
Nagina and Another Vs Deputy Director of Consolidation and Others

C.M.W.P. No. 14446 of 1996

Court: Allahabad High Court

Date of Decision: May 14, 1996

Acts Referred:

Constitution of India, 1950 " Article 13, 19(1), 19(1)(J)#Industrial Disputes Act, 1947 " Section 17B#Uttar Pradesh Consolidation of Holdings Act, 1953 " Section 3(11A), 3(8), 4, 4(1), 4(2)#Uttar Pradesh Consolidation of Holdings Rules, 1954 " Rule 62#Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 " Section 4(2)#Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 " Section 198

Hon'ble Judges: R.B. Mehrotra, J

Bench: Single Bench

Advocate: Sankatha Rai, for the Appellant; S.C. and A.R. Dubey, for the Respondent

Final Decision: Allowed

Judgement

R.B. Mehrotra, J.

The complex issue of consequence to ensue on publication of notification in the Official Gazette u/s 4(2) bringing certain

villages under consolidation scheme is haunting the cause of Justice in the present case. Factual matrix of the case is as short as it can be.

2. On 15.6.1979 a notification u/s 4(2) of the U.P. Consolidation of Holdings Act (hereinafter referred to as the Act) was published in the Official

Gazette notifying inter alia that the agricultural land situate in village, Bajhedi, Pargana, Jhijnjhana, district, Muzaffarnagar has been brought under

the consolidation scheme.

3. Plot No. 698, area 12 Bigha, plot No. 699, area 1 Bigha, 13 Biswa, plot No. 700, area 12 Biswa, plot No. 701, area 12 Biswa, total 4 plots,

area 3 Bigha 9 Biswa of Khata No. 147 in the aforesaid village was recorded as "Bhurnidhari" in the name of Beg Raj, who has been arrayed as

Respondent No. 4 in the present writ petition. The present Petitioners, namely, Nagina and Shyam Lal sons of Data Ram purchased the aforesaid

plots by means of a registered sale-deed on 16.7.1979, from Respondent No. 4, without obtaining permission from Settlement Officer

Consolidation.

4. On 28.8.1979, the requisite publication in the unit where the village was situate, was made in accordance with procedure provided u/s 4(2) of

the Act read with Rule 62 of the Rules framed under Consolidation of Holdings Act (hereinafter referred to as the Rules).

5. On the basis of the aforesaid sale-deed, the Petitioners filed objection u/s 9 of the Act praying therein that since the name of Beg Raj

Respondent continue to be recorded in the basic year, the name of the Petitioners be mutated in place of aforesaid Beg Raj on the basis of the

aforesaid sale-deed. Beg Raj filed an affidavit before the Assistant Consolidation Officer admitting the execution of the sale-deed and also

admitting that the Petitioners are in possession of the aforesaid land. Aforesaid Beg Raj, Respondent, however, contested the matter before the

Consolidation Officer and contended that since the sale-deed was executed in violation of Section 5(1)(c)(ii) of the Act, it was void in view of

Section 45A of the Act and as such, the Petitioner's name cannot be mutated on the basis of the aforesaid sale-deed.

6. All the three Consolidation Courts, namely, Consolidation Officer, Assistant Settlement Officer, Consolidation and Deputy Director of

Consolidation upheld the objection raised by Beg Raj and held that the sale-deed was a void document and no rights accrued to the Petitioners on

the basis of the aforesaid sale-deed. Beg Raj, however, taking the advantage of his own conduct to nullify the claim of the Petitioners sought

permission on 10.9.1981 of the Settlement Officer, Consolidation to transfer the disputed land as per requirement of Section 5(1)(c)(ii) of the Act.

The Settlement Officer, Consolidation granted permission. Consequent there to Sri. Beg Raj executed a sale-deed in favour of Indra Pal, Har Pal

and Yash Pal who have been arrayed as Respondent Nos. 5 to 7 in the writ petition. The present writ petition is being contested by the aforesaid

Respondent Nos. 5 to 7. A counter-affidavit has been filed on their behalf supporting the judgment of the Consolidation Authorities.

