Supreme Court of India
K.T. Huchegowda vs Deputy Commissioner on 18 March, 1994
Equivalent citations: 1994 SCC (3) 536, JT 1994 (2) 694
Author: S N.P.
Bench: Singh N.P. (J)

PETITIONER:
K.T. HUCHEGOWDA

Vs.

RESPONDENT:
DEPUTY COMMISSIONER

DATE OF JUDGMENT18/03/1994

BENCH:
SINGH N.P. (J)
BENCH:
SINGH N.P. (J)
AHMADI, A.M. (J)
YOGESHWAR DAYAL (J)

CITATION:
1994 SCC (3) 536 JT 1994 (2) 694
1994 SCALE (2)349

ACT:

HEADNOTE:

JUDGMENT:

The judgment of the Court was delivered by N.P. SINGH, J.- Leave granted.

2.This appeal has been filed on behalf of the appellant, for setting aside an order passed by the High Court of Karnataka, rejecting the claim of the appellant, that, being in possession over the lands in dispute for more than 12 years, he had perfected his title by prescription, as such there was no scope for restoring the lands to the respondent concerned, in accordance with the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as the "Act".

3.According to the appellant, the father of Respondent 3 (hereinafter referred to as the "respondent") was granted 4 acres of land in Village Karakachi on 29-3-1957 by the State of Karnataka, with the condition that he shall not alienate the said land for a period of 15 years from

the date of the grant. However, the father of the said respondent transferred 2 acres 20 guntas out of the 4 acres in favour of one Ismail Saheb by a registered sale deed dated 24-4- 1965 i.e. before the expiry of the period of 15 years. The said Ismail Saheb in his turn transferred the said land in favour of the appellant by a registered sale deed dated 20-7-1979. The appellant claims to be in peaceful possession of the said land. He also claims to have invested huge sum in the development and cultivation and construction of a residential house over the land in question.

4.The Act aforesaid came into force from 1-1-1979, the primary object of which is to declare the transfer of any granted land, made either before or after the commencement of the said Act, in contravention of the terms of the grant null and void. It vests power in Assistant Commissioner, if he is satisfied, that the transfer of any granted land was null and void, to take possession of such land after evicting all persons in possession thereof, in such manner as may be prescribed and to restore such land to the original grantee or to his legal heir. As in the instant case, admittedly, the father of the respondent had alienated the land, granted to him, in contravention of the terms of the grant, inasmuch as before the expiry of the period of 15 years, on an application, being filed on behalf of the respondent, the Assistant Commissioner, declared by an order dated 13-5-1988, the alienation of the land aforesaid as null and void and directed restoration of land to the respondent being the heir of the original grantee.

5.The Deputy Commissioner dismissed the appeal, filed on behalf of the appellant. The writ application, filed on behalf of the appellant, was dismissed by the High Court. The High Court was of the view that in order to defeat the claim of the respondent, the appellant had to prove adverse possession over the land in question not only for a period of 12 years but for a period of 30 years i.e. the period prescribed in respect of the lands belonging to the State Government. This was based on an order passed by this Court in the case of Sunkara Rajayalakshmi v. State of Kamataka1. 1 (1985) 1 Scale 445

6.It may be mentioned that earlier several writ applications had been filed before the High Court of Karnataka, questioning the constitutional validity of Sections 4 and 5 of the Act aforesaid, which were dismissed by the High Court. This Court in the case of Manchegowda v. State Of Kamataka2 examined the different provisions of the Act, as to whether they were violative of Article 19(1)(f) and Article 31 (which were then in force) or Articles 14 and 3 1 A. It was held that the provisions were constitutionally valid and there was no infirmity because the object of the Act was speedy restoration of granted lands to the members of the weaker communities i.e. members of the Scheduled Castes and Scheduled Tribes. Having rejected the challenge to the validity of the provisions of the Act, it was said:

> "Though we have come to the conclusion that the Act is valid, yet, in our opinion, we have to make certain aspects clear. Granted lands which had been transferred after the expiry of the period of prohibition do not come within the purview of the Act, and cannot be proceeded against under the provisions of this Act. The provisions of the Act make this position clear, as Sections 4 and 5 become applicable only when granted lands are transferred in breach of the condition relating to prohibition on transfer of such granted lands. Granted lands transferred before the commencement

