

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2502 of 1988

Most. Prabhawati Kumari, wife of Late Baccha Singh, R/o vilalge &
P.O. Bangra Phiroz, P.S.- Baruraj, District- Muzaffarpur.. ... Petitioner
Versus

- 1. The State of Bihar
 - 2. The Joint Director, Consolidation, Bihar, Patna
 - 3. The Deputy Director, Consolidation, Muzaffarpur
 - 4. The Consolidation Officer, Baruraj (Motipur), District- Muzaffarpur
 - 5. Yasuda Devi wife of Ramayagya Singh
 - 6. Shankar Singh son of Ramayagya Singh
- Both R/o village & P.O. Bangra Phiroz, P.S.- Baruraj, District-
Muzaffarpur

... ... Respondents

with
Civil Writ Jurisdiction Case No. 1361 of 1977

RamKrit Singh And Ors Petitioner/s
Versus
The State Of Bihar and Ors Respondent/s

Appearance :(In Civil Writ Jurisdiction Case No. 2502 of 1988)	
For the Petitioner/s	: Mr. Bindhya Keshari Kumar, Sr. Advocate Mr. Kamal Nayan Chowbey, <i>Amicus Curiae</i> Mr. Ranjna Sinha, Advocate
For the Respondent/s	: Mr. N.K.Sinha, G.P. 3
For the State	: Mr. Pushkar Narayan Shahi, A.A.G. 6
(In Civil Writ Jurisdiction Case No. 1361 of 1977)	
For the Petitioner/s	: Mr. Bindhya Keshari Kumar, Sr. Advocate Mr. Kamal Nayan Chowbey, <i>Amicus Curiae</i> Mr. Ramanuj Sinha, Advocate
For the Respondent/s	: Mr. K.K. Sharan-ii, G.P. 2
For the State	: Mr. Pushkar Narayan Shahi, AAG-6

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE SANJAY PRIYA
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT



Date : 02-09-2019

Amreshwar Pratap Sahi, CJ.:-

I have gone through the erudite and fully explained judgments of my brother Justice Chakradhari Sharan Singh, Justice Ashuthosh Kumar, Justice Sanjay Priya and Justice Rajeev Ranjan Prasad.

I fully agree and endorsed the views expressed by my learned brothers, the ratio of the judgment may be culled out as under:

- (1) Section 4 (C) of the Consolidation Act 1956 (hereinafter referred to as the 'Act of 1956') is intra-vires and the same has been upheld by the Hon'ble Supreme Court in the case of **Satyanarayan Prasad Sah Vs. State of Bihar (AIR 1980 SC 2051)** hence, this issue is not longer a *res-integra*.
- (2) Sections 15 and 16 of the Act of 1956 have no conflict with each other. Both are operating in mutually exclusive fields and they are supplementing each other.
- (3) Regarding the bar of jurisdiction of the Civil Court, it has been the consistent views that the Consolidation Authorities have got status of 'Deem Courts' and they have powers akin to the Civil Courts to summon witnesses, taking of evidence etc. In this regard my learned brothers have agreed with the minority views of Hon'ble Mr. Justice Nagendra Rai (as his lordship then was) in the case of **Seikh Haidar Zan Vs. Md. Yusuf Ansari & Anr.** reported in **2000 (2) PLJR SC 338** and I agree



with the views expressed by my brothers for the reasons already explained by them in their respective judgments.

- (4) The question as to whether a suit based on title is maintainable after close of the consolidation operation has been considered in the case of **Seikh Haidar Zan** (supra) and I agree with the views expressed by the minority judgment of Hon'ble Mr. Justice Nagendra Rai (as his lordship then was) which have been quoted in the judgment of my brother Justice Rajeev Ranjan Prasad.

The views expressed by brother Justice Chakradhari Sharan Singh, Justice Sanjay Priya and Justice Rajeev Ranjan Prasad saying that there is no infirmity in the orders of the Consolidation Authorities dated 02.04.1987 passed by the Joint Director of the Consolidation, Bihar, Patna and the order dated 19.11.1984 passed by the Deputy Director of Consolidation, Muzaffarpur, hence, no interference is required with those orders.

The writ applications therefore, stand dismissed.

(Amreshwar Pratap Sahi, CJ.)

Chakradhari Sharan Singh, J.:-

I have had the benefit of going through the deftly written, erudite and scholarly judgment of brother Rajeev Ranjan Prasad, J., I am in agreement with his Lordship's conclusions on questions of law and merit of this case as well.



2. In view of the two conflicting Full Bench (three-Judge) decisions of this Court, in the case of **Ramkrit Singh and Others v. The State (AIR 1979 PATNA 250)** and **Kalika Kuer alias Kalika Singh v. The State of Bihar and others**, reported in **1989 PLJR 1203**, the matter has been placed for consideration before this larger bench, on a remand made by the Supreme Court, by judgment and order, dated 25.04.2003, in Civil Appeal No. 5654 of 1990, in the case of **State of Bihar v. Kalika Kuer alias Kalika Singh and Others**, since reported in **(2003) 5 SCC 448**.

3. In the case of **Ramkrit Singh** (supra), the question of constitutional validity of Section 15 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (in short 'the Act') and the consequences of the notification issued under Section 3 of the Act by operation of of Section 4 (b), Section 4 (c) and Section 37 of the Act, were under consideration before the Full Bench. The Full Bench, in the case of **Ramkrit Singh** (supra), upheld the *vires* of Section 15 of the Act, including the provision putting bar on the jurisdiction of the Civil Courts in respect of the matters covered by a notification under Section 3 read with Section 4 (b) and Section 4 (c) of the Act.

4. The Full Bench, (of equal strength) in the case of **Kalika Kuer alias Kalika Singh v. The State of Bihar and others** (supra), held *per incurium*, however, the Full Bench decision, in the case of **Ramkrit Singh** (supra), and, therefore, not binding and concluded that Sub-



Sections (1) and (2) of section 15 of the Act were *ultra vires* Articles 13 and 14 of the Constitution of India. Noticing direct conflict between Full Bench decisions, in the said two decisions of equal strength in case of **Ramkrit Singh** (supra) and **Kalika Kuer alias Kalika Singh v. The State of Bihar and others** (supra), the Supreme Court has held, in the case of **State of Bihar v. Kalika Kuer alias Kalika Singh and Others** (supra), that the doctrine of *per incuriam* has been misapplied by the High Court, in the case of **Kalika Kuer alias Kalika Singh v. The State of Bihar and others** (supra), to the earlier decision, in the case of **Ramkrit Singh** (supra). Having held thus, the Supreme Court recorded, in paragraph 14, in the case of **State of Bihar v. Kalika Kuer alias Kalika Singh and Others** (supra), as under:-

“14. Hence the case is liable to be remanded to the High Court to consider it in the light of this judgment and to dispose it of, in accordance with law. We order accordingly while allowing the appeal and setting aside the judgment of the High Court.”

5. This is the background in which the present Special Bench has been constituted to reconsider the issues involved in case of **Kalika Kuer alias Kalika Singh v. The State of Bihar and others** (supra).

6. It is noteworthy, at the very outset, that the Act and subsequent amendments to the Act, viz., the Bihar Consolidation of



Holdings and Prevention of Fragmentation (Amendment) Act, 1970 (Bihar Act 9 of 1970), the Bihar Consolidation of Holdings and Prevention of Fragmentation (Amendment) Act, 1973 (Bihar Act 27 of 1975) and the Bihar Consolidation of Holdings and Prevention of Fragmentation (Amendment) Act, 1981 (Bihar Act 35 of 1982), have since been included in the Ninth Schedule of the Constitution, since 30.08.1995, i.e., after the Full Bench decision of this Court, in the cases of **Ramkrit Singh** (supra) and **Kalika Kuer alias Kalika Singh v. The State of Bihar and others** (supra). In this background, Article 31-B of the Constitution of India needs to be referred to which declares that none of the Acts and Regulations specified in the Ninth Schedule of the Constitution nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by any provisions of Part III of the Constitution. It further declares that notwithstanding any judgment, decree or order, of any court or tribunal to the contrary, each of the said Acts and Regulations shall continue to remain in force.

7. The immediate consequence of inclusion of an enactment in the Ninth Schedule of the Constitution can be easily discerned from the Supreme Court decision, in the case of **L. Jagannath etc. v. The Authorised Officer, Land Reforms, Madurai and Another** (AIR



1972 SC 425), which lays down that Article 31-B of the Constitution being retrospective, after inclusion of an Act in the Ninth Schedule, the said Act, even though held unconstitutional and void, by a previous judicial decision, becomes valid, with retrospective effect and no re-enactment by the competent Legislature is necessary. As has already been seen, While remanding this matter back to this Court, the Supreme Court has set aside the Full Bench decision, in the case of **Kalika Kuer alias Kalika Singh v. The State of Bihar and others** (supra) which even otherwise could not hold field in the light of subsequent inclusion of the Act in the Ninth Schedule of the Constitution, in my considered opinion.

8. Thus, once the Act and subsequent enactments, amending various provisions under the Act have been included in Ninth Schedule of the Constitution, the scope of any challenge to constitutional validity of the provisions almost diminishes and is available only on the ground that it destroys basic structure of the constitution, as held in the case of **I. R. Coelho (DEAD) by LRS. v. State of T.N.**, reported in **(2007) 2 SCC 1**. In the case of **I. R. Coelho** (supra), the Apex Court has, in no uncertain terms laid down that if an Act is subsequently incorporated in Ninth Schedule of the Constitution, which was earlier held to be violative of any rights conferred under Part III of the Constitution, the same can be open to challenge only on the ground that it destroys or



damages the basic structure of the Constitution, as indicated in Article 21 read with Articles 14 and 19 etc. of the Constitution and the principle lying therein. Paragraph 151 (v) of the decision, in the case of **I. R. Coelho** (supra), reads thus:-

“(v) If the validity of any Ninth Schedule law has already been upheld by this Court, it would not be open to challenge such law again on the principles declared by this judgment. However, if a law held to be violative of any rights in Part III is subsequently incorporated in the Ninth Schedule after 24th April, 1973, such a violation/infracton shall be open to challenge on the ground that it destroys or damages the basic structure as indicated in Article 21 read with Article 14, Article 19 and the principles underlying thereunder.”

9. In this background, the challenge put by the petitioners to the validity of the provisions of the Act will have to be tested, in the light of the law enunciated in the Supreme Court’s decision, in the case of **I. R. Coelho** (supra).

10. In any view of the matter, subsequent Full Bench decision, in the case of **Kalika Kuer alias Kalika Singh v. The State of Bihar and others** (supra), holding Section 15 (1) and Section 15 (2) of the Act ultra vires Articles 13 and 14 of the Constitution, has thus lost its significance with the inclusion of the Act in the Ninth Schedule of the Constitution. Obviously thus the grounds, which were available for



the petitioners to challenge the constitutionality of Section 15 (1) and Section 15 (2) of the Act are not, now, available with same strength as they might have been, before inclusion of the Act and amending provisions in Ninth Schedule of the Constitution.

11. This Court has heard Mr. Vindhya Kesari Kumar, learned Senior Counsel for the petitioners, and Mr. Puskar Narayan Shahi, learned Additional Advocate General No. 6, for the State of Bihar. Mr. Kamal Nayan Choubey, learned Senior Counsel, has assisted this Court, as *Amicus Curiae*.

12. In order to appreciate the controversy, which is at the core, it would be beneficial to have a deeper scrutiny into the scheme of the Act, which has four chapters. Chapter I covers the short title, extent and commencement as well as definitions of various expressions used in the Act. Chapter II is the main body of the Act dealing with consolidation of holdings. Transfer of fragments is under Chapter III of the Act; whereas, Chapter IV contains miscellaneous provisions to regulate effectively, the scheme of the consolidation of holdings under the Act.

13. ‘Consolidation’ has been defined under sub-Section (3) of Section 2 of the Act to include re-arrangement of parcels of land comprised in a holding or in different holdings for the purpose of rendering such holdings more compact. ‘Holding’ has been defined



under Section 2 (7) of the Act as a parcel or parcels of land held by a *raiyat* and forming the subject matter of a separate tenancy. For the purpose of various provisions under the Act, 'holding' is not to include the following:-

- (i) Land which was orchard or grove in the agricultural year, immediately preceding the year in which the notification under Section 3 was issued;
- (ii) Land subject to fluvial action and intensive soil erosion;
- (iii) Such compact areas as are normally subject to prolonged water-logging;
- (iv) Such other areas as the Director of Consolidation may declare to be unsuitable for the purpose of consolidation.

14. '*Chak*' has been defined under Section 2 (3a) of the Act as every parcel of land allotted to a *raiyat* or the under-*raiyat* on consolidation. 'Rectangulation' is a process for carrying out consolidation of holdings and has been defined under Section 2 (3b) of the Act as the process of dividing the area of a unit into rectangles or part of rectangles of convenient sizes with a view to regulate the allotment of Chaks, during consolidation operation. The definition of 'Land', within the meaning of Section 2 (9) of the Act acquires significance in the background of controversy arising in the present case and means 'agricultural land, and includes horticultural land, Kharpur



land, land with bamboo clumps, pasture lands, cultivable waste land, homesteads, tanks, wells and water channels.

15. Section 3 of the Act empowers the State Government to declare its intention to make a scheme for consolidation of holdings in any area by notification in official gazette, with the object of effecting consolidation of holdings for the purpose of better cultivation of lands in any area, after such enquiries as the State Government may deem fit.

16. Section 4 of the Act discloses the effect of notification under Section 3 (1) of the Act. Since this provision has been most hotly debated and discussed in course of argument advanced on behalf of the parties and the grievance of the petitioners revolves mainly around this provision of the Act, the entire Section 4 is being re-produced herein below:-

“4. Effect of notification under Section 3(1) of the Act. - Upon the publication of the notification under sub-section (1) of Section 3 in the *official gazette* the consequences, as hereinafter set forth, shall, subject to the provisions of this Act, from the date specified in the notification till the close of the consolidation operation, ensue in the area to which the notification relates, namely-

(a) the district or part thereof, as the case may be, shall be, deemed to be under consolidation operations and duty of preparing and maintaining the record-of-rights and the village map of each village shall be performed by the Director of Consolidation, who shall prepare or maintain them, as the case may be, in the manner prescribed;

(b) no suit or other legal proceeding in respect of any land in such areas shall be entertained in any court, and in



calculating period of limitation applicable to such suits and proceedings such period shall not be counted :

Provided that nothing in this clause shall apply to any proceedings under Section 48(E) of the Bihar Tenancy Act, 1885 (Act VIII, 1885) and to the proceedings relating to the recording of the titles of *Bataidars*;

(c) every proceeding for the correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the area or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any court or authority whether of the first instance or of appeal, reference or revision, shall on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending stand abated:

Provided that if the State Government empowers any other officer appointed under this Act to dispose of any proceeding relating to survey settlement operations under the provisions of chapter X of the Bihar Tenancy Act, 1885 (Bihar Act VIII of 1885), or chapter XII of the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI, 1908) or Santhal Parganas Settlement Manual, 1872 (Regulation 3, 1872) and transfer such proceeding to such officer or disposal, then the proceeding shall not abate or shall not be considered to have been abated:

Provided also that no such order shall be passed without giving to the parties notice by post or in any other manner that may be convenient and after giving them an opportunity of being heard:

Provided further that such abatement shall be without prejudice to the rights of the persons affected to agitate the right or interest in the said suits or proceeding before the appropriate consolidation authorities under and in accordance with the provision of this Act and the rules made thereunder:

Provided that the State Government may, by notification in the *Official Gazette* exempt any such proceeding,



suit, appeal, reference or revision, or any class of them, if in its opinion their abatement is not in public interest, and is not necessary for the purposes of this Act:

Provided further that nothing in this section shall apply to any proceedings under [Sections 144 to 148 of Chapter X of the Code of Criminal Procedure, 1973 (Act 2 of 1974), the Bihar Tenants Holdings (Maintenance of Records) Act, 1973 (Bihar Act 28 of 1975)], Section 48E of the Bihar Tenancy Act, 1885 (Act VIII of 1885) and the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Act XII of 1962).“

17. A close reading of Section 4 of the Act would suggest that consequence of issuance of notification under Section 3 (1) of the Act ensue from the date specified in the said notification till the close of consolidation operation in respect of the area to which the notification relates.

18. The foremost significance of the said notification is that the area notified shall be ‘deemed to be under consolidation operations’. The duty of preparing and maintaining the ‘record of rights’ and the ‘village map’ of each village is to be performed by the Director of Consolidation, who has been enjoined with the duty of preparation and their maintenance, as the case may be, in the manner prescribed under the Act. Once the notification is issued, no suit or other legal proceeding in respect of any land in such areas is to be entertained in any court, and in calculating period of limitation applicable to such suits and proceedings, such period shall not be counted, the provision says.



Noticeably, the proceedings under Section 48(E) of the Bihar Tenancy Act, 1885, and the proceedings relating to the recording of the titles of Bataidars have been excluded from the bar operating under the second consequence of issuance of notification. The third consequence, as prescribed under Section 4 of the Act, is the offending provision, which states that every proceeding for correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the notified area or for declaration or adjudication of any other right in regard to which 'proceedings can or ought to be taken under this Act', pending before any court or authority whether of the first instance or of appeal, reference or revision, shall 'on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending', stand abated. There are three kinds of the proceedings which abate by operation of third consequence under Clause (c) of Section 4 of the Act, which can be easily seen on careful examination of the said clause, which are as under:-

- (i) proceeding for correction of records;
- (ii) every suit and proceeding in respect of declaration or interest in any land lying in the area;
- (iii) declaration or adjudication of any other right in regard to which proceeding can or ought to be taken under the Act.



19. There are five *provisos* to Clause (c) of Section 4 of the Act. As is manifest from the clear language of Clause (c) of Section 4 of the Act, the proceedings, as noted above, shall abate 'on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending'.

20. First proviso is of no significance for the controversy in hand. The second proviso to Clause (c) of Section 4 of the Act prescribes that no order of abatement shall be passed by the court or the authority without giving to the parties, notice and an opportunity of being heard.

21. The third proviso to Clause (c) of Section 4 of the Act prescribes that such abatement shall be without any prejudice to the rights of the persons affected, which they may agitate before appropriate consolidation authorities in accordance with the provision of this Act and the rules made thereunder. Evidently thus, in accordance with the third proviso, the forum of a party pursuing his claim of right and title before a competent court of civil jurisdiction shifts to the appropriate consolidation authorities for adjudication. Certain proceedings have been excluded from the consequence of abatement by virtue of fifth proviso to Section 4 (c) of the Act, which are as under:-

(i) any proceedings under Sections 144 to 148 of Chapter X of the Code of Criminal Procedure, 1973 (Act 2 of 1974),



(ii) any proceeding under the provisions of the Bihar Tenants Holdings (Maintenance of Records) Act, 1973 (Bihar Act 28 of 1975)],

(iii) any proceeding under Section 48E of the Bihar Tenancy Act, 1885 (Act VIII of 1885)

(iv) any proceeding under the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Act XII of 1962).

22. Section 7 of the Act envisages constitution of Village Advisory Committee, to be set up by the Assistant Consolidation Officer, consisting of the members of the Executive Committee of the Gram Panchayat of the village. The Assistant Consolidation Officer has been authorized to appoint landless labourers of the village and any land holder of the village holding land, not in excess of 5 acres, to be members of the Village Advisory Committee.

23. Section 8 of the Act requires preparation of up-to-date record of rights, in respect of all lands comprised in the notified area together with a map in accordance with Chapter X of the Bihar Tenancy Act, 1885. Once in respect of land comprised in the notified area, map and record of rights are prepared and preliminarily or finally published under Chapter X of the Bihar Tenancy Act, 1885, such map and record of rights are to be treated as deemed to be up-to-date map and record-of-



rights prepared under sub-section (1) of Section 8 of the Act. Section 8A of the Act authorizes the Assistant Consolidation Officer or the Consolidation Officer to partition joint holdings, either on an application in that behalf or of their own motion. It further prescribes that partition of joint holdings is to be effected on the basis of shares and where the raiyats concerned agree, it may be effected on the basis of specific plots.

24. Section 9 of the Act relates to preparation of register of lands, once up-to-date record of rights before consolidation, as contemplated under Section 8 of the Act, is complete. The said provision requires valuation of each plot, after taking into consideration the opinion of the Village Advisory Committee or such raiyats as may be available and after taking into consideration its productivity, location and availability of irrigation facilities, if any. Sub-section (2) of Section 9 of the Act prescribes the details, which are to be mentioned in the register of lands, after completion of the exercise beginning from the step as contemplated in sub-section (1) of Section 8 of the Act to sub-section (1) of Section 9 of the Act. Section 9A of the Act enjoins upon the Assistant Consolidation Officer a duty to prepare a statement in the prescribed manner, called 'statement of principles', setting forth the principles to be followed in carrying out the consolidation operations in the unit. In the said statement of principles, details of areas earmarked for expansion of habitation, the basis on which the raiyats would



contribute land for expansion of habitation and for other public purposes and details of land to be earmarked for public purposes, need to be incorporated.

25. Section 10 of the Act stipulates publication of registers of lands and statement of principles for the general public for the purpose of seeking objection in respect thereof, disputing the correctness and nature of entries in the records or in the statement of principles. Section 10 of the Act lays down the procedure for disposal of objections.

26. Section 10-A of the Act prohibits raising of any objection in respect of any entry made in the map or registers prepared under Section 9 of the Act or the statement of principles prepared under Section 9A of the Act, relating to the consolidation area, which might or ought to have been raised under Section 10 of the Act but has not been raised; at any subsequent stage of Consolidation proceeding. It is for the obvious reason that for the smooth operation of the consolidation proceeding, once a person refuses to raise objection under Section 10 of the Act against the registers prepared under sub-Section (2) of Section 9 of the Act and the statement of principles prepared under Section 9A of the Act, he cannot raise such objections at any subsequent stage.

27. Section 10-B envisages that all matters relating to changes and transfers affecting any right or interest, recorded in the



register of land published under sub-Section (1) of Section 10, for which cause of action had not arisen when proceedings under Sections 8 and 9 were started or were in progress, may be raised before the Consolidation Officer, within thirty days of cause of action, but not later than the date of notification under Section 26A or under subsection (1) of Section 4A.

28. Before I proceed further, dealing with other provisions of the Act, I must indicate here itself that Section 26A of the Act requires the State Government to issue notification in official Gazette soon after fresh maps and records have been prepared and certificates of transfers have been issued to the raiyats under the scheme, stating that the consolidation operation have been closed. Sub-Section (1) of Section 4A, as has already been noticed, empowers the State Government to cancel the notification made under Section 3 of the Act in respect of whole or part of the area specified therein. It is evincible, thus, that either upon a notification under sub-Section (1) of Section 4A or under Section 26A, no objection can be raised, as permissible under Section 10-B of the Act. For the purpose of dealing with the objections raised in accordance with Section 10-B of the Act, provisions of Sections 8 and 9 of the Act apply *mutatis mutandis*, as is manifest from sub-Section (2) of Section 10-B of the Act.

29. Section 10-C of the Act provides for re-publication of register of lands and the statement of principles pertaining to the units,



after expiry of specified period of exemption as provided in Section 5A, but before the publication of draft scheme of consolidation under sub-section (1) of Section 12, the register of lands prepared under sub-Section (2) of Section 9 and the statement of principles prepared under section 9A and published under sub-Section (1) of Section 10 and corrected under sub-sections (3), (4), (5) and (6) of Section 10 of the Act. It further provides that any person may, within twenty days of re-publication of the register of lands and the statement of principles, file before the Assistant Consolidation Officer, objection in respect thereof, disputing the correctness and nature of entries in the register of lands or in the statement of principles, if cause of action for such objections arise after publication of the register of lands and the statement of principles under sub-section (1) of Section 10.

30. Section 10-D confers upon the Deputy Director, Consolidation, authority to re-publish the register of lands or the statement of principles or both again in the manner prescribed, on being satisfied that in the register of lands published under sub-section (1) of Section 10, substantial number of raiyats or under-raiyats, for sufficient and unavoidable reasons, could not avail of the opportunity to place their claims under sub-section (2) thereof. This section allows any person to raise objection within 20 days of re-publication before the Assistant Consolidation Officer, disputing correctness and nature of



entries in the register of lands or in the statement of principles or in both, notwithstanding the bar to objection under Section 10-A.

31. Section 10-E requires application of provisions of sub-sections (2), (3), (4), (5), (6) and (7) of Section 10 of the Act *mutatis mutandis* to the objections of any matter raised under Sections 10-C and 10-D. The provision, at the same time, makes it clear that the dispute which has been decided earlier in accordance with the provisions of sub-sections (3), (4), (5) or (6) of Section 10 of the Act shall not be re-opened on re-publication of the register of lands or the statement of principles or both.

32. Section 11 of the Act states that soon after the objections, made under sub-section (2) of Section 10, have been disposed of, the Assistant Consolidation Officer shall visit the village concerned on a date of which previous notice shall have been given in the prescribed manner and considering the advice of the Village Advisory Committee and such raiyats, as may be available, prepare the draft scheme for consolidation of holdings in the notified area. In case, there is difference of opinion between the Assistant Consolidation Officer and the Village Advisory Committee or of the raiyats in any matter, a reference is to be made to the Assistant Director of Consolidation in this regard, before preparing the draft scheme, whose order shall be final, according to the *proviso* to Section 11.



33. Sub-Section (2) of Section 11 deals exhaustively with the factors, which are to be taken into account by the Village Advisory Committee and the Assistant Consolidation Officer in preparation of a scheme of consolidation.

34. Sub-Sections (2) to (6) of Section 11 of the Act, in my opinion, is exposition of the vision of the legislature behind enactment of the Act, to obtain a self contained village with optimum facilities for community living, through agrarian reforms as contemplated under the Act, which are being re-produced herein below:-

“(2) The Village Advisory Committee and the Assistant Consolidation Officer shall in preparation of a scheme of consolidation, keep the following factors in view, namely:—

(a) the rights and liabilities of a raiyatas recorded in the register of lands prepared under Section 9 or secured in the lands allotted to him, subject to the deductions, if any, made on account of the contribution to public purposes under this Act;

(b) the valuation of plots allotted to a raiyat subject to deductions, if any, made on account of the contribution for public purposes under this Act, is equal to the valuation of the plot originally held by him:

Provided that except with the permission of the Assistant Director of Consolidation, the area of the holding or holdings allotted to a raiyat shall not differ from the area of his original holding or holdings by more than 25 percent of the latter;

(c) the amount determined under the provisions of this Act, or the rules framed thereunder is awarded for the following:—



(i) for trees, bamboo-clumps, wells, structures and other improvements, originally held by him and allotted to another raiyat, and

(ii) for land contributed by the raiyat for public purposes;

(d) every raiyat is, as far as possible, allotted a compact area of the plots where he holds the largest part of his holdings:

Provided that no raiyat may be allotted more chaks than three except with the approval in writing of the Deputy Director of Consolidation;

(e) every raiyat is, as far as possible allotted the plot on which exists his private source of irrigation or any other improvement, together with an area in the vicinity equal to the valuation of the plots originally held by him;

(f) every raiyat is, as far as possible, allotted chaks in conformity with the process of rectangulation in rectangular units; and

(g) subject to rules made in this behalf by the State Government, the lands held by an under raiyat is consolidated:

Provided that the land allotted under the scheme to an under raiyat in lieu of any land held by him before the confirmation of the scheme shall form part of the new holding allotted under the scheme to the raiyat under whom the under raiyat originally held the land.

(3) For the purpose of sub-section (1), it shall be lawful for the Assistant Consolidation Officer—

(i) to declare that any land specifically assigned for any public purposes ceases to be so assigned and to assign any other land for such public purposes:

Provided that it shall not be lawful for the Assistant Consolidation Officer to direct that any land specifically assigned for cremation ground or other religious purposes shall cease to be so assigned unless it is approved by the Village Advisory Committee;



(ii) to assign additional land for public purposes; and
(iii) to direct that any area out of the land set apart for public purposes shall be used for the construction of houses for landless labourers.

(4) In addition to the particulars contained in the register prepared under Section 9 (which shall be attached to the scheme) the scheme shall specify-

(i) the description and area of the new holdings proposed to be allotted to a raiyat and the valuation thereof;

(ii) the description and area of land proposed to be set apart for extension of habitation and other public purposes;

(iii) the description and area of land, if any, proposed to be set apart for the construction of houses for landless labourers;

(iv) the rent payable for the existing holding;

(v) the rent proposed to be fixed for the new holding;

(vi) the encumbrances, if any, to any plot comprised in the existing holding of any raiyat;

(viii) the encumbrances, if any, to be transferred or attached to any plot of land comprised in the holding proposed to be allotted to a raiyat;

(viii) any other particulars that may be prescribed.

(5) There shall be appended to the map prepared under Section 8 another map showing the position of the plots allotted to each raiyat and those reserved for public purposes after consolidation.

(6) Where additional lands are allotted for public purposes such lands shall be contributed by the raiyats in proportion to the market value of their lands:

Provided that no land shall be contributed under this sub-section by a raiyat who holds land equal to or less than the prescribed area.



Explanation- The State Government shall be deemed to be a raiyat in respect of the lands belonging to the State Government.”

35. Once the aforesaid exercise is complete and draft consolidation scheme has been prepared, the Assistant Consolidation Officer is required to publish the scheme in the unit and give a general notice that all the raiyats may obtain relevant extract of the scheme free of cost, as per Section 12 of the Act. Sub-Section (2) of Section 12 Act allows any person, whose right or interest is substantially prejudiced or affected by the draft consolidation scheme or who disputes the propriety and correctness of the entry in the draft consolidation scheme or the extracts furnished therefrom to file objection before the Assistant Consolidation Officer within 30 days of the date of publication of the draft consolidation scheme, stating, (i) the nature of his interest or right in or over any land; (ii) the manner in which such interest or right is likely to be adversely affected; and (iii) the amount and particulars of his claim to the amounts, if any, for such interest or right. This right to objection, under Sub-Section (2) of Section 12 is apparently subject to bar under Section 10-A of the Act.

36. Section 12-A of the Act deals with the manner of disposal of objections under sub-Section (2) of Section 12 by the Consolidation Officer after giving notice to the parties concerned and the Village Advisory Committee. There is provision of appeal, under



sub-Section (2) of Section 12-A before the Assistant Director of Consolidation against an order passed by the Assistant Consolidation Officer, under sub-Section (1) of Section 12 of the Act.

37. Section 12-B of the Act is another significant provision, which allows the Consolidation Officer or the Assistant Director of Consolidation to revise the draft consolidation scheme on being satisfied that ‘material injustice is likely to be caused to a number of raiyats or under raiyats in giving effect to the draft consolidation scheme’, and fair and proper allotment of land to the raiyats or the under-raiyats of the unit is not possible, without revising the draft consolidation scheme or getting a fresh one prepared.