7. I have heard Sri. Sankatha Rai for the Petitioner and Sri. A.R. Dubey for the Respondent. Both have filed their submissions in writing which

form part of the record.

8. After having executed a sale-deed in favour of the Petitioner, the transferor Sri. Beg Raj took a somersault on the basis of a provision of law, to

undo the sale-deed executed by himself and having pocketed the consideration money, contested the proceedings, on technical ground and later

on sold out the same land to Respondent Nos. 5 to 7, thereby getting consideration money twice from two sets of transferee for the same land.

The equity of the case is directly against aforesaid Sri. Beg Raj.

9. However, the issue which arises in this petition is as to how to interpret the provisions of Section 5(1) of the Act in relation to Section 4(2) of

the Act. The relevant provisions of the aforesaid two sections, as they stood on the relevant date, are being reproduced for convenience:

4. Declaration and notification regarding consolidation.-(1) (a) The State Government may, where it is of opinion that a district or part thereof may

be brought under consolidation operations, make a declaration to that effect in the Gazette whereupon it shall become lawful for any officer or

authority, who may be empowered in this behalf by the District Deputy Director of Consolidation

(i) to enter upon and survey, in connection with rectangulation or otherwise, and to take levels of any land in such area;

(ii) to fix pillars in connection with rectangulation; and

(iii) to do all acts necessary to ascertain the suitability of the area for consolidation operations.

(b) The District Deputy Director of Consolidation shall cause public notice of the declaration issued under Clause(a) to be given at convenient

places in the said district or part thereof.

(2) (a) When the State Government decides to start consolidation operations, either in an area covered by a declaration issued under Sub-

section(1) or in any other area, it may issue a notification to this effect.

(b) Every such notification shall be published in the Official Gazette and in each unit in the said area.

(Emphasis added)

5. Effect of notification u/s 4(2)-(I) Upon the publication of the notification under Sub-section (2) of Section 4 in the Official Gazette, the

consequences, as hereinafter set forth, shall, the date specified there under till the publication of notification u/s 52 or Sub-section(1) of Section 6

as the case may be, ensue in the area to which the notification under Sub-section(2) of Section 4 relates.

(Emphasis added)

(c) Notwithstanding anything contained in the U.P. Zamindari Abolition and land Reforms Act, 1950, no tenure-holder, except with the

permission in writing of the Settlement Officer, Consolidation, previously obtained shall-

(i) use his holding or any part thereof for purposes not connected with agriculture, horticulture or animal husbandry including pisciculture and

poultry fanning; or

(ii) transfer by way of sale, gift or exchange his holding or any part thereof in the consolidation area.

(Emphasis added)

10. A reading of Section 4(2) of the Act makes it obligatory for effective implementation of Section 4 that two requirements were necessary for

commencement of the consolidation proceedings in the unit:

(1) Publication of the notification in the Official Gazette.

(2) Publication in each unit in the said area. Rule 62 of the Rules provide a detailed procedure for publication in the unit. The aforesaid Rule is as

under:

62. Section 54(2)(i) and (ii).-The Consolidation Lekhpal shall maintain a proceedings book in C.H. Form 29 for recording proceedings of the

meetings of the Consolidation Committee. He shall also maintain a diary in C.H. Form 30 showing the details of work done by him each day. A

Diary in this Form shall also be maintained by the Consolidator and the Assistant Consolidation Officer.

11. The aforesaid Rule refers to C.H. Form 29 and C.H. Form 30. The aforesaid forms provide that a proceedings book will be maintained

wherein the date on which publication is made in the unit, the number of the members of the Consolidation Committee, description of proceedings

and signatures of the members are to be maintained. C.H. Form 30 is for maintaining a diary of the Consolidation Lekhpal/Consolidator/Assistant

Consolidation Officer bringing the details of the date, place of halt at night by the concerned officer, description of the work done.