> of the Act and not in contravention of prohibition on transfer are clearly beyond the scope and purview of the present Act. Also in case where granted lands had been transferred before the commencement of the Act in violation of the condition regarding prohibition on such transfer and the transferee who had initially acquired only a voidable title in such granted lands had perfected his title in the granted lands by prescription by long and continuous enjoyment thereof in accordance with law before the commencement of the Act, such granted lands would also not come within the purview of the present Act, as the title of such transferees to the granted lands has been perfected before the commencement of the Act. Since at the date of the commencement of the Act the title of such transferees had ceased to be voidable by reason of acquisition of prescriptive rights on account of long and continued user for the requisite period, the title of such transferees could not be rendered void by virtue of the provisions of the Act without violating the constitutional guarantee. We must, therefore, read down the provisions of the Act by holding that the Act will apply to transfers of granted lands made in breach of the condition imposing prohibition on transfer of granted lands only in those cases where the title acquired by the transferee was still voidable at the date of the commencement of the Act and had not lost its defeasible character at the date when the Act came into force. Transferees of granted lands having a perfected and not a voidable title at the commencement of the Act must be held to be outside the pale of the provisions of the Act. Section 4 of the Act must be so construed as not to 2 (1984) 3 SCC 301 : AIR 1984 SC 1151 have the effect of rendering void the title of any transferee which was not voidable at the date of the commencement of the Act."

Although, it was said by this Court, that the provisions of the Act shall not be applicable where the transferee, who had initially acquired only a voidable title in such granted lands, had perfected his title in the granted lands by "a prescription by long and continuous enjoyment thereof', it was not clarified in that judgment as to whether this period of continuous enjoyment by the transferee shall be for a period of 12 years or for a period of 30 years, in order to defeat the application for restoration by the grantee of such lands. It appears that later a review application was filed, which was disposed of by an order referred to above in the case of Sunkara Rajayalakshmi v. State of Kamataka1. While clarifying the question regarding the period of prescription, it was said by this Court:

> "We may also make it clear that so far as the second exception laid down by us in our judgment dated 17-4-1984 is concerned, namely that the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 will not apply where the transferees have perfected their title in the granted land by prescription of long and continuous enjoyment before the commencement of the Act, the period of limitation which has to be taken into account for the purpose of determining whether the title has been perfected by prescription is that which runs against the State Government and therefore it would be 30 years and not 12 years."

As the appellant and other similarly situated persons were not parties to the aforesaid case which had come to this Court or to the review application, they have questioned the direction of this Court, that for the purpose of determining whether the title has been perfected by prescription, the period would be 30 years and not 12 years. According to the appellant, once the State Government granted the land to any person, being a member of Scheduled Caste or Scheduled Tribe, the title to such land passed to such person and there is no question of applying the period of 30 years, for determining whether the transferee has perfected his title by prescription against such person. It will be only 12 years, as is applicable to any other class of citizens.

7.Section 3(b) of the Act defines "granted land" to mean "any land granted by the Government to a person belonging to any of the Scheduled Castes or the Scheduled Tribes and includes land allotted or granted to such persons under the relevant law for the time being in force relating to agrarian reforms or land ceilings or abolition of inams, other than that relating to hereditary offices or rights and the word 'granted' shall be construed accordingly". Relevant part of Section 4 is as follows:

> "4. Prohibition of transfer of granted lands.- (1) Notwithstanding anything in any law, agreement, contract or instrument, any transfer of granted land made either before or after the commencement of this Act, in contravention of the terms of the grant of such land or the law providing for such grant, or subsection (2) shall be null and void and no right, title or interest in such land shall be conveyed nor be deemed ever to have conveyed by such transfer. (2)No person shall, after the commencement of this Act, transfer or acquireby transfer any granted land without the previous permission of the Government."
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> Sub-section (1) of Section 5 of the Act with which, we are concerned says:
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> "5. Resumption and restitution of granted lands.- (1) Where, on application by any interested person or on information given in writing by any person or suo motu, and after such enquiry as he deems necessary, the Assistant Commissioner is satisfied that the transfer of any granted land is null and void under sub-section (1) of Section 4, he may,-
>
> (a)by order take possession of such land after evicting all persons in possession thereof in such manner as may be prescribed: Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard;
>
> (b)restore such land to the original grantee or his legal heir. Where it is not reasonably practicable to restore the land to such grantee or legal heir, such land shall be deemed to have vested in the Government free from all encumbrances. The Government may grant such land to a person belonging to any of the Scheduled Castes or Scheduled Tribes in accordance with the rules relating to grant of land."

