 21(4) and 42. The former section confers

on the State Government appellate powers and the latter the power to call for '-proceedings' for the purpose of satisfying itself as to the legality and propriety of any order passed under the Act by any officer acting under the Act. The respective submissions of the parties before us are these: according to the petitioner once the power of appeal in regard to an order of the Settlement Officer is exercised under s. 21(4) by the State Government or its delegate to whom power is delegated under s. 41 the State Government cannot exercise the power of control contained in s. 42 of calling for the record and correcting the errors of its

555

officers. According to the respondents' submission the two powers of appeal and control are separate and distinct powers and if they are delegated to two different officers as they were in the present case then the exercise of one power (under s. 21(4)) does not exhaust the Government's power or that of its delegate under s. 42 of the Act. In order to resolve the controversy it is necessary to refer to some of the provisions and the objects of the Act.

As the long title of the Act shows the underlying object of the Act is the consolidation of holdings and prevention of fragmentation and thus to improve agriculture in the State. By a series of partitions since the founding of the various villages in the State the holdings had become fragmented and uneconomic for the purpose of efficient cultivation. The Act provides the remedy for this by means of consolidation of holdings. In order to effectuate that object, the Act has created a machinery which provides for putting all the holdings in a village in hotch-potch evaluating each holding and then repartitioning in accordance with that evaluation with a provision for compensation to equalise the values.

Chapter III deals with consolidation of holdings. Under that Chapter first the State Government declares its intention to make a scheme for consolidation of holdings and then a scheme is prepared by the Consolidation Officer after obtaining the advice of the landowners of the state. Under s. 15 the scheme has to provide for compensation. After the scheme is prepared it can be objected to by any landowner and is liable to be amended by the Consolidation Officer and the Settlement Officer who is a higher official. The scheme as finally drafted has to be confirmed by the Settlement Officer. After the scheme is prepared and confirmed and published, the land is put in hotch-potch and repartitioned in accordance with the scheme of consolidation and, with the advice of the landowners.

556

Here comes the hierarchy of officers who are empowered to look into the grievances of any aggrieved person in regard to repartition and that is provided in s. 21 of the Act. An objection can be lodged in the first instance by any person aggrieved by the repartition before the Consolidation Officer and any person aggrieved by the order of the Consolidation Officer can appeal to the Settlement Officer (Consolidation) and if any person is aggrieved by his order he can take the appeal within the time specified to the State Government and there the machinery for appeals stops and subject to that appellate order the order of the Settlement Officer is final.

After repartition has been finally sanctioned under the provisions of the Act and has been effected a new record of rights has to be prepared and then if all the land-owners agree to enter into possession in accordance with the scheme of repartition the possession is given to the land owners

and if they do not agree to enter into possession then possession is to be taken by the landowners at the commencement of the agricultural year following the date of the publication of the final scheme and they have to be put into physical possession of the holdings and would be entitled to the standing crop on payment of such compensation as may be determined. Under s. 24 as soon as possession is taken in accordance with the provisions of the Act the scheme shall be deemed to have come into force. Provision is then made in regard to encumbrances of the landowners and tenants. Provision is also made for apportionment of compensation.

Now we shall deal with Chapter V which is headed "General". For the administration of the Act s. 41 empowers the State Government to appoint such persons as it thinks fit and it may by notification delegate any of its powers under the Act to any of its officers either by name or designation. Section 42

557

confers power on the State Government to call for the proceedings i. e. any order passed, scheme, prepared or confirmed or repartition made under the Act by any officer acting, under the Act to satisfy itself as to the legality and propriety of orders passed by its officers and to pass such orders as it thinks fit. Section 43 provides that except as provided in the Act no appeal or revision shall lie from any order passed under the Act and under s. 44 no civil suit is entertainable in respect of any matter which the State Government or any other officer is empowered to determine, decide or dispose of under, the Act and under s. 45 no suit is maintainable in respect of the exercise of any power or discretion conferred by the, Act or against any public servant or person (duly appointed or authorised under the Act in respect of) anything done in good faith or purporting to be done under the Act and s. 46 is the rule making power. This, in short, is the scheme of the Act.

It is to be noticed that the Act provides under s. 42 an over-all control of the State Government at all stages of consolidation proceedings. It is the State Government which has to specify the estate for the purposes of the Act and it has the power to determine and revise at any time the standard areas under s. 5 of the Act. The scheme for consolidation of holdings has to be finally sanctioned by the State Government or by its delegate and after the scheme is sanctioned repartition is to take place so as to allot lands to the people in accordance with the value of their original holdings with such compensation as may be necessary and if any person is dissatisfied with the repartition, he can appeal first to the Consolidation Officer, then to the Settlement Officer and thereafter to the State Government but the appeals are not confined to the person aggrieved by the repartition scheme; any person who may be aggrieved by the order of Consolidation Officer may, under s. 21(2) of the Act appeal to the Settlement Officer under s. 21 (3)

558

and any person who is aggrieved by that order, who may not necessarily be the person who, started the proceedings before the Consolidation Officer can appeal to the State Government. Section 21 reads as follows :

"S. 21 (1) The Consolidation Officer shall after obtaining the advice of the landowners of the estate or estates concerned, carry out repartition in accordance with the scheme of consolidation confirmed under section 20, and the boundaries of the holdings as demarcated

shall be shown on the shajra which shall be published in the prescribed manner in the estate or estates concerned.

(2) Any person aggrieved by the repartition may file a written objection within fifteen days of the publication before the Consolidation Officer who shall after hearing the objector pass such orders as he considers proper confirming or modifying the scheme.