12. Section 3(8) of the Act defines the word "publication" in unit. The relevant section is quoted herein:

(8) "Publication in the unit" or "publish in the unit" with reference to any document means reading out of the document in the unit on a date of which

Prior notice shall be given by the beat of drum and proclamation by beat of drum in any other customary mode, in the unit of the fact that the

document is open to public inspection at an appointed place and time:

Provided that where a Consolidation Committee has been constituted for the unit each member of the said committee shall also be individually

informed of the fact of publication.

"Unit" is defined u/s 3(11A) of the Act as under:

(11A) "Unit" means a village or part thereof, and where the Director of Consolidation so notifies by publication in the Official Gazette two or more

village or part thereof, for which a single scheme of consolidation is to be framed.

13. The issue hunches on Interpretation of Section 5(1) of the Act, as to whether the consequence of Section 5(1)(c)(ii), i.e., transferring a land

without the permission of the Settlement Officer, Consolidation, attract the provision of Section 45A only where the publication has been made

both in the Official Gazette as well as in the unit? A literal interpretation of Section 5(1)(c)(i) read with Section 5(1)(c)(ii), if to be adhered, the

consequences of transferring a land after publication in the Official Gazette are to follow and Section 45A will be attracted.

However, this literal interpretation is to result in a patent injustice as the village people are hardly supposed to know on which date the notification

has been published in the Official Gazette and for making them aware of the fact that the village has been brought under Consolidation Scheme.

Section 4(2)(b) has to be read in a composite manner, i.e., to show that the consequence of making a transfer void should flow only when the

people of village came to know that the village has been brought under the Consolidation Scheme. A hyper-technical literal interpretation of

Section 5(1) as demonstrated in this case is to result in patent injustice.

14. The injustice done to the Petitioner is writ large, as he purchased the land before the consolidation scheme was published in the unit, as such, it

is clear that it was factually impossible for him to know regarding the promulgation of the consolidation scheme in the village, as the publication in

the Official Gazette itself is brought to the notice of knowledgeable persons after months when the Gazette is released to the concerned authorities,

some time gap is taken in the publication and availability of the Gazette to concerned authorities and people.

15. A pragmatic approach is required for construing Section 5(1)(c)(ii) read with Section 45A in the context of Section 4(2)(b) of the Act.

For interpreting the aforesaid provisions, it is necessary to look into the legislative background as to how and why the said sections have been

enacted.

16. U.P. Consolidation of Holdings Act being U.P. Act No. 5 of 1954 was enacted by the State Legislature as a follow up of the land reforms

instituted on the dawn of the independence by enacting U.P. Zamindari Abolition and Land Reforms Act. The objects of the Act as proposed in

the Bill are quoted herein:

Object.- After the enforcement of the U.P. Zamindari Abolition and Land Reforms Act, 1950, there was naturally a pressing demand for the

consolidation of holdings in the State. Since the complicated and numerous types of tenures, both proprietary and cultivatory, the greatest

stumbling block in the way of successful consolidation of holdings, have been abolished it is an opportune time to start this work. The advantages

of having in compact blocks all the land framed by one family need only be briefly mentioned. Boundary lines would be reduced in number and

extent, saving land and diminishing boundary disputes, larger fields would be possible and time saved in making trips to the fields. Further, if land

were all in one piece, barriers, such as fences, hedges or ditches could be erected to obtain privacy and prevent trespassing thieving and gleaning.

The control of irrigation and drainage water would be easier; control of pests insects and disease would also be less difficult. In August, 1952,

Government therefore, appointed a Committee under the Chairmanship of the Revenue Minister to draw a detailed scheme for achieving

consolidation of holdings in the State as early as possible and to suggest amendments to the U.P. Consolidation of Holdings Act, 1939. The

Committee after examining the reasons for failure of scheme under the Act of 1939 and the report of the sub-committee which studied the

consolidation of holdings scheme of Punjab (India) has recommended a new scheme for a co-ordinated plan for the general development of the

villages on the pattern of the Punjab. A copy of the Committee's report is enclosed.