8.On a plain reading, granted land will mean, any land granted by the Government to a person, who is a member of the Scheduled Castes or Scheduled Tribes which includes land allotted to such

persons. Grant may be of different types; it may be by absolute transfer of the interest of the State Government to the person concerned; it may be only by transfer of the possession of the land, by way of allotment, without conveying the title over such land of the State Government. If by grant, the transferee has acquired absolute title to the land in question from the State Government, then subject to protection provided by the different provisions of the Act, he will be subject to the same period of limitation as is prescribed for other citizens by the provisions of the Limitation Act, in respect of extinguishment of title over land by adverse possession. On the other hand, if the land has been allotted by way of grant and the title remains with the State Government, then to extinguish the title that has remained of the State Government by adverse possession, by a transferee on the basis of an alienation made in his favour by an allottee, the period of limitation shall be 30 years. Incidentally, it may be mentioned that some of the States in order to protect the members of the Scheduled Tribes from being dispossessed from the lands which belong to them and of which they are absolute owners, for purpose of extinguishment of their title by adverse possession, have prescribed special period of limitation, saying that it shall be 30 years. In Bihar, vide Regulation No. 1 of 1969, in Article 65 of the Limitation Act, it has been prescribed that it would be 30 years in respect of immovable property belonging to a member of the Scheduled Tribes as specified in Part III to the Schedule to the Constitution (Scheduled Tribes) Order, 1950.

9.There is no dispute that so far as the Act with which we are concerned, no special period of limitation has been prescribed, in respect of lands which have been granted to the members of the Scheduled Castes and Scheduled Tribes with absolute ownership by the State Government. In this background, when this Court in the case of Sunkara Rajayalakshmi v. State of Karnataka' said that the period of limitation, which has to be taken into account for the purpose of determining, whether the title has been perfected by prescription, shall be that which runs against the State Government and therefore it would be 30 years and not 12 years, has to be read in context with the lands, the ownership whereof, has not been transferred absolutely, to the members of the Scheduled Castes and Scheduled Tribes; the lands having been only allotted to them, the title remaining with the State Government. The cases where the transfer by the State Government by way of grant has been absolute, then unless there is an amendment so far the period of limitation is concerned, it is not possible to apply the special limitation of 30 years, so far such grantees are concerned, when the question to be determined, is as to whether a transferee in contravention of the terms of the grant, has perfected his title by remaining in continuous and adverse possession. The transferee, who has acquired the land from the grantee, in contravention of the terms of the grant shall perfect his title by adverse possession by completing the period of 12 years. When this Court said in its main judgment, in the case of Manchegowda v. State of Karnataka2 that in cases where granted lands had been transferred before the commencement of the Act in violation of the condition, regarding prohibition on such transfer and the transferee who had initially acquired only a voidable title, in such granted lands had perfected his title in the granted lands by prescription by long and continuous enjoyment thereof in accordance with law before the commencement of the Act, has to be read, for purpose, of determining the period of limitation in respect of lands granted with absolute ownership, to mean 12 years and grant by way of allotment without transfer of the ownership in favour of the grantee, to mean 30 years.

10.It is obvious that for the purpose of determining whether the period of 12 years or 30 years limitation is to be applied, each case has to be examined on its own merit. The High Court has dismissed the writ application as well as the appeal merely on the basis of the order passed by this Court in the case of Sunkara Rajayalakshmi v. State of Karnataka' on the review application filed before this Court. According to us, the High Court has to examine the claim made by the appellant on the materials produced in support of the said claim, especially the deed of grant in favour of the original grantee, for the purpose of recording a finding as to whether the grant was in the nature of absolute transfer of the title of the State Government in favour of the grantee or it was a mere allotment for enjoyment of the lands in question, the title having remained with the State Government.

11.Accordingly, the order of the appellate court is set aside and the High Court is requested to examine the aforesaid question on the materials produced on behalf of the appellant and the respondents concerned. It need not be pointed out that any claim made on behalf of the appellant, that the grant by the State Government in favour of the original grantee was in the nature of absolute grant, reserving no right, title and interest and that transferee has perfected his title by continuous and adverse possession over such transferred land, shall be examined taking into consideration, as to whether the appellant had raised this question at the earliest opportunity i.e. before the Assistant Commissioner and what material had been produced by the appellant before the Assistant Commissioner in support of such claim. It need not be impressed that the object and the scheme of the Act is to protect the interest of the members of the Scheduled Castes and Scheduled Tribes, who shall be deemed to be a weaker section of our community and the transfer in favour of the appellant admittedly being in contravention of the terms of the grant in favour of the original grantee, heavy onus rests on the appellant, to show to the court that by his continuous and adverse possession, the right, title and interest of the grantee has been extinguished before the commencement of the Act.