38. In case, no objections are filed within the time limit prescribed in Section 12 or where such objections are filed after modification or alteration, as may be necessary in view of the orders passed under sub-Sections (1) to (3) of Section 12A of the Act, the Assistant Director of Consolidation is required to confirm the draft consolidation scheme, as stipulated under sub-Section (1) of Section 13 of the Act. Sub-Section (2) of Section 13 of the Act requires publication of draft consolidation scheme in the unit, so confirmed, which is to be treated as final, unless otherwise provided under this Act. Clause (i) of sub-Section (3) requires that when the allotment, made under Section 11 (draft scheme), is not modified under Section 12-A of the Act and are



confirmed under sub-section (1) of Section 13 of the Act, the entries contained in the extracts issued under sub-section (1) of Section 12 be treated as *final allotment orders for the raiyats and under raiyats concerned (emphassis added)*, except as provided by or under the Act. Clause (ii) of sub-Section (3) requires issuance of the extracts of the scheme showing allotment to raiyats concerned as confirmed under sub-section (1) of Section 13 of the Act, by the Consolidation Officer, where the allotments are not modified and, by the Assistant Director of Consolidation, where the allotments have been modified,. These are treated to be the final allotment orders for raiyats and under raiyats concerned.

39. Section 14 of the Act requires the Consolidation Officer to fix a date with effect from which the final consolidation scheme shall come into force and notified in the unit in the prescribed manner, whereafter a raiyat or an under raiyat shall be entitled to possession of the plot(s) allotted to him.

40. Section 15 of the Act requires the Consolidation Officer to grant to every raiyat, to whom a holding has been allotted in pursuance of a scheme of consolidation, a certificate of transfer in the prescribed form, containing the prescribed particulars, which are to be final conclusive proof of title of such raiyat to such holding and shall be liable for payment of such rent, as may be specified in the certificate.



Sub-Section (2) of section 15 envisages similar certificate of transfer to be granted to every under raiyat, whether having a right of occupancy or not in any land allotted to him, in pursuance of the scheme, which shall be conclusive proof of title of such under raiyat to such land.

41. Section 16 of the Act declares that when certificates of transfer have been granted to the raiyats and under-raiyats under Section 15 of the Act, the scheme confirmed under Section 13 shall, in supersession of up-to-date record of rights prepared under Section 8 of the Act, be deemed to be the record of rights prepared and finally published under Chapter X of the Bihar Tenancy Act, 1885.

42. Section 17 of the Act declares that a raiyat shall have the same right in the land allotted to him in pursuance of the scheme of consolidation as he had in his own original holding.

43. I am referring to various provisions of the Act, as I have done herein above, primarily with the purpose of focussing on legislative intent and the objectives sought to be achieved through the enactment of the Act and the stages provided for the Consolidation authorities under the Act, to consider objections. Before, however, I proceed to refer to other statutory provisions, I pause here for a moment to summarize the provisions which have already been taken note of.

44. It is manifest in my opinion, that the provisions from Section 3 to Section 16 of the Act, mark a journey, beginning from



notification of declaration by the State Government of its intention to make scheme for consolidation of holdings for the purpose of better cultivation of lands in any 'area' upto preparation of up-to-date records of right in accordance with the provisions of Chapter-X of the Bihar Tenancy Act, 1885, that is to say, applying the principles of consolidation of holdings, as laid down under various provisions of the Act as noted above, preparation of new records of right, superseding the up-to-date records of right, to be finally published under Chapter-X of the Bihar Tenancy Act, 1885. This journey, from Section 3 to Section 16 of the Act is sought to be accomplished, as is manifest from the provisions noted above, by active participation of the Village Advisory Committee, consisting of Executive Committee of Gram Panchayat and other members to be appointed in consultation with raiyats and under raiyats, in the process of preparation of register of lands and statement of principles and objections thereon.¹⁴

45. The provisions allow objections to be raised, at least, at four stages, as can be seen from sub-Section (2) of Section 10, Section 10C, Section 10D and Section 12 (2) of the Act. The obvious ultimate destination of the journey, from Section 3 to Section 16 of the Act, is 'creation of new records of right' which by deeming legal fiction stands prepared under the Bihar Tenancy Act, 1885, superseding the up-to-date records of right earlier existing, by operation of law.



46. As has already been noted in the beginning itself, Section 5 of the Act puts a bar on transfer of land by way of sale, gift, exchange or partition without previous sanction of the Consolidation Officer, during this operation.

47. Section 21 of the Act is significant when it states that no instrument in writing shall be necessary in order to give effect to a transfer involved in carrying out any scheme of consolidation of holdings and no instrument, if executed, shall require any stamp duty or registration.

48. Once the fresh maps and records are found to have been prepared and certificates of transfer have been issued to the raiyats under the scheme, Section 26A mandates the State Government to issue a notification in the Official Gazette stating that the consolidation operations have been closed in the unit. Evidently thus, what had started with the issuance of declaration by way of notification under Section 3 comes to an end with the issuance of notification in Official Gazette by the State Government under Section 26A of the Act. If one is to closely appreciate the scheme from Section 4 to Section 26A of the Act, the provisions up to Section 26A deal with the exercise of consolidation of holdings.

49. The other objective of the Act is prevention of fragmentation, as is evident from its preamble and nomenclature, which



part has been dealt with in Section 28, 31 and 32. Chapter IV, deals *inter alia* with certain powers conferred upon the Officers under the Act, including provisions for appeal, revision and reference etc.. The provision, which is at the core of the controversy, is Section 37, which puts bar on jurisdiction of Civil Court to entertain any suit or application to vary or set aside any decision or order given or passed under this Act with respect to any other matter for which a proceeding could or ought to have been taken under this Act. Section 37 of the Act is being reproduced herein below:-

“37 - Bar of jurisdiction of Civil Courts : No Civil Court shall entertain any suit or application to vary or set aside any decision or order given or passed under this Act with respect to any other matter for which a proceeding could or ought to have been taken under this Act.”

50. Section 37A contains *non-obstante* clause and declares that the Director of Consolidation, the Deputy Director of Consolidation, the Assistant Director of Consolidation, the Consolidation Officer and the Assistant Consolidation Officer shall be deemed to be the courts of competent jurisdiction while hearing ‘objections’ or ‘appeals’ or deciding ‘disputes’ under this Act, notwithstanding anything to the contrary contained in any other law for the time being in force. Section 37A, in my opinion, is also relevant for answering the main issue, which is why the same is being reproduced herein below:-



“37A - Authorities under the Act to be deemed courts of competent jurisdiction:- Notwithstanding anything to the contrary contained in any other law for the time being in force, the Director of Consolidation, the Deputy Director of Consolidation, the Assistant Director of Consolidation, the Consolidation Officer and the Assistant Consolidation Officer shall be deemed to be courts of competent jurisdiction while hearing objections or appeals or deciding disputes under this Act.”

51. Section 39 of the Act declares that the provisions of this Act shall have effect, notwithstanding anything to the contrary contained in any other law for the time being in force.

52. Section 40 of the Act confers upon the State Government rule making power for carrying out the purposes of the Act, particularly in relation to the matters enumerated in sub-Section (2) thereof and reads thus:-

“40 - Power to make rules:- (1) The State Government may, after previous publication, make rules, not inconsistent with this Act for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the State Government may make rules providing for all or any of the following matters:—

- (a) the manner of publication of notices;
- (b) the manner of giving notices to persons affected or interested;
- (c) the manner in which the Consolidation Officer shall consult the Village Advisory Committee;
- (d) the manner in which a person may be evicted from any land;



(e) the manner in which compensation recoverable from any person shall be deposited by him;

(f) the guidance of the Consolidation Officer in respect of the transfer of a lease, mortgage or other encumbrance;

(g) the manner in which the area and assessment (including water-rates, if any) of each reconstituted holding shall be determined;

(h) the appointment of guardians of minors whose interests may be affected by consolidation proceedings;

(i) the procedure to be followed in filing applications and appeals and in hearing and disposing of such applications and appeals;

(j) the fees to be payable on applications and memoranda of the appeals;

(k) the guidance of the Village Advisory Committee, the Consolidation Officer and other persons in all proceedings under this Act; and

(l) any other matter which is to be, or may be prescribed.

(3) All rules made under this section shall be laid for not less than fourteen days before the State Legislature as soon as possible after they are made, and shall be subject to such modifications as the State Legislature may make during the session in which they are so laid.”

53. In exercise of rule making power under Section 40 of the Act, the Bihar Consolidation of Holdings and Prevention of Fragmentation Rules, 1958, have been framed, certain provisions of which I may be referring to at appropriate stage.

54. Having noticed various provisions of the Act, I need to take note of the two conflicting Full Bench decisions, in the cases of



Ramkrit Singh (supra) and **Kalika Kuer alias Kalika Singh v. The State of Bihar and others** (supra).

55. The constitutional validity of Section 12A, Section 37 and Section 4 (c) of the Act was put to challenge in the case of **Ramkrit Singh** (supra) mainly on the ground that the said provisions were arbitrary and discriminatory. From paragraph 4 of the decision in the case of **Ramkrit Singh** (supra), the grounds of attack taken on behalf of the petitioner of that case can be easily noticed, which is being re-produced herein below :-

“4. The main attack on the vires of the Act and more particularly Sections 12A and 37 and 4(c) of the Act was on the ground that the Act and the aforesaid sections were discriminatory. It was contended that in the scheme of the Act Assistant Director of Consolidation and Consolidation Officer were entitled to finally determine questions of title. Their determination in that regard could not be challenged in civil suit. It was contended that the officers aforesaid had no judicial training and were ill-equipped to decide questions of title, which required consideration of intricate questions of facts and law. Whereas the door of the courts were open for the general public, it was shut for those who were covered by the Act. Thus whenever consolidation proceedings had commenced the raiyats and under-raiyats had no option but to have their title determined by untrained hands. This was discriminatory and had no rational basis. The purpose of the Act, it was conceded, was laudable. But in order to achieve that purpose the ouster of jurisdiction of the civil courts was neither necessary nor desirable.”



56. Rejecting the contention, the Full Bench, in the case of **Ramkrit Singh** (supra), held that the mere fact that law creates special forum will not make the law suffer from the vice of discrimination. The Full Bench observed, in the case of **Ramkrit Singh** (supra), in paragraphs 6 and 7, as follows:-

“**6.** It is well settled now that in order to pass the tests of permissible classification it has to be seen whether (a) the classification is founded on an intelligible differentia which distinguishes those that are grouped together from others left out of the group, and (b) the differentia has a rational relation to the object sought to be achieved by the Statute in question. Are these tests fulfilled in the present Statute? So far as the first test is concerned, it is patently clear that those whose lands have to be consolidated constitute a class by themselves. There is an intelligible differentia between them and those who are out of that class. Where a law is applicable to well defined class, it is not obnoxious and it is not open to the charge of denial of equal protections on the ground that it does not apply to other person. *The State of Bombay v. F.N. Balsare* (1951 S.C.R. 682 at 708, 709).

7. The second test also, in my view, is fulfilled in this case. But it is not without some hesitation that I have come to this conclusion. In order to achieve the object of the legislation the legislature in its wisdom and experience thought that even the questions of title should be determined by the authorities under the Act. Then only could the purpose of the legislation be achieved, in examining this question it has to be borne in mind that the opinion of the legislature has to be given great weight. Just because a more perfect or satisfactory legislation could be enacted would not bring constitutional infirmity in the legislation. See *Kangshari Halder v. The State of West Bengal* (A.I.R. 1960 S.C. 457), para 19). It is from this



point of view that I have approached the problem posed in this case.”

57. The Full Bench, in the case of **Ramkrit Singh** (supra), noticed, in paragraph 8, that the provisions under challenge had been made with the legislative intent that scheme of consolidation are not inordinately delayed. Rejecting the plea of discrimination, the Full Bench held, in the case of **Ramkrit Singh** (supra), that it is not that the people covered by consolidation proceeding will have their rights determined by one person and others under another. Dealing with the attack on Section 4 (c) of the Act, the Full Bench held, in the case of **Ramkrit Singh** (supra), that the opening words of Section 4 state clearly that consequence of Section 4 (c), as mentioned therein, shall ensue from the date specified in the notification till the close of the consolidation operation with the issuance of notification envisaged under Section 26A of the Act. The Full Bench finally observed, in paragraph 14 in the case of **Ramkrit Singh** (supra), thus:-

“**14.** When the section says that the ensuing consequences are till the close of the consolidation operation, we cannot nullify the words aforesaid by, saying that the consequences are for all times to come. It is obvious, therefore, that on the close of consolidation operation in a village or area the abated suits would revive. But the revival of those suits would not create any problem as suits will have to be decided in conformity with the decisions arrived at in the consolidation proceedings in so far as the rights of interest in any land covered by the consolidation proceedings is concerned.



If this interpretation is accepted it would be seen that the suggested harshness or injustice disappears. In the illustration already given, if a party succeeds in establishing its title, after the close of the consolidation proceeding, it would be open to it not only to have its title declared accordingly but also to have a decree for mesne profits.”

58. Dealing with the question of abatement of composite suits, involving two reliefs, one relating to title of land and some other individual relief, by operation of Section 4 (c), the Full Bench held, in paragraphs 15 and 16, as follows:-

“**15.**In my view, such is not the position. Controversy in a suit may relate to right and title in land and certain reliefs dependent on the determination of the aforesaid title. Only in such a situation, in my opinion; the suit abates not only in relation to ancillary or dependent reliefs. But the position is different where independent relief or reliefs, unconnected with the declaration and determination of title to land are Involved in a suit. In such a situation the suit does not abate in relation to such controversies. It is perfectly legitimate as a rule of construction, to give a restricted meaning to the words used if the context so requires. (See *Attorney General v. H.R.H. Prince Earnest Augustus of Hanover-1957 AC 436, 461*). More so where the effect of giving a wider meaning may render the provisions constitutionally invalid. It is trite law that where a provision can be read in two ways; one of which makes it constitutional and the other unconstitutional, it should be so read and Interpreted that it does not become invalid. In my view, therefore, the second contention of the learned Advocate General is also sound.

16. It would be appropriate here to clarify that there are certain class of cases which are not covered by Section 4(c) of the Act. An illustration is provided by the observations in the



case *Gorakh Nath v. Hari Narain Singh* (AIR 1973 SC 2451). There the claim of the plaintiff was that the sale of his half share by his uncle was Invalid, Inoperative and void. In the suit the plaintiff had prayed for cancellation of the sale-deed executed by his uncle to the extent of his half share. It was held that the suit was covered by the relevant provision of the U.P. Consolidation of Holdings Act and the claim had to be adjudicated upon by the consolidation courts. It was, however, pointed out that there is a distinction between cases where a document is wholly or partially Invalid so that it can be disregarded by any court or authority and one where it has to be actually set aside before it can cease to have legal effect. The latter class of cases were held to be outside the scope of the provision relating to abatement of suits.”

59. A plea was raised, in the case of **Ramkrit Singh** (supra), that power of the State Government to initiate consolidation proceeding in a village/area of its choice was unguided, drastic and arbitrary. Responding to this plea, the Full Bench held, in paragraph 17 in the case of **Ramkrit Singh** (supra), as under:-

“**17.** It is not possible to accept this argument also. So far as the guidance is concerned it is available both from the preamble and general scheme of the Act. It is patently clear that a law of this nature cannot be applied throughout the State at the same time. There are various administrative and financial constraints. The more fact that consolidation operations are not undertaken simultaneously throughout the district or State does not bring any infirmity in the law. (See *Ram Chandra Palal v. State of Orissa* (AIR 1956 SCR 28). This very aspect has been emphasised in the case of *Shyam Sunder v. Siya Ram* (1973 A.I.J. 53). It has been held by this Court in relation to other statutes, that piecemeal



application of law is not Illegal or ultra vires. [See *Nasibun Nisa v. State of Bihar* C.W.J.C. 670 of 1978 decided on 27.6.1978]. In view of the interpretation that I have put on Section 4(c) of the Act, I am of the view that the challenge to the validity of the provisions of the Act on the grounds urged in the course of argument cannot be accepted.”

60. While upholding various provisions under the Act, validity of which were under challenge, the Full Bench, in the case of **Ramkrit Singh** (supra), made significant observations, in paragraphs 19 and 20, which read thus:

“**19.** Before I conclude, I must refer to the feeling of dissatisfaction and apprehension which was expressed in course of argument. This was because the determination even in respect of question of title is left in the hands of administrative authorities untrained in law. Of course, the determination of the authorities can be challenged by way of writ. But the challenge, as is well known, is restricted challenge. There cannot be challenge to erroneous determination on questions of fact. This could have been; obviously; obviated, if in relation to question of title, at least an appellate forum was provided before a court, say, the District Judge. The apprehension that there would be delay could very well be eliminated by laying down a time limit in the law for disposal of such appeals. I have, no doubt, in my mind that the High Court would have made appropriate arrangements for the early disposal of such matters. Indeed, even in the High Court, cases relating to acquisition of surplus lands under the provisions of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act are taken up and decided with utmost speed. Rule in cases, which are admitted, is usually made returnable between five weeks to eight weeks and that too to enable the State to be adequately prepared at the time of hearing and file counter affidavits, if necessary. If



this can be done in the High Court, I do not see any reason why adequate administrative arrangement could not be made in the District Courts for disposal of cases which require utmost priority.

20. It would not perhaps be inappropriate to point out that if we had a Law Commission in the State many of the problems that arise either as a result of inartistic drafting or failure to appreciate the consequence and impact of legislations, would have been avoided. We have a Law Commission at the Centre. If one is constituted in the State many of the local problems that do arise may be avoided. In that context I have expressed my views in the article "What is wrong with the law?" Which has been printed in the souvenir published on the occasion of the Diamond Jubilee celebration of this High Court. Therein I have tried to explain why the constitution of State Law commission is necessary; and the extent of its utility to the State. I may only mention here that such a Commission, if constituted, has to have a statutory status. Some times back Law Commission was constituted under administrative order in this State. As for as I know it made many useful suggestions. But those have only adorned the archives of the Secretariat. Had there been a statutory constitution of the Commission this might not have been the result. These are the matters which I hope would receive serious consideration of the State Government."

61. This is not to be forgotten that the challenge to the above noted provisions of the Act, in the case of **Ramkrit Singh** (supra), was on the ground of the same being violative of Article 14 of the Constitution of India. In view of the subsequent development of inclusion of the Act in the Ninth Schedule of the Constitution, the validity of the provisions of the Act cannot be tested on the touchstone of



Article 13 or 14 of the Constitution of India, as has been already been discussed in the beginning.

62. This takes me to the Full Bench decision, in the case of **Kalika Kuer alias Kalika Singh v. The State of Bihar** (supra).

63. The most significant aspect of the Full Bench decision, in the case of **Kalika Kuer alias Kalika Singh v. The State of Bihar** (supra), is that Hon'ble Mr. Justice P. S. Misra (as he then was) held, in paragraph 102 (5), that Sections 15 (1) and 15 (2) of the Act were *ultra vires* Articles 13 and 14 of the Constitution of India insofar as they declared certificate of transfer to be conclusive proof of the raiyat to be the transferee of the holding or that of the under-raiyat therein. Hon'ble Mr. Justice S. B. Sinha (as he then was) held, while agreeing with the opinion of Hon'ble Misra, J. that the said provisions was violative of Article 300A of the Constitution of India. Hon'ble Mr. Justice S. Hoda (as he then was) recorded his agreement with the judgment of Justice P. S. Misra.

64. The conclusions arrived at by Misra, J., in paragraph 102, are as under:-

“**102.** My conclusions, therefore, are that:

(1) all suits of civil nature, including suits in respect of any land in the area notified under section 3 of the Act can be filed, notwithstanding, the bar under section 4(b) of the Act, before a civil court of competent jurisdiction, which on examination of jurisdictional facts, may hold that the suit is not maintainable until notification is cancelled or consolidation**61.**



This is not to be forgotten that the challenge to the above noted provisions of the Act, in the case of **Ramkrit Singh** (supra), was on the ground of the same being violative of Article 14 of the Constitution of India. In view of the subsequent development of inclusion of the Act in the Ninth Schedule of the Constitution, the validity of the provisions of the Act cannot be tested on the touchstone of Article 13 or 14 of the Constitution of India, as has been already been discussed in the beginning.

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64. The conclusions arrived at by Misra, J., in paragraph 102, are as under:- scheme is completed. When such order is passed by the court, the parties concerned may raise their dispute in respect of any land in such area before the consolidation authorities.

(2) pending suits shall not abate unless specific order of abatement is made by the civil court of competent jurisdiction. The suit shall revive and proceed in accordance with law in the event of cancellation of the consolidation scheme or its completion. The civil court shall, while making the order of abatement, see that no question of pure title, except in respect for declaration of rights or interests in any land lying the area or such incidental questions which arise from the claim of the rights or interests is involved in the suit. If any question of pure title other than claims in respect of the declaration of rights or interests in the land or incidental thereto is involved, the suit shall not abate.

(3) The consolidation authorities shall be required to decide preliminary/collateral/ jurisdictional facts before assuming jurisdiction. It shall be open to a party to the proceeding or any person affected by the decision on the jurisdictional facts to file a suit before a civil court of competent jurisdiction questioning the correctness of such findings of fact recorded by the consolidation authorities. Such a suit shall be maintainable, notwithstanding the bar under section 4(b) of the Act;

(4) a pending suit abated under section 4(c) of the Act or a suit not entertained under 4(b) of the Act may proceed or be entertained, as the case may be, after the completion of the consolidation scheme and notification under section 26A of the Act or cancellation thereof, which suit shall be decided by the civil court of competent jurisdiction in accordance with law;

(5) the bar under section 37 of the Act shall not apply to any suit questioning the jurisdiction of the consolidation authorities, the abated suit under section 4(c) and



the suit not entertained under section 4(b) when revived or filed after completion of the consolidation scheme or its cancellation. Section 15(1) and 15(2) of the Act are ultra vires Articles 13 and 14 of the Constitution, in so far as they declare certificate of transfer to be conclusive proof of the Raiyat to the transferee holding or that of the under-raiyat therein;(emphasis added)

(6) The certificate of transfer shall have use only with respect to the rights presumed to exist under section 16 of the Act as to be the rights under record of rights prepared and finally published under Chapter X of the Bihar Tenancy Act, 1885 or as the case may be Chapter XII of the Chotanagpur Tenancy Act, 1908 of the Santhal Parganas Settlement Regulation 1872: and

(7) Consolidation authorities are deemed courts of limited jurisdiction. Any decision by them except on questions relevant to the record of rights, correctness whereof can be questioned on the grounds of wrong decision by them on pure questions of title, shall neither be binding nor available as evidence of title in a court of law.”

65. Hon'ble Justice S. B. Sinha J, in his judgment framed following three questions for determination:-

“**106.** In this writ application, the principal questions which arise for consideration are follows:—

“A. Whether despite statutory bar with regard to the maintainability of suit and/or continuation thereof as contained in Section 4(b), Section 37 and Section 4(c) of the said Act, the Civil Court will have any jurisdiction to entertain a suit for any purpose whatsoever?

B. Whether the provisions of the Bihar Consolidation of Holding and Prevention of



Fragmentation Act is ultra vires the Constitution, inter alia, on the ground that the lis with regard to title is to be decided by Executive Authorities and not by the Judicial Authorities?

C. Whether Section 15 of the said Act is ultra vires the Constitution?”

66. The question no. B was answered in negative and question no. C in affirmative. Dealing with Section 15 of the Act, it has been held, by Honb'ble Sinha, J. In , in paragraphs 216 to 220, and 225 as follows:-

“**216.** In view of Articles 226 and 227 of the Constitution of India, the power of this Court to exercise of its writ jurisdiction over an order passed by an inferior tribunal, cannot be taken away unless the provisions of the Constitution itself is amended.

217. If, merely by grant of a certificate in terms of Section 15 of the said Act, the title of a person in whose favour such a certificate is granted, becomes conclusive, the adjudicatory power of courts would itself be taken away.

218. It is now well known that the right of judicial review is a basic structure of the Constitution.

219. Thus, there cannot be any doubt whatsoever that the Section 15 insofar as it seeks to take away the adjudicatory power of other courts including this Court must be held to be ultra vires the Constitution.

220. As noticed hereinbefore, that in several cases, it has been held that the right of the superior court to issue a writ of certiorari, cannot be excluded.

X X X X X X



225. Article 300A of the Constitution provides that “No person shall be deprived from his property save by authority of law”.

If thus a certificate granted under section 15 of the Act becomes conclusive so as to mean that it cannot be reopened by any authority in any proceeding whatsoever despite the fact that certificate has been prepared on the basis of orders which are either without jurisdiction or a nullity or becomes invalid or wrong, owing to certain subsequent event or absence of the jurisdictional facts, the same, in my opinion, would be violative of Article 300A of the Constitution. I however, with utmost respect agree with Brother Mishra, when he held that Section 15 of the Act is also ultra vires Article 14 of the Constitution.”

67. Mr. Kamal Nayan Choubey, learned Senior Counsel, assisting this Court as an *Amicus Curiae*, has submitted that in view of subsequent inclusion of the Act in Ninth Schedule of the Constitution, *vires* of the Act cannot be questioned, more so, in view of the Supreme Court’s decision, in the case of **I. R. Coelho** (supra).

68. Mr. Vindhya Kesari Kumar, learned Senior Counsel, has, with his usual vehemence, contended that the view taken by the Full Bench, in the case of **Kalika Kuer alias Kalika Singh v. The State of Bihar** (supra), is correct view and because Section 15 of the Act seeks to take away adjudicatory power of the Courts and confers such power on judicially untrained executive officers, the said provision is constitutionally invalid. He has argued that Section 37 of the Act needs to be read down if its constitutional validity is to be upheld, and it be declared that the bar of suit under section 15 of the Act shall not apply



when the matter involves questions of title, based on complex issues of facts and law, as judicially untrained Consolidation Officers cannot examine such issues. According to him, despite bar under Section 37 of the Act, the civil Courts may entertain such suits, which involve disputed questions of title, after close of the proceedings, with the issuance of notification under Section 26A of the Act.

69. Mr. Pushkar Narayan Shahi, learned Additional Advocate General, has submitted that it is within the legislative competence of the State Legislature to enact law laying down jurisdiction and powers of all courts except the Supreme Court, with respect to any of the matters in the List-II of the Seventh Schedule. He has referred to Entry-65 read with Entry-18 of List-II of the Seventh Schedule of the Constitution, which read thus:-

“18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.”

X X X X X X

“65. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.”

70. Referring to the aforesaid constitutional provision, he has, contended that the State Legislature has authority to decide jurisdiction and powers of the courts including courts under the Act. He has placed reliance on Supreme Court’s decisions, in the cases of **Satyanarayan**



Prasad Sah and Others v. The State of Bihar (AIR 1980 SC 2051) and **Mst. Bibi Rahmani Khatoon and Other v. Harkoo Gope and Others (AIR 1981 SC 1450)**, dealing with the concept of abatement in consolidation matters.

71. Before I proceed further, I must not loose sight of the Full Bench decision of this Court, in the case of **Seikh Haider Zan v. Md. Yusuf Ansari and Another**, reported in **2000 (2) PLJR (HC) 338**.

72. In the said case, there were three questions under reference including the question as to whether a suit based on title challenging the correctness of the entries in the records of right published under Section 16 of the Act is maintainable in the civil court or not. The judgment authored by Hon'ble Mr. Justice S. N. Jha (as he then was) in **Seikh Haider Zan v. Md. Yusuf Ansari and Another**, reported in **2000 (2) PLJR (HC) 338** holds the majority view, in paragraph 42 whereof it has been laid down that suits based on title, challenging the correctness of the entry in the register of lands under the Act are not barred in civil courts. In the dissenting judgment, Hon'ble Mr. Justice Nagendra Rai (as he then was), in very clear and unambiguous term, recorded, in paragraph 39, that the consolidation authorities have power to decide the question of title and the decision rendered by them on the question of title is final and the same cannot be challenged in a civil court, in view of the specific provisions contained in section 37 of the Act. Interpreting



various provisions of the Act, Hon'ble Mr. Nagendra Rai, J. Held that even in respect of the matters, which could or ought to have been raised under the provisions of the Act, including the question of title, but if not raised, the suit is barred under section 37 of the Act. While recording so, his Lordship held, however, that the judgment/order of the consolidation authorities or the entries made by them in the records in regard of the matter cognizable by it, passed or recorded without complying with the provisions of the Act or against the fundamental principles of judicial procedure or obtained by fraud is amenable to the jurisdiction of the Civil Court.

73. I will deal first, with the question of validity of Section 15 of the Act. As has been noticed, the said provision confers upon the Consolidation Officer power to grant a certificate to every raiyat or under-raiyat, to whom holding/land has been allotted in pursuance of the scheme of consolidation. The said certificate, the provision contemplates, shall be conclusive proof of title of such raiyat or under-raiyat, after the exercise undertaken in accordance with various other provisions of the Act. The challenge is on the identical ground that it takes away the powers of the civil courts manned by judicial officers, properly trained to adjudicate complex questions of disputes relating title and possession, during the pendency of the consolidation proceeding; and allows the executive officilas to adjudicate, even complex issues of



title of rival parties. It has been argued that it hits the doctrine of separation of powers of legislature, executive and judiciary, which has been held to be basic feature of the Constitution, in the cases of **Kesavanand Bharti v. State of Kerala and Another (AIR 1973 SC 1461)** and **S. R. Bommai v. Union of India**, reported in (1994) 3 SCC 1.

74. I reiterate here that this Court cannot travel beyond the 'Basic Structure doctrine' while considering the validity of the statutory provisions of the Act, in view of the law clearly enunciated, in the case of **I. R. Coelho** (supra). Be it noted that Constitutional amendments, whereby the Act and the amendments thereto have been included in the Ninth Schedule of the Constitution have never been put to challenge. In the absence of any challenge to inclusion of the enactments in the Seventh Schedule of the Constitution on the ground of the same being hit by basic structure doctrine, I find it difficult to see any merit in the plea to challenge to the provisions of the Act, on the said ground.

75. In order to deal with the said ground of challenge, the questions, *inter alia*, (i) whether the provisions under the Act, which bar jurisdiction of the civil court, provide an effective mechanism for adjudication of the disputes by consolidation authorities appointed under the Act and (ii) whether the provision requiring abatement of proceedings before the regular courts and those puts bar on the



jurisdiction of the civil courts, can be said to be against the doctrine of separation of powers, as conceived under the Constitution, need to be gone into.

76. Before I address this aspect, I must first refer to Section 9 of the Code of Civil Procedure, 1908, which contemplates exclusion of jurisdiction to try such suits of a civil nature if their cognizance is either expressly or impliedly barred. The Code contains the provisions relating to the procedure of the court of civil judicature.