17. The Act has been amended as many as 16 times since its enactment, almost every year some provision or the other was amended in the Act

on the basis that whenever some difficulty was realised in working of the Act, the Legislature intervened. The provisions of the Act in the aforesaid

legislative background should not be construed to give such a literal interpretation as to defeat the cause of Justice. The avowed object of the Act

was to usher the land reforms for the benefit of the agriculturists of the country who were the backbone of the Independent India.

18. Initially in the year 1954 when the Act was enacted. Section 4(2) of the Act was in the present form. However, u/s 5 of the Act, the

requirement was only that upon the publication u/s 4, the District or the local area, as the case may be, shall be deemed to be under consolidation

operation from the date of such publication until publication of the notification u/s 52 of the Act. The effect of declaration of the notification was

only after publication of the declaration in the local area. Section 5 of the Act was amended in 1956 and it was provided for the first time that the

consequence of the enforcement of the consolidation proceedings are to flow on publication of the notification in the Official Gazette. However, it

is pertinent to mention that in 1956, there was no provision like the present one as Section 5(1)(c)(iii) and no adverse consequences were to flow

to any tenureholder on initiation of the consolidation proceedings except that the proceedings for correction of record cases pending in the other

courts were stayed.

19. Section 5(c)(ii) of the Act relevant for the present case has been brought on the statute book for the first time in the year 1988. Section 5(c)(ii)

as enacted by U.P. Act No. 38 of 1958 was in the following terms:

5. Effect of Declaration.- Upon the publication of the notification u/s 4 in the Official Gazette, the consequences, as hereinafter set forth, shall,

subject to the provisions of this Act, from the date specified there under till the publication of notification u/s 52 or Sub-section (1) of Section 6 as

the case may be, ensue in the area to which the declaration relates.

(a) * * * * *

(b) * * * * *

(c) notwithstanding anything contained in the U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act 1 of 1951), no tenure-holder,

except with the permission in writing of the Settlement Officer, Consolidation, previously obtained shall-

(i) use his holding or any part thereof for purposes not connected with agriculture, horticulture or animal husbandry including pisciculture and

poultry farming; or

(ii) transfer by way of sale, gift or exchange any part of his holding in the consolidation area.

(Emphasis added)

20. Aims and Objects of U.P. Act 38 of 1958 does not give a clue for legislating a provision like Section 5(c)(ii). Aims and Objects of the

aforesaid Act are being reproduced below:

Object.- The working of the Uttar Pradesh Consolidation of Holdings Act, 1953, has revealed certain shortcomings. It is necessary to simplify the

procedure with a view to cut out avoidable delays in consolidation operations. There is a public demand in certain areas for recognition of the

consolidation which might have already been carried out by the tenure-holders voluntarily. Since the Jurisdiction for bhumldhari suits is being

transferred to revenue court, it has become necessary to do away with the provisions for arbitration which used to cause great delay. To inspire

greater confidence in the people in the adjudication of rights of tenure-holders by consolidation authorities it is proposed to provide for a second

appeal and a revision against orders passed by the Consolidation Officers. The present method of valuation of plots on the basis of soil

classification and rent rates has not been found to be satisfactory. It is now proposed to provide for the valuation of plots on the basis of

productivity, availability of irrigation facilities and location, etc, in consultation with the Consolidation Committee. Uptil now there was no provision

for the management of land contributed for public purpose. Exclusion of plots of special value having cultivation of Pan, Rose, Bela, Jasmine and

Keera, etc., from consolidation operations has also been found necessary. With a view to provide for the above and to remove a few other minor

defects, the Bill is being introduced."" (vide statement of objects and Reasons, published in the U.P. Gazette, Extraordinary, dated September 18,

1958/Bhadra 27, 1880 Saka.)

However, the aforesaid provision came for consideration in various decisions of this Court. While interpreting the aforesaid provisions, the Court

held that the provision was necessitated to prevent further bifurcation of the holdings of the tenure-holders without knowledge and notice to the

Settlement Officer, Consolidation, as transfer of the part of the holding could have frustrated the purpose of the Act, i.e., consolidation of holdings.

There were some conflicting decisions on the issue, as to whether a permission of the Settlement Officer, Consolidation is also required when the

entire holding is transferred.