12.Accordingly, the appeal is allowed. But in the circumstances of the case, there shall be no order as to costs.

SWARAN SINGH v. STATE OF PUNJAB (Jayachandra Reddy, J.) The Judgment of the Court was delivered by K.JAYACHANDRA REDDY, J.- In all these appeals the question that arises for consideration is whether the tenants also are entitled to be heard by the authority concerned while deciding a dispute of title between the persons claiming to be the owners and the Gram Panchayat in respect of shamilat deh under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 ('Act' for short)? According to the averments, the appellants claim to have been cultivating the land as lessees which land has been described in the revenue records as shamilat deh owned by the Gram Panchayat. Thus they claim to be tenants of the Gram Panchayat in respect of the land in dispute. Before the High Court they challenged the order of Director of Consolidation of Holdings ('Director' for short) passed under Section 42 of the Act. The said order was passed by the Director in a petition filed by persons claiming to have shares in the shamilat deh which shares were entered in the cultivation column as maqbuza malkan. Their contention before the Director was that the consolidation authorities were not competent. to change the title of the "right holders" and that whatever was entered in the Wajab-ul-Arz had to be made a

part of the scheme of the village and had to be adhered to by the consolidation authorities during repartition proceedings. Secondly they also challenged the mutation. The Director accepted the contention and held that the Panchayat cannot lay any claim to the area since the same was mentioned in the Jamabandi to be in possession of the Khewatdars namely the right holders and therefore the Panchayat had no right to the land. The Director remanded the matter to the consolidation authority with a direction that 20 acres of the area should be allowed to the Gram Panchayat and the rest should be partitioned among the right holders namely the Khewatdars. It may be mentioned here that the Panchayat pursued the matter further unsuccessfully. Ultimately the special leave petition filed by it was also dismissed by this Court.

2.The appellants, however, filed writ petitions before the High Court and contended that since they were in possession of the suit land as lessees under the Gram Panchayat, they were entitled to be heard before any order could be passed adversely affecting them and since no such opportunity was given to them nor they were made parties to the petition under Section 42 of the Act, the order of the Director was liable to be quashed. They also contended that they had the locus standi to file the writ petitions. The High Court, however, dismissed the writ petitions filed by the appellants holding that in view of two earlier decisions of the same High Court namely Joginder Singh v. Director of Consolidation of Holdings, and Nek Singh v. State of Punjab through Additional Director, Consolidation of HoldingS2, CWP No. 2820 of 1986 dated 12-8-1986 the petitioners cannot claim to have any locus standi to file the writ petitions and accordingly dismissed them. LPAs filed in some of these matters against the order in writ petitions were also dismissed. Hence the present appeals.

3.At this juncture, it may be mentioned that Civil Appeal No. 3429 of 1990 is filed against the judgment in Joginder Singh case' in the following circumstances. In Joginder Singh case' the Division Bench after considering the legal provisions held that the land in question did not vest in the Panchayat. Then with reference to the contention of the petitioners that they being the tenants of the Panchayat in respect of this land in question are interested parties and the Director should have also made them parties to the petition under Section 42 of the Act, the Division Bench at one stage made an observation that they could have approached the Director for passing a 1 AIR 1989 P & H 234: 1988 Punj LJ 535: (1988) 2 Rev LR 318 fresh order after affording them an opportunity of being heard. But the later observations would show that the Director could not review the order. The petitioners Joginder Singh and others, however, moved the Director for giving them an opportunity of being heard and for passing a fresh order, as observed by the High Court. The Director asked the petitioners to get a clarification from the High Court regarding the observation made. The petitioners applied to the High Court for clarification and the High Court dismissed the petition saying that no clarification is necessary. As against the said order, Civil Appeal No. 3429 of 1990 is filed and consequently the ratio laid down by the Division Bench in Joginder Singh case' is also being questioned. The other Civil Appeal Nos. 3427-3428 of 1990 and 4357 of 1990 are filed by the petitioner-appellants claiming to be the tenants against the order of the High Court dismissing the writ petitions filed by them following the decision in Joginder Singh case' and the LPAs filed by them were also dismissed by the High Court. Since a common question arises, all these appeals are being disposed of together.