77. Mr. Pushkar Narayan Shahi, in my view, has rightly referred to Entry-65 of List-II-State List of the Seventh Schedule, which authorizes the Legislature of any State to make laws with respect to *'powers of all courts, except the Supreme Court, with respect to any of the matters in this List'*. *'Land, that is to say, a right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization'* are the matters in List-II at Entry-18, which I have already noticed. There is no ambiguity in the language of Entry-18, which, read with Article 246 of the Constitution, leaves no room of doubt, over the legislative competence of the state legislature to make laws in relation to these matters. The enactment of Act, in the background of its scheme, as has been noticed herein above, is apparently an exercise covered by Entry-18. It is also



evident that there is clear purpose behind providing for exclusion of jurisdiction of the civil courts, which is to accomplish the aims and objectives of the Act. This is for the purpose to ensure that the jurisdiction of the authorities under the Act remains unhampered and the State authorities are not prohibited by the civil courts and the decisions consolidation authorities under the Act are not impeded by the decisions of the civil courts.

78. The purpose of exclusion of jurisdiction of the civil courts has been discussed lucidly by the Supreme Court, in the case of **Paras Nath Rai** (supra), while observing that it is aimed to avoid conflict of jurisdiction on the consolidation authorities 'which are required to exclusively examine the rival claims of the parties'.

79. Can a provision, which prescribes for adjudication of civil disputes between the parties by a forum/authority other than the civil courts, be said to be hitting the basic structure of the Constitution? My answer to the question would be in negative. The Constitution does not command adjudication of civil disputes exclusively by the civil courts. The law governing procedure in the civil courts, as contained in the Coder of Civil Procedure, 1908, itself contemplates a situation where jurisdiction of the civil courts can be barred. Barring jurisdiction of civil courts in adjudication of such matters, in my view, is not against the doctrine of separation of power. It is true that the adjudication, under the



scheme of the Constitution, is a function of judiciary. Taking away of this function of adjudication from the judiciary altogether will certainly hit the basic structure of the Constitution. The provisions under the Act, however, do not take away the powers of the High Courts and the Supreme Court of judicial review of any action of the consolidation authorities under the Act.

80. The plea that the Consolidation Officers are not adequately trained to decide disputes and, therefore, the provision is invalid and against the basic structure of the Constitution, is not acceptable to me.

81. It cannot be forgotten that various enactments have been made, leading to constitution and establishment of Tribunals for adjudication or trial of disputes to the exclusion of the civil courts. Some of the Tribunals have been established in pursuance of Articles 323-A and 323-B of the Constitution which empower the Central Government to make laws providing for adjudication or trial by such Tribunals, of disputes specified therein to the exclusion of jurisdiction of all courts except the jurisdiction of the Supreme Court, under Article 136 of the Constitution. On challenge being made to the said provisions under Articles 323-A and 323-B of the Constitution the same have been held to be unconstitutional, being in breach of the basic feature of the Constitution, but only to the extent power of judicial review of the Supreme Court, under Articles 32 and 136 of the Constitution and of the



High Courts, under Articles 226 and 227 of the Constitution, was sought to be taken away in respect of the matters for which the Parliament or State Legislature could constitute Tribunals under the said provisions. [See **L. Chandra Kumar v. Union of India**, reported in (1997) SCC 261]

82. The Legislature has, thus, in my opinion, the jurisdiction to make provision for exclusion of jurisdiction of courts other than the Supreme Court, under Articles 32 and 136 of the Constitution and of the High Courts, under Articles 226 and 227 of the Constitution.

83. The challenge, thus, to the validity of Section 15 of the Act fails.

84. So far as the attack against the provisions under Section 4 (c) of the Act is concerned, the same is no more *res integra*. This is for the reason that similar provision under Section 5 of the U.P. Consolidation of Holdings Act, 1953, which is *pari materia* with Section 4 (c) of the Act, was under consideration before the Supreme Court, on the point of its validity, in the case of **Ram Adhar Singh v. Ramroop Singh and Others** (AIR 1968 SC 714). Considering the said decision, in the case of **Ram Adhar Singh** (supra) and another decision, in the case of *Chattar Singh v. Thakur Prasad Singh* reported in (1975) 4 SCC 457, the Supreme Court, in the case of **Satyanarayan Prasad Sah** (supra), dealing with the provisions of the Act, has refused to accept the



contention that the provision prescribing the abatement of suits and conferring exclusive jurisdiction on the consolidation authorities was in violation of Articles 14 and 19 of the Constitution. The judgment, in the case of **Satyanarayan Prasad Sah** (supra), reads thus:-

“The appeal relates to a suit and later stage thereof certain remedies were sought under the U.P. Consolidation of Holdings Act, 1953 as amended by U.P. Act 21 of 1966. During the pendency of the appeal in this Court, a notification has been issued under Section 4 of the Act. By virtue of the operation of Section 5(2)(a) of the said Act, there is a statutory abatement of the suit and other proceedings pending therefrom. This Court has in *Ram Adhar Singh v. Ramroop Singh* [AIR 1968 SC 714 : (1968) 2 SCR 95] held that even appeals pending before this Court will abate consequent on the above statutory provision. The appellants have moved in CMP No. 19 of 1975 for passing an order of Holdings Act. Counsel for the respondent faced with the decision of this Court and the clear statutory provision agrees that the stand taken by the appellants is correct. We therefore hold that the suit and the appeal stand abated. It is open to the parties to work out their rights before the appropriate consolidation authorities. With this direction, the appeal is disposed of as abated. Parties will bear their costs throughout.

Mr Sinha, appearing for the petitioners in the above writ petitions, contended that Section 4(ii) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 was violative of Articles 14 and 19 of the Constitution of India. In his submission, the provision that any proceeding in a civil court of the nature covered by Section 4(ii) would be within the exclusive jurisdiction of the Consolidation Authorities and any order passed by a civil court regarding land (title or possession or other incident) pending before the civil court would stand abated, was a reasonable restriction on the right of a party to go to an ordinary civil court. It also



discriminated that class of litigants from other classes of litigants who enjoyed the right to approach the civil court. In his case the decree had been passed in his favour by a civil court but the subject-matter was pending in an appeal in the High Court and the High Court passed an order nullifying the decree of the trial court having regard to Section 4(ii) of the Act.

2. We do not think there is substance in the submissions. True, the petitioner is right in saying that the High Court should not have “nullified” the decree of the trial court but should have merely declared that the proceeding stood abated, which of course, means that the civil proceeding comes to nought. Regarding the constitutional submissions we are not called upon to investigate the merits for the short reason that both the points have been covered by two decisions of this Court, *Ram Adhar Singh v. Ramroop Singh* [AIR 1968 SC 714 : (1968) 2 SCR 95] and *Chattar Singh v. Thakur Prasad Singh* [(1975) 4 SCC 457 : AIR 1975 SC 1499]. Indeed, the High Court has merely followed these two decisions in reporting the contentions of the appellants. We, therefore, see no merit in the writ petitions and dismiss them.

3. In the circumstances of the case there will be no order as to costs.”

85. Situated thus, no provision under the Act, which have been put to challenge can, therefore, be said to be *ultra vires* Articles 14 and 16 of the Constitution nor cannot be said to be against the basic structure of the Constitution.

86. I am also of the view that once constitutional validity of the provision has been upheld by the Supreme Court, it is not within the purview of this Court to examine again the validity of the said provision, applying basic structure doctrine.



87. Dealing with similar provision under the U. P. Consolidation of Holdings Act, 1953, the Supreme Court, in the case of **Gorakh Nath Dube v. Hari Narayan Singh and Others**, reported in (1973) 2 SCC 535, has referred to with approval, a decision of the Allahabad High Court, in the case of **Jagarnath Shukla v. Sitaram Pandey**, reported in 1969 ALJ 768, and has held that the questions relating to the validity of sale-deeds, gift deeds, and wills could be gone into in proceedings before the consolidation authorities, because such questions naturally and necessarily arise and have to be decided in the course of adjudication on rights or interests in land which are the subject-matter of consolidation proceedings. While observing so, the Supreme Court, in the case of **Gorakh Nath Dube** (supra), noted that a distinction can be made between cases where a document is wholly or partially invalid so that it could be disregarded by any court or authority or where it has to be actually set aside before it can cease to have legal effect. The Supreme Court further observed that an alienation made in excess of power to transfer would be, to the extent of the excess of power, invalid. An adjudication on the effect of such a purported alienation would be necessarily implied in the decision of a dispute involving conflicting claims to rights or interests in land which are the subject-matter of consolidation proceedings. The Supreme Court clarified that the existence and quantum of rights claimed or denied will have to be



declared by the consolidation authorities which would be deemed to be vested with jurisdiction, by the necessary implication of their statutory powers to adjudicate upon such rights and interests in land, to declare such documents effective or ineffective, but where there is a document, the legal effect of which can only be taken away by setting it aside or by its cancellation, so long as it is not cancelled by a court having such power to cancel, the same would be binding on the consolidation authorities.

88. In the light of what has been held by the Supreme Court, in the case of **Gorakh Nath Dube** (supra), it is in fact 'the substance of the claim' and 'not its form' which will be decisive to determine whether the consolidation court shall have the jurisdiction to determine the dispute or not.

89. The Supreme Court had yet another occasion to deal with various provisions of U.P. Consolidation of Holdings Act, 1953, in the case of **Sita Ram v. Chhota Bhondey**, reported in **1991 Supp (1) SCC 556**. In the case of **Chhota Bhondey** (supra), a question relating to the maintainability of a suit against the order of the Deputy Director of Consolidation, determining the issues of shares on participation in a Hindu Joint Family was under consideration in view of similar bar under Section 49 of the U.P. Consolidation of Holdings Act, 1953. Answering



the said question, the Supreme Court held in paragraphs 6 and 13, in the case of *Chhota Bhondey* (supra), as follows:-

“6. From a perusal of Section 49 it is evident that declaration and adjudication of rights of tenure holders in respect of land lying in an area for which a notification has been issued under Section 4(2) and adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under the Act, had to be done in accordance with the provisions of the Act only and the jurisdiction of the civil or revenue courts to entertain any suit or proceeding with respect to rights in such land or with respect to any other matter for which a proceeding could or ought to have been taken under the Act, has been taken away. The language used in Section 49 is wide and comprehensive. Declaration and adjudication of rights of tenure holders in respect of land lying in the area covered by the notification under Section 4(2) of the Act and adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under the Act, would cover adjudication of questions as to title in respect of the said lands. This view also finds support from the other provisions of the Act and the amendments that have been introduced therein.

13. In the instant case respondent 1 was claiming an interest in the land lying in the area covered by notification issued under Section 4(2) on the basis that he is the son of Chhota, brother of Nanha and that the lands were recorded in the name of Nanha in a representative capacity on behalf of himself and his other brothers. This claim which fell within the ambit of Section 5(2) had to be adjudicated by the consolidation authorities. Since it was a matter falling within the scope of adjudicatory functions assigned to the consolidation authorities under the Act the jurisdiction of the civil court to entertain the suit in respect of the said matter was expressly barred by Section



49 of the Act and the suit of the appellant was rightly dismissed on that ground.”

90. In view of the law as discussed and laid down by the Supreme Court, in the cases of **Gorakh Nath Dube** (supra) and **Chhota Bhondey** (supra), there cannot be any gainsay that the consolidation authorities are courts competent to decide even questions of title in respect of lands, which are subject matter of consolidation proceedings.

91. No discussion is needed on the effect of operation of Section 4 (c) of the Act in view of detailed discussion by the Supreme Court, in the case of **Paras Nath Rai** (supra), paragraph 30 of which reads thus:-

“**30.** From the aforesaid enunciation of law it is crystal clear that once a notification has been published under Section 3 of the Act, every suit and proceeding in respect of declaration of rights or interest in any land lying in areas or for declaration or adjudication of any other rights in regard to which proceeding can or ought to be taken under the Act pending before any court or authority whether of the first instance or of appeal, reference or revision, shall, on order being passed in that behalf by the court or authority before whom such suit or proceeding is pending shall stand abated with a view to ensure the jurisdiction of the authorities under the Consolidation Act remains unhampered and the said authorities are not obstructed by the proceedings in civil courts and their decisions are not impeded by the decisions of the civil courts. It is also vivid that the purpose of the scheme of consolidation is to avoid conflict of jurisdiction in order to confer jurisdiction on the consolidation authorities who are required to exclusively examine the rival claims of the parties. Apart from that there is conceptual difference between statutory abatement and abatement under the Code of Civil Procedure. On the basis of a statutory abatement,



the whole proceeding from its inception stands abated because the local law has provided an effective alternative remedy to be pursued before an exclusive forum to remedy the grievance raised before the court. It has been further pronounced by this Court that nothing remains to be adjudicated before the civil court and it is apt to note that in *Satyanarayan Prasad Sah* [1980 Supp SCC 474] this Court had held that the High Court should not have nullified the decree of the trial court but should have declared that the proceedings stood abated which meant that civil proceedings came to a naught, that is to say, the proceedings from its commencement stood abated.”

92. The Supreme Court has further clarified that where a notification is issued, bringing the land involved in a dispute in the civil proceeding under a scheme of consolidation, the proceeding pending before the civil court either in trial court, appeal or revision, shall abate as a consequence ensuing upon the issue of notification and the effect of abatement would be that the civil proceeding as a whole would come to a naught. The Supreme Court has, in no uncertain terms clarified that not only the judgment and decrees would become extinct but the entire civil proceeding would come to a naught. The Supreme Court has further held that the contrary views of the High Court, in the cases of **Jagdish Prasad v. Satya Narain Singh (AIR 1982 Pat 37)** and **Raja Mahto v. Mangal Mahto**, reported in **1982 PLJR 392**, were erroneous wherein it was held that an appeal might abate, but the decree would not abate. The Supreme Court proceeded one step further to clarify the consequences of issuance of notification under Section 3 of the Act, by virtue of operation



of Section 4 (c) of the Act and held that a suit as well as the appeal would abate and resultantly, the very commencement of the civil proceeding would come to a naught and, therefore, findings recorded in the said proceeding would become extinct.

93. On the basis of what has emerged from the foregoing discussions, in the light of statutory provisions and the authoritative pronouncements made by the Supreme Court in various cases noted above, following is the summary of my conclusions :-

(i) Sections 4(c), and 37 of the Act are *intra vires* and cannot be held to be against the *Basic Structure* of the Constitution. There is no conflict between Section 15 and 16 of the Act. Whereas under Section 15, the Consolidation Officer is required to grant certificate to every raiyat or under-raiyat, to whom holding/land has been allotted, Section 16 refers to confirmation of the scheme under Section 13 of the Act to be deemed to be the records of right prepared and finally published under Chapter-9 of the Bihar Tenancy Act, 1885.

(ii) In my view, the provision under Section 15 of the Act cannot be said to be against the basic structure of the Constitution. The view taken by S. B. Sinha , J., in the case of **Kalika Kuer alias Kalika Singh v. The State of Bihar** (supra), is not acceptable to me because what has been held to be the basic structure of the Constitution by the Supreme Court, in the case of **L. Chandra**



Kumar v. Union of India and others, reported in (1997) 3 SCC 261, is High Court's power of judicial review under Articles 226 and 227 of the Constitution of India. I find it difficult to accept the view taken by his Lordship, in the case of **Kalika Kuer alias Kalika Singh v. The State of Bihar** (supra), that Section 15 of the Act is *ultra vires* the Constitution because it seeks to take away adjudicatory power of other courts. It is to be kept in mind that Section 37 of the Act bars jurisdiction of civil courts only and not the power of judicial review of the constitutional courts under Articles 226, 227, 136 or 32 of the Constitution of India. Section 37A of the Act, as has been noted, declares authorities under the Act to be deemed courts of competent jurisdiction. The challenge, therefore, to Sections 15 or 37A of the Act cannot be sustained, which, in my view, are *intra vires*.

(iii) On the point of abatement, under Section 4 (c) of the Act, in my opinion, the law stands well settled, in view of the decision of the Supreme Court, in the case of **Paras Nath Rai and Others v . State of Bihar and Others** (AIR 2013 SC 1010). The Supreme Court, upon examining the various provisions of the Act and the judgment rendered in the case of **Satyanarayan Prasad Sah** (supra), has clearly held that once a notification has been published under Section 3 of the Act, every suit and proceeding in respect of declaration of rights or interest in any land lying in areas or for declaration or adjudication of any other rights



in regard to which proceeding can or ought to be taken under the Act pending before any court or authority whether of the first instance or of appeal, reference or revision, shall, on order being passed in that behalf by the court or authority before whom such suit or proceeding is pending

shall stand abated with a view to (i) ensure that the jurisdiction of the authorities under the Consolidation Act remains unhampered, (ii) the said authorities are not obstructed by the proceedings in civil courts and

(iii) their decisions are not impeded by the decisions of the civil courts. The Supreme Court has further held that purpose of such power under the scheme of consolidation is to avoid conflict of jurisdiction in order to confer jurisdiction on the consolidation authorities who are required to exclusively examine the rival claims of the parties.

(iv) What is evident from the decision of the Supreme Court, in the case of **Paras Nath Rai** (supra), is that it has kept in mind the jurisdiction conferred upon the Consolidation Authorities to examine rival claims of the parties.

(v) Referring to the earlier decision in the case of **Satyanarayan Prasad Sah** (supra), the Supreme Court has laid down in the case of **Paras Nath Rai** (supra), that nothing remains to be adjudicated before the 'civil court' after discussing conceptual difference between statutory abatement and abatement under the Code of Civil Procedure. By operation of statutory abatement, the whole



proceeding from its inception stands abated because the Act has provided an effective alternative remedy to be pursued before an exclusive forum to remedy the grievance which could have been raised before the court.

(vi) In the light of Supreme Court's decision in case of **Gorakh Nath Dubey** (supra), it is the 'substance of the claim' and not 'its form' which will be decisive to determine whether the consolidation court shall have jurisdiction to determine the dispute or not. As propounded by the Supreme Court in the said case, a document, legal effect of which can only be taken away by setting it aside or by its cancellation, so long as it is cancelled by court having power to cancel, shall be binding on the Consolidation authorities.

(vii) The Consolidation authorities have power to decide the question of title and the decision rendered by them on the question of title is final and the same cannot be challenged in a civil court, in view of the specific provisions contained in section 37 of the Act. However, judgments/orders of the consolidation authorities or the entries made by them in the records in respect of the matters cognizable by it, passed or recorded without complying with the provisions of the Act or against the fundamental principles of judicial procedure or obtained by fraud is amenable to the jurisdiction of the Civil Court. I fully endorse the



dissenting opinion of Hon'ble Mr. Justice Nagendra Rai, in case of **Sheikh Haider Zan** (supra).

(Chakradhari Sharan Singh, J.)

Per:- Ashutosh Kumar, J.

I have had the occasion to go through the painstaking and erudite opinions delivered by my learned brothers, Hon'ble Justice Chakradhari Sharan Singh, Hon'ble Justice Rajeev Ranjan Prasad and Hon'ble Justice Sanjay Priya, JJ. who have affirmed the proposition that consolidation authorities are competent courts to decide even questions of title in respect of lands which are subject matter of consolidation proceedings and that Sections 4(B) and (C), Sections 15 and 37 and 37A of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 in short 'the act' are *intra vires* the Constitution as they do not affect the basic structure of the Constitution.

2. In *State of Bihar v. Kalika Kuer @ Kalika Singh & Ors.* (2003) 5 SCC 448, the Supreme Court while, hearing the appeal on behalf of State of Bihar against a judgment of a three Judges Bench of Patna High Court in ***Kalika Kuer @ Kalika Singh and Ors. 1989 (1) P.L.J.R., H.C. 1203*** (decided on 25.09.1989) which had declared Sections 15(1) and 15(2) of the Act *ultra vires* articles 13 and 14 of the Constitution of India after holding a judgment delivered by a co-eval



strength of three Judges in ***Ramkrit Singh and Others v. State of Bihar 1979 (Patna) 250*** (which was delivered about ten years ago) to have been rendered *per incuriam*, opined that ***Kalika Kuer*** (supra) wrongly applied the doctrine of *per incuriam* and that in the event of there being contrary opinion of the Judges in the two cases, remitted the matter to the High Court of Patna for fresh consideration, after setting aside the judgment in ***Kalika Kuer*** (supra).

3. It is important here to note that the Act has been included in the 9th Schedule of the Constitution on 30.08.1995, thereby immunizing it from being tested on any other ground except on the basic structure/feature test as enunciated in ***I.R. Coelho (dead) by LRs. v. State of Tamil Nadu AIR 2007 SC 861*** and ***Glanrock Estate Private Limited v. State of Tamil Nadu (2010) 10 SCC 96***.

4. All the learned brother Judges have tested the so called offending provisions of the act in the light of the act being packed up in 9th Schedule of the Constitution and thus amenable to the basic structure test/essence of the right and impact test for giving the act the constitutionality of a valid piece of legislation.

5. Any further deliberation on the issues viz. the occasion for this special Bench to be constituted for the purpose of deciding the validity of the Act and the issues which were placed before this Bench for its consideration, would be nothing but tautology.



6. To avoid any repetition and prolixity, I would only like to refer to the constitutional developments which have taken place with particular reference to the agrarian reforms and the efforts of the law making body as also the courts to read them in tune with the rights and goals of the Constitution set forth in its preamble as well as the part-III and IV of the said document.

7. Towards the end of the year 1946, approximately 300 wise men from different parts of the country, having different cultural background, learning and experience, came together under a common umbrella of constituent assembly for drafting a constitution for independent India. After undertaking tremendous efforts, toil and labour, a document, a living document so to say, was handed over to us which envisioned various rights and goals for the citizenry. The document was neither autochthonous nor allochthonous in as much as it did not accept completely the Gandhian vision and also rejected all traces of colonialism and the net result was that we got a document which was robust, yet flexible and could be modulated with some degree of rigidity for day to day governance and also for extraordinary times by providing for extraordinary measures.

8. Like all constitutions, the Indian Constitution also has incorporated and drawn up a set of rights known as fundamental rights and freedoms which are enforceable under the Constitution along with a



list of the principles known as Directive Principles of the State Policy which would provide the government of the day through the parliament to enact such laws which will not offend the Constitution or its basic foundation but would serve the goal as defined in such list which stands included in Part IV of the Constitution. The Constitution of India is not a static document but a living document, which is amply proved by the provision contained in the Constitution with respect to its amendment i.e. Article 368.

9. A special reference is required to be taken of Article 13 in Part III of the Constitution which enshrines that all laws which are inconsistent with the fundamental rights are void to the extent of inconsistency and that no law shall be made which takes away or negates such rights conferred by Part III of the Constitution. Initially, the word 'law' used in Article 13 included any ordinance, order, bylaw, rule, regulation, notification, custom or usage having in the territory of India the force of law but by 24th amendment of the Constitution in the year 1971, clause 4 was added to Section 13 which made Section 13 inapplicable to amendments made in the Constitution under Article 368. The interpretation of the aforesaid accretion in Section 13 will be referred to later.



10. The core of the fundamental rights has been enshrined in Article 14 which provides every citizen equality before the law and equal protection of laws.

11. In the context of legislations impacting the agriculture, a special reference is required to be made to the principles, though unenforceable in courts of law but reflecting the goals set forth under the Constitution. Article 38 enjoins upon the State to secure a social order for the promotion of welfare of the people and providing them with a social order in which there is emphasis on all round justice viz. social, economic and political and Article 48 which obliges the State to endeavour for organizing and improving agriculture and animal husbandry on modern and scientific lines.

12. When the English East India Company had acquired the Diwaniship of Bengal, Bihar and Orissa in 1765, it had the right to collect land revenues for about 25 years thereafter. Various experiments were made by Robert Clive and Warren Hastings for increasing the revenue. Those measures/experiments only led to harassment of peasants at the hands of Zamindars/Tax Farmers who did not have any permanent interest in the land or in the peasantry. The experimentation permitted the unabashed extraction from both; land as well as the peasantry.

13. Under Governor General Cornwallis, permanent settlement was established in 1793. Under this system, the East India



Company made an assessment on a permanent basis as to how much annual revenue would come from a piece of land and vested the right to collect this revenue in the Zamindars. Thus the Zamindars became the proprietors of the land as long as they continued to pay the fixed annual revenue to the Company. They had a right to buy or sell the land and the peasants who tilled the land became the tenants of such Zamindars who were entitled to use the land as long as they paid whatever the Zamindars chose to charge from them. Perhaps Cornwallis was of the view that the Zamindars, like the barons and the landed gentry of England would develop the land for their benefit but nothing of that dream ever concretized. The orientation of those Zamindars remained oppressive in the same manner, towards maximizing profits rather than maximizing production. This also resulted in exploitation of peasants and their being rendered poor, indebted and helpless. The additional maladies which were generated were soil mining, fragmentation of holdings and additional poverty on a larger scale. One of the research papers written by Joseph W. Elder “Land Consolidation in an Indian Village; a case study of Consolidation of Holdings Act in Uttar Pradesh” tells us that instead of the dreams of Cornwallis for an improved condition of land and peasantry being realized, the permanent settlement resulted in a blight on the land.



14. The land holding system instituted by Cornwallis in 1793 remained the basic pattern for about half a century till the independence of this country in the year 1947.

15. The Land Revenue Administration was hitherto considered by the British to be properly dealt by only the provincial governments rather than Viceroy. Thus, when Government of India Act in 1935 abolished the principle of diarchy in the provinces and replaced it with a principle of provincial autonomy under elected Indian legislators, Indians for the first time came in a position to enact land reform legislation.

16. After the 1937, the elected governments of the provinces began pushing through a slew of land reforms measures. One amongst them was the Bihar Tenancy Acts of 1937 and 1938.

17. The State of Bihar came up with a legislation viz. Bihar Land Reforms Act (30 of 1950), the preamble of which stated that it was enacted to provide for the transference to the State of the interests of proprietors and tenure holders in land and of the mortgagees and lessees of such interests including interests in Trees, Forest, Fisheries, Jalkars, Ferries, Hats, Bazars, Mines and Minerals. The same was challenged before the Patna High Court on the ground of lack of competence of the State to enact such a legislation. The case was decided by a three Judges Bench (Shearer, Reuben and Dass, J.J.) who held the Act to be



unconstitutional on the ground that it transgressed Article 14 of the Constitution of India (*Kameshwar Singh Vs. State of Bihar AIR 1951 Patna 91*). Similar legislations by the State of Uttar Pradesh and Madhya Pradesh were but held to be constitutionally valid by the High Courts of Allahabad and Nagpur. The parties aggrieved preferred appeals before the Supreme Court. In the meantime, some Zamindars also invoked Article 32 of the Constitution of India for having their rights protected. It was at this stage that the first amendment in the Constitution was made by adding Articles 31(A) and 31(B) for the purposes of protecting the legislation on agrarian reforms by giving them immunity from the attack based on Part III of the Constitution of India. By the same amendment, 9th Schedule was created with 13 items, all relating to land reform laws for the purposes of protecting them from the challenge on the ground of their contravening Article 13 of the Constitution of India which provided that no law shall be made by the State which takes away or abridges the rights conferred by Part III of the Constitution and law made in contravention thereof shall, to the extent of contravention, be void.

18. Articles 31(A) and (B) are being extracted hereinbelow for ready reference:

[31-A. Saving of laws providing for acquisition of estates, etc.-(1)Notwithstanding anything contained in article 13, no law providing for-



(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers or corporations, or of any voting rights of shareholders thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by [article 14 or article 19]:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:]

[Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land,



building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.]

2. In this article, -

[(a) the expression “estate” shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include-

(i)any jagir, inam or muafti or other similar grant and in the States of [Tamil Nadu] and Kerala, any janmam right;

(ii)any land held under ryotwari settlement;

(iii)any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;]

(b) the expression “rights”, in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, [raiyat, under-raiyat] or other intermediary and any rights or privileges in respect of land revenue.]

[31-B. Validation of certain Acts and Regulations.

– Without prejudice to the generality of the provisions contained in article 31-A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provision thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any Court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.]



19. In *Sri Sankari Prasad Singh Deo v. Union of India and State of Bihar [(1952) SCR 89]*, the Supreme Court upheld the constitutional validity of the first amendment on the ground that the provision of Article 13(2) does not affect the amendments to the Constitution made under Article 368 as they are made in exercise of constituent powers. It may be noted that the first constitutional amendment was brought by the constituent assembly which was in existence as provisional parliament. Thereafter several acts dealing with agrarian reforms were put in the 9th Schedule, the constitutionality of which was challenged in ***Sajjan Singh v. State of Rajasthan [(1965) 1 SCR 933]***. The validity of all such acts were upheld by following the decision in ***Sankari Prasad*** (supra). The Supreme Court was of the view that Articles 31(A) and 31(B) were added for the purposes of protecting such state legislative measures which were enacted for the purposes of giving effect to policy of agrarian reforms. Packing up of those state laws in the 9th Schedule was therefore held to be only with the objective of protecting them by amending fundamental rights which was permissible. The Supreme Court in the aforesaid case noted the power of the parliament under Article 368 to amend by adding laws to the 9th Schedule. However while upholding the constitutional validity of Articles 31 (A) and 31(B) and the laws relating to agrarian reforms being placed in the 9th Schedule, two of the Judges viz. Justice Hidayattullah



and Justice Mudholkar, though sided with the majority but in their judgments, sowed the seeds of basic feature/basic structure of the Constitution. It was questioned by them whether in the name of amendment, a constitutional provision could be abrogated or done away with and in that event, would it not tantamount to rewriting the Constitution, which in the opinion of the Hon'ble Judges was not permissible even with the aid of Article 368.

20. A few years later, the question was again referred to a Bench of eleven judges of the Supreme Court of India: In *I.C. Golak Nath and Ors. v. State of Punjab and Anr. [(1967) 2 SCR 762]*, the Bench was constituted to give a re-look on the view taken in *Sankari Prasad* and *Sajjan Singh* (supra). The Supreme Court, by a thin majority of 6:5 held that the constitutional amendments were “laws” within the purview of Article 13(2), rendering part III of the Constitution completely inviolate. However, the majority applied the doctrine of prospective overruling to avoid chaos and confusion that would have followed the invalidation of existing constitutional amendments and the statutes on which they were based.

21. After the aforesaid judgment in *Golak Nath* (supra), the government of the day, through parliament, carried out 24th, 25th, 26th and 29th amendments to the Constitution in 1971 and 1972 respectively. By 24th amendment in 1971, Article 13 was amended and sub-clause 4



thereto was added which clarified that nothing in Article 13 shall apply to any amendment of the Constitution made under Article 368. Article 368 was also amended and the words “constituent powers” were inserted. The 25th amendment led to the addition of 31(C) which provided that no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges anyone of the rights conferred by Article 14 or 19 and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy. The 26th amendment led to the abolition of Privy Purse and the rights and privileges of rulers of Indian states. The 29th amendment which came in the year 1972 amended the 9th Schedule of the Constitution by inserting two Kerala Amendment Acts which had been enacted in furtherance of land reforms.