A Full Bench of this Court consisting of live Judges ultimately set at rest the controversy and held that no permission u/s 5(c) is required for

transferring the composite holding. The Full Bench ruled that the permission is only required when the part of the holding is sought to be

transferred. (See Smt. Ram Rati and Others Vs. Gram Samaj, Jehwa and Others, .

21. Earlier a Full Bench of three Hon"ble Judges of this Court also took the same view in the matter of Smt. Asharfunisa Begum Vs. Dy. Director

of Consolidation Camp at Hardoi and Others, . In this case, the Full Bench categorically held that restriction in regard to the transfer of whole

holding would be unjustified and unreasonable and, therefore, hit by Article 13 read with 19(1)(f) of the Constitution. The relevant portion of the

judgment is quoted below:

The second reason for the interpretation placed by the learned single Judge and the Division Bench on the sub-clause to the effect that it prohibits

without the permission of the Settlement Officer (Consolidation) transfer of a plot only of a holding and not the whole was that the object

underlying the prohibition was fulfilled by prohibiting the transfer of a part only of a holding and did not call for prohibition of transfer of the holding

as a whole. During consolidation operations, complications will arise if only part of a holding is transferred because then there will spring up two

tenure-holders the original tenure-holder holding one part and the transferee holding the other part leading to complications. If however, the whole

holding is transferred then all that will be necessary in carrying out the consolidation operations in progress will be to substitute the name of the

transferee in place of that of the original tenure-holder. There is no doubt that if it can be shown that the transfer of whole holding will not create

any complications and hindrance in the progress of the consolidation operations then the restriction in regard to transfer of the whole holding would

be unjustified and unreasonable and therefore hit by Article 13 read with Article 19(1)(f) of the Constitution.

Accordingly, if the whole holding is transferred that will not disturb the progress of the consolidation proceedings. The scheme of U.P.

Consolidation of Holdings Act is to treat a person as a Bhumidhar tenure-holder or Sirdar tenure-holder and not to have separate holdings under

the same tenure. This is apparent in the instant case from the documents filed in which all plots of land held by the deceased Bashir Mohammad as

Bhumidhar are grouped together and corresponding chak or chaks were allotted together in lieu of that land and similarly all plots of land held as

Sirdar was grouped together for allotting a chak or chaks in lieu thereof as constituting one holding. We are accordingly of the view that it will be

only part of a holding under one tenure if transferred by a tenure-holder during consolidation operations, that would create complications and the

object of speedy consolidation would be thwarted, but if the whole holding is transferred that position will not arise. The Legislature must be

presumed not to have intended to place more restrictions than were necessary or to have intended to make an invalid provision hit by Article 13

read with Article 19(f) of the Constitution. We are accordingly of the opinion that with the meaning of "holding" as clarified above, Sub-clause (ii)

of Clause (c) of Sub-section (1) of Section 5 restricts only the transfer of any part only of the holding of a tenure-holder and not the whole holding

and in our view the Division Bench case referred to above was correctly decided on the basis of a similar interpretation placed on Sub-clause (1)

of Section 5 of the Act.

22. In Chidda Singh v. Arjun Singh 1968 AWR 639, a learned single Judge of this Court has taken a view that consequence of Section 5(1) of the

Act will flow immediately on the publication of the notification in the Official Gazette. The said decision has lost relevance after an amendment

having been made in Section 5(1)(c)(ii) by Act No. 34 of 1974 and subsequent amendment by Act No. 30 of 199. It may also be stated that in

the said decision, learned single Judge observed that the Petitioner has failed to demonstrate any injustice having been done to him. In the aforesaid

case, the Court also held that the consolidation authorities did not give a finding that there was no publication in the unit. The facts of the aforesaid

case are not relevant for the purposes of the decision of the present matter. The ratio of the aforesaid decision is also not attracted in the present

controversy.