4.The Act provides for the compulsory consolidation of agricultural holdings and preventing the fragmentation of agricultural holdings in the State of Punjab and for the assignment or reservation of land for common purposes of the village. Under Section 14 of the Act, the Government may of its own accord agree or on application declare its intention to make a scheme for consolidation of holdings. Section 16 lays down that the scheme prepared by the Consolidation Officer may provide for the distribution of land held under the occupancy tenure between the tenant holding right of occupancy and his landlord in such proportion as may be agreed upon between the parties. Section 16(2) confers ownership right in the manner stated therein on such tenants. Section 22 provides for preparation of record of rights by the Consolidation Officer in accordance with the provisions of the Land Revenue Act giving effect to the re- partition etc. Some of the later provisions provide for consolidation and adjustment of the re-partitioned lands and remedies to appeal by any aggrieved person by order of the Consolidation Officer. Section 42 empowers the State Government to call for the proceedings at any time for the purpose of satisfying itself as to the legality or propriety of any order passed or scheme prepared or re-partition made by any officer and examine the records and pass appropriate orders. In all the cases before us the respondents claiming to be the right holders preferred petitions under Section 42 of the Act before the Director and contended that the land in dispute was Banjar Qadim and according to the entry in the Wazab-ul-Arz of the village, it had to be apportioned among the proprietors and Khewatdars pro rata of their holdings in the revenue estate and that the Director had no jurisdiction to hold that the land in dispute vests in Gram Panchayat. They also contended that the disputed land was described in the record of rights prior to the consolidation as Banjar Qadim in the individual cultivating possession of the Khewatdars and therefore the same could not vest in the Gram Panchayat. The Director accepted their plea and passed orders ordering distribution of the land among shareholders as per the provisions contained in the Jamabandi of 1951-52, which according to him, is the only authenticated document inherited by the Consolidation Department. In all these cases similar orders were passed by the Director. Questioning the same the petitioner-appellants claiming to be the tenants in the disputed land filed above writ petitions before the High Court and the main submission was that they should have been given an opportunity of being heard by the Director.

5.The Division Bench which heard the first matter in Joginder Singh case' referred to Section 2(g) of the Village Common Lands Act which defines shamilat deh and held that the land in dispute does not come within the ambit of shamilat deh. The Division Bench also observed that the petitioners have not placed any material on record to draw an inference that the land was recorded as shamilat deh in the record of rights. The Division Bench also observed that even otherwise in the scheme of consolidation there are existing adequate shamilat deh lands for common purposes including the purposes of the Gram Panchayat and that the excess land secured from the proprietors pro rata deserves to be redistributed among the proprietors in accordance with their rights. The Division Bench in detail considered several other aspects concerned with the interpretation of the provisions of the Act. The Division Bench also noticed that the petitioners got priority for cultivation in auction for a year and they had a right to remain in possession for the auction period namely one year. The Division Bench, however, concluded that since the dispute was between the proprietors and the Panchayat, the tenants had no right to be impleaded as respondents before the Director.

6.Learned counsel for the appellants before us contended that since they are tenants in the disputed land as per the leases granted by way of auction by the Gram Panchayat, they are interested parties and they should have been heard by the Director while passing an order under Section 42 of the Act in favour of the respondents. From the facts stated above, it can be seen that it was a question of dispute of title to the land between the Gram Panchayat and the rightholders.

7.A perusal of some of the above mentioned provisions of the Act in the background of the object underlying would show that the legislation is meant to improve the standard of living and working in the villages and the provisions indicate that the persons who were in possession of certain lands either as tenants or otherwise are entitled to allotment of the said lands after consolidation. The provisions also provide for preparation of schemes, re- partition, rights to possession of new holdings and reservation of land for common purposes etc. Under Section 42 of the Act all such proceedings of the authorities concerned can be examined by the Government to satisfy itself about the legality or propriety of the orders passed in such proceedings. Section 42 of the Act reads thus :

> "42. Power of State Government to call for proceedings.- The (State) Government may at any time for the purpose of satisfying itself as to the legality or propriety of (any order passed, scheme prepared or confirmed or repartition made by any officer under this Act), call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit :
>
> Provided that (no order, scheme or repartition shall be varied) or reversed without giving the parties interested notice to appear and opportunity to be heard (except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration)."