22. All these amendments were challenged in ***Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225*** which is popularly known as basic structure case. Six writ petitions had come up before the Supreme Court, challenging the land redistribution legislations and the constitutional amendments that protected it. The reported name of the case is the title of one of the petitioners viz. His Holiness Swami Kesavananda Bharati who was the head of a religious establishment. The



Supreme Court delivered eleven separate opinions on 24th April, 1973. By a razor thin majority again of 7:6, it was held that though Part III of the Constitution could be amended under Article 368 but the amendment could not destroy or abrogate the basic structure of the Constitution.

23. By the aforesaid judgment, the 24th amendment bringing in the statute book Article 13(4) was validated. The first part of Article 31(C) was also held to be valid. However, the 2nd part of 31(C) which provided immunity to any declaration made by the law that it is for giving effect to the directive principles of state policy was held to be unconstitutional. The 29th amendment of putting two Kerala Acts in 9th Schedule was also held to be valid. The 26th amendment which dealt with omission of Articles 291 and 362 and addition of Article 363A was left to be determined by a constitution Bench of five Judges.

24. What was decided in *Kesavananda Bharati* (supra) therefore was that there were certain implied limitations in Article 368 which indicated clearly that the basic feature/structure of the Constitution could not be changed in the name of amendment. What would comprise the basic structure of the Constitution was but left open to be developed incrementally. In *Kesavananda Bharati* (supra), the concepts drawn from the preamble and some of the fundamental rights and freedoms were held to be the basic features of the Constitution.



25. It would also be necessary at this stage to recount that an important political development had taken place in the year 1975. Allahabad High Court had set at naught the result of the election of the then Prime Minister Mrs. Gandhi in the 5th Lok Sabha on the ground of alleged corrupt practices. The aforesaid judgment of Allahabad High Court was challenged in appeal before the Supreme Court and during the pendency of the appeal, the most pernicious and destructive of the amendments was passed viz. the 39th amendment by which Article 329(A) was added. Along with the addition of Article 329 (A), two of the clauses of which proscribed the application of any law made by the parliament in connection with election of the Prime Minister and the Speaker and some other clauses of the Act were put in the 9th Schedule. This was struck down as invalid in *Smt. Indira Nehru Gandhi v. Raj Narain [(1975) Supp. (1) SCC 1]* as it violated the basic structure of the Constitution. This judgment was delivered at the time when internal emergency had already been proclaimed by Mrs. Gandhi which continued from 26th June, 1975 to March 1977. During this period, there was suspension of Article 19 by virtue of Article 358 of the Constitution and 14 and 21 by virtue of Article 359 of the Constitution.

26. This was the time when, by 40th amendment, 9th Schedule was further populated and several laws which were not at all connected with land reforms were also put in the aforesaid pack of immunity (the



9th Schedule). Soon came the 42nd amendments in the year 1976 which added sub-clause 4 and 5 to Article 368, making any amendment to the Constitution immune from any judicial review and giving unlimited power to the parliament in the shape of constituent power to amend by way of addition, variation or repeal of the provisions of the Constitution. The aforesaid provisions which were brought by 42nd amendment were also struck down as violating the basic structure of the Constitution in ***Minerva Mills Ltd. and Ors. v. Union of India [(1980) 3 SCC 625]***.

27. In the aforesaid case, the challenge was to the validity of the 42nd amendment which had brought about changes in Article 31(C) and 368 of the Constitution of India. In Article 31(C), laws implementing any directive principle were exempted from challenge on the ground of violation of Articles 14, 19 and 31 and in Article 368, clauses 4 and 5 validated all invalidated existing amendments and removed all limitations on future amendments. The Supreme Court with a big majority of 4:1, by applying the basic structure doctrine test, struck down the 42nd amendment.

28. In ***Waman Rao v. Union of India (1981) 2 SCC 362***, the Supreme Court re-examined and upheld the validity of original and amended Articles 31(A) and 31(B) and the 9th Schedule with reference to basic structure doctrine. The Supreme Court in that instance opined



that such amendments have only strengthened the basic structure by making the constitutional ideal of equal justice a living truth.

29. The un-amended Article 31(C) (before the 42nd amendment) was also kept in the same category. However, with respect to 9th Schedule, the Supreme Court clarified that all amendments to it before 24.04.1973 i.e. the day on which the **Kesavananda Bharati's** judgment was delivered were valid. Amendments to it made on or after that date were left open to challenge on the ground that they damaged the basic structure of the Constitution. However, it was held that inclusion of such laws in the 9th Schedule was immune from any challenge if such law was already covered by Article 31(A) or Article 31(C).

30. The aforesaid view was affirmed by a nine judges Bench in *I.R. Coelho (dead) by LRs. v. State of Tamilnadu AIR 2007 SC 861*.

31. The discussion would remain incomplete if the provisions of the 9th Schedule of the Constitution and the judgment in *I.R. Coelho* (supra) is not discussed in some more detail.

32. The 9th Schedule to the Constitution which is inextricably linked with Article 31(B) has its parallel in the Canadian and Israeli Constitution. It is a kind of appendix to the Constitution wherein whichever laws are placed without prejudice to the generality of the provisions contained in Article 31(A), they shall not be deemed to be void or would ever have become void on the ground of such laws being



inconsistent with Part III of the Constitution of India. Article 31(B) has already been extracted before for ready reference. Article 31(B) contains a specific saving clause protecting legislation notwithstanding any judgment even if it has been struck down but has been later inserted in the 9th Schedule without fresh enactment. Such legislative power flowing through Article 31(B) and 9th Schedule was not originally part of the Constitution but as noted above was included through an amendment in 1951 for saving agrarian reforms from any judicial scrutiny on the ground of same being in contravention of the fundamental rights under Part III. Today, about 280 statutes have the protection and immunity from judicial scrutiny, a majority of which do not pertain to land reforms. What is however relevant to note is that the list contains about 85% of the legislations of the State.

33. There are three stages at which the parliament could pack up a legislation in the 9th Schedule. Any fresh enactment can be put in such Schedule so as to guard it against any adverse judicial decision in future. A law which has been struck down could be revived by placing it in 9th Schedule. There could be instance of placing a law under such protective umbrella even while it is under discussion before a court of law.

34. In *Balmadies Plantations Ltd. And Anr. v. State of Tamil Nadu* [(1972) 2 SCC 133], a challenge was laid to the



constitutional validity of *Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969* which sought to transfer private forest lands to state government. Both, the Madras High Court and the Supreme Court upheld the validity of the statute except in so far as it related to the transfer of forests in certain private estates to the government which violated Articles 14, 19 and 31 of the Constitution. By 34th Amendment Act of 1974, the aforesaid statute was brought under 9th Schedule as Entry 80. This is how the portion of the legislation which had been struck down as being violative of Articles 14, 19 and 31 were again revived. In another case, the State of Kerala enacted the Kerala Land Reforms Act, 1963 which was also put in 9th Schedule by 17th amendment of the Constitution. Some amendments were made in the Kerala Law by an amending statute viz. Kerala Land Reforms (Amendment Act 1969) which was not put in the 9th Schedule. The amended provisions therefore were challenged before the Kerala High Court which held that since the amending statute was not invested with the immunity under the 9th Schedule, the amendment would not have the protection of Article 31(B) (*Narayan Nair v. State of Kerala AIR 1971 Kerala 98*). The Kerala High Court therefore struck down some statutory provisions on the touchstone of Articles 14 and 19(1)(f) of the Constitution.



35. The Supreme Court, in appeal confirmed the aforesaid decision of the Kerala High Court (*Kunjukutty Sahib v. State of Kerala AIR 1972 SC 2097*). Shortly thereafter, the aforesaid amending Act of 1969 was brought into 9th Schedule by the parliament and thus the whole amending Act referred to above got revived (29th Amendment, 1972). Similarly in *Paschim Banga v. State of West Bengal*, the Calcutta High Court considered the validity of West Bengal Land Holding Revenue Act, 1979 which imposed a levy of revenue on land holdings in the State. Section 2(C) of the Act was struck down as it gave excessive power to the authority under the statute. Since there was complete connection between Section 2(C) and the entire Act, the whole of the Act was declared unenforceable. This was also put in the 9th Schedule by 36th Amendment Act, 1990.

36. These were few enactments which brought the controversy to the fore viz. whether Article 31(B) along with 9th Schedule conferred unlimited powers of constitutional amendment on parliament to protect legislation from judicial review vis-à-vis the basic structure doctrine propounded in *Kesavananda Bharati*, limiting parliament's amending power and subjecting it to judicial scrutiny.

37. The narrative of the parliament and the courts therefore differed.



38. Since in *Waman Rao* (supra) it was held that any amendment to the Constitution made on or after on 24.04.1973 by way of 9th Schedule amendment was amenable to judicial scrutiny on the touchstone of basic feature of the Constitution which was affirmed in *Minerva Mills* (supra) and *Maharao Sahib Shri Bhim Singhji v. Union of India and Others [(1981) 1 SCC 166]*, a need was felt that the judgment in *Waman Rao* needed to be reconsidered by a larger Bench so that apparent inconsistencies be reconciled and it is clarified whether an Act or regulation which, or a part of which, is or has been found by the Supreme Court to be violative of one or more of the fundamental rights conferred by Articles 14, 19 and 31 can be included in the 9th Schedule or whether it is only a constitutional amendment amending the 9th Schedule which damages or destroys the basic structure of the Constitution that can be struck down.

39. This is how the matter was placed before a nine judges Bench in *I.R. Coelho (dead) by LRs. v. State of Tamil Nadu* (supra). The question before the special Bench was whether it was permissible for parliament under Article 31(B) to immunize legislations from fundamental rights by inserting them into 9th Schedule and if so, to what effect on the power of judicial review of the court post 24.04.1973 (the date of delivery of judgment in *Kesavananda Bharati*).



40. It would be interesting to note the arguments which were advanced before the special Bench in *I.R. Coelho* (supra) against such immunity. The foremost argument was that such power of conferring absolute immunity to a legislation by putting it in 9th Schedule is incompatible with the doctrine of basic structure. The other argument was based upon an observation of Justice Khanna in *Kesavananda Bharati's* case which was clarified in *Indira Gandhi's* case that all fundamental rights may perhaps be included in the basic structure and in that case a law inserted in 9th Schedule will have to be tested on the ground of basic structure of fundamental rights test. The argument therefore was that the test of direct impact and effect had to be applied and the consequence of such amendment had to be taken as the determinative factor. The argument to the opposite was that the validity of 9th Schedule legislation would surely be tested on the touchstone of basic structure but not on the ground of violation of fundamental rights in totality. The fundamental rights chapter stands excluded as a result of Article 31(B) and therefore the challenge could only be on the basic structure doctrine and in addition, there could be other tests of legislative competence or violation of other constitutional provisions. It was also urged before the special Bench that retrospective validation of laws had constitutional validity and therefore there was no folly in putting a legislation in 9th Schedule which has been struck down to cure the defect.



41. The special Bench in *I.R. Coelho* (supra) was not at ease in accepting the broad proposition that laws violative of Part III of the Constitution cannot be put in 9th Schedule by the device of Article 31(B) read with Article 368 of the Constitution of India. But it was also conscious of the fact that the power to pack up laws in the 9th Schedule in the absence of any indicia under Article 31(B) could be abused continuously, illustration of which was evident from the population of 9th Schedule increasing manifold from 13 enactments to 284.

42. After going through the successive cases with respect to agrarian reforms and the power of amendment in *Sankari Prasad Singh, Sajjan Singh, Golak Nath, Kesavananda Bharati, Waman Rao, Minerva Mills, Indira Gandhi* (supra), the nine judges Bench envisioned that the Constitution will keep on being amended as India grows and changes and never will come a time that the country will run out of the need for protecting the principles behind the fundamental rights. The countries with controlled Constitutions have realized the importance of the basic structure of the Constitution and have also therefore listed certain core constitutional commitments.

43. The upshot of the above discussion was that since the basic structure of the Constitution included some of the fundamental rights, any law which was granted 9th Schedule protection deserved to be tested against these principles. If the law infringes the essence of any of



the fundamental rights or any other aspect of basic structure, then it will be struck down, the extent of abrogation and limit of abridgment shall but have to be examined in each case. The conclusion of the Bench in ***I.R. Coelho*** is listed in paragraph 150 (AIR 2007 SC 861) is as follows.

“150. In conclusion, we hold that:

(i) A law that abrogates or abridges rights guaranteed by Part III of the Constitution may violate the basic structure doctrine or it may not. If former is the consequence of law, whether by amendment of any Article of Part III or by an insertion in the Ninth Schedule, such law will have to be invalidated in exercise of judicial review power of the Court. The validity or invalidity would be tested on the principles laid down in this judgment.

(ii) The majority judgment in Kesavananda Bharati’s case read with Indira Gandhi’s case, requires the validity of each new constitutional amendment to be judged on its own merits. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account for determining whether or not it destroys basic structure. The impact test would determine the validity of the challenge.

(iii) All amendments to the Constitution made on or after 24th April, 1973 by which the Ninth Schedule is amended by inclusion of various laws therein shall have to be tested on the touchstone of the basic or essential features of the Constitution as reflected in Article 21 read with Article 14, Article 19, and the principles underlying them. To put it differently even though an Act is put in the Ninth Schedule by a constitutional amendment, its provisions would be open to attack on the ground that they destroy or damage the basic structure if the fundamental right or rights taken away or abrogated pertains or pertain to the basic structure.

(iv) Justification for conferring protection, not blanket protection, on the laws included in the Ninth Schedule



by Constitutional Amendments shall be a matter of Constitutional adjudication by examining the nature and extent of infraction of a Fundamental Right by a statute, sought to be constitutionally protected, and on the touchstone of the basic structure doctrine as reflected in

Article 21 read with Article 14 and Article 19 by application of the “rights test” and the “essence of the right” test taking the synoptic view of the Articles in Part III as held in Indira Gandhi’s case. Applying the above tests to the Ninth Schedule laws, if the infraction affects the basic structure then such a law(s) will not get the protection of the Ninth Schedule.

This is our answer to the question referred to us vide Order dated 14th September, 1999 in I.R. Coelho v. State of Tamil Nadu [(1999) 7 SCC 580].

(v) If the validity of any Ninth Schedule law has already been upheld by this Court, it would not be open to challenge such law again on the principles declared by this judgment. However, if a law held to be violative of any rights in Part III is subsequently incorporated in the Ninth Schedule after 24th April, 1973, such a violation/infraction shall be open to challenge on the ground that it destroys or damages the basic structure as indicated in Article 21 read with Article 14, Article 19 and the principles underlying thereunder.

(vi) Action taken and transactions finalized as a result of the impugned Acts shall not be open to challenge.

We answer the reference in the above terms and direct that the petitions/appeals be now placed for hearing before a Three Judge Bench for decision in accordance with the principles laid down herein.”

44. Since the terms of reference was answered in *I.R. Coelho* (supra) and the matter was placed for hearing before a three Judges Bench in connection with the principles laid down, a three Judge Bench



in *Glanrock Estate Private Limited Vs. State of Tamilnadu (2010) 10 SCC 96* applied the *I.R. Coelho* test to *Gudalur Janmam States (Abolition and Conversion into Raiyatbari) Act, 1969* in short *Janmam Act (24 of 1969)* for finding out whether such act was beyond the constituent power of the parliament as it damage the basic or essential feature of the Constitution. The constitutional validity of the 34th Amendment Act, 1974 by which Janmam (Act 24 of 1969) was inserted in 9th Schedule was thus put to test.

45. Justice S.H. Kapadia, C.J., as he then was, held in paragraphs 25 to 32 as follows:

“25. Since the power to amend the Constitution is a derivative power, the exercise of such power to amend the Constitution is subject to two limitations, namely, the doctrine of basic structure and lack of legislative competence. The doctrine of basic structure is brought in as a window to keep the power of judicial review intact as abrogation of such a power would result in violation of basic structure. When we speak of discrimination or arbitrary classification, the same constitutes violation of Article 14 of the Constitution. In this connection, the distinction between constitutional law and ordinary law in a rigid Constitution like ours is to be kept in mind. The said distinction proceeds on the assumption that ordinary law can be challenged on the touchstone of the Constitution. Therefore, when an ordinary law seeks to make a classification without any rational basis and without any nexus with the object sought to be achieved, such ordinary law could be challenged on the touchstone of Article 14 of the Constitution. However, when it comes to the validity of a constitutional amendment, one has to examine the validity of such amendment by asking the question



as to whether such an amendment violates any overarching principle in the Constitution.

26. What is an overarching principle? Concepts like secularism, democracy, separation of powers, power of judicial review fall outside the scope of amendatory powers of Parliament under Article 368. If any of these were to be deleted it would require changes to be made not only in Part III of the Constitution but also in Article 245 and the three lists of the Constitution resulting in the change of the very structure or framework of the Constitution. When an impugned Act creates a classification without any rational basis and having no nexus with the objects sought to be achieved, the principle of equality before law is violated undoubtedly. Such an Act can be declared to be violative of Article 14. Such a violation does not require rewriting of the Constitution. This would be a case of violation of ordinary principle of equality before law.

27. Similarly, “egalitarian equality” is a much wider concept. It is an overarching principle. Take the case acquisition of forests. Forests in India are an important part of environment. They constitute national asset. In various judgments of this Court delivered by the Forest Bench of this Court in T.N. Godavarman Thirumulpad v. Union of India (Writ Petition No. 202 of 1995), it has been held that “inter-generational equity” is part of Article 21 of the Constitution.

28. What is inter-generational equity? The present generation is answerable to the next generation by giving to the next generation a good environment. We are answerable to the next generation and if deforestation takes place rampantly then inter-generational equity would stand violated.

29. The doctrine of sustainable development also forms part of Article 21 of the Constitution. The “precautionary principle” and the “polluter pays principle” flow from the core value in Article 21.

30. The important point to be noted is that in this case we are concerned with vesting of forests in the State. When



we talk about inter-generational equity and sustainable development, we are elevating an ordinary principle of equality to the level of overarching principle. Equality doctrine has various facets. It is in this sense that in I.R. Coelho case this Court has read Article 21 with Article 14. The above example indicates that when it comes to preservation of forests as well as environment vis-à-vis development, one has to look at the constitutional amendment not from the point of view of formal equality or equality enshrined in Article 14 but on a much wider platform of an egalitarian equality which includes the concept of “inclusive growth”. It is in that sense that this Court has used the expression Article 21 read with Article 14 in I.R. Coelho case. Therefore, it is only that breach of the principle of equality which is of the character of destroying the basic framework of the Constitution which will not be protected by Article 31-B. If every breach of Article 14, however, egregious, is held to be unprotected by Article 31-B, there would be no purpose in protection by Article 31-B.

31. The question can be looked at from yet another angle. Can Parliament increase its amending power by amendment of Article 368 so as to confer on itself the unlimited power of amendment and destroy and damage the fundamentals of the Constitution? The answer is obvious. Article 368 does not vest such a power in Parliament. It cannot lift all limitations/restrictions placed on the amending power or free the amending power from all limitations. This is the effect of the decision in Kesavananda Bharati. The point to be noted, therefore, is that when constitutional law is challenged, one has to apply the “effect test” to find out the degree of abrogation. This is the “degree test” which has been referred to earlier. If one finds that the constitutional amendment seeks to abrogate core values/overarching principles like secularism, egalitarian equality, etc. and which would warrant rewriting of the Constitution then such constitutional law would certainly violate the basic structure. In other words, such overarching



principles would fall outside the amendatory power under Article 368 in the sense that the said power cannot be exercised even by Parliament to abrogate such overarching principles.

32. It is important to bear in mind that according to Mathew, J.'s observations in Indira Nehru Gandhi, equality is a feature of rule of law and not vice versa, as submitted by Mr Viswanathan, learned counsel for the petitioner(s). Very often the expression "rule of law" is used to convey the idea of a Government that is limited by law. The expression "rule of law" describes a society in which the Government must act in accordance with law. A society governed by law is the foundation of personal liberty. It is also the foundation of economic development since investment will not take place in a country where rights are not respected. It is in that sense that the expression "rule of law" constitutes an overarching principle embodied in Article 21, one aspect of which is equality. It is in that context that this Court has used the phrase "Article 21 read with Article 14" in the judgment in I.R. Coelho to which one of us Kapadia, J. was a party."

46. Applying the above test, Kapadia, J. rejected the argument that inclusion of Janmam Act (24 of 1969) in the 9th Schedule amounted to negation or abrogation of judicial review. It was held that the amending power under Article 368 is a derivative power and the doctrine of basic structure provides a touchstone on which the validity of a constitutional amendment act could be judged. While applying this doctrine, one need not go to the contents of a right but by the test of justifiability under which one has to see the scope and object of the constitutional amendment.



47. The aforesaid view was concurred with by Justice K.S. Radhakrishnan, J.

48. Now, looking at the so called offending provisions of the Act through the prism of *Coelho*, it clearly appears that the Act in question is an agrarian reform measure for consolidation of holdings and prevention of fragmentation. Once a notification under the Act is issued for undertaking consolidation operations, till such a decision is called off, no suit or other legal proceedings in respect of any such order shall be entertained in any court with the exception of 48(E) of the Bihar Tenancy Act, 1885 and proceedings relating to the recording of titles of Bataidars and that every proceeding for correction of records and every suit and proceeding in respect of declaration of rights or interests in any land lying in the area or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act pending before any court or authority whether of the first instance or of appeal, reference or revision, shall on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending stands abated.

49. There is a further proviso that the state government would be competent to empower any other officer appointed under the act to dispose of any proceeding relating to survey settlement operations under the provisions of *Chapter X of the B.T. Act, 1885* or *Chapter XII of*



Chhotanagpur Tenancy Act, 1908 or *Santhal Pargana Settlement Manual, 1872* and transfer such proceeding to such officer for disposal, then the proceeding shall not abate or shall not be considered to have been abated.

50. The entire purpose of the notification under the Act is to prepare a scheme for consolidation of holdings for better cultivation of lands by preparation of up to date record of rights and such record of rights would supersede the earlier record of rights and would be finally published under *Chapter X of the B.T. Act, 1885*. In the preparation of such record of rights, active participation of Village Advisory Committee comprising executive committee of Gram Panchayat and other stakeholders is provided for. Provisions have been made in the Act for entertaining objections at various stages of the preparation of such records of rights.

51. In order to avoid any unnecessary delay in such process, Section 37 has been enacted which puts a bar on jurisdiction of civil courts to entertain any suit or application to vary or set aside any decision or order given or passed under the Act with respect to any other matter for which a proceeding could or ought to have been taken under this Act.



52. Along with Section 37, Section 37A provides that the authorities under the Act would be deemed courts of competent jurisdiction.

53. In *Ramkrit Singh* (supra), the constitutional validity of Sections 4(C), 12(A) and 37 was challenged as being arbitrary and discriminatory because the scheme of the dispute being decided by consolidation officers which would include even complicated questions of title would be discriminatory to such persons who would be prevented from approaching the normal civil courts for the determination of their title like others. It was further challenged on the ground that the consolidation officers are ill-equipped to decide the questions of title. The purpose of the act, it was urged may be laudable, but the means to achieve the aforesaid end was neither necessary nor desirable.

54. The aforesaid contentions were rejected by the Bench in *Ramkrit Singh* (supra) on the grounds that creation of a special forum of law will not make the law *per se* discriminatory. If the law passes the test of classification viz. an intelligible differentia, distinguishing a class of persons and the rationale of such classification to the object which is sought to be achieved, a legislation has to be held *intra vires*. The aforesaid piece of legislation was found to have passed the two litmus tests of Article 14 [refer to the *State of Bombay and Anr. v. F.N. Balsara (1951) SCR 682* and *Kangshari Halder v. State of West Bengal*



(*AIR 1960 SC 457*]. It was conclusively held by the Full Bench, therefore that till the time the consolidation operations are pending in an area with the notification under Section 3 of the Act, the jurisdiction of the Civil Court would be barred and the suits shall abate. Even the objection to the choice of issuing notification in particular areas being unguided and arbitrary was rejected on the ground of administrative and financial constraints in carrying out such land reform measures simultaneously in the entire State of Bihar. In other words, piecemeal application of law was not held to be illegal or *ultra vires* [*Ramchandra Palal v. State of Orissa AIR (1956) S.C.R. 28* and *Shyam Sunder v. Siyaram (1973) A.I.J. 53*]. However the Full Bench had expressed dissatisfaction about the manner in which the law was framed/couched and was of the view that if the Law Commission would have been constituted in the State of Bihar, the law in question would have been framed in a better manner.

55. In *Kalika Kuer* (supra), which was decided ten years later, it was held that Sections 15(1) and 15(2) of the Act were *ultra vires* Article 13 and 14 of the Constitution of India in so far as those Sections declared certificate of transfer to be conclusive proof of the raiyats to be the transferee of the holding or that of the under raiyat therein. Another member of the Full Bench considered the aforesaid provisions to be violative of Article 300(A) of the Constitution of India.



56. As has been rightly held by the other learned members of this Bench, I also subscribe to the view that the State of Bihar has the legislative competence to enact such a legislation by virtue of Entry 18 and 65 of the list II of the 7th Schedule read with Article 246 of the Constitution and while doing so, any provision for making consolidation officers to be the deemed courts of competent jurisdiction for deciding even issues of title during the pendency of the consolidation operations, is constitutionally valid (refer to *Satyanarayan Prasad Sah and Others Vs. State of Bihar 1980 SC 2051*; *Most. Bibi Rahmani Khatoon and Others Vs. Harku Gope and Others AIR 1981 SC 1450*, *Seikh Haidar Jaan Vs. Md. Yusuf Ansari and Another 2000 Vol. 2 P.L.J.R. HC 338*).

57. Section 9 of the Civil Procedure Code 1908 contemplates exclusion of jurisdiction to try suits of civil nature if their cognizance is either expressly or impliedly barred. This provision read with Entry 18 of List II of 7th Schedule and Article 246 of the Constitution of India does not leave any trace of ambiguity with respect to the legislative competence of the State legislature to enact such provisions for accomplishing the aims and objectives of the Act which is primarily agrarian reform.

58. No basic structure of the Constitution is damaged or abrogated if for a temporary period, *lis* is decided by an authority away from the courts especially when the powers of the High Court and



Supreme Court of judicial review of any action of the consolidation authorities under the Act have not been attempted to be clouded.

59. It is by now settled that the enactments providing for tribunals for adjudication of trial and disputes to the exclusion of civil courts have been held to be valid and not in breach of the basic features of the Constitution if the power of judicial review of the High Court and Supreme Court is not touched (*L. Chandra Kumar v. Union of India and Ors.* [(1997) 3 SCC 261]).

60. The UP Consolidation of Holdings Act, 1953 which has similar provisions as that of the Act under question has been held to be valid in *Ram Adhar Singh v. Ramroop Singh and others* AIR 1968 SC 714 and *Chattar Singh v. Thakur Prasad Singh* (1975) 4 SCC 457.

61. Reiterating and accepting the reasons given by Hon'ble Justice Chakradhari Sharan Singh, J. in his opinion, I hold the entire Act to be constitutionally valid.

62. I would be failing in my duty if I do not advert to the submissions of Mr. Kamal Nayan Chaubey, learned senior advocate who has appeared as amicus curiae in this matter. He has informed this Court that there has been noticeable apathy of the Government in implementing the Act despite it having been placed in the 9th Schedule. The reason for him to say so is that in the first two decades, the act remained virtually inoperative and from 1974 to 1991, it was applied in



only 17 districts. The operation of the act remained suspended for quite sometime but with the intervention of this Court, the same was revived. The consolidation operations have also been reported to have been closed under Section 26(A) in several villages in which, though records have been prepared/updated, but there is no concrete proof of the delivery of possession as per the new records.

63. Without sounding any note of despondency, I am of the view that a valid and self-contained act like the present one, if implemented in letter and spirit, will definitely bring about desired agricultural reforms.

(Ashutosh Kumar, J.)

Per:- Sanjay Priya, J.

1. I have gone through the opinions delivered by my learned brothers, Hon'ble Mr. Justice Chakradhari Sharan Singh and Hon'ble Mr. Justice Rajeev Ranjan Prasad. I am in agreement with the opinion delivered by my learned brothers on the question of law and merit of this case.

2. This larger Bench has been constituted on account of order of Hon'ble Supreme Court passed in Civil Appeal No.5654 of 1990 remanding the case to the Hon'ble Patna High Court because the decision and reasoning in two judgments of the Full Benches i.e. in the case of **Ramkrit Singh and others Vs. State of Bihar and others** reported in **AIR 1979 Patna 250** and in the case of **Kalika Kuer alias Kalika Singh Vs. The State of Bihar** reported in **1989 (1) PLJR (HC) 1203** run contrary to



each other on almost all points. In view of Hon'ble Supreme Court, doctrine of *per incuriam* has been misapplied by the High Court, to the earlier decision in the case of Ramkrit Singh (supra).

3. Petitioners in CWJC No.2502 of 1988 had moved this Hon'ble Court for a writ in the nature of *certiorari* for quashing the order dated 02.04.1987 passed by the Joint Director of Consolidation, Bihar, Patna, order dated 19.11.1984 passed by the Deputy Director of Consolidation, Muzaffarpur, and order dated 21.08.1980 passed by the Consolidation Officer, Baruraj, on the grounds, *inter alia*, that they are not competent to decide a pure question of title and that they have acted without jurisdiction in ignoring a Civil Courts' decree recognizing a gift with respect to land in dispute.

4. Respondents were noticed to show cause and when after their appearance case was heard by a Division Bench on 25.01.1989 and on 17.02.1989, it was referred to a Full Bench. The Full Bench by judgment dated 25th September, 1989, reported in **1989 (1) PLJR (HC) 1203** has held in para 78 A as follows:

“78A. As noticed hereinbefore, the Special Bench in Ram Krit Singh's case did not consider the question as to whether the consolidation authorities are courts of limited jurisdiction or not and thus it made an observation that the civil court while disposing of the suits after revival thereof at the end of the consolidation proceedings, would merely pass a decree in terms of the decision of the consolidation authorities. The said observation must be held to have been rendered *per incuriam* in as much as in the cases where the jurisdiction of the civil court is not barred in terms of Section 4(b) or Section 37 of the Act, the civil court cannot pass a decree only in terms of the decision of the consolidation authorities after revival of the suit. The said observations, therefore, are not binding



upon this court. In such a situation the civil court will have jurisdiction to decide suit relating to such matter in respect whereof its jurisdiction is not barred either in terms of section 4(b) or Section 37 of the said Act.”