23. However, Section 5(1)(c)(ii) of the Act was again amended prohibiting transfer by way of sale, gift or exchange of the holding or any part

thereof without the permission of the Settlement Officer, Consolidation as required u/s 5(1)(c) of the Act. The object for bringing the aforesaid

legislative change cannot be culled out from the object and reasons of the Act. The section was substituted by Act No. 34 of 1974 in U.P. Law

Amendment Act. The objects and reasons mainly deal with the problems of the Harijans in regard to the Zamindari Abolition and Land Reforms

Act. For amending the Consolidation of Holdings Act, the objects and reasons are silent. For convenience, the objects and reasons of Act No. 34

of 1974 are reproduced below:

The Act was passed with the following Objects and Reasons:

To remove the grievance of the Harijans that they are not allowed to exercise ownership rights over houses built by them on holdings recorded in

the name of other persons, provision is being made in the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 to settle the house sites

in such cases with the owners of the houses existing on March 15, 1974. It has also been observed that the influential persons get the land held by

the members of Scheduled Castes transferred in their names with the result that such members again become landless. With a view to safeguarding

the interests of the members of the Scheduled Castes, restriction is being placed on transfer by such members. In order to ensure that persons

belonging to the Scheduled Castes get at least 50 per cent of land available for allotment. Section 198 of the U.P. Zamindari Abolition and Land

Reforms Act is being amended with a view to preventing clandestine subletting. The provisions relating to recovery of arrears of land revenue and

appointment of receivers are also being amended keeping in view the defects noticed in the enactments concerned.

Certain amendments are proposed in the Consolidation of Holdings Act, 1953 so as to provide that the proceedings under the U.P. Imposition of

Celling on Land Holdings Act, 1960, shall not be treated proceedings for declaration of rights under the Consolidation of Holdings Act.

Opportunity has also been taken to make some other verbal amendments of a formal nature.

24. This provision was brought into force on 7.12.1974 on publication in the Official Gazette. Soon the Legislature realized that the provision is not

only unreasonable but is also causing great hardship and is also source of corruption. In order to remove the practical and legal difficulties,

experienced in the implementation of the aforesaid provisions, Section 5(c)(ii) of the Act has been deleted from the statute book by Act No. 30 of

1991. The relevant portion of the statement of object and reasons of U.P. Act No. 30 of 1991 deleting the aforesaid obnoxious provision is being

reproduced herein:

Prefatory Note-Statement of Object and Reasons.-In order to remove the practical and legal difficulties experienced in the Implementation of the

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 and the Uttar Pradesh Consolidation of Holdings Act, 1953 and for extending

the consolidation scheme in the hill areas it was considered necessary to amend the aforesaid Acts with a view to providing for-

(3) Publication of notification u/s 4 of the Consolidation Act in the newspapers also having circulation in the consolidation area to ensure timely

information regarding commencement of consolidation operation to the tenure-holders.

(4) doing away with the provisions for taking permission of Settlement Officer, Consolidation for transfer of holding after the commencement of the

consolidation scheme in order to prevent corruption and ensure quick disposal of cases relating to consolidation.

(Emphasis added)

25. It may also be stated that the urgency of undoing the mischief brought by Act No. 34 of 1974, was so much that for enforcing the aforesaid

provisions, the Government resorted issuing the Ordinance by U.P. Act No. 20 of 1991. Which was later on substituted by Act No. 30 of 1991.

The statement and object of U.P. Act No. 30 of 1991, makes it abundantly clear that putting complete ban on transfer of holding of a tenure-

holder without the permission of Settlement Officer. Consolidation could not have been sustained in view of the Full Bench decision of this Court in

Asharfunisa Begum"s case (supra). The legislature itself thought it proper to delete the aforesaid provision. Act No. 30 of 1991 is a remedial Act

as has been brought on statute book to undo the mischief caused by the provisions of Section 5 (i)(c)(ii), as amended by U.P. Act No 34 of 1974,

what should be the import of such an enactment, when the unamended provision come up for consideration before a Court is an issue to be dealt

with in this case?