8.It can be seen that the proviso to Section 42 of the Act lays down that notice to "interested parties" to appear and opportunity to be heard to them being given are conditions precedent to the passing of an order under Section 42.

9.The test for determining whether or not a particular person is a "party interested" within the contemplation of the proviso is, whether he is likely to be affected by the decision or the result of the proceedings.

10.In Northem Caterers P. Ltd. v. State of Punjab and Haryana3 the Constitution Bench of this Court indicated that an unauthorised occupant should have an opportunity of being heard. In Mohan Lal v. State of Punjab4 Justice Hegde speaking for the Bench of this Court refer-red to the ratio laid down in Northem India Caterers P. Ltd. case3 and having considered the scope of provisions of Punjab Public Premises and Land (Eviction and Rent Recovery) Act observed thus :

> "Under our jurisprudence even an authorised occupant can be evicted only in the manner authorised by law. This is the essence of the rule of law."

11.The appellants in each of these appeals before us claim to be the tenants of the Panchayat. In Joginder Singh case' the Division Bench also noted the fact that the writ petitioners got the property for cultivation in the auction held by the Panchayat. The Division Bench further observed that lease was only for one year and they had a right to remain in possession only for the auctioned period and after the expiry of that period they had to surrender the suit land to the Gram Panchayat. But the plea of the appellants in each of the case is that they are continuing to be in possession and they are still holding the land on annual patta basis and the pattanama in their favour has been executed by the Gram Panchayat and therefore, they are tenants and lessees of this land. In the counter-affidavit filed by the respondents also it is stated that the appellants were merely lessees from year to year basis under the Gram Panchayat and that when once it is found that Gram Panchayat is not the owner of the suit land and that they were merely lessees from year to year basis under the said Panchayat, they will have no right to stay on that land as they had no right independent to that of the Gram Panchayat and their possession becomes illegal and unauthorised and 3 (1967) 3 SCR 399: AIR 1967 SC 1581 4 1971 PLJ 338 (SC) they can be ejected in due course by law by the rightful owners, namely, the respondent-proprietors who have been held to be the owners of the suit land. It can thus be seen that the appellants have an interest in the dispute land in each of these cases. Though the dispute as such was regarding the title between the proprietors and the Panchayat, the appellants at least come in the category of tenants having interest in the suit land in which case they do come within the meaning of "interested parties" and the proviso to Section 42 comes into operation and consequently an order passed without notice to them to appear becomes invalid.

12.In Paras Ram v. State of Punjab5 Justice Sarkaria, as he then was, considered the scope of the proviso to Section 42 and held thus :

> "The proviso to Section 42 of the Act embodies a fundamental canon of natural justice. It is founded on the maxim that no one should be condemned unheard. The word 'interested' in the proviso, therefore, is to be interpreted in a very generous spirit and its wide amplitude should not be allowed to be whittled down by legal quibbles. In its dictionary sense, the word 'interested' means 'concern', 'affected', 'having an interest, right or title to, a claim upon or a share in something'. The word 'interested' therefore, embraces within its scope not only landowners, rightholders, tenants and settlers, but also all persons who have a claim upon the land or the property which is the subject-matter of the case before the Government under Section 42 of the Act. The test for determining whether or not a particular person is a 'party interested' within the contemplation of the proviso, is, whether he is likely to be affected by the decision or the result of the proceedings. In the present case, the petitioners satisfy that test. It cannot be denied that the impugned order might adversely affect the petitioners by causing shrinkage or disappearance of the surplus area on which they have settled. Surely, they are not trespassers. They have been inducted by the Collector in accordance with a statutory scheme for utilisation of surplus area drawn up under the Tenancy Act. It is true that as a result of the order, dated 20-6-1967, of the Commissioner, the matter has been reopened, but that does not mean that the petitioners have ceased to be ` parties interested' within the meaning of the proviso to Section 42 of the Act. Admittedly, they are still in

cultivating possession of the land. They have not been evicted from the area on which they were settled."

13. Likewise in Gram Panchayat of Village Serohi Behali v. Har Lal6 a Division Bench of the High Court considered the meaning of the words "parties interested" in the proviso to Section 42 and observed thus :

"The learned counsel for the appellants has, however, submitted that the words 'parties interested' in the proviso to Section 42 of the Act only relate to the rightholders and not the tenants or other persons in possession of the land otherwise then as rightholders.