5. The State has filed Civil Appeal No.5654 of 1990 against the judgment and order dated 25.09.1989 passed by the Patna High Court declaring Sections 15(1) and 15(2) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, (in short ‘the Act’), ultra vires of Articles 13 and 14 of the Constitution of India. The Full Bench held Section 15 of the Act ultra vires and further held that certain categories of disputes and matters could be entertained and decided by the civil Court despite the restrictions placed under section 4(b) and 4(c) of the Act and bar of jurisdiction of Civil Court under Section 37 of the Act.

6. It is to be mentioned that in earlier Full Bench’s decision of this Court reported in **AIR 1979 Patna 250 (Ram Krit Singh and others Vs. State of Bihar and others)**, same questions have been considered and decided, *inter alia*, the question of validity of Section 15 and impact of Section 4(b), Section 4(c) and Section 37 of the Act. The vires of Section 15 of the Act has been upheld in the case of Ram Krit Singh (supra) by the Full Bench including the bar of jurisdiction of the Civil Court in respect of matters covered by notification under Section 3 read with Section 4(b) and 4(c) of the Act.



7. The Hon'ble Supreme Court in the aforesaid judgment has observed that doctrine of *per incuriam* has been misapplied by the High Court to the earlier decision in the case of Ramkrit Singh (supra) and the matter may be remanded to the High Court to consider it and dispose of same in accordance with law in the light of judgment passed by the Hon'ble Supreme Court.

8. The main ground of attack against the said orders of the consolidation authorities in CWJC No.2502 of 1988 was that the consolidation authorities were not entitled to decide the pure question of title and that they had acted without jurisdiction in ignoring the decree of the Civil Court recognizing the deed of gift with respect to the disputed lands. It was asserted by the Respondent No.1 in the aforesaid writ application that dispute related to 45 decimals of land of the old cadestral survey plot No.265 (hereinafter to be referred as "CSP No.265"), which had been converted into plot No.693 during the revisional survey (hereinafter to be referred as 'RSP 693'). It was stated that the original CSP No.265, which were broken into 4 RSP plots stood in the name of grandfather of the petitioner, Ram Ugrah Kuer. Ram Ugrah Kuer had four sons, namely, Bhuneshwar Kuer, Deepu Kuer, Senful Kuer and Kisun Kuer. It was further stated that Bhuneshwar Kuer died leaving behind a daughter Yashodha Kuer and Respondent No.1 was son of Deepu Kuer, whereas, two other sons of Ram Ugrah Kuer, namely,



Kisun Kuer and Senful Kuer died issueless. Thus, there were two heirs of Ram Ugrah Kuer left; Yashodha Kuer (Respondent No.2) and Kalika Singh (Respondent No.1). It was asserted by Respondent No.1 that in a private partition, the disputed plot was given in the share of father of Respondent No.1. The disputed plot was, however, recorded in the name of one Raiam Singh, who had no concern with the land and when the consolidation proceedings started, Respondent No.1 filed objection under Section 10(2) of the Consolidation Act. Respondent Nos.2 and 3 also filed objection. It was asserted by Respondent Nos. 2 and 3 that disputed plot was taken in gift on 15.04.1959 from one Pawitra Kuer. However, the Deed Writer by mistake mentioned plot No.267 instead of 265. The above matter was also involved in a dispute in Title Suit No.115 of 1965, which was disposed of on 28.05.1965 in terms of the Award of the Arbitrator by which Respondent Nos.2 and 3 had been given CSP Plot No.267 in place of disputed plot. The Consolidation Officer rejected the claim of Respondent No.1 and accepted claim of Respondent Nos.2 and 3. The order passed by the Consolidation Officer was affirmed on 19.11.1984 by the Deputy Director of Consolidation in Appeal No.238 of 1980 and thereafter by the Joint Director of Consolidation, Bihar, Patna, by his order dated 02.04.1987 passed in Revision Case No.158 of 1985.



9. The Respondent No.1 filed writ application challenging the aforesaid three orders of the consolidation authorities, which was referred to the Full Bench of the Patna High Court. The Full Bench by unanimous decision struck down the validity of Section 15 of the Consolidation Act. It also held that Consolidation Courts were the Courts of limited jurisdiction. It also held that bar under Section 37 of the Act is not applicable after completion of the consolidation scheme in respect of even suits, which had abated under Section 4(c) and which have not been entertained under Section 4(b).

10. The Full Bench of the Patna High Court by unanimous decision allowed the writ application filed by Respondent No.1.

11. The State has filed SLP against the impugned judgment of High Court seeking proper declaration of law by the Hon'ble Supreme Court under the provisions of Article 141 of the Constitution of India as the impugned judgment will nullify the effect of the entire consolidation proceedings and Act and will scuttle the settled position.

12. Heard Sri Kamal Nayan Choubey, Sr. Advocate, who appeared as *Amicus Curiae*, Sri Vindhakeshri Kumar, counsel for the petitioner and Sri Pushkar Narain Shahi, AAG-6, appearing for the State.

13. It has been submitted by learned counsel Sri Vidhyakeshri Kumar that Consolidation Courts were of limited jurisdiction and pending suits shall not abate unless a specific order of abatement is made



by the Civil Court of competent jurisdiction. The suits shall revive and proceed in accordance with law in the event of cancellation of consolidation scheme or its completion. The Civil Court shall while making the order of abatement see that no question of pure title except in respect of declaration of rights or interests in any land lying in area or such incidental questions which arise from the claim of rights or interests is involved in the suit. If any question of pure title other than claim in respect of the declaration of rights or interests in the land or incidental thereto is involved, the suit shall not abate. It shall be open to a party to the proceeding or any person affected by the decision on the jurisdictional facts to file a suit before a Civil Court of competent jurisdiction questioning the correctness of such findings of facts recorded by the consolidation authorities. Such a suit shall be mandatory notwithstanding the bar under Section 4 (b) of the Act.

14. A pending suit abated under Section 4 (c) of the Act or suit not entertained under Section 4(b) of the Act may proceed or entertain as the case may be after completion of the consolidation scheme and notification under Section 3(a) of the Act or cancellation there of which suit shall be decided by the Civil Court of competent jurisdiction in accordance with law. He further submitted that bar under Section 37 of the Act shall not apply to any suit questioning the jurisdiction of the consolidation authorities. The abated suit under



Section 4(c), the suit not entertained under Section 4(b) shall revive after completion of the consolidation scheme. Section 15(1) and 15(2) of the Act are ultra vires Article 13 and 14 of the Constitution in so far as they declared certificate of transfer to be conclusive proof of title of such raiyat to such holding and he shall be liable for payment of such rent as may be found in the certificate.

15. The consolidation Courts are deemed Court of limited jurisdiction. Any decision by them except on question relevant to records of rights, correctness whereof can be questioned, on the ground of wrong decisions by them, on pure question of title, shall neither be binding nor available as evidence of title in the Courts of law. The consolidation authorities had no jurisdiction to pass an order contrary to and inconsistent with Civil Court decree which has not been set aside by the higher Court.

16. He further submitted that if the authorities did not act in accordance with mandatory provisions of the law or decide an issue in violation of the principles of natural justice or fair play or pass an order which was without jurisdiction, the jurisdiction of Civil Court shall not be barred.

17. Sri Kumar further argued that right of judicial review was a basic structure of the Constitution and Section 15 of the Act is the adjudicatory powers of the Civil Court and shall thus ultra vires to the



Constitution of India. He has also submitted that Section 15 of the Act was violative of Section 300 A of the Constitution as well as Article 14 of the Constitution of India.

18. Sri Pushkar Narain Shahi, learned AAG-6, appearing for the State has, on the other hand, submitted that Full Bench has failed to consider that in the case of Ram Krit Singh (supra) the challenges on the ground that Section 15 of the Act was ultra vires the Article 14 of the Constitution of India as Consolidation Courts are not manned by judicial authorities trained in law, they were not competent to decide intricate question of title has not been accepted. The counsel for the State has further submitted that the High Court has failed to appreciate that vires of Section 15 having been specifically upheld by a Full Bench of the Patna High Court in the case of Ramkrit Singh (supra), it was no longer open to another Full Bench of the High Court of three Judges to declare the same as ultra vires. Counsel for the State has further submitted that legislature is competent to legislate a law and legislation is constitutional authority. It is open to the legislature to provide for a mechanism which is different from a regular Court of law and if a mechanism has been provided for adjudication of dispute, the legislature has the confidence to oust the jurisdiction of the Civil Court.

19. The Full Bench also failed to consider that another Full Bench of Patna High Court in the case of Ram Krit Singh (supra) had



rejected the challenge to the provisions of the Consolidation Act on an additional ground that the scheme of consolidation would be inordinately delayed if jurisdiction of Civil Court is not set at naught and ordinary Civil Courts are to decide the question relating to lands, which are subject matter of the consolidation proceedings. It is well known that civil litigation at least in this State usually takes such a long time that the litigant feel completely desperate. In such a situation to the authorities under the Act the power to determine question of title could not be said to be either unreasonable or having no nexus with object sought to be speedy consolidation of agricultural lands.

20. Mr. Kamal Nayan Choubey, learned Amicus Curiae, has submitted that entire aim and objective of the Consolidation Act will be defeated if the consolidation authorities are not given opportunity to decide question of title which are necessary for proper and speedy consolidation of the agricultural holdings. He has further submitted that the Hon'ble Court has failed to appreciate the decision of Hon'ble Supreme Court in the case of **Budhan Choudhry Vs. State of Bihar** reported in **AIR 1955 SC 191**, wherein, the Hon'ble Supreme Court has laid down the guidelines for permissible classification by legislature and had held that Article 14 does not forbid reasonable classification for the purposes of legislation. He further submitted that the Full Bench has failed to take into consideration the decision of the Hon'ble Supreme



Court in the case of **Zafar Khan Vs. Board of Revenue** reported in **AIR 1985 SC 39**, wherein, the Hon'ble Supreme Court has clearly laid down that once lands of the village are put into consolidation after notification under Section 4 of the UP Consolidation of Holdings Act, settlement of lands in such villages cannot be questioned in a suit before a Civil Court. The said decision of the Hon'ble Supreme Court was binding on the High Court and the High Court erred in completely disregarding the same.

21. Sri Kamal Nayan Choubey has further submitted that the High Court has failed to appreciate that judicial review, which is the basic feature of the Constitution of India has not been excluded in the instant case because the final order passed by the Consolidation Courts are subject to judicial scrutiny by this Court under Article 226 of the Constitution of India as well as by the Hon'ble Supreme Court under Article 32 and 136 of the Constitution of India. Thus, the judicial scrutiny had not been excluded. He further submitted that the Court has failed to appreciate that ouster of jurisdiction of the Civil Courts and manning of the Courts of limited jurisdiction by person not trained in the judicial work was not peculiar to Consolidation Act and in several acts like Income Tax, Sales Tax, Revenue, Service and Industrial matters, the Courts are manned by executive personnel and that has not been held to be ultra vires of the Constitution.



22. Counsel has further submitted that unless and until all decisions passed under the Act were immuned from interference by the hierarchy of the Civil Court, the aim and objective of speedy consolidation of the agricultural holdings could not be achieved. Earlier, the Full Bench consisting of three Judges had already decided the question in the case of **Ramkrit Singh Vs. State of Bihar (1979 BBCJ 259)** and upheld the provisions of the Consolidation Act as valid. Subsequent special Bench consisting of three Judges had absolutely no jurisdiction to over-rule the previous Special Bench decision.

23. The Full Bench has failed to take notice of the provisions of Section 16, 17A, 18, 19, 20, 21 and 22 of the Act. From the analysis of these provisions, it is abundantly clear that the proceeding under the Consolidation Act is not a proceeding for correction of records. It is unlike the provisions of the BT Act regarding preparation of records of rights. The learned Judges have, therefore, completely misconstrued the scope of the proceeding under the Consolidation Act and the proceeding under the Bihar Tenancy Act regarding recording of rights.

24. Mr. Kamal Nayan Choubey has further submitted that Judges in Full Bench have held that proceedings in the Civil Court will proceed simultaneously and if this is the position then the whole scheme under the Act cannot be proceeded and the provisions of the entire Act will be redundant.



25. He has further submitted that in the Consolidation Act, an independent adjudicatory mechanism had been provided for matters which were within the competence of law making authority. The scope of judicial review under Article 32, 136 and 226 of the Constitution of India had not been curtailed. Therefore, in that view of the matter, the Court ought not to have declared the ouster of jurisdiction of the Civil Courts under the provisions of Section 4(c) and Section 37 of Act and conclusive proof of title being given by Section 15 of the Act as ultra vires.

26. Counsel has further argued that the Hon'ble Supreme Court in the judgment reported in **AIR 1980 SC 2051 (Satyanarayan Pd. Sah Ors. Vs. State of Bihar and another)** has held that any proceeding in a Civil Court of nature covered by Section 4 (c) would be within the exclusive jurisdiction of the consolidation authorities and any order passed by the Civil Court relating to land (title or possession or other incident) pending before the Civil Court would stand abated was a reasonable restriction on the right of a party to go to an ordinary Civil Court. Hence, it was not violative of Article 14 of the Constitution of India.

27. Counsel has finally argued that mere fact that the Consolidation Courts were not being manned by the judicially trained authorities could not militate against the vires of the Consolidation Act.



28. The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, (Bihar Act XXII of 1956) received the assent of the President of India on 6th September, 1956, and was published in the Bihar Gazette, of the 10th October, 1956.

Section 4 of the aforesaid Act provides:

“4. Effect of notification under Section 3(1) of the Act. - Upon the publication of the notification under sub-section (1) of Section 3 in the *official gazette* the consequences, as hereinafter set forth, shall, subject to the provisions of this Act, from the date specified in the notification till the close of the consolidation operation, ensue in the area to which the notification relates, namely-

(a) the district or part thereof, as the case may be, shall be deemed to be under consolidation operations and duty of preparing and maintaining the record-of-rights and the village map of each village shall be performed by the Director of Consolidation, shall prepare or maintain them, as the case may be, in the manner prescribed;

(b) no suit or other legal proceeding in respect of any land in such areas shall be entertained in any court, and in calculating period of limitation applicable to such suits and proceedings such period shall not be counted :

Provided that nothing in this clause shall apply to any proceeding under Section 48(E) of the Tenancy Act, 1885 (Act VIII, 1885) and to the proceedings relating to recording of the titles of *Bataidars*;

(c) every proceeding for the correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the area or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any court or authority whether of the first instance or of appeal,



reference or revision, shall on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending stand abated:

Provided that if the State Government empowers any other officer appointed under this Act to dispose of any proceeding relating to survey settlement operations under the provisions of chapter X of the Bihar Tenancy Act, 1885 (Bihar Act VIII of 1885), or chapter XII of the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI, 1908) or Santhal Parganas Settlement Manual, 1872 (Manual 3, 1872) and transfer such proceeding to such officer for disposal, then the proceeding shall not abate or shall not be considered to have been abated:

Provided also that no such order shall be passed without giving to the parties notice by post or in any other manner that may be convenient and after giving them an opportunity of being heard:

Provided further that such abatement shall be without prejudice to the rights of the persons affected to agitate the right or interest in the said suits or proceeding before the appropriate consolidation authorities under and in accordance with the provision of this Act and the rules made thereunder:

Provided that the State Government may, by notification in the *Official Gazette* exempt any such proceeding, suit, appeal, reference or revision, or any class of them, if in its opinion their abatement is not in public interest, and is not necessary for the purposes of this Act:

Provided further that nothing in this section shall apply to any proceedings under [Sections 144 to 148 of Chapter X of the Code of Criminal Procedure, 1973 (Act 2 of 1974), the Bihar Tenants Holdings (Maintenance of Records) Act, 1973 (Bihar Act 28 of 1975)], Section 48E of the Bihar Tenancy Act, 1885 (Act VIII of 1885) and the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Act XII of 1962).”



29. Section 13 of the Act provides for the confirmation of the draft consolidation scheme and its publication. It states besides other things that the 'draft consolidation scheme so confirmed shall be published in the unit, and except as otherwise provided by or under this Act, shall be final'. Confirmation of the scheme, as provided in Section 15 of the Act, has to be followed by a certificate of transfer.

30. A brief examination of the language of Section 15 at this stage may be helpful. Sub-section (1) of Section 15 of the Act has remained unchanged, which runs as follows:

“The Consolidation Officer shall grant to every *raiyat* to whom a holding has been allotted in pursuance of a scheme of consolidation a certificate in the prescribed form containing the prescribed particulars. Such certificate shall be conclusive proof of the title of such *raiyat* to such holding and he shall be liable for payment of such rent as may be specified in the certificate.”

31. Sub-section (2) of this section was originally worded thus:

“A similar certificate of transfer shall be granted to every under *raiyat* having a right of occupancy in any land allotted to him in pursuance of the scheme and the certificate shall be conclusive proof of the title of such under *raiyat* to such land and he shall be liable to payment of such rent and to such person as may be specified in the certificate.”

32. This, however, has been amended by Bihar Act 27 of 1975 and at present reads, thus:



“A similar certificate of transfer shall be granted to every under *raiyat*, whether having a right of occupancy or not in any land allotted to him in pursuance of the scheme and the certificate shall be conclusive proof of the title of such under *raiyat* to such land and he shall be liable to payment of such rent and to such person as may be specified in the certificate.”

33. A certificate of transfer in the hands of a Raiyat or an under-raiyat has been made conclusive proof of the title of such raiyat. Words ‘title’ and ‘conclusive proof’ are noticed no where except sub-section (b) of Section 4 in the Act until Section 15 is reached. Section 16, however, has recognized the effect of confirmation of the scheme in the following words:

“When certificates of transfer have been granted to the *raiyats* and under-*raiyats* under Section 15, the scheme confirmed under Section 13 shall, in supersession of the up-to-date record-of-rights prepared under Section 8, shall be deemed to be the record-of-rights prepared and finally published under Chapter X of the Bihar Tenancy Act, 1885 (VIII of 1885), or as the case may be, Chapter XII of the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908), or the Santhal Parganas Settlement Regulation, 1872 (Reg. III of 1872)”.

34. And Section 17 has recognized a raiyat’s right to be the same in the land allotted to him in pursuance of the scheme of consolidation as he had in his original holding.

35. Section 37 and 37-A of the Act is quoted below for better appreciation:



“37. Bar of jurisdiction of Civil Courts. - No Civil Court shall entertain any suit or application to vary or set aside any decision or order given or passed under this Act with respect to any other matter for which a proceeding could or ought to have been taken under this Act.

37A. Authorities under the Act to be deemed courts of competent jurisdiction.- Notwithstanding anything to the contrary contained in any other law for the time being in force, the Director of Consolidation, the Deputy Director of Consolidation, the Assistant Director of Consolidation, the Consolidation Officer and the Assistant Consolidation Officer shall be deemed to be courts of competent jurisdiction while hearing objections or appeals or deciding disputes under this Act.”

36. Having heard counsel for the parties and considering the scope of the Act and judgment of two Full Benches, as referred above, this Court finds that Hon’ble Supreme Court in the case of **Paras Nath Rai and Ors. Vs. State of Bihar and Ors.** reported in **AIR 2013 SC 1010** has clearly held as follows:

“Once a notification has been published under Section 3 of the Act, every suit and proceeding in respect of declaration of rights or interest in any land lying in areas or for declaration or adjudication of any other rights in regard to which proceeding can or ought to be taken under the Act pending before any Court or ought to be taken under the Act pending before any Court or authority whether of the first instance or of appeal, reference or revision, shall, on order being passed in that behalf by the Court or authority before whom such suit or proceeding is pending shall stand abated. This is with a view to ensure that the jurisdiction of the authorities under the



Consolidation Act remains unhampered and the said authorities are not obstructed by the proceedings in Civil Courts and their decisions are not impeded by the decision of the Civil Courts. It is also vivid that the purpose of the scheme of consolidation is to avoid conflict of jurisdiction in order to confer jurisdiction on the consolidation authorities who are required to exclusively examine the rival claims of the parties. Apart from that there is conceptual difference between statutory abatement and abatement under the Code of Civil Procedure. On the basis of a statutory abatement, the whole proceeding from its inception stands abated because the local law has provided an effective alternative remedy to be perused before an exclusive forum to remedy the grievance raised before the Court. The effect of abatement is that not only the proceeding pending before the Civil Court either in trial Court, appeal or revision shall abate but even the judgment and decrees would become extinct. Once the judgment and decree of Civil Court has become extinct the findings recorded therein cannot be placed reliance upon by consolidation authorities. More so when findings were of preliminary decree passed in partition suit which was under appeal.”

37. Therefore, after aforesaid judgment of the Hon’ble Supreme Court effect of abatement under Section 4 of the Act is not only the proceeding pending in suit, appeal or revision stands abated but even the judgment and decree passed therein becomes nullity. Once the judgment and decree of Civil Court would become extinct, the findings recorded therein cannot be placed reliance upon by consolidation authorities.

38. Similarly, the Hon’ble Supreme Court in the judgment reported in **AIR 1974 SC 2009 (Maganlal Chhaganlal Pvt. Ltd. Vs.**



Municipal Corporation of Greater Bombay) has held merely because one procedure provides the forum of a civil Court while the other provides the forum of an administrative tribunal, it cannot be said that the latter is necessarily more drastic and onerous. To attract the inhibition of Article 14 there must be substantial and qualitative differences between the two procedures so that one is really and substantially more drastic and prejudicial. Superfine differences are bound to exist when two procedures are prescribed.

39. The Constitution Bench of the Hon'ble Supreme Court in the case of **Attar Singh Vs. State of UP (AIR 1959 SC 564)** has upheld the provisions of the UP Consolidation of Holding Act as not offending Article 14 of the Constitution of India.

40. It is also relevant to mention the judgment of Hon'ble Supreme Court in the case of **Budhan Choudhary Vs. State of Bihar** reported in **AIR 1955 SC 191**, wherein, Hon'ble Supreme Court has laid the guidelines for permissible classification by legislature and had held that Article 14 does not forbid reasonable classification for the purposes of legislation.

41. The Hon'ble Supreme Court has held in the decision reported in **AIR 1985 SC 39 (Zafar Khan vs. Board of Revenue)** that once lands of the village are put into consolidation and notification under Section 4 of the UP Consolidation of Holdings Act, 1953, had been



issued, settlement of land in such villages cannot be questioned by suit before a civil or revenue Courts in view of the bar enacted in Section 49.

42. In this manner, after judgment of the Hon'ble Supreme Court in the case of **Paras Nath Rai and ors. Vs. State of Bihar and ors.** reported in **AIR 2013 SC 1010**, findings given by subsequent Full Bench in Kalika Kuer alias Kalika Singh (supra) that pending suits shall not abate unless specific order of abatement is made by the Civil Court of competent jurisdiction cannot sustain.

43. The Hon'ble Supreme Court in the case of **Sita Ram Vs. Chhota Bhondey (AIR 1991 SC 249)** has held with respect to UP Consolidation of Holdings Act as follows:

“Declaration and adjudication of rights of tenure-holders in respect of land lying in an area for which a notification has been issued under Section 4(2) and adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under the Act had to be done in accordance with the provisions of the Act only and the jurisdiction of the civil or revenue courts to entertain any suit or proceeding with respect to rights in such land or with respect to any other matter for which a proceeding could or ought to have been taken under the Act would cover adjudication of questions as to title in respect of the said lands. In the instant case, son was claiming an interest in the land lying in the area covered by notification issued under Section 4(2) on the basis that he is the son of ‘C’ brother of ‘N’ and the lands were recorded in the name of ‘N’ in a representative capacity on behalf of himself and his other brothers. The claim was disputed by the appellants and other members of family. This claim had to be adjudicated by the consolidation authorities, since it was a matter falling within the scope of adjudicatory functions assigned to the



consolidation authorities under the Act and the jurisdiction of the Civil Court to entertain the suit in respect of the said matter was expressly barred by Section 49 of the Act.”

44. The Hon’ble Supreme Court in the case of **Satyanarayan Prasad Sah and others Vs. State of Bihar and another** reported in **AIR 1980 Supreme Court 2051** has held that the provision that any proceeding in a Civil Court of the nature covered by section 4(c) would be within the exclusive jurisdiction of the Consolidation Authorities and any order passed by a civil Court regarding land (title or possession or other incident) pending before the Civil Court would stand abated, was a reasonable restriction on the right of a party to go to an ordinary civil Court. Hence, it was not violative of Article 14 of the Constitution.

45. The Hon’ble Supreme Court in the case of **I. R. Coelho (dead) by LRs. Vs. State of T.N. (AIR 2007 SC 861)** has held as follows:

“Since the basic structure of the Constitution includes some of the fundamental rights, any law granted 9th Schedule protection deserves to be tested against these principles. If the law infringes the essence of any of the fundamental rights or an other aspect of basic structure then it will be struck down. The extent of abrogation and limit of abridgment shall have to be examined in each case.”

46. The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, along with amendment have already been included in the Schedule IX of the Constitution since 1995. The



consolidation authorities on the basis of record of rights under Section 8 continue their work in preparation of up to date Record of rights under Section 16 of the Act, whose presumption of correctness is rebuttable.

47. Under the scheme of the Act, the certificate that they purport to give under Section 15 read with Section 17 to the raiyat in the new Chak (in place of earlier parcels of land) is conclusive proof of his title for the purposes of consolidation. In consequence of notification under Section 3 of the Act, a duty is cast on the authority to prepare and maintain the record of rights and prepare the map of each village in the area with certain embargo on the Civil Court. The purpose is to complete consolidation without undue delay.

48. Provisions of Section 16, 17A, 18, 19, 20, 21 and 22 of the Consolidation Act make abundantly clear that the proceeding under the Consolidation Act is not a proceeding for correction of records.

49. The Civil Court cannot be empowered to entertain the suit without striking down the provision of Section 4(b) and 4 (c). The Hon'ble Supreme Court in the case of **Paras Nath Rai and ors. Vs. State of Bihar and ors.** reported in **AIR 2013 SC 1010**, has already held provisions of Section 4(b) and 4(c) of the Act to be intra vires.

50. Similarly, Section 15 and 37 of the Act cannot be held to be ultra vires Article 13, 14 and 300-A of the Constitution of India on the



basis of various judgments of Hon'ble Supreme Court as discussed above.

51. In the instant Act, final order passed by the consolidation authorities are subject to judicial scrutiny under Article 226 of the Constitution of India in High Court as well as under Article 32 and 136 of the Constitution of India in the Hon'ble Supreme Court. Thus, judicial scrutiny has not been excluded.

52. Similarly, manning of the Court of limited jurisdiction by person not trained in law is not peculiar to Consolidation Act. In several Acts like Income Tax, Sales Tax, Revenue and Service & Industrial Matters, the Courts are manned by executive personnel and that has not been held to be ultra vires of the Constitution.

53. In the Consolidation Act, an independent adjudicatory mechanism has been provided for matters which were within the competence of law making authority and the scope of judicial review under Article 32, 136 and 226 of the Constitution of India has not been curtailed. Therefore, ouster of jurisdiction of Civil Courts under the provision of Section 4(c) and Section 37 of the Act and the conclusive proof of title being given by Section 15 of the Act are not ultra vires to the Constitution of India.

54. The Hon'ble Supreme Court has held in the judgment reported in **Satyanarayan Prasad Sah and others Vs. State of Bihar**



and another reported in **AIR 1980 Supreme Court 2051** that any proceeding in a Civil Court of the nature covered by section 4(c) would be within the exclusive jurisdiction of the Consolidation Authorities and any order passed by a civil Court regarding land (title or possession or other incident) pending before the Civil Court would stand abated, was a reasonable restriction on the right of a party to go to an ordinary civil Court. Hence, it was not violative of Article 14 of the Constitution.

55. Therefore, mere facts that Consolidation Courts are not being manned by judicial trained Officers could not militate against the vires of the Consolidation Act.

56. The Consolidation Authorities shall be competent to decide such issue. Therefore, in view of discussions made above, I am of the view that provisions of the Consolidation Act as contained in Section 4(c), 15, 16, and 17 of the Act do not violate any of the principles of natural justice or fair play and are not ultra vires to Article 13 and 14 of the Constitution of India. The jurisdiction of the Civil Court has been barred only with aim and object of speedy consolidation of the agricultural holdings. The whole scheme in the Act cannot be proceeded and the provision of the entire Act will be redundant if proceedings in Civil Court is allowed to proceed simultaneously with consolidation proceedings.



57. The Consolidation Authorities shall be deemed to be Courts of competent jurisdiction while hearing objections or appeals or deciding disputes under the Act in terms of provision of Section 37-A and 37-B of the Act. Therefore, I do not find any illegality in the order of the consolidation authorities dated 02.04.1987 passed by the Joint Director of Consolidation, Bihar, Patna, order dated 19.11.1984 passed by the Deputy Director of Consolidation, Muzaffarpur, and order dated 21.08.1980 passed by the Consolidation Officer, Baruraj.

58. This writ application is, accordingly, **dismissed**.

(Sanjay Priya, J.)

Rajeev Ranjan Prasad, J.:-

1. Heard Shri Kamal Nayan Choubey, learned Senior Counsel as Amicus Curiae, Sri Vindhya Keshari Kumar, learned Senior Counsel on behalf of the petitioner and Sri Pushkar Narain Shahi, learned Senior Advocate on behalf of the State of Bihar.

2. The occasion to constitute this Larger Bench has arisen in order to decide some issues of seminal importance in the contexts of certain provisions of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (in short hereinafter referred to as 'the Act of 1956') keeping in mind the Judicial Pronouncement of



Hon'ble Supreme Court on the subject and that of the Full Bench Judgment of three Hon'ble Judges of this Court in the case of **Ramkrit Singh and Ors. Vs. The State of Bihar and Ors.** reported in **AIR 1979 Patna 250.**

3. The Constitution of India by its 73rd and 74th Amendment brought Chapters on Panchayat and Municipalities, simultaneously Eleventh and Twelfth Schedule were added in respect of both the institutions of self government. The second entry to Eleventh Schedule reads:-

“1.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.”

4. The legislature of the State of Bihar being conscious of its constitutional obligations enacted the Act of 1956 which received the assent of the President of India on 6th September, 1956 and was first published in the Bihar Gazette on the 10th of October, 1956. The preamble of the Act of 1956 reads as under :-

“An Act to provide for the consolidation of holdings and Prevention of Fragmentation”

5. The Act of 1956 is in fact is a sequel to the abolition of Zamindari and part of a silent revolution to land reforms which were taken up by the Legislatures of the State of Bihar after coming into force of the Bihar Land Reforms Act, 1950. It has been placed under Schedule IX of the Constitution of India vide entry no. 263. IX Schedule is relatable to Article 31 B of the Constitution of India which provides for validation of certain Acts and Regulations. Article 31 B reads as under:-



³⁴[**31-B. Validation of certain Acts and Regulations.-** Without prejudice to the generality of the provisions contained in article 31-A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provision thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any Court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.]”