26. In Principles of Statutory Interpretation by Justice G.P. Singh, Vth Edition, Page 313 for construing the remedial statute, the following principle

is laid down:

Remedial statutes, though favoured by Courts are not for that reason retrospective to affect vested rights; but since such statutes are to be

construed liberally, the inhibition of the rule against retrospective construction may be applied with less insistence.

27. In *Bharat Singh Vs. Management of New Delhi Tuberculosis center, New Delhi and Others*, the Apex Court while construing the provision

of Section 17B of the Industrial Disputes Act held that the provision will also apply to the awards of the Labour Tribunal already made and thus

made the said provision effective retrospectively. For construing such a provision, the Court held:

The Objects and Reasons give an insight into the background why this Section was introduced. Though Objects and Reasons cannot be the

ultimate guide in interpretation of statutes. It often times aids in finding out what really persuaded the legislature to enact a particular provision. The

Objects and Reasons here clearly spell out that delay in the implementation of the awards is due to the contests by the employer which

consequently cause hardship to the workmen. If this is the object, then would it be in keeping with this object and consistent with the progressive

social philosophy of our laws to deny to the workmen the benefits of this Section simply because the award was passed, for example just a day

before the Section came into force. In our view it would be not only defeating the rights of the workman but going against the spirit of the

enactment. A rigid interpretation of this Section as is attempted by the learned Counsel for the Respondent would be rendering the workman

worse off after the coming into force of this Section. This section has in effect only codified the rights of the workmen to get their wages which they

could not get in time because of the long drawn out process caused by the methods employed by the Management. This Section, in other words,

gives a mandate to the Courts to award wages if the conditions in the Section are satisfied.

In interpretation of statutes, Courts have steered clear of the rigid stand of looking into the words of the Section alone but have attempted to make

the object of the enactment effective and to render its benefits into the person in whose favour it is made. The legislators are entrusted with the task

of only making laws. Interpretation has to come from the Courts.

28. In *Sheo Nayak v. Saraswati* 1991 RD 260, an issue arose that if permission for transferring three plots has been obtained by the tenure-

holder from the Settlement Officer, Consolidation and thereafter the tenure-holder only transfers one of the three plots, can the provision of Section

5(c)(ii) of the Act be attracted to make the transfer void in view of Section 45A of the Act. This Court, while construing Section 5(c)(ii) of the Act,

held:

The duty of the Court is to expound the law as it is not as it ought to be Words are not to be construed contrary to their meaning as excluding or

embracing a particular case See *Whitehead v. McGregor Ltd.* (1949) 1 KB 353; *Suttons v. Briggs* (1922) 1 ACL. It is general rule of literal

construction that nothing is to be added to or subtracted unless there are adequate grounds to justify the inference that the Legislature intended

something which it omitted to express:

It is a strong thing to read into Act of Parliament words which are not there and in the absence of clear necessity it is wrong thing to do.

We are not entitled to read words into Act of Parliament unless clear reason is to be found within the four corners of the Act itself.

See Thomson v. Gould S. Co. (1910) AC 409; Vickers, Sans and Maxim Ltd. v. Evens (1910) AC 444.

A VERBIS LEGIS NON EST RECEDENDUM, a latin maxim connotes that from the words of law there must be no departure.

The provisions of Section 5(c)(ii) of the Act have to be interpreted according to the words employed to convey the meaning. The provision has to

be considered in the context in which it is used. This provision must bear textual and contextual interpretation. It must not be in its isolation.

Further, meaning ought to be assigned so as to promote the public good.

29. In Khub Chand and Others Vs. State of Rajasthan and Others, , while construing the provisions of Section 4(1) of Rajasthan Land Acquisition

Act, the Court held it to be mandatory that the publication is also to be made in the village as provided in the Act.

30. In Principles of Statutory Interpretation following guidelines have been laid down for supplying the words to the statute. Justice G.P. Singh in

his book "Principles of Statutory Interpretation (supra) has laid down following principles:

Application of the mischief rule or purposive construction may also enable reading of words by implication when there is no doubt about the

purpose which the Parliament intended to achieve. But before any words are read to repair an omission in the Act; it should be possible to state

with certainty that these words would have been inserted by the draftsman and approved by Parliament had their attention been drawn to the

omission before the Bill into law.