(3) Any person aggrieved by the order ,of the Consolidation Officer under sub-section (2) may within one month of that order file an appeal before the Settlement Officer (Consolidation) who shall after hearing the appellant pass such order as he considers proper."

The effect of this section is to give a right to every person who is aggrieved by any order passed either at the time of the repartition or by the order of the Consolidation Officer or by the order of the Settlement Officer to object and get relief, The reason for this

559

is that the order passed by the Consolidation Officer in favour of a person who applies under s. 21(2) may start a chain reaction which may affect the rights of others, like any other ordinary partition proceedings may do, and therefore any person aggrieved has been given the right to take objection under the various provisions of s. 21. When the appellate power of the State Government is exercised by an officer to whom powers are delegated under s. 41 which provides :-

S. 41 (1) "The State Government may for the administration of this Act, appoint such persons as it thinks fit, and may by notification delegate any of its powers or functions under this Act to any of its officers either by name or designation.

2) A Consolidation Officer or a Settlement Officer (Consolidation) may, with the sanction of the State Government, delegate any of its powers or functions under this Act to any person in the service of the State Government."

The officer though exercising such powers as the State Government itself possesses is still an officer of the State Government and has all the protection which is given by s. 45 of the Act and his order is final as provided in s. 43. Any order passed by him as an appellate authority is an order in regard to repartition which has to be taken into consideration for the purposes of bringing the scheme into effect under s. 24 of the Act. Thus he does not cease to be an officer of the State Government even though in disposing of appeals lie is exercising delegated powers.

Section 42 of the Act provides :

"S. 42 The State Government may at any time for the purpose of satisfying itself as to

560
the legality of propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under this Act call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit. Provided that no order, scheme or repartition shall be varied or reversed

without giving the parties interested notice to appear and opportunity to be heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration."

Now this power of the State Government is distinct from the power s. 21(4) and is in the nature of revision. This gives an overall control to the State Government to see that the orders passed by its officers are legal and are proper because one illegal or improper order may start a chain of reactions which may disturb the whole scheme of consolidation and prevent its coming into effect. One order passed at any stage under s. 21 of the Act by which a landowner gets more than his share or is given a different area to that which is provided in the repartition scheme may lead to the undoing of the whole scheme and may set at naught the whole scheme of consolidation. It is for that purpose that the State Government has been given the power under s. 42 which is further clear from the fact that under the proviso to s. 42 the Government is expressly given the power to set aside proceedings ex parte in regard to which it is satisfied that there has been an element of unlawful consideration. This would apply equally to an order under s. 21(4) by a delegate as to any other order improperly obtained.

The Government has necessarily to act through its officers and as consolidation has to take place in

561

several villages, where the rights of a large number of landowners are affected, it cannot always appoint as a final appellate authority, persons who correspond to a Financial Commissioner under the Land Revenue Act of the Punjab; and as the orders of such officers become immune from challenge in courts and can in certain cases affect the whole scheme the State Government has been given the power of overall control over all actions of its officers and at all stages. In the present case the officer who exercised the appellate power was Mr. Avtar Singh Brar, Assistant Director, Consolidation of Holdings, Ambala. Naturally the Government had to appoint an officer of a higher status to see that no improper or illegal order was passed and for that purpose its powers under s. 42 were delegated to the Director of Consolidation of Holdings.

The language of s. 42 shows that an overall control is given to the State Government over all consolidation proceedings and at all stages. In that section are mentioned firstly any order passed by an officer, secondly a scheme prepared or confirmed, thirdly a partition made by any officer under the Act. They are all equally subject to the power of the State Government under s. 42. The order under s. 21 (4) by a delegate is an order of repartition and would even apart from the fact that it is an order of an officer be subject to the revisional powers of the State Government under s. 42. Therefore the statute must be taken to have authorised the State Government to reconsider the scheme confirmed by its delegate. If in that case the power is exercisable by the State Government there does not seem to be any reason why that power is not exercisable when its delegate passes an order under s. 21 (4) and thus makes an order in regard to repartition. So read the extent of the power of the State Government under s. 42 extends equally to any order passed by its officers whether of confirmation of a scheme or of repartition and whether the power is exercised by the officer

562

making the order acting under authority expressly given to him under the Act or it is delegated to him by the State Government under s. 41 of the Act. If this power were not to be inferred from s. 42 then no kind of illegality or impropriety would be liable to correction. This argument receives further support from the power given to the State Government where it is satisfied that proceedings have been vitiated by unlawful consideration. If this power was not there then any order howsoever obtained would remain immune from all control of higher officials and would lead to a great deal of inconvenience if not injustice.

The view of the Punjab High Court in *Lakha Singh v. Director' Consolidation of Holdings, Punjab*(1) which was a case under a similar provision of the Pepsu State in our opinion is a correct interpretation of s. 41 of the Pepsu Act corresponding to s. 42 of the Act. In that case it was held that the appellate powers are concerned with the grievances of the appellant and those who are arrayed as parties in the appeal but s. 42 gives an overriding power to the Government to consider any order of its officers under the Act and to make such orders as would subserve the objects and purposes of consolidation proceedings. The change in allotment, as a result of an appeal, may produce a chain of reactions and affect the rights of a number of persons which cannot be satisfactorily adjusted in appeal but under its general powers the Government may make such orders as would prevent the right of all or a large number of landowners from being affected. Without such a power, as we have said above the whole scheme of consolidation may fail because there would be no remedy in a civil court and finality being given to the appellate order would produce an impasse which must necessarily defeat the object of the Act and the process of consolidation.

In this view of the matter, in our opinion, this

(1) A.I. R. (1959) Punj. 157.

563

petition is without force and is dismissed with costs.

BY COURT :-In view of the majority opinion the Writ Petition is allowed with costs.