6. The Act of 1956 is, thus, a step forward after abolition of the intermediary interest.

7. Section 2 contains the definition clause.

8. Section 2 (3) of the Act of 1956 defines, *inter alia* the word "consolidation". Consolidation includes re-arrangement of parcels of land comprised in a holding or in different holdings for the purpose of rendering such holdings more compact. The explanation to Section 2 (3) provides for the purpose of this clause, holding shall not include:-

(i) land which was orchard or grove in the agricultural year immediately preceding the year in which the notification under Section 3 was issued;

(ii) land subject to fluvial action and intensive soil erosion;

(iii) such compact areas as are normally subject to prolonged water-logging;

(iv) such other areas as the Director of Consolidation may declare to be unsuitable for the purpose of consolidation.

9. Clause (3a) defines "Chak" means every parcel of land allotted to a *raiya*t or the under *raiya*t on consolidation.

34. Inserted by the Constitution (First Amendment) Act, 1951, S. 5.



10. Clause (5) defines "Fragment" means a piece of land being in area less than :-

(a) one acre of land irrigated by flow irrigation work or tube-well or lift irrigation;

b) two acres of unirrigated land;

(c) four acres of hilly or sandy land:

11. Proviso to clause (5) says that no piece of land shall be deemed to be a fragment by reason of any diminution in its area by diluvion.

12. Clause (7) defines "Hold••••ing" which means a parcel or parcels of land held by a *raiya*t and forming the subject matter of a separate tenancy.

13. Clause (9) defines "Land" which means agricultural land, and includes horticultural land, Kharaur land, land with bamboo clumps, pasture lands, cultivable waste land, homesteads, tanks, wells and water channels.

14. Clause (11) defines "Notified areas" which means any area in respect of which a notification is made under section 3.

15. Clause (14) defines '*Raiya*t' which means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family or by hired servants or with the aid of partners, and includes, also the successors-in-interest of persons who have acquired such a right and includes:-

(i) in the district of the Santhal Parganas, a village headman in respect of his private holding, if any; and



(ii) in the areas to which the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908), applies a Mundari Khunt Kattidar and Bhuinhar;

16. Clause (16) defines "Scheme" which means a scheme for the consolidation of holdings and

17. Clause (17) defines " Under *raiya*" which means a tenant, holding whether immediately or mediately under a *raiya*;

18. Clause 18 defines "Unit" which means a village or part of a village and where the Director of Consolidation so notifies, by publication in the Official Gazette, two or more villages for which a single scheme of consolidation is to be framed.

19. In order to give full effect to the aim and object of the Act certain provisions were incorporated. Under Section 3 of the Act 1956 the State Government has to declare its' intention to make a scheme for consolidation of holdings for better cultivation of Land in any area. Such intention is to be notified in the official gazette.

20. Section 4 of the Act of 1956 provides that upon publication of the notification under sub-section (1) of Section 3, the consequences set forth shall, subject to provisions of the Act from the date specified in the notification till the close of the consolidating operation ensue. The most contentious are provided under Section 4 and clause (b) and (c) of Section 4

3. Declaration by State Government of its intention to make scheme for consolidation of holdings. - (1) With the object of effecting consolidation of holdings for the purpose of better cultivation of lands in any area, the State Government may, after such enquiries as it may deem fit, by notification in the *Official Gazette*, declare its intention to make a scheme for the consolidation of holdings in that area.

¹**[4. Effect of notification under Section 3(1) of the Act.** - Upon the publication of the notification under sub-Section (1) of Section 3 in the *official gazette* the consequences, as hereinafter set forth, shall, subject to the provisions of this Act,

from the date specified in the notification till the close of the consolidation operation, ensue in the area to which the notification relates, namely-

1. subs by Act 27 of 1975



of the Act of 1956. Under Section 4(b) once notification is issued, the effect would be that no suit or other Legal proceeding in respect of any land in such areas shall be entertained in any court. This clause (b) shall however not apply to the proceedings under Section 48(E) of the Bihar Tenancy Act, 1885. By virtue of Section 4(C) all proceedings for the correction of records and every suit and proceeding in respect of declaration of rights or interest in any land or any other right in regard to which proceedings can or ought to be taken up under the Act, pending before any Court or authority of first instance or of appeal, reference or revision shall on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending shall stand abated. Under 3rd proviso to Section 4 (c) of the Act of 1956 such abatement shall be without prejudice to the rights of the person affected to agitate the right or

(a) the district or part thereof, as the case may be, shall be, deemed to be under consolidation operations and duty of preparing and maintaining the record-of-rights and the village map of each village shall be performed by the Director of Consolidation, who shall prepare or maintain them, as the case may be, in the manner prescribed;

(b) no suit or other legal proceeding in respect of any land in such areas shall be entertained in any court, and in calculating period of limitation applicable to such suits and proceedings such period shall not be counted :

Provided that nothing in this clause shall apply to any proceedings under Section 48(E) of the Bihar Tenancy Act, 1885 (Act VIII, 1885) and to the proceedings relating to the recording of the titles of *Bataidars*;

(c) every proceeding for the correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the area or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any court or authority whether of the first instance or of appeal, reference or revision, shall on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending stand abated any proceeding relating to survey settlement operations under the provisions of chapter X of the Bihar Tenancy Act, 1885 (Bihar Act VIII of 1885), or chapter XII of the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI, 1908) or Santhal Parganas Settlement Manual, 1872 (Regulation 3, 1872) and transfer such proceeding to such officer or disposal, then the proceeding shall not abate or shall not be considered to have been abated:

Provided also that no such order shall be passed without giving to the parties notice by post or in any other manner that may be convenient and after giving them an opportunity of being heard:

Provided further that such abatement shall be without prejudice to the rights of the persons affected to agitate the right or interest in the said suits or proceeding before the appropriate consolidation authorities under and in accordance with the provision of this Act and the rules made thereunder:

Provided that the State Government may, by notification in the *Official Gazette* exempt any such proceeding, suit, appeal, reference or revision, or any class of them, if in its opinion their abatement is not in public interest, and is not necessary for the purposes of this Act:

Provided further that nothing in this Section shall apply to any proceedings under [Sections 144 to 148 of Chapter X of the Code of Criminal Procedure, 1973 (Act 2 of 1974), the Bihar Tenants Holdings (Maintenance of Records) Act, 1973 (Bihar Act 28 of 1975)], Section 48E of the Bihar Tenancy Act, 1885 (Act VIII of 1885) and the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Act XII of 1962).]



interest in the said suits or proceedings before the appropriate consolidation authorities under and in accordance with the provision of the Act and the rules made thereunder.

21. Section 8 of the Act of 1956 provides for preparation of up-to date record of right before consolidation. Section 9 talks of preparation of register of Land. Section 10 is in regard to publication of register of Lands and statements of principles and objections thereon. Section 11 deals with preparation of draft scheme.

8. Preparation of up-to-date record-of-rights before consolidation. - (1) Save as provided in sub-Section (2) as soon as may be after the publication of a notification under Section 3, an up-to-date record-of-rights, in respect of all lands comprised in the notified area, together with a map shall be prepared in accordance with the provisions of Chapter X of the Bihar Tenancy Act, 1885 (Act VIII of 1885), or as the case may be, Chapter XII of the Chota Ngpur Tenancy Act, 1908 (Bengal Act VI of 1908) or the Santhal Parganas Settlement Regulation, 1872 (Regulation III of 1872; [or the Bihar Tenants Holdings (Maintenance of Records) Act, 1973 (Bihar Act 28 of 1975)]:

Provided that the State Government may, by rules made in this behalf, make such modifications in the provisions of the said Acts and Regulations as may be necessary for the expeditious preparation of the record-of-rights.

(2) Where in respect of lands comprised in the notified area, map and record-of-rights have been prepared and preliminarily or finally published under the provisions of Chapter X of the Bihar Tenancy Act, 1885 (Act VIII of 1885), or as the case may be, Chapter XII of the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908) or the Santhal Parganas Settlement Regulation, 1872 (Reg. III of 1872) within [twenty] years preceding the date of publication of the notification under Section 3, such map and record-of-rights shall be deemed to be up-to-date map and record-of-rights prepared under sub-Section (1).]

9. [Preparation of register of lands.] - (1) When the record-of-rights and map have been or are deemed to have been brought up-to-date there shall be determined, the valuation of each plot after taking into consideration the opinion of the Village Advisory Committee, or such *raiya*s as may be available and after taking into consideration its productivity, location and availability of irrigation facilities, if any.

(2) There shall be prepared in the prescribed form-

(i) a register of lands belonging to *raiya*s which shall contain the following particulars, namely-

(a) the name of the *raiya*;

(b) the areas and the serial numbers of the plots of land held by the *raiya*;

(c) classification of each plot according to its produce;

(d) the areas and serial numbers of the plots of land held by [under *raiya*s,] if any having right of occupancy therein;

(e) the areas and serial numbers of the plots of land held by [under *raiya*s,] if any, having no right of occupancy therein;

(f) the valuation of each plot;

(g) the valuation of all structures, trees, bamboo clumps, wells and other improvements existing in the plots for the purposes of calculating the amount thereof;

(h) any other particulars that may be prescribed.

(ii) a register of lands reserved for public purposes which shall contain the following particulars, namely:-

(a) the public purpose for which any such land has been reserved or which it serves;

(b) the area and boundary of such land, and

(c) any other particulars that may be prescribed.

[9A. Preparation of statement of principles.] - The Assistant Consolidation Officer shall prepare after considering the opinion of the Village Advisory Committee and such *raiya*s as may be available in respect of each unit under consolidation operations, a statement in the prescribed manner (hereinafter called the statement of principles) setting



22. A draft consolidation scheme once prepared is to be published in the unit with a general notice that all raiyat may obtain relevant extract of scheme free of cost. Any person whose right or interest is substantially prejudiced or affected by draft consolidation scheme may within 30 days of publication of draft scheme file an objection before Assistant Consolidation Officer stating any of the grounds under Section 12 (I) (ii) and (iii) of the Act of 1956. All objections are to be disposed of under Section 12A. A person aggrieved by order of consolidation officer u/s. 12A may prefer an appeal u/s. 12A(2) before the Assistant Director of Consolidation.

forth the principles to be followed in carrying out the consolidation operations in the unit. The statement of principles shall also contain the following:-

(a) details of areas, as far as they may be determined at this stage, to be earmarked for expansion of habitation including areas for habitation of Scheduled Castes, Scheduled Tribes and landless persons in the unit, and for such other public purposes as may be prescribed;

(b) the basis on which the *raiya*s will contribute land for expansion of habitation and for other public purposes; and
(c) details of land to be earmarked for public purposes.]

[10. Publication of registers of lands and statement of principles and objections thereon. - (1) The registers prepared under sub-Section (2) of Section 9 and the statement of principles prepared under Section 9A shall be published in the manner prescribed and shall remain published for not less than 30 days.

(2) Any person may, within 45 days of the date of the publication of the register under sub-Section (1) file before the Assistant Consolidation Officer, objection in respect thereof, disputing the correctness and nature of entries in the records or in the statement of principles.

(4) All cases which are not disposed of by the Assistant Consolidation Officer under sub-Section (3), all cases relating to valuation of plots and all cases relating to valuation of structures, tree, bamboo-clumps, wells or other improvements for calculating the amount thereof, and its apportionment amongst co-owners, if there be more owners than one, shall be forwarded by the Assistant Consolidation Officer to the Consolidation Officer who shall dispose of the same in the manner prescribed

(5) Where objections have been filed against the statement of principles under [sub-Section (2) of Section 10] the Assistant Consolidation Officer, after affording opportunity of being heard to the parties concerned and after taking into consideration the view of the Village Advisory Committee, shall submit his report to the Consolidation Officer who shall dispose of the objections in the manner prescribed.

(6) Any person aggrieved by an order of the Assistant Consolidation Officer or Consolidation Officer under [sub-Sections (3), (4) or (5)] may, within 30 days of such order, file an appeal before the Assistant Director of Consolidation, whose decision, except as otherwise provided by or under this Act, shall be final.

(7) The Consolidation Officer shall and the Assistant Director of Consolidation may, wherenecessary, before deciding an objection or an appeal, make local inspection of the unit, after giving due notice to the parties concerned and the Village Advisory Committee.]

[12. Publication of draft scheme. - After the draft consolidation scheme has been prepared, the Assistant Consolidation Officer shall publish the scheme in the Unit and give a general notice that all the *raiya*s may obtain relevant extract of the scheme free of cost.

(2) Subject to the provisions contained in Section 10A, any person, whose right or interest is substantially prejudiced or affected by the draft consolidation scheme or who disputed the propriety and correctness of the entries in the draft consolidation scheme or the extracts furnished therefrom, may within 30 days of the date of publication of the draft consolidation scheme file an objection before the Assistant Consolidation Officer stating-



Under Section 12B there is a power to revise the draft consolidation scheme or getting a fresh one prepared. Principles of natural justice by giving the raiyats an opportunity of hearing is to be followed at all stages of preparation, finalization and Revisions of the Scheme of Consolidation.

23. Section 13 of the Act of 1956 talks of submission of scheme to the Director of Consolidation. According to this provision, the Assistant Director of Consolidation shall confirm the draft consolidation scheme-

(a) If no objections are filed within the time specified in Section 12

or

(b) Where such objections are filed, after such modification or alterations, as may be necessary, in view of the order passed under sub-sections (1) to (4) of section 12A.

(i) the nature of his interest or right in or over any land;

(ii) the manner in which such interest or right is likely to be adversely affected; and

(iii) the amount and particulars of his claim to the amounts, if any, for such interest or right;

Provided that no claim for the amount on account of the extension or diminution of any interest or right in or over any road, street, lane, path, channel, drain, tank, pasture or other land reserved for public purposes shall be entertained.]

[12A. Disposal of objections. - (1) All objections received by the Assistant Consolidation Officer shall as soon as may be, after the expiry of the period specified in Section 12 be submitted by him to the Consolidation Officer who shall dispose of the same, in the manner hereinafter laid down, after notice is given to the parties concerned and the Village Advisory Committee.

(2) Any person aggrieved by the order of Consolidation Officer under sub-Section (1) may, within thirty days of the date of the order, file an appeal before the Assistant Director of Consolidation whose decision shall, except as otherwise provided by or under this Act, be final.

(3) The Consolidation Officer shall, before deciding the objection and the Assistant Director of Consolidation may, before deciding any appeal, make local inspection of the plots in dispute after giving notice to the parties concerned and the Village Advisory Committee.]

[12B. Revision of the Draft Consolidation Scheme. - The Consolidation Officer or the Assistant Director of Consolidation, as the case may be, on being satisfied that material injustice is likely to be caused to a number of *rai-yats* or under *rai-yats* in giving effect to the draft consolidation scheme as prepared by the Assistant Consolidation Officer or as subsequently modified by the Consolidation Officer, as the case may be, and that a fair and proper allotment of land to the *rai-yats* or the under *rai-yats* of the unit is not possible without revising the draft consolidation scheme or getting a fresh one prepared, it shall be lawful, for reasons to be recorded in writing for-

13. Submission of scheme to the Director of Consolidation. - (1) The Assistant Director of Consolidation shall confirm the draft consolidation scheme-

(a) if no objections are filed within the time specified in Section 12; or

(b) where such objections are filed after such modification or alterations, as may be necessary, in view



24. Sub-section (2) of Section 13 says that the draft consolidation scheme so confirmed shall be published in the unit and except as otherwise provided by or under this Act, shall be final.

25. Under Section 14 of the Act of 1956 the Consolidation Officer shall fix the date with effect from which the final consolidation scheme shall come into force and shall, notify the same in the unit in the manner prescribed.

26. Under Section 15 the consolidation officer has to grant every raiyat to whom a holding has been allotted under the Scheme a certificate containing prescribed particulars in prescribed form which shall be a conclusive proof of the title of such raiyat to such holdings and he shall be liable for payment of rent as specified in the certificate. Under Section 15(2) a similar certificate is to be issued to the under raiyat.

of the order passed under sub-sections (1) to (4) of Section 12A.

(2) The draft consolidation scheme so confirmed shall be published in the unit, and except as otherwise provided by or under this Act, shall be final.

(3) (i) Where the allotments made under Section 11 are not modified under Section 12A and are confirmed under sub-section (1), the entries contained in the extracts issued under sub-section (1) of Section 12, shall, except as provided by or under this Act, be treated as final allotment orders for the *raiylats* and under *raiylats* concerned.

(ii) Extracts of the scheme showing allotment to the *raiylats* concerned as confirmed under sub-section (1) shall be issued by-

(a) the Consolidation Officer where the allotments are not modified; and (b) the Assistant Director of Consolidation, where the allotments have been modified, and the same shall, except as otherwise provided by or under this Act, be the final allotment orders for *raiylats* and under *raiylats* concerned.]

[14. Possession and accrual of the amount for trees, etc. - (1) The Consolidation Officer shall fix the date with effect from which the final consolidation scheme shall come into force and shall, notify the same in the unit in the prescribed manner.

(2) On and after the said date a *raiylat* or an under *raiylat* shall be entitled to possession of the plots allotted to him.

(3) Every *raiylat* or under *raiylat* getting tree, bamboo-clumps, wells and other improvements existing on the plots allotted to him in pursuance of the enforcement of the final consolidation scheme shall, on getting possession, be liable for payment to the former *raiylat* thereof amount to be determined in the manner prescribed for the trees, bamboo-clumps, wells and other improvements existing on the plots allotted to him.]

15. Certificate of transfer. - (1) The Consolidation Officer shall grant to every *raiylat* to whom a holding has been allotted in pursuance of a scheme of consolidation a certificate in the prescribed form containing the prescribed particulars. Such certificate shall be conclusive proof of the title of such *raiylat* to such holding and he shall be liable for payment of such rent as may be specified in the certificate.

(2) A similar certificate of transfer shall be granted to every under *raiylat*, whether having a right of occupancy or not in any land allotted to him in pursuance of the scheme and the certificate shall be conclusive proof of the title of such under *raiylat* to such land and he shall be liable to payment of such rent and to such person as may be specified in the certificate.]



27. Section 16 of the Act of 1956 provides that when certificate of transfer have been granted to the raiyats and under raiyats under Section 15, the scheme confirmed under Section 13 shall in suppression of the up-to date record of rights prepared under Section 8 shall be deemed to be the record-of-rights prepared and finally published under Chapter X of the Bihar Tenancy Act, 1885, or as the case may be Chapter XII of the Chota Nagpur Tenancy Act, 1908 or the Santhal Parganas Settlement Regulations, 1972.

28. The most contentious provisions under the Act of the 1956 is Section 37 which says that “No civil court shall entertain any suit or application to vary or set aside any direction or order given or passed under this Act with respect to any other matter for which a proceeding could or ought to have been taken under this Act.”

29. Mr. Kamal Nayan Chaubey, learned Senior Counsel appearing as Amicus Curiae in present case has submitted that the Act of 1956 provides for a comprehensive measure for better scientific cultivation in an egalitarian measures and it is a step forward after abolition of intermediary interest by virtue of the enforcement of the Land Reforms Act.

16. Confirmed scheme to be treated as finally published record-of-rights. - When certificates of transfer have been granted to the *raiya*ts and under-*raiya*ts under Section 15, the scheme confirmed under Section 13 shall, in supersession of the up-to-date record-of-rights prepared under Section 8, shall be deemed to be the record-of-rights prepared and finally published under Chapter X of the Bihar Tenancy Act, 1885 (VIII of 1885), or as the case may be, Chapter XII of the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908), or the Santhal Parganas Settlement Regulation, 1872 (Reg. III of 1872).

37. Bar of jurisdiction of Civil Courts. - No Civil Court shall entertain any suit or application to vary or set aside any decision or order given or passed under this Act with respect to any other matter for which a proceeding could or ought to have been taken under this Act.]”



30. Learned Senior Counsel, however, expressed his disappointment at the manner in which the notification remained pending for over two decades. While lamenting the present state of consolidation, Mr. Choubey, learned Senior Counsel submitted that except robbing the people and befooling the people in the labyrinth of some procedure, nothing concrete has resulted on the spot. He has closed his argument with a couplet by poet Dushyant Kumar :-

“कहाँ तो तय था चरागों हर घर के लिए,

कहाँ चराग मयस्सर नहीं शहर के लिए”

31. Mr. Vindya Keshari Kumar, learned Senior Counsel submitted that a perusal of Sections 15 and 16 of the Act of 1956 would show that they are in conflict with each other. His further submission is that Section 37 of the Act of 1956 has to be read down to the extent that the Consolidation Officers who are not judicially trained persons cannot go into the question of title which involves intricate questions of facts and law and the jurisdiction of the Civil Court cannot be completely ousted. According to him, the Civil Court may despite their being a bar of Section 37 of the Act of 1956, still entertain the suits which involved disputed question of title and once the consolidation proceeding is over and closed by virtue of notification under Section 26 of the Act of 1956, the dispute relating to question of title between the parties may still be brought before the Civil Court.



32. On the other hand, Mr. Pushkar Narain Shahi, learned Senior Counsel representing the State of Bihar submits that the issue of conflict between Sections 15 and 16 of the Act of 1956 was raised before the Hon'ble Full Bench in the case of **Ramkrit Singh** (supra), however, the Hon'ble Full Bench found that there was no conflict between the two sections. It is further submitted that vires of Section 4 (c) of the Act of 1956 has already been tested before the Hon'ble Apex Court in the case of **Satyanarayan Prasad Sah Vs. State of Bihar** reported in (AIR 1980 SC 2051) and what has been held in the case of **Mst. Bibi Rahmani Khatoon and others v. Harkoo Gope and others** (AIR 1981 SC 1450) with regard to the concept of abatement in the Consolidation Act is final.

33. In the aforesaid background of the submission of the parties, I would proceed to consider the legal position as appearing from the provisions of the Act of 1956 keeping in mind the judicial pronouncements of the Hon'ble Apex Court as well as of this Hon'ble Court in the cases discussed hereinafter.

34. The Hon'ble Full Bench in the case of **Ramkrit Singh** (supra) considered the question of validity of Section 15, impact of Sections 4 (b), Section 4 (c) and Section 37 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (in short 'the Act of 1956').

Ramkrit Singh Case

35. The facts of the case was that the petitioners had filed a Title Suit being No. 103 of 1966. The plaintiff in the suit was challenging certain alienation by defendant first party in favour of defendant second party. A



declaration was sought for that the said alienation is not binding on the plaintiffs-petitioners. The alienations were sought to be set aside and the plaintiffs-petitioners prayed for putting them in possession of the properties mentioned in Schedule I of the plaint. In the village in question, a Consolidation Proceeding had begun by virtue of the notification under Section 3(1) of the Act of 1956. The defendants filed an application in the court of learned Additional Subordinate Judge, Muzaffarpur raising an objection as to maintainability of the suit on the ground that the Consolidation operation had commenced in all the villages where the lands involved in the suit are situated. It was contended and prayed that by virtue of Section 4 (c) of the Act of 1956, the suit had abated, therefore, a declaration to that effect be made by the learned Additional Subordinate Judge.

36. The Learned Subordinate Judge, heard the parties and declared that the suit had abated. The order declaring that the suit had abated was sought to be challenged before this Court in Civil Writ Jurisdiction Case No. 1364 of 1997 which was ultimately referred to a Full Bench of this Court, comprising the then Hon'ble Acting Chief Justice and two Hon'ble Judges of the Court. An issue was raised as to whether the consolidation authorities under the Act are competent and empowered to decide a dispute involving question of title.

37. The Full Bench having considered the statutory provisions and the submission of the parties, took a view that the Consolidation authorities under the Act of 1956 are invested with the powers under the Act to determine the question of Title and it cannot be said that the power conferred upon the



authorities are unreasonable or have no nexus with the objects sought to be achieved, namely, a speedy consolidation of agricultural lands. The Hon'ble Full Bench rejected the contention of the plaintiffs-petitioners that Section 12 A , 37 and 4 (c) of the Act of 1956 were discriminatory. The contention that under the scheme of the Act, the Assistant Director of Consolidation and Consolidation Officer have been empowered to finally determine the question of title and the determination in that regard could not be challenged in the civil suit and thus, conferment of powers upon the officers who had no judicial training and were ill equipped to decide the questions of title which involves complicated question of facts and law was neither necessary nor desirable and that it had no rational basis, were rejected by the Hon'ble Full Bench. **Kalika Kuer Case**

38. The issues which were decided by the Hon'ble Full Bench in **Ramkrit Singh** (Supra), again came for consideration in the case of **Kalika Kuer @ Kalika Singh & Ors. Vs. The State of Bihar & Ors. (1989 1 PLJR 1203 HC)**. Although on record copy of the writ application and pleadings are not available but on request Shri Vindhya Keshari Kumar, learned Senior Counsel could make available a copy of the writ application with annexures but copy of counter affidavit and rejoinder supplied are not having any of the annexures. It appears that the dispute in the present case relates to Revisional Survey Plot (in short 'R.S.P.') No. 693 area 45 decimals corresponding to Cadestral Survey Plot (in short 'C.S.P.') No. 265 situated in village Balbalwa, P.S.- Baruraj, District- Muzaffarpur. The case of the petitioner is that C.S.P. No. 265 which has been sub-divided into four R.S.P.



No. 693, 694, 695 and 696 as an ancestral land of the petitioner and stands recorded in the name of grandfather of the petitioner. Common ancestor Ram Ugrah Kuer had four sons (1) Bhuneshwar Kuer, (2) Dipu Kuer, (3) Bishun Kuer and (4) Sanful Kuer. Bhuneshwar Kuer died leaving a widow Most. Pavitar Kuer who also died leaving daughter Yashoda Kuer. Dipu Kuer died leaving a son Kalika Singh. Kishun Kuer and Sanful died issueless. Petitioner is the son of Dipu Kuer. It was his case that Bhuneshwar Kuer got his share in C.S.P. No. 267 along with other plots and Dipu Kuer got C.S.P. No. 265 and the petitioner being son of Dipu Kuer was paying rent and getting rent receipts. It is further case of the petitioner that during the revisional survey operation the disputed land was wrongly recorded in the name of Ramayan Singh who got no concern with the land as admitted by him. In the Consolidation proceeding the petitioner filed an objection under Section 10 (2) before the Consolidation Officer, Motipur. Respondent nos. 5 and 6 also filed objection under Section 10 (2) in Case No. 20 of 1975. A Title Suit No. 115 of 1965 was fought between the petitioner and respondent nos. 5 and 6 in which with the agreement of the parties, the dispute was referred to Arbitrator and on the basis of the report of the Arbitrator a decree dated 28.05.1965 was passed according to which C.S.P. No. 267 area 10 Kattha was given to respondent nos. 5 and 6. The petitioner relied on the certified copy of decree dated 28.05.1965 passed in Title Suit No. 115 of 1965. Thus, it is the case of the petitioner that respondent nos. 5 and 6 cannot claim C.S.P. No. 265 whose area is 1 Bigha and 12 Kattha and the boundary of C.S.P. No. 265 cannot be the same of the boundary of C.S.P. No. 267 area 10 Kattha.



39. The petitioner was aggrieved by the order passed by the Consolidation Officer on 21.08.1980 as according to the petitioner, he wrongly passed an order in favour of the respondent nos. 5 and 6 for recording their names in consolidation record holding that there was a mistake on the part of the Katib in the gift deed and instead of C.S.P. No. 265 he had wrongly mentioned C.S.P. No. 267. A challenge to the order of the Consolidation Officer before the Deputy Collector, Consolidation also failed and then the revision preferred before the Director, Consolidation, Bihar brought by the petitioner was dismissed vide order dated 02.04.1987.

40. In the aforesaid facts and circumstance, it is the contention of the petitioner that the consolidation authorities cannot ignore the decree of the Civil Court in Title Suit No. 115 of 1965.

41. A counter affidavit has also been filed on behalf of respondent nos. 5 and 6. It is the stand of the respondents that Ram Anugrah Kuer @ Ram Ugrah Kuer had four sons but so far as Sanful Kuer and Kishun Kuer are concerned, they died issueless and their share also devolved equally upon the two other brothers namely, Dipu Kuer and Bhuneshwar Kuer. Respondent no. 5 is the granddaughter of Ram Anugrah Kuer and cousin sister of the petitioner. Bhuneshwar Kuer died leaving behind Pavitra Kuer his widow, one son Birja Kuer and daughter Yashoda Devi (Respondent No. 5) but Birja Kuer died leaving behind his mother and sister. Due to love and affection Pavitra Kuer executed a deed of Atayname in favour of her daughter respondent no. 5 gifting 10 Kathas of C.S.P. No. 265 along with other lands mentioned in the deed of gift dated 15.04.1959 and since then respondent no. 5 is exercising



exclusive possession over the land in dispute. The private respondents also took a stand that the total area of C.S.P. No. 267 is only 26 decimals so the story of deed of gift in respect of 10 Kattha of C.S.P. No. 267 is an imaginary story. Actually she had gifted away C.S.P. No. 265 but due to slip of pen by deed writer instead of C.S.P.No. 265, 267 was mentioned in the deed of gift. It is the respondent no. 5 who had filed an application for correction of khata before the Consolidation Officer, Baruraj as the plot was wrongly recorded in the name of Ramayan Singh.

42. This application according to respondent nos. 5 and 6, was registered as Objection Case No. 20 of 1975, later on the petitioner also intervened. It is further submitted that the petitioner had made absolutely incorrect and distorted statement regarding the decree passed in Title Suit No. 115 of 1965. It is stated that the said decree was an ex-parte decree and when the defendants came to about the same then a Miscellaneous case was filed and ultimately the ex-parte decree was set aside and on joint petition of both the parties, the dispute was referred to for arbitration on 01.08.1968. The Arbitrator submitted a report dated 06.05.1969 which was objected to on behalf of the petitioner but the objection raised by the petitioner was over ruled and ultimately vide order dated 24.01.1970 the award was confirmed by Sri P.B. Sinha, learned Munsif II, Muzaffarpur. According to respondent no. 5, the boundary of C.S.P. No. 267 mentioned in deed of gift tallies with the boundary of C.S.P. No. 265 and the same is also obvious from the order passed by the learned Consolidation Officer as contained in Annexure-1 to the writ application. The respondents have also denied the story of the petitioner



that C.S.P. No. 265 was allotted to Dipu Kuer. Their case is that in the year 1948 itself one Kanchan Kuer filed Title Suit No. 162 of 1948 in which the petitioner was the defendant no. 1 and Birja Kuer the brother of respondent no. 5 who was alive at that time was the defendant no. 2. The said suit ended in compromise and on the basis of compromise the defendant nos. 1 to 10 were allotted share in Khata No. 14 which includes C.S.P. No. 262, 265 and 267. It is submitted that Bhuneshwar Kuer as well as Dipu Kuer died before 1948.

43. The Consolidation Officer has reached to a conclusion on perusal of maps old as well as new that the boundary of C.S.P. No. 267 is that of C.S.P. No.265. Further he has perused the gift deed and recorded a finding that the petitioner had got certain lands by way of gift but the rest of the lands have been gifted to respondent no. 5.