31. In Hameedia Hardware Stores, represented by its partner S. Peer Mohammed Vs. B. Mohan Lal Sowcar, , the aforesaid principle has been

reiterated:

It is no doubt true that the Court while construing a provision should not easily read into its words which have not been expressly enacted but

having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the Court should

construe it in a harmonious way to make it meaningful.

In Seaford Court Estates Ltd. v. Asher (1940) 2 All ER 155 at p. 164, Lord Denning L.J. said:

When a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the

intention of Parliament....and then he must supplement the written word so as to give "force and life" to the intention of the legislature A Judge

should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they should have

straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven but he can and should

iron out the creases.

In N.K. Jain and others Vs. C.K. Shah and others, , the aforesaid principle has been reiterated by the Apex Court.

32. In the present case, if Section 5(1) in regard to its Clause (c)(ii) is to be saved from the vice of unreasonableness as laid down in Asharfunis

Begum's case (supra) by Full Bench of this Court, the way out is to interpret the said section to mean that only on publication in the unit the

consequence u/s 5(1)(c)(ii) will flow. It is settled proposition of law that if a provision can be saved by interpreting it in the manner that it does not

suffer from vice of unconstitutionality, the said interpretation should be preferred. In the light of the facts of this case, it may not be necessary to

hold that the provision of Section 5(1)(c)(ii) as brought on the statute book by Act No. 34 of 1974 was unreasonable or to hold that the said

provision stands retrospectively deleted by Act No. 30 of 1991, if a Justice-oriented interpretation is provided to Section 5(1)(c)(ii). If the

consequences of Section 5(1)(c)(ii) are attracted only on complete publication as contemplated by Section 4(2), the issue of considering vires of

the aforesaid provisions will not arise.

33. On analyzing the aforesaid provision, I am of the view that the words ""on publication in the Official Gazette u/s 4(2)"" in Section 5(1) should be

read to mean complete publication u/s 4(2) of the Act, i.e., publication in the Official Gazette as well as in the unit. The sale-deed in the present

case in favour of the Petitioner was executed in regard to the holding, admittedly before the date of the publication of the Consolidation Scheme in

the unit, as such, the consequences of Section 5(1)(c)(ii) are not attracted in the light I have interpreted Section 5(1)(c)(ii) of the Act aforesaid.

34. A reading of Section 5(1)(c)(ii) in the context of Section 4(2) of the Act, it is necessary for harmonious construction and for proper

implementation of Section 5 that the consequences u/s 5(1)(c)(iii) should follow only when the publication regarding consolidation operation has

also been made in the unit as required u/s 4(2)(b) and from the aforesaid aspect, it is necessary that u/s 5(1) after the words "Official Gazette", the

words "in each unit of the said area" should be read.

35. On the basis of the aforesaid analysis, I am of the view that the sale-deed executed by the Respondent No. 4 in favour of the Petitioner was

not hit by the provisions of Section 5(1)(c)(ii) read with Section 45A of the Act. All the three consolidation Courts have committed error of law in

holding to the contrary.

36. Accordingly, I issue a writ of certiorari and quash the orders of Consolidation Officer, Settlement Officer, Consolidation and Deputy Director

of Consolidation dated 3.8.1981, 23.9.1982 and 21.8.1986, respectively and issue a direction that the mutation be made in the revenue records in

the name of the Petitioner on the basis of the sale-deed executed by the Respondent No. 4 in favour of the Petitioner on 16.7.79. The sale-deed

executed by the Respondent No. 4 in favour of the Respondent No. 5 to 7 during the pendency of the consolidation proceedings is non-operative,

as the Respondent No. 4 had no right to execute a sale-deed in favour of the Respondent No. 5 to 7 after transferring the entire rights in favour of

the Petitioners. The Petitioner's rights cannot be affected in any manner by the aforesaid sale-deed.

With the aforesaid directions the writ petition is allowed. However, in the circumstances of the case, the parties will bear their own costs.