44. Thus, the question for consideration before this Court is as to whether the consolidation authority had no jurisdiction to go beyond the decree which according to the petitioner, became final.

45. Initially the case of **Kalika Kuer** (supra) was posted before a Hon'ble Division Bench of this Court on 25.01.1989 when the Hon'ble Division Bench took note of the arguments raised on behalf of the petitioners as to whether any decision on the question of title, including right and interest in a joint state can be allowed to be finally determined by Officers who are not trained to act as judicial officers or not. A notice was also issued to the learned Advocate General on the question as to who may be competent to be appointed as the officers for the Consolidation proceedings. Learned counsel for the petitioner was directed to add a ground as to the competency of the



officers empowered to act in a consolidation proceedings to decide the question of title etc.

46. On 17.02.1989 when the matter was placed before the Hon'ble Division Bench, a view was taken that because the writ application is raising larger question, it should be placed before Hon'ble the Chief Justice for constituting a Full Bench at the Admission stage itself. By virtue of this reference Full Bench was again constituted comprising three Hon'ble Judges of this Court.

47. The Full Bench considered the issues raised in the case of **Kalika Kuer** (supra) by noticing the earlier Full Bench in the case of **Ramkrit Singh** (supra). The Bench noted that the Special Bench in **Ramkrit Singh** (supra) had considered the attack on the vires of the Act more particularly Sections 12A, 37 and 4 (c) thereof and **Ramkrit Singh** (supra) had answered the contentions stating that mere fact that law created a special forum would not make the law suffer from vice of discrimination.

48. The Full Bench in the case of **Kalika Kuer** (Supra) went on to hold that:-

“The Act has contemplated adjudication up to reference or revision by the Director of Consolidation. Consolidation Authorities are also made deemed courts. They (Consolidation Authorities) are, however, chosen by the State Government without there being anything in the Act suggesting that they, who are required to act judicially, must have some sort of judicial training. There is, thus, no pretention in the Act that the deemed courts of Consolidation Authorities are a mechanism created in lieu of the Civil Courts. In such a situation, it is difficult to hold that anything done by them shall be final and conclusive as to the title of any person to a property including the land. It shall indeed be in tune with the scheme of the Act that any person intending to raise a



pure question of title may file a suit before a Civil Court of competent jurisdiction which shall decide either to proceed or to hold that the issues raised in the suit fell within the jurisdiction of the consolidation authorities or not. When it so decided by the Civil Court that the issue raised in the suit could be decided by the consolidation authorities, the suit shall not be entertained during the period the consolidation proceedings are pending. After the disposal of the consolidation proceedings finally or cancellation of the scheme in the area, however, it shall be opened to the person concerned to file a suit questioning the validity of the record of rights and raising other issues for declaration of title and recovery of possession etc.....”

49. The Full Bench in **Kalika Kuer** (supra) further went on to take a view that abated suits under Section 4(c), after cancellation of or completion of the consolidation scheme shall in the same manner proceed and the jurisdiction of the civil court shall not be affected by the bar of jurisdiction provided under Section 37 of the Act for the reason that the validity or otherwise of the record of right when considered will no doubt take into account certain orders that may have been passed in course of the consolidation proceedings. The Full Bench further held in **Kalika Kuer** (supra) that adjudication by the Consolidation authorities as deemed courts is only for the limited purposes of consolidation and transfer of the rights and interests as recorded in the record of rights before the consolidation proceedings to new holding or holdings after consolidation, their knowledge of revenue law and the law of evidence and the civil procedure need not be equal to that of a judicial officer, yet some sort of adjudication of rights and interests are required to be done.



Challenge before the Hon'ble Supreme Court

50. The judgment of the Full Bench in **Kalika Kuer's** case (supra) was challenged before the Hon'ble Supreme Court giving rise to Civil Appeal No. 5654 of 1990. the Hon'ble Supreme Court came across Paragraph-78(A) of the impugned judgment delivered on behalf of the two Hon'ble Judges and the third Hon'ble Judge concurring with it, holding that the case of **Ramkrit Singh** (supra) is not binding, having been rendered *per incuriam*. The Hon'ble Supreme Court recorded that "the reasons which has been indicated to hold that the decision in the case of **Ramkrit Singh** (supra) was per incuriam is that it did not consider the question as to whether the consolidation authorities are courts of limited jurisdiction or not...." The Hon'ble Supreme Court held that "whatever has been held or observed in the case of **Ramkrit Singh** (supra) may not appear to be correct or may seem to be against the provisions of the Act but that would not be a valid ground to hold that the earlier judgment was rendered per incuriam or that decision would not be binding on the Bench of a coordinate jurisdiction.

51. Referring to the judgments of the Hon'ble Apex Court in the case of **Govt. of Andhra Pradesh and Anr. B. Satyanarayana Rao (Dead) by Lrs.** reported in **2000 (4) S.C.C. 262** and in the case of **State of U.P. and Another Vs. Synthetics and chemicals Ltd. & Anr.** reported in **1991 (4) S.C.C. 139** and in the case of **Furest Day Lawson Ltd. Vs. Shivraj V. Patil** reported in **(2001) 6 SCC 356**, the Hon'ble Supreme Court ultimately set aside the impugned judgment in **Kalika Kuer's** case (supra) as it was running contrary the judgment of the Full Bench in the case of **Ramkrit's** case (supra)



almost on all points. The matter was remanded thereafter to this Court vide judgment dated April, 25-2003.

52. I am recording the aforementioned facts in order to provide the factual backgrounds in which this case has now come up for consideration before the Larger Bench of five judges of this Court. During pendency of the matter before the Hon'ble Supreme Court and then before this Hon'ble Court, the issues arising for consideration in the present case have come up for consideration before the Hon'ble Supreme Court, if not on all aspects of the matter at least on some of the aspects which I will discuss hereinafter.

**A glance over Ramkrit Singh (Supra)
(Bar of Jurisdiction of Civil Court)**

53. In the case of **Ramkrit Singh** (supra), the vires of Sections 12A, 37 and 4(c) of the Act was challenged on the ground that those provisions were discriminatory. It was argued before the Hon'ble Full Bench that the Assistant Director of Consolidation and the Consolidation Officers who have been empowered to finally determine the question of title and against whose determination no challenge may be made in the civil suit, had no judicial training and were ill equipped to decide the question of title. It was further contended that the decision before the authorities under the Act required consideration of intricate question of facts and law and while the door of the courts were open for the general public, the same was closed for those who were covered by the Act.

54. As against the aforesaid submissions of the petitioners, it was the stand of the State that under the scheme of the act those who are covered



are being treated equally. It was submitted that in order to achieve the object of the Act, namely, the Consolidation of Holdings it was necessary that the power of deciding question of title be vested in the authorities created under the Act. The mere fact that special forum has been created cannot be construed as there has been discrimination. It was submitted that there were numerous laws which invested of creation of special forum for determining the rights of the parties. Instances were provided by referring to the House Control Legislation in several States, Land Encroachment Act, Debt Redemption Laws and Labour Welfare Legislation under which such forums have been created in which have been invested with the jurisdiction to decide the question affecting the rights of the parties. A particular reference was made to the Evacuee Property Act which entitled the authorities under the Act to decide questions of title.

55. On the strength of the judgment of the Hon'ble Supreme Court in the case of **State of Bombay v. F.N. Balsara (AIR 1951 SC 318 at p. 326)** it was submitted that the law is well settled now that to pass the tests of permissible classification it has to be seen whether (a) the classification is founded on an intelligible differentia which distinguishes those that are grouped together from others left out of the group, and (b) the differentia has a rational relation to the objects sought to be achieved by the Statute in question. As regards first test it was contended that those whose lands have to be consolidated constitute a class by themselves. There is an intelligible differentia between them and those who are out of that class. Where a law is applicable to well-defined class, it is not obnoxious and it is not open to the



charge of denial of equal protection on the ground that it does not apply to other person.

56. As regards the second test, the Full Bench took a view that in order to achieve the object of legislation, the legislature in its wisdom and experience thought that even the questions of title should be determined by the authorities under the Act. A view was taken that while considering this question the opinion of legislature has to be given great weight. Just because a more perfect or satisfactory legislation could be enacted would not bring constitutional infirmity in the legislation. Reference has been made to the judgment of Hon'ble Supreme Court in the case of **Kangshari Halder v. State of West Bengal (AIR 1960 SC 457, Para 19)**. The Full Bench referred Paragraph-8 of the judgment as under :-

“8. The classification of offenders who are reached by the Act is obviously reasonable. The offences specified in the four items in the schedule are clearly of such a character as led to the disturbance and it is these offences which were intended to be speedily punished in order to put an end to the threat to the security of the State and the maintenance of public peace and tranquility. It would be idle to contend that if the offences of the type mentioned in the schedule were committed and the Legislature thought that they led to the disruption of public peace and tranquility and caused jeopardy to the security of the State they could not be dealt with as a class by themselves. Other offences committed by individuals under the same categories of offences specified by the Code could be rationally excluded from the classification adopted by the Act because they did not have the tendency to create the problem which the Act intended to meet. We are, therefore, satisfied that the classification made by the Act is rational and the differentiation on which the offenders included within the Act are treated as a class as distinguished from other



offenders has a rational nexus or relation with the object of the Act and the policy underlying it. Therefore it would be difficult to acceded to the argument that the act violates Art. 14 of the constitution.”

57. The Full Bench usefully referred the views of the Hon’ble Agrawala, J. in **Mukhtar Singh v. State of U.P. (AIR 1957 All 297 at 302):-**

"Now the differentiation of tenure-holders where consolidation proceedings are taking place from tenure-holders who are not subjected to such proceedings is based upon an intelligible differentia, where an area is declared to be under consolidation proceedings it is necessary that the proceedings should terminate within a reasonable time. There may be hundreds of cases relating to title, boundaries and possession over the holdings or plots contained in those holdings. If the tenure-holders were left to the process of the ordinary law nobody can say when the litigation would terminate and when matters of dispute would be finally decided after having passed through the stages of original appellate and revisional Courts. It is well known that the ordinary procedure takes a long time to come to an end. If this were to be permitted, consolidation proceedings might be held up for an indefinite period. It is therefore necessary that such cases be treated differently from cases where consolidation proceedings are not taking place.”

58. Finally the Full Bench also referred the judgment of the Hon’ble Apex Court in the case of **Lachhman Dass Vs. State of Punjab (AIR 1963 SC 222 at p. 236)** in following words :-

"It is then contended that S. 11 of the Act bars the jurisdiction of the Civil Courts with reference to the disputes triable under the Act, and that is unreasonable. It is too late in the day to contend that provisions in statutes creating a special jurisdiction and taking away the jurisdiction of Civil courts in respect of matters falling within that jurisdiction are



unreasonable or opposed to rules of natural justice. It has only to be remembered that provisions excluding the jurisdiction of Civil Courts in such cases do not affect the jurisdiction of either the High Court under Art. 226 or of this Court, under Art. 32 or Art. 136 to interfere when grounds therefor are established."

59. The Full Bench Decision of this Court in the case of **Nand Kumar Rai Vs. The State of Bihar (AIR 1974 164)** was distinguished by taking note of the fact that in the case of **Nand Kumar Rai** (Supra) under the Bihar Tenancy Act while Section 106 provided for two appeals, only one appeal was provided in Section 109 (3) of the said Act. It was further noticed that there was a difference between two types of suits and that while the decision of Revenue Officer in a suit under Section 106 had the force of a decree, and was executable as a decree, such was not the position in relation to decision under Section 109 of the said Act. Thus, the wide differences noticed, the Full Bench in **Nand Kumar Rai** (Supra) held that Section 109 under the Bihar Tenancy Act was invalid. In **Ramkrit Singh** (Supra) the Hon'ble Full bench held that contrary to the situation prevailing in the Bihar Tenancy Act, under the Act of 1956 all those who are covered under the Act are governed by same procedure in relation to the determination of questions of their right or interests. The Full Bench thus held "it is not that some people covered by the consolidation proceeding will have their rights determined under one procedure and others are under another".

60. Referring to Section 37-B of the Act the Hon'ble Full Bench held that the principles laid down in the case of **Magan Lal Chhaggan Lal (P) Ltd. v. Municipal Corporation of Greater Bombay (AIR 1974 SC**



2009), would not come to the assistance of the petitioner. As in **Magan Lal Chhaggan Lal's** case (supra) so here also objections are to be decided after notice to the parties, with the right of appeal or revision. Authorities have power and privileges as vested in a Civil Court. They have power to enforce attendance of witnesses and compelling production of documents. In case of **Magan Lal Chhaggan Lal** (supra) the provisions of appeal was to the Principal Judge of Civil Court or a District Judge but it was held that merely because there is no provision of appeal under the Act to a court like one in case of **Magan Lal Chhaggan Lal** (supra) it has vice of discrimination. The Hon'ble Acting Chief Justice presiding over the Special Bench, however, expressed a feeling of dissatisfaction and apprehension because determination even in respect of question of title was left in the hands of administrative authorities untrained in law. It was recorded by his Lordship "Ofcourse, the determination of the authorities can be challenged by way of writ. But the challenge, as is well known, is restricted challenge. There cannot be challenge to erroneous determination on questions of fact. This could have been, obviously, obviated, if in relation to question of title, at least an appellate forum was provided before a court, say, the District Judge, the apprehension that there would be delay could very well be eliminated by laying down a time limit in the law for disposal of such appeals."

(Abatement of Suit and Proceedings)

61. The Hon'ble Special Bench considered the submissions with regard to Section 4(C) of the Act being ultra vires. It was contended before the Hon'ble Full Bench that Section 4(C) not only affects the rights in respect of



lands which are subject matter of consolidation proceedings but also the rights determined in a suit where composite decrees are passed. It was contended that the impact of Section 4(C) of the Act is that if there is a decree for recovery of possession or mesne profit the result of the abatement of the suit would be that the decree for mesne profits would also disappear. It was the submissions that the abatement of suit in respect of such matters had thus no nexus with the object of the Act and that such a provision was not necessary to achieve the purposes for which the Act was enacted.

62. At that point of time the learned Advocate General representing the State of Bihar contended that as matter of construction of Section 4 of the Act, there is no abatement of the suits for all times to come but suits or proceedings abate only so long as the consolidation operation does not come to a close. It was further contended by the learned Advocate General that Section 4(c) has to be read with qualification. In other words the limiting words "So far as the rights or interest in land concerned" has to be read after the words abated.

63. The Hon'ble Full Bench accepted the views of the learned Advocate General and held that the "the opening words of Section (4) states clearly that the consequence, as mentioned therein, shall ensue "from the date specified in the notification till the close of the consolidation operation". The consolidation operation closes by issue of notifications envisaged in Section 26A of the Act. It was held that when the Section says that the ensuing consequences are till the close of the consolidation operation, the Court cannot



nullify the words by saying that the consequences are for all times to come. It is in this background that the Full Bench proceeded to record as under :-

“.....that on the close of consolidation operation in a village or area the abated suits would revive. But the revival of those suits would not create any problems as suits will have to be decided in conformity with the decisions arrived at in the consolidation proceedings in so far as the rights or interest in any land covered. If this interpretation is accepted, it would be seen that suggested harshness or injustices disappeared. In the illustration already given, if a party succeeds in establishing its title, after the close of the consolidation proceedings, it would be open to it not only to have its title declared accordingly but also to have a decree for mesne profits.”

64. The Hon’ble Full Bench also accepted the second submission of learned Advocate General referring to the judgment of **Attorney General v. Earnest Augustus (Prince) of Hanover, 1957 AC 436, 461**), the Hon’ble Bench held that “Controversy in a suit may relate to right and title in land and certain reliefs dependent on the determination of the aforesaid title. Only in such situation, the suit abates not only in relation to ancillary or dependent reliefs. But the position is different where independent relief or reliefs, unconnected with the declaration and determination of the title to land are involved in a suit. In such a situation the suit does not abate in relation to such controversies. It is perfectly legitimate, as a rule of construction, to give a restricted meaning to the words used if the context so requires.”

65. The Hon’ble Bench thereafter clarified that “there are certain class of cases which are not covered by Section 4(c) of the Act. In this regard illustration was provided from the observations in the case **Gorakh Nath v.**



Harinarain Singh (AIR 1973 SC 2451). In the said case the claim of the plaintiff was that the sale of his half share by his uncle is invalid, inoperative and void. In the suit the plaintiff had prayed for cancellation of the sale-deed executed by his uncle to the extent of his half share. It was held that the suit was covered by the relevant provision of the U. P. Consolidation of Holdings Act and the claim had to be adjudicated upon by the consolidation courts. It was, however, pointed out that there is a distinction between cases where a document is wholly or partially invalid so that it can be disregarded by any court or authority and one where it has to be actually set aside before it can cease to have legal effect. The latter class of cases were held to be outside the scope of the provision relating to abatement of suits.

Excessive delegation:

66. In the case of **Ramkrit Singh** (supra) a plea was taken that the provision relating to piecemeal applicability of the law conferred unguided power on the State Government to initiate proceedings in villages of its choice. It was contended that the power was drastic and arbitrary. The Hon'ble Special Bench rejected the contention by holding that merely because the consolidation operation are not under taken simultaneously throughout the District or State does not bring any infirmity in law. Reliance has been placed in the case of **Ram Chandra Palai v. State of Orissa, (1956 SCR 28) : (AIR 1956 SC 298)**, **Shyam Sunder v. Siya Ram (1973 All LJ 53) : (AIR 1973 All 382)**. It has been held by this Court in relation to other statutes, that piecemeal application of law is not illegal or ultra vires. Challenge to Section 4(c) of the Act was, thus, rejected.



Conflict between Sections 15 and 16 of the Act of 1956

67. A contention was raised in the case of **Ramkrit Singh** (supra) that there is a conflict between Sections 15 and 16 of the Act of 1956. It was submitted that while Section 15 makes the certificate issued under the said Section as conclusive, the effect of the confirmed scheme being treated as finally published record of rights is that the same has only a presumptive value. The Hon'ble Full Bench took a view that there was no conflict. According to the Full Bench Section 15 only relates to proof of title and i.e. conclusive. But in respect of matters not covered by Section 15, the confirmed scheme shall have a presumptive value. It was held that in any event, even if there be a conflict Section 15 being clear and explicit, has to prevail.

68. In the aforesaid background of interpretation of the scheme of statute the Hon'ble Bench held in case of **Ramkrit Singh** (supra) that the suit was under Section 72 of the Bihar Hindu Religious Trust Act. The plaintiff was claiming a declaration that the sale deed executed by his uncle (defendant first party) was not binding on him. It was held that the contention that the suit was not covered by Section 4(c) of the Act was not acceptable. The Hon'ble Bench found that Section 72 of the Bihar Hindu Religious Trust Act makes special provisions for suits for recovery of immovable property. The finding of the suit under this provision did not affect the true effect of the reliefs claimed in the suit. The Bench was satisfied from the gist of the plaint that the suit was in respect of declaration of right and interest in lands which were subject matter of consolidation proceedings. The deed executed by the first party in favour of the second party, according to the claim in the suit, was not binding



on the plaintiff. It was held that it is not a Court of competent jurisdiction. The suit was held in the first category and not in the second category mentioned in **Gorakh Nath Dubey's** case (supra).

Post Ramrit Singh (Supra)

Satyanarayan Prasad Sah Vs. State of Bihar (AIR 1980 SC 2051)

69. In the case of Satyanarayan Prasad Sah (Supra) the constitutional validity of Section 4 (c) of the Act of 1956 came for consideration. The Hon'ble Supreme Court referred the judgments rendered in the case of **Ram Adhar Singh v. Ramroop Singh and Others** reported in **1968 2 SCR 95 : AIR 1968 SC 714** and rejected the contention of the writ petitioners that Section 4 (c) of the Act 1956 was violative of Articles 14 and 19 of the Constitution of India. In the said case the writ petitioner had submitted that the provision that any proceeding in a civil Court of the nature covered by Section 4(c) of the Act of 1956 would be within the exclusive jurisdiction of the Consolidation authorities and any order passed by a civil Court regarding land (title or possession or other incident) pending before the Civil Court would stand abated, was not a reasonable restriction on the right of a party to go to an ordinary civil Court. In the said case the decree had been passed in favour of the writ petitioner by a civil court but the subject matter was pending in an appeal in the High Court and the High Court had passed an order nullifying the decree of the trial court. In view of Section 4 (c) of the Act of 1956, the Hon'ble Supreme Court held that "the petitioner is right in saying that the High Court should not have "nullified" the decree of the trial



Court but should have merely declared that the proceeding stood abated, which of course, means that the civil proceeding comes to naught.”

70. Yet another judgment of the Hon’ble Supreme Court in the case of **Chattar Singh and others v. Thakur Prasad Singh** reported in **AIR 1975 SC 1499** was noticed and referred by the Hon’ble Apex Court in the case of **Satyanarayan Prasad Sah** (supra).

71. Thus, as regards the constitutional validity of Section 4 (c) of the Act of 1956, I find that immediately after the judgment of the Hon’ble Full Bench in the case of **Ramkrit Singh** (supra), the Hon’ble Supreme Court has put at rest the issue for all times to come.

Mst. Bibi Rahmani Khatoon and others v. Harkoo Gope and others (AIR 1981 SC 1450)

72. Immediately after the decision of the Hon’ble Supreme Court in the case of **Satyanarayan Prasad Sah** (Supra), the another case arising from an order of the learned Additional Subordinate Judge I, Gaya went to the Hon’ble Supreme Court. In the said case the title suit was filed in the court of learned Sub-Judge I, Gaya for declaration of title and for recovery of possession of certain agricultural land. The suit was decreed declaring that the plaintiffs were owners of certain khatahs and were entitled to recover the possession of the same. On appeal preferred before the learned District Judge, Gaya the same was dismissed and the decree was affirmed. Second Appeal was instituted in the High Court. During pendency of the second appeal before the High court an affidavit was filed stating that a notification under Section 3 of the Act of 1956 had been issued and in view of the language employed in



Section 4 of the said Act the suit and appeal stood abated. The High Court accepted the submission and disposed of the appeal by stating that the proceeding stood abated and thus, the judgment and decree of the court below deserves to be set aside. In the Supreme Court a contention was raised that the High Court had erred in setting aside the judgment and decree of the trial court as well as of the first appellate court which were in favour of the appellants. The Hon'ble Supreme Court went through the scheme of the Consolidation and held in the following words:

“9. When a scheme of consolidation is undertaken, the Act provides for adjudication of various claims to land involved in consolidation by the authorities set up under the Act. In order to permit the authorities to pursue adjudication of rival claims to land unhampered by any proceedings in civil courts, a wholesome provision was made that the pending proceedings involving claims to land in the hierarchy of civil courts, may be in the trial court, appeal or revision, should abate. This provision was made with a view to ensuring unhampered adjudication of claims to land before the authorities under the Consolidation Act without being obstructed by proceedings in civil courts or without being hampered or impeded by decisions of the civil courts in the course of consolidation of holdings. In order to avoid conflict consequent upon rival jurisdictions the legislature provided that the proceedings involving the claims to land put in consolidation should be exclusively examined by the authorities under the Consolidation Act and all rival jurisdiction would be closed. Simultaneously it was necessary to deal with the pending proceedings and that is why the provision for abatement of such proceedings.”

73. In the case of **Bibi Rahmani Khatoon** (Supra) the Hon'ble Supreme Court also noticed that there is a conceptual difference of abatement



in civil law and in the scheme of the 1956 Act. The Hon'ble Apex Court observed that if the abatement as conceptually understood in the Code of Civil Procedure is imported to Section 4 of the 1956 Act, it would cause irreparable harm and the party whose appeal is pending would lose the chance of convincing the appellate court and in case, if successful, would turn the tables against the other party in whose favour the judgment, decree or order would become final on abatement of the appeal. The Hon'ble Supreme Court further proceeded to say that the legislature intended that not only the appeal or revision would abate but the judgment, order or decree against which the appeal is pending would also become non est as they would also abate and that would leave consolidation authorities free to adjudicate the claims of title or other rights or interest in land involved in consolidation.

74. Then came the judgment in the case of **Raja Mahto and another v. Mangal Mahto (AIR 1982 Pat 235)**. In the said case the Hon'ble Judges distinguished the judgments of the Hon'ble Supreme Court in the case of **Ram Adhar Singh (Supra)** and **Gorakh Nath Dubey (Supra)** and then placing reliance on **Satyanarayan Prasad Sah (Supra)** opined as under:-

“I am, therefore, of the opinion that under Section 4 (c) of the Act, the suit, appeal, reference or revision abates and not the decree or preliminary or final decree abates.”

75. During this very period the Division Bench of this Court in the case of **Dr. Jagdish Prasad @ Jagdish Prasad Gupta v. Sardar Satya Narain Singh and Ors. (AIR 1982 Pat 37)** after referring to the decisions in **Nathuni Rai and Ors. v. Smt. Khira Devi and Ors. (1981 BBCJ 413)**, **Srinibas Jena and Ors. v. Janardan Jena and Ors. (AIR 1981 Orissa 1**



(Full Bench), Satyanarayan Prasad Sah (Supra), Mst. Bibi Rahmani Khatoon (supra) came to hold that :-

“In my opinion, the Supreme Court did not differ with the principle laid down in the former case of Satyanarayan Prasad Sah. Hence we are of the opinion that under S. 4 (c), a suit, an appeal, a reference or a revision will abate and neither a preliminary decree nor a final decree will abate. Hence, we dismiss the petition filed by the appellant under S. 4 (c) of the Act. Even if it is held that the appeal abates under S.4 (c) of the Act, the effect will be that it will not help the party inasmuch as even if the appeal abates, the final decree, remains alive. The suit comes to an end when a preliminary decree is passed for the purpose of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act. Hence, in this circumstance, in any event, I dismiss the appeal.”

76. It is apparent from a bare reading of the aforesaid judgments particularly, the one in the case of **Satyanarayan Prasad Sah** (supra) and **Mst. Bibi Rahmani Khatoon** (Supra) that by this time the Hon’ble Supreme Court had upheld the constitutional validity of Section 4 (c) of the Act and then it was held that on coming into force of a notification under Section 3 of the 1956 Act, in view of the language employed in Section 4 of the Act, the suit, appeal and Revision and proceedings shall abate. The Hon’ble Supreme Court never held that after issuance of a notification under Section 26 A of the Act, the suits abated by virtue of Section 4 (c) of the Act shall stand revived.

77. In the case of **Nathuni Rai** (supra) it was categorically held by the Hon’ble High Court that all rival jurisdiction would be closed and the decree against which the appeal is pending would also become non est as they would also abate and that would lead consolidation authorities free to



adjudicate the claims of title or other rights or interest in law involved in consolidation.

78. It seems, the judgment of the Hon'ble Supreme Court in the case of **Satyanarayan Prasad Sah** (supra) and **Bibi Rahmani Khatoon** (supra) were not brought to the notice of the Hon'ble Full Bench hearing the case of **Kalika Kuer** (Supra).

79. After the decision of the Hon'ble Full Bench in **Kalika Kuer's** case (supra) yet another Full Bench of this Court in the case of **Seikh Haidar Zan Vs. Md. Yusuf Ansari & Anr.** reported in **2000 (2) PLJR SC 338** considered some of the provisions of the Act of 1956.

80. The Full Bench in the case of **Seikh Haidar Zan** (Supra) was considering the following three questions:-

(1) Whether the consolidation operation comes to an end with the final publication of the record of right under Section 16 of the Consolidation Act?

(2) Whether the bar of Section 10A applies to the exercise of revisional power under Section 35 of the Consolidation Act? And

(3) Whether a suit based on title challenging the correctness of the entries in the record of right published under Section 16 of the Consolidation Act is maintainable in the civil court ?

81. The Hon'ble Special Bench in **Seikh Haidar Zan's** case (supra) referred the Full Bench judgment in **Ramkrit Singh's** case (supra) and held that as a matter of fact, under Section 14 of the Act, the final consolidation scheme also comes into force with effect from the date notified



in that behalf. The Special Bench was of the view that coming into force of the consolidation scheme is one thing and close of the consolidation operation is another thing for the purpose of continuance of the effect and consequence of notification under Section 3. The consolidation operations come to close only when a notification in that behalf is issued under Section 26A. After noticing that Section 14, as it presently stands, Section 26A were brought in the statute by the same amendment, namely, Bihar Act 27/75 in the year 1975, the Hon'ble Special Bench held that in view of the express provisions of the Act, there cannot be any doubt that although the consolidation scheme comes into force under Section 14 from the date notified in that behalf, the consequence of the notification under Section 3 continues until issuance of notification under Section 26A. Abatement of suit under Section 4(c) is a consequence of notification and if the consequence continues up to the issuance of notification under Section 26A, when the consolidation operation statutorily comes to an end, it cannot be said that the consequence comes to an end with the grant of certificate of transfer under Section 15 or coming into force of consolidation scheme under Section 14.

82. Thereafter the Hon'ble Full Bench considered as to whether the power of Section 10A applies to exercise of revisional power under Section 35 of the Act. Referring to the earlier Division Bench judgment in the case of **Hari Narain Singh vs. State of Bihar** reported in **1997 (1) PLJR 302** and by relying upon the judgment of Hon'ble Supreme Court in the case of **Ram Dular vs. Deputy Director of Consolidation** reported in **1994 Suppl. (2) SCC 198** and also referring to **Pritam Singh v. Assistant Director of**



Consolidation reported in (1996) 2 SCC 270, the Hon'ble Special Bench noticed that Section 35 of the Bihar Act and Section 48 of the U.P. Consolidation Act are at *pari-materia*. Section 11 of the U.P. Consolidation Act was corresponding to Section 10A of the Bihar Consolidation Act. The Special Bench took a view that the judgment in the case of **Ram Dular** (supra) was on the facts of the case and the issue as to whether Section 11 of the U.P. Consolidation Act applies to exercise of revisional jurisdiction under Section 48 of the U.P. Consolidation Act was not an issue in that case. Relying upon the judgment of Hon'ble Supreme Court in the case **Pritam Singh** (supra) the Hon'ble Special Bench held that the revisional authority has jurisdiction to pass any suitable order for doing complete justice between the parties and it leaves little room for doubt that power under Section 35 of the Act of 1956 is an independent power, unfettered or un-circumscribed by any other provision. The Special Bench also noted that there is no *non-obstante* clause in Section 10A.

83. Coming to the last questions under reference relating the maintainability of the suit based on the title challenging the correctness and the entries in the record of right published under Section 16 of the Consolidation Act in the civil court, the majority view in the case of **Seikh Haidar Zan** (supra) is reflected in Paragraph-32 of the judgment delivered by Hon'ble Mr. Justice S.N. Jha (as his lordship then was). Paragraph-32 reads as under:-

“32. From bare reading of section 37B it is evident that the consolidation authorities do not have all the powers of the civil court as conferred upon it (civil court) by the, Code of Civil



Procedure. They have power to summon witnesses and examine them on oath, to issue commission for that purpose, compel production of any document and punish a person for contempt. They do not have the power to issue injunction or appoint Receiver, attach the subject matter of dispute, and so on. Besides having limited jurisdiction in matters of procedure, they have limited jurisdiction to decide the dispute itself. For example, they have no power to set aside or cancel a deed, entertain suits for permanent injunction, redemption of mortgage and so on. By way of illustration, reference may be made to the decisions reported in AIR 1973 Supreme Court 2451 and 1985 PLJR 76 (cases of cancellation of a deed), 1989 PLJR 579 (case of permanent injunction), 1979 BBCJ 722 and 1980 BBCJ 544 (redemption of mortgage), 1981 BBCJ and 1985 PLJR 722 (easementary rights), 1979 BBCJ 566 (Specific Performance of Contract), 1979 BBCJ 738 and 1989 PLJR 536 (homestead land), 1980 BBCJ 191 (ejectment), 1986 BBCJ 343 (Action based on allegation of fraud), and so on. In all these cases the suits of nature mentioned within brackets have been held to be maintainable in the civil courts because consolidation authority have no jurisdiction to grant any relief in such cases. The point is well settled that all suits or proceedings do not abate under section 4(c) of the Act. I have therefore referred to only some of the cases above as illustrative cases. The law journals are replete with case law on the point and it is not necessary to refer to all of them in this judgment.”

84. The Hon’ble Special Bench in the case of **Seikh Haidar Zan** (supra) also noticed the judgment of Full Bench of this Court in the case **Kalika Kuer’s** case (supra) and then after reading the provisions of Sections 15, 16 and 17 of the 1956 Act, it took a view in Paragraph-37 which reads as under :-

“37. It is well known principle of interpretation that in order to understand the true scope and effect of a particular provision, statute has to be interpreted as a whole keeping in view, in particular, the context in which the provision appears. Reading



the provisions of sections 15, 16 and 17 of the Act it appears to me that the certificate of transfer has been described as conclusive proof of title of the raiyat with respect to the holding to which it relates because as a result of the finalisation of the consolidation scheme there is change of hands amongst the different persons. They are made to part with possession over the land which earlier belonged to them in lieu of some other land belonging to other persons. Necessarily, therefore, he has to have the same rights in the land allotted to him in pursuance of the consolidation scheme as he had in the original holding. This is what section 17 provides and that is the reason, as it appears to him, why the 'certificate' have been described as conclusive proof of title of the person to such holding. I should not be understood to mean that the consolidation authorities cannot go into the questions of title. In fact, a decision on the question of title is implicit in disposal of objection, appeal or revision by them while preparing and finalising the register of land under the Act. Because if they do not decide title of the person, how a land belonging to one person can be allotted to another? The question, however, is whether having decided title while disposing of the appeal or revision under the Act, a suit based on title in the civil court is barred."

85. The views expressed by Hon'ble Mr. Justice S. N. Jha (as His Lordship then was) were agreed in entirety by Hon'ble Mr. Justice Ravi Nandan Sahaya (as His Lordship then was) and therefore, it became a majority view. The decision in **Hari Naraian Singh's** case (Supra) was held to be not laying down a correct law.

86. There was a difference of opinion in the case of **Seikh Haider Zan** (supra) by Hon'ble Mr. Justice Nagendra Rai (as His Lordship then was). His Lordship agreed on the interpretation given by the majority view with regard to points no. 1 and 2 but on the question of exclusion of jurisdiction of the civil courts, Hon'ble Mr. Justice Nagendra Rai (as His Lordship then was)



took a categorical view that the Act of 1956 contains a detail provision for determination of the question of right and interest, including the question of title. After referring to Section 37 A and 37 B of the Act of 1956 whereunder the Consolidation officers have been granted status of deemed court of competent jurisdiction to hear the objections or appeals or deciding the disputes under the Act and then they have been conferred with all such powers, rights and privileges while hearing any matter in dispute are vested in a civil court, His Lordship took a view that by virtue of the deeming provision under Section 37A the only logical conclusion that would flow is that the decision of a dispute under the Act of 1956 will be treated as a decision given by a competent court i.e. the civil court with regard to the matter of a civil nature and for this purpose, the legislature has incorporated deeming provision under Section 37A and has given the consolidation authorities the power of civil court in the matter of taking evidence of the witnesses under Section 37B. While interpreting the law having a force of a deeming provision, his lordship quoted the celebrated passage of Lord Asquith in the case of **East End Dwellings Co. Ltd. v. Finsbury Borough Council, 1952 Appeal Cases 109**, in following words :—

“If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incident which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it.....”

87. Relying on the judgment of the Hon’ble Apex Court in the case of **State of Bombay vs. Pandurag Vinayak**, reported in **AIR 1953 Supreme**



Court 244 while quoting with approval for the aforesaid passage of Lord Asquith, His Lordship held as follows :-

“When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion”.

88. The same principle has been reiterated with regard to a legal fiction in the case of **Orient Paper and Industries Ltd. v. State of Orissa**, reported in **A.I.R. 1991 Supreme Court 672**. Their Lordship also referred the judgment of the Hon’ble Supreme Court in the case of **Sita Ram v. Chhota Bhondey**, reported in **A.I.R. 1991 Supreme Court 249**. In the said case the claim of one of the parties as respect the title and parentage was accepted by the consolidation authorities and the decision was upheld up to the High Court. The Appellant before the Supreme Court had already lost before the consolidation authorities, filed the title suit challenging the decision of the consolidation authorities. The respondent No. 1 before the Supreme Court challenged the maintainability of the suit in view of the provision of Section 49 of the U.P. Consolidation Act. The said petition was accepted by the trial court and upheld in appeal up to the High Court. The appellant challenged the decisions in the Supreme Court and at this stage the Hon’ble Apex Court considered the provision of Section 49 of the U.P. Consolidation Act and held that as the matter was falling within the scope of adjudicatory functions assigned to the consolidation authorities, the jurisdiction of the civil courts to



entertain the suit was barred. In paragraph 12 of the judgment in the case of **Chhota Bhondey** (supra) the Hon'ble Supreme Court held as follows:—

“12. This Court has held that question relating to the validity of sale deeds, gift deeds and wills could be gone in proceedings before the consolidation authorities because such questions naturally and necessarily arose and had to be decided in the course of adjudication on rights or interests in land which are the subject matter of consolidation proceedings. A distinction has, however, been made between cases where the document is wholly or partially invalid so that it can be disregarded by any court or authority and one where it has to be actually set aside before it can cease to have legal effect. With regard to cases falling in the first category it was held that such a claim can be adjudicated by consolidation courts on the view that an alienation made in excess of power to transfer would be to the extent of the excess of power, invalid and an adjudication on the effect of such a purported alienation would be necessarily implied in the decision of a dispute involving conflicting claims to rights, or interests in land which are the subject matter of consolidation proceedings. But as regards cases falling in the second category where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation, it was held that the consolidation authorities would have no power to cancel the same and it must be held to be binding on them so long as it is not cancelled by a court having the power to cancel it.”

89. While taking the minority view in **Seikh Haider Zan** (supra) in paragraph 29 His Lordship relied on another Full bench judgment of this Court in the case of **Sheoratan Chamar & Ors.Vs. Ram Murat Singh &Ors. (1985 PLJR 86)** and quoted from the said judgment as follows:-

“..... as the exhaustive provisions of the 40 Sections of this Act would indicate, it was intended to be a self-contained Code for the purpose of Consolidation of all agricultural lands



within the State. The bar of jurisdiction of Civil Courts under Section 37 of the Act would show that the Legislature clearly requires that with respect to any matter for which a proceeding could or ought to have been taken under this Act, the same alone provides the forum, and, further, all decisions or orders, given or passed under this Act, are immune from interference by the Civil Court.”

Daya Chand vs. Om Dutta Sharma

90. In the case of **Daya Chand v. Om Dutta Sharma**, reported in **A.I.R. 1991 Supreme Court 1725**, it has been held that since the claim of the parties to the land in dispute had been adjudicated by the consolidation authorities and the gift deed was held to be invalid, no suit can legally be maintained by the affected parties for declaration of his title to the land in view of the bar created by Section 49 of the U.P. Consolidation Act.

Paras Nath Rai and others Vs. State of Bihar and others

91. At this stage, I would like to refer one of the comparatively recent judgments of the Hon’ble Supreme Court in the case of **Paras Nath Rai and others Vs. State of Bihar and others** reported in **AIR 2013 SC 1010** reliance on which has been placed before us on behalf of the State. The said case had traveled to the Hon’ble Supreme Court questioning the order dated 2nd May, 2011 passed by the Division Bench of this Court in L.P.A. No. 947 of 2002 whereby the judgment of the learned Single Judge passed in C.W.J.C. No. 1851 of 2000 was affirmed. The learned Single Judge had affirmed the order passed by the Director, Consolidation, Bihar, Patna in Revision Suit No. 151 of 1975 and other analogous matters.



92. In the said case a partition suit filed by father of appellant no. 1 was dismissed by learned Munsif vide judgment and decree dated 4th April, 1968 and appeal was preferred against the judgment and decree passed by learned Munsif giving rise to Title Appeal Nos. 30/41 of 1968/71. The State Government issued Notification No. 1168 dated 26-11-1970 under Section 3 of the Act of 1956 bringing the area under consolidation scheme. Before the appellate court a petition was filed under Section 4(c) of the Act of 1956 to the effect that the appeal and the suit had abated by statutory operation of law. The appellate court, however, failed to consider the application but dismissed the appeal saying that the appeal cannot be allowed to proceed as one of the respondents had died during the pendency of the appeal and the application for substitution had been rejected.

93. The said order of appellate court was challenged by way of Civil Revision Application before the learned Single Judge of the High Court. The learned Single Judge returned a finding that the appellant had not made any prayer for withdrawal of the appeal and, therefore, the order passed by the lower appellate court was without jurisdiction and accordingly the matter was remitted to the lower appellate court for disposal of the appeal in accordance with law. After the remittance, the title appeal was revived eventually on 26th November, 1980 the learned Sub Judge, Bhabhua noted that the appellant was represented and the respondent no. 1 and 2 filed cross objection and had also filed an application for abatement of the appeal. The learned Sub Judge noted that the appellant was not interested in contesting the appeal and opined that the Title Appeal No. 30/68 and Title Appeal No. 123/63 stood abated.



94. At this stage it was noticed by the Hon'ble Supreme Court that in the consolidation proceeding the Consolidation Officer vide order dated 23-3-1974 arrived at the conclusion that the claim of the applicant therein deserved to be rejected. Being of this view he directed entry in Khata No. 142 of recent revisional survey of Village Lakhanpatti Thana No. 407 which was in the name of father of the appellant no. 1 who was respondent in the proceeding before the Consolidation Officer. The appeal preferred from the said order also failed. The revisional authority also confirmed the orders passed by the Consolidation Officer and the Deputy Director of Consolidation. The two orders passed by the revisional authority were challenged before the High Court in C.W.J.C. Nos. 1638 and 1640 of 1981. The learned Single Judge by order dated 15-11-1985 quashed the order impugned and directed the Additional Director to decide the revision petitions along with other pending revisions. After the remand, three revision suits were disposed off by the Deputy Director, Consolidation on 08.10.1987.

95. The common order dated 08.10.1987 was assailed in C.W.J.C. No. 5610 of 1987 and the learned Single Judge by order dated 14.05.1998 expressed the view that the Deputy Director, Consolidation could not have decided the revisions while in-charge of Director and hence, the order had been passed by an authority who did not have the jurisdiction and, accordingly, remanded the matter to be heard afresh and disposed of by the revisional authority. After the remand, the Director, Consolidation dismissed the three revisions. A conclusion was arrived by the Director, Consolidation that one Umraoti Devi was the daughter of Dhyani Rai and not of Anant Rai.



The said conclusion was arrived on the basis of finding recorded by the civil court. The said order was challenged in C.W.J.C. No. 1851 of 2000. The learned Single Judge by order dated 9-8-2002 concurred with the view of the appellate authority and the revisional authority and, accordingly, dismissed the writ petition.

96. The decision of the learned Single Judge was called in question in LPA No. 947 of 2002, and the Division Bench opined that as the appeal had abated for the non-prosecution by the appellants and as the consolidation authorities had taken note of the findings recorded by the civil court, the same had rightly not been interfered with by the learned Single Judge. Taking this view the Division Bench dismissed the appeal. The said orders were the subject-matters of challenge in the appeal before the Hon'ble Supreme Court.

97. The Hon'ble Supreme Court discussed the various judgments and finally held in paragraph 32 that the High Court of Patna in **Dr. Jagdish Prasad's** case (supra) and **Raja Mahto's** case (supra) had interpreted the judgment of the Hon'ble Supreme Court in the case of **Mst. Bibi Rahmani Khatoon** (Supra) absolutely erroneously. Paragraph 32 and 35 of the judgment of the Hon'ble Apex Court in the case of **Paras Nath Rai** (supra) are quoted hereunder for ready reference:-

“32. At this stage, it is condign to clarify that the High Court of Patna in Dr. Jagdish Prasad (*AIR 1982 Pat 37*) (supra) and Raja Mahto & Anr. (supra) had read the judgment of this Court absolutely erroneously. It has been held by this Court that the entire civil proceeding from its commencement stands abated and it comes to a naught. In Satynaryan Prasad Sah (supra) this Court had found an error in the decision of the High Court in nullifying the decree. It was explained in Mst. Bibi Rahmani Khatoon's (supra) case that what is the impact when a scheme of a consolidation is undertaken. This Court had referred to the



pronouncement in *Satynaryan Prasad Sah* (supra) and stated that both in principle and precedent it is clear that where a notification is issued bringing the land involved in a dispute in the civil proceeding under a scheme of consolidation, the proceeding pending before the civil court either in trial court, appeal or revision shall abate as a consequence ensuing upon the issue of notification and the effect of abatement would be that the civil proceeding as a whole come to a naught. To elaborate not only the judgment and decrees would become extinct but the entire civil proceeding would come to a naught.

35. The question that emanates for consideration if the appeal which is a continuation of suit had abated whether findings recorded therein could have been relied upon. We have noted that in the case of *Raja Mahto and another* (supra) and *Dr. Jagdish Prasad* (*AIR 1982 Pat 37*) (supra) the High Court of Patna had taken a view that on issuance of a notification under Section 3 of the Act the suit or appeal would abate but neither the preliminary decree nor the final decree would abate. For the said purpose inspiration had been drawn from *Srinibas Jena & Ors.* (*AIR 1981 Ori 1*) (supra) a decision rendered by the Full Bench of the High Court of Orissa. In the Full Bench decision of the High Court of Orissa, the preliminary decree was allowed to attain finality and nothing remained to be adjudicated. There is a distinction between a preliminary decree and final decree. Recently in *Bimal Kumar & another v. Shakuntala Debi & others*¹¹ this Court after referring to the decisions in *Rachakonda Venkat Rao v. R. Satya Bai (D)* by L.R. and another¹², *Muzaffar Husain v. Sharafat Husain*¹³, *Raghubir Sahu v. Ajodhya Sahu*¹⁴, *Renu Devi v. Mahendra Singh and others*¹⁵, has ruled thus:

“A preliminary decree is one which declares the rights and liabilities of the parties leaving the actual result to be worked out in further proceedings. Then, as a result of the further inquiries conducted pursuant to the preliminary decree, the rights of the parties are finally determined and a decree is passed in accordance with such determination, which is the final decree. Thus, fundamentally, the distinction between preliminary and final decree is that: a preliminary decree merely declares the rights and shares of the parties and leaves room for some further inquiry to be held and conducted pursuant to the directions made in the preliminary decree which inquiry having been conducted and the rights of the parties finally determined a decree incorporating such determination needs to be drawn up which is the final decree.”

11.(2012) 3 SCC 548:(AIR 2012 SC 1586).

12.AIR 2003 SC 3322.

13. AIR 1933 Oudh 562.

14. AIR 1945 Pat 482.

15. AIR 2003 SC 1608.



Conclusion

98. After hearing learned Senior Counsel for the parties and going through the various case laws cited hereinabove, it appears to me that so far as vires of Sections 4 (c) of the Act of 1956 is concerned, the same has already been upheld by the Hon'ble Supreme Court in the case of **Satya Narain Prasad Sah** (supra), hence the issue with regard to Section 4(c) is no longer *res integra*. With humility and respect I say that views expressed by Hon'ble Full Bench that on the close of the consolidation operation in a village or area the abated suits would revive does not provide a correct interpretation as in view of aforesaid judicial pronouncements that the matter decided by consolidation authorities would not be open to challenge before Civil Court. The concept of abatement as provided by Hon'ble Supreme Court in the case of **Bibi Rahmani Khatoon** (supra) referred and relied in the case of **Paras Nath Rai** (supra) is an authoritative pronouncement on the subject. Once a suit, appeal, revision, or proceeding abates, the decree under challenge in any appeal, revision, or proceeding shall not be relied upon by the consolidation authorities. Converse to this, if on the date of notification under Section 3, a decree passed in a suit or proceeding had attained finality as no appeal or revision was filed within the limitation provided under the statute and was not pending, such decree in a suit or order passed in a proceeding shall be binding between the parties in the consolidation proceeding.



99. As far as the submissions with regard to conflict between Sections 15 and 16 of the Act of 1956 is concerned, I am of the considered opinion that Section 15 clearly provides the intention of the Legislatures that once the scheme of consolidation is finalized in terms of Section 13 of the Act of 1956, the Consolidation Officer shall issue a certificate in the prescribed form and in prescribed particulars which will be a conclusive proof of title of such raiyats to such holding. A similar certificate of transfer shall be granted to every under raiyat. I fully agree with the minority views expressed by Hon'le Mr. Justice Nagendra Rai (as His Lordship then was) in the case of **Seikh Haidar Zan** (supra) in paragraph 21 and 22 which read as under:-

“21. Much emphasis has been laid on the provision of section 16 of the Act and it has been argued that as under section 16 the confirmed scheme is to be treated as record of rights finally published under the Bihar Tenancy Act or other local laws as the case may be and it is well-settled that the entry made in the record of rights does not create a title in favour of any person, the consolidation authorities have no power to decide the question of title or in alternative any such determination is not a final determination ousting the jurisdiction of the civil court.

22. The said submission is devoid of any substance. After consolidation operation is over, the consolidation authorities do not maintain records and they are maintained by other authorities including survey authorities and for that limited purpose, the confirmed scheme is treated as a record of right under the relevant local laws so that in future in case of death or any other subsequent event, the names of the persons other than those recorded, may be mutated. Thus, the confirmed scheme is treated as a record of right under the local Act only for the purpose of mutation with regard to matters



arising out of the close of the consolidation proceeding. On the basis of that provision, it cannot be said that the consolidation authorities have no power to decide the question of title, on the other hand, they are competent to decide the question of title and order issued after determination of the dispute is a documentary proof of title.”

100. Here, I would hasten to add that so far as the question of conflict between Sections 15 and 16 of the Act of 1956 are concerned, speaking for the majority, Hon’ble Mr. Justice S. N. Jha (as His Lordship then was) had also expressed a similar kind of view holding that Section 15 of the Consolidation Act of 1956, no doubt, provides that the certificate in the prescribed form shall be conclusive proof of title of the raiyat with respect to holding mentioned in the certificate but it should be kept in mind that the certificate is prepared on the basis of register of land and the register of land itself is prepared on the basis of the record of rights prepared under the concerned Tenancy law which is Bihar Tenancy Act, Chotanagpur Tenancy Act or the Santhal Parganas Settlement Regulation , as the case may be, in favour of the owner by the consolidation authorities on objections as to such entries in the record of rights. It was further held that under Section 16 of the Consolidation Act such register of land is ‘deemed to be record of rights’. Under Section 16 of the Consolidation Act such register of land is deemed to be record of rights and ‘deemed’ always means ‘to be deemed as it were’. I, therefore, find that views expressed in the case of **Ramkrit Singh** (supra) and in the case of **Sheikh Haider Zan** (supra) are consistent. On both occasion the Hon’ble Full Bench of this Court has answered the issue on conflict between Sections 15 and 16 of the



Act of 1956. While agreeing with the aforesaid views, I would say that Sections 15 and 16 of the Act of 1956 are operating in mutually exclusive fields and they are supplementing each other, hence there is no conflict between the two provisions.

101. Now coming to the most contentious issue with regard to bar of jurisdiction of the Civil Court as contained in Section 37 of the Act of 1956.

102. I have referred the provisions as contained in Sections 37 and 37A of the Act 1956 which have been duly discussed by the Hon'ble Full Bench in the case of **Ramkrit Singh** (supra) as also in the case of **Seikh Haidar Zan** (supra). It is the consistent views of both the Hon'ble Full Bench that in view of the purpose sought to be achieved under the Act of 1956, the Consolidation Authorities have been conferred with status of 'deemed courts' as they have also been conferred with the powers of summon to witnesses, taking evidence etc. In the case of **Seikh Haidar Zan** (supra) in Paragraph-32, Hon'ble Mr. Justice S.N. Jha (as His Lordship then was) speaking for the majority took a view that from a reading of Section 37B it is evident that the Consolidation Authorities do not have all the powers of the civil court as conferred upon it by the Code of Civil Procedure. It was further held that they are empowered to summon witnesses and examine them on oath, to issue commission for that purpose, compel production of any document and punish a person for contempt but they do not have the power to issue injunction or appoint Receiver, attach the subject matter of dispute, and therefore the Full Bench in **Seikh**



Haidar Zan's case (supra) took a view that it has limited jurisdiction in matters of procedures. Certain illustrations were given in Paragraph-32 of the judgment to demonstrate that the Consolidation Officers have no power to set aside or cancel the deed, entertains suits for permanent injunction, redemption of mortgage and so on. The Full Bench took a view that all suits or proceedings do not abate under Section 4(C) of the Act. In my opinion, the majority views expressed by Hon'ble Mr. Justice S.N. Jha (as His Lordship then was) in **Seikh Haidar Zan's** case (supra) while saying that consolidation operation had limited jurisdiction were perhaps influenced by the judgment of the Hon'ble Full Bench judgment in the case of **Kalika Kuer** (supra) which was pending consideration before the Hon'ble Supreme Court of India at the relevant time. Hon'ble Mr. Justice Nagendra Rai (as His Lordship then was) while recording his minority view has at one place recorded the fact that the judgment rendered in the case of **Kalika Kuer** (supra) was under stay before the Hon'ble Supreme Court. I am willing to agree with the views expressed by Hon'ble Mr. Justice Nagendra Rai (as His Lordship then was) to say that the Act of 1956 contains a detail provision for determination of the question of right and interest, including the question of title and it also provides an adequate remedy in terms of Sections 37A and 37B of the Act of 1956. Section 37A contains a *non-obstante* clause and it clearly records that the authorities under the Act shall be deemed to be a court of competent jurisdiction while deciding disputes, hearing objections, appeals etc. and Section 37B vests power of civil court in the authorities under the Act with regard to certain



matters enumerated therein. I would like to agree with the minority view expressed in **Seikh Haidar Zan's** case (supra) on this point. To me it appears that it would not be just and proper to say that the consolidation authority are courts of limited jurisdiction.

103. The views expressed in paragraph 32 of the majority judgment in the case of **Seikh Haidar Zan** (supra) is required to be clarified. I am of the view that the consolidation authorities have all the powers of the Civil Court in the matter of seeking attendance of the witnesses, receiving evidence and compelling attendance of the witnesses. The Legislatures in their wisdom has provided for a separate forum to deal with any matter for which a proceeding could or ought to have been taken under the Act in course of a consolidation proceeding going on in a unit. It is well settled by now by virtue of the judgments of the Hon'ble Supreme Court discussed hereinabove that the consolidation authorities are fully competent to deal with the issue of title with only exception which has been carved out by the Hon'ble Supreme Court in the case of **Gorakh Nath Dubey** (Supra) wherein, in paragraph 5 the Hon'ble Apex Court has held that the existence and quantum of rights claimed or denied will have to be declared by the consolidation authorities which would be deemed to be invested with jurisdiction, by the necessary implication of their statutory powers to adjudicate upon such rights and interest in land, to declare such documents effective or ineffective but where there is a document the legal effect of all which can only be taken away by setting aside or its cancellation, it can be urged that the consolidation authorities have no



power to cancel the deed. therefore, they must be held to be binding on them so long as it is not cancelled by a court having power to cancel it. This has to be read along with paragraph '12' of the **Chhota Bhondey** (supra).

104. Further it appears that the illustrations of cases given by the Hon'ble Full Bench in paragraph 32 of the majority judgment in case of **Seikh Haider Zan** (supra) is in consonance with the judgment of the Hon'ble Supreme Court in the case of **Gorak Nath Dubey** (supra) and are to be read accordingly but by no stretch of imagination it can be said that the consolidation authorities are not a court competent to decide the question of title in respect of a Land which is subject matter of a consolidation proceeding.

105. In the nature of cases which have been given by way of illustrations in paragraph 32 of the judgment, in a pending suit or a proceeding if an application is filed for declaration that the said suit or proceeding has abated under Section 4 (c) of the Act of 1956, the Civil court may *prima facie* satisfy itself as to whether the suit or proceeding pending before a Civil court in respect of which a consolidation scheme has been notified requires adjudication of rights and title for purpose of setting aside or cancellation of a deed/document. If the suit or proceeding is not for setting aside or cancellation of a document based on uncontested right and title and it is looking for a declaration that upon adjudication of rights and title in land the document/deed to be declared effective or ineffective, the suit is liable to abate. The Hon'ble Supreme Court has held in the case of



Gorakh Nath Dubey (supra) that such contentions may be raised only when the legal effect of the document may be taken away only by setting it aside or its cancellation. Thus, that will be the only distinguishing feature where a party may contend before the Civil Court that Consolidation Officer would have no authority / jurisdiction to cancel the deed/document. Such examinations before passing order under Section 4 (c) by the Civil Court would be strictly limited to the class of cases which have been mentioned in paragraph ‘5’ of the judgment of the Hon’ble Supreme Court in the case of **Gorakh Nath Dubey** (supra) and in paragraph 32 of the majority judgment of the Hon’ble Full Bench in the case of **Seihk Haidar Zan** (supra). For example if there is a dwelling house or structure along with few trees in the compound, the same shall be the homestead land which will not be a subject matter of consolidation (**Smt. Jai Kala Devi and others Vs. Nalini Ranjan Prasad Singh and others** reported in **1989 PLJR 536**). Homestead not connected with agricultural operation would only fall within the definition of Section 2 (g) of the Act of 1956 (**Bibi Magboolam and others Versus Sk. Hanif** reported in **AIR 1983 Patna 232**).

106. As regards a question as to whether a suit based on title is maintainable after close of the consolidation operation, I find that in the case of **Seikh Haider Zan** (supra) speaking for self His Lordship Hon’ble Mr. justice Nagendra Rai (as His Lordship then was) discussed Section 37 of the Act of 1956 as under:

“24. It appears that section 37 of the Act has not been correctly translated into English from the Hindi version of



the said section of the Act. The Hindi version of section 37 of the Act reads as follows:-

“कोई भी सिविल न्यायालय इस अधिनियम के अधीन दिए गए या पारित किसी विनिश्चय या आदेश में हेर-फेर या उसे अपस्त करने के लिए अथवा किसी ऐसे अन्य विषय के संबंध में जिसके लिए इस अधिनियम के अधीन कार्यवाही की जा सकती थी या की जानी चाहिए थी, कोई वाद या आदेश ग्रहण नहीं करेगा ।”

“The authentic English translation published by the Superintendent of Government Press, Bihar, is as follows:-

“No civil court shall entertain any suit or application to vary or set aside any decision or order given or passed under this Act with respect to any other matter for which a proceeding could or ought to have been taken under this Act.”

25. It appears that the said English version of section 37 of the Act is not the correct translation of Hindi version of the said section of the Act as the word ‘or’ is missing therein between the words ‘Act’ and ‘with’. A bare reading of the said provision shows that it is in two parts. The first part provides that the civil court has no jurisdiction to entertain any suit or application to vary or set aside any decision or order passed under the Act and the second part provides that the civil court has no jurisdiction to entertain suit with regard to the matter which could or ought to have been taken under the Act, meaning thereby, that if any person aggrieved by any entry even with regard to question of title has not raised it at the appropriate stage inspite of having a notice or knowledge of the proceeding, he cannot be allowed to agitate the matter in the civil court. In other words, it contains a principle of constructive *res judicata*.”

107. I have noticed that the concept of abatement under Section 4 (c) as enunciated in the case of **Ramkrit Singh** (Supra) was more based on the submissions of the then learned Advocate General. The Hon’ble Supreme Court in the case of **Most. Bibi Rahmani Khatoon** (supra) has



explained the concept of abatement in a consolidation proceeding which is quite different and distinct from the concept of abatement in the Civil Procedure Code.

108. While agreeing with the interpretation of Section 37 as given by the minority judgment in **Seikh Haider Zan** (supra), I say that the decision of the consolidation authorities cannot be re-opened/challenged in a Civil Court by the parties even after closure of notification under Section 26A of the Act. To that extent **Ramkrit Singh** (supra) is clarified.

109. Further the apprehension of the Hon'ble Full Bench expressed in paragraph 19 of the judgment in the case of **Ramkrit Singh** (supra) expressing dissatisfaction because the determination even in respect of question of title is left in the hands of the administrative authorities untrained in law is no longer an issue to be racked up. The Legislatures are competent to provide a special forum keeping in mind the aim and object of a particular statute. From the discussions hereinabove it is quiet clear to me that the consolidation authorities have got the powers of the Civil court vested in them to decide the question of title. The Revisional order passed by the consolidation authority is open to challenge in this Court under Article 226 of the Constitution of India and this Court may, in a case of perverse findings of fact arrived by consolidation authority, interfere with the same, therefore, the orders of the consolidation authorities may be scrutinized to that extent.



110. In the facts and circumstances of the present case, I find that the petitioner has raised a question of jurisdiction of the Consolidation Officer on the ground that he has discarded the decree of the Civil Court which he could not have done because the said decree had attained finality as no suit or proceeding was pending against that. Nothing has been brought to my notice showing that the consolidation authorities have taken any contrary view rather I find that they have satisfied themselves with the correctness of the plea taken on behalf of the private respondents no. 5 and 6, who were the objcetors. After comparing the old and new maps the consolidation authorities came to a conclusion that the gift deed in question was containing the boundary of C.S.P. No. 265, therefore, the authorities under the Act of 1956 being fully competent to examine the issue raised before them have examined the materials on the record and recorded a finding thereon. I do not find any reason to interfere with the orders of the consolidation authorities.

111. The writ applications stand dismissed.

(Rajeev Ranjan Prasad, J)

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