We regret our
5 1969 PLJ 97 (P&H HC)
6 1971 Punj LR 1009

inability to agree to that submission. The words 'parties interested' in the proviso means persons whose rights of the ownership or possession or any other rights in the land will be affected by the adjudication under Section 42 of the Act. The reason is that no order adverse to the interest of any person whatever can be made without issuing notice to him and affording him an opportunity of being heard and that is the purpose and the intention of the proviso. It cannot be confined only to the rightholders. The tenants have also a right to be heard in order to safeguard their tenancy rights and to secure that, in case of any other land being allotted to the landowner under whom they are tenants, their rights in that land are protected and that the land allotted in lieu of the land going to be taken away from them is such a land which is cultivable and their interest as tenants will not in any way suffer."

(emphasis supplied)

14. In Mukhtiar Singh v. State of Punjab7 a Division Bench of the High Court examined the scope of provisions of Section 42 of the Act and held as under :

"As already held above, the Act specifically prohibits the State Government from exercising its jurisdiction under Section 42 with a view to vary or reverse the order of a lower authority under the Act without complying with the statutory requirements of the proviso to that section."

15.In Chet Singh v. State of Punjab' the facts are that one Gurdev Singh petitioner under Section 42 who had some complaint against a consolidation scheme was not present and his petition was ordered to be closed by the Additional Director (Consolidation) on 4-5-1965. Gurdev Singh on 15-5-1965 filed an application for restoration supported by an affidavit, attributing his absence on 4-5-1965 on ground of illness. An order dated 8-6-1965 of the Additional Director shows that the applicant Gurdev Singh's assertion that he could not attend due to illness was accepted by the

Additional Director, who proceeded to exercise his powers under Section 42 of the Act and to set right the grievance of Gurdev Singh, he perused all the relevant records. This order of the Additional Director was questioned by the appellant unsuccessfully before the High Court as well as before this Court. The contention was that the Additional Director had no power to review. A Bench of this Court in the said case having examined Section 42 held thus (S CC pp. 500, 501, para 4) "The proviso to Section 42 lays down that notice to interested parties to appear and opportunity to be heard are conditions precedent to passing of an order under Section

42. The fact that the Additional Director was satisfied that the respondent, Gurdev Singh, did not have an opportunity of being heard due to his illness, seems to us to amount to a finding that the proviso could not be complied with so that the previous order could 7 AIR 1971 P & H 1: 72 Punj LR 697: 1970 Rev LR 289 8 (1977) 2 SCC 499: AIR 1977 SC 1494 not be held to be an order duly passed under Section 42 of the Act. It could be ignored as 'non est'."

16.The learned counsel for the respondents, however, submitted that assumingthat the appellants are the tenants in the disputed land they can at the mostclaim such protection as would be available to them as tenants and if they acquire any rights for being in possession they can assert the same whenever any proceedings are taken before a competent authority to dispossess them. We do not agree that they cannot participate in the dispute between the proprietors and the Panchayat in respect of the title of the land in view of the mandate under the proviso to Section 42. The general issues in law regarding locus standi of a tenant to participate in a dispute regarding title between two rival claimants would not arise in a case covered by Section 42 of the Act having regard to the nature of the rights created under the Act in favour of the tenants also, as discussed above. As observed in Paras Ram case5 and in the case of Gram Panchayat of Village Serohi Behali6 the tenants definitely come within the meaning of "parties interested" and, therefore, they have a right to be heard. As a matter of fact in Joginder Singh case' they again approached the Director of Consolidation and he directed them to get a clarification from the High Court which was refused and they have come up to this Court. We do not think that the appellants in each of these appeals who are the interested parties should be driven to have a recourse to some other proceedings. Hearing of an interested party is a condition precedent for passing of an order under Section 42 of the Act. When once it is not in dispute that the appellants who are the tenants in the disputed land by virtue of a lease granted by the Panchayat by way of auction, then they have acquired some rights which also should be protected.

17.In the result the impugned orders passed by the Director and also the impugned judgments of the High Court are set aside and the matters are remanded to the Director for being disposed of afresh after hearing the appellants as well as the other necessary parties. Before passing appropriate orders the Director shall consider whether any or all of the appellants are still in possession of the land as tenants and if so how their rights can be protected even if the title to the land is to be decided in favour of the respondent-shareholders. Accordingly all the above said appeals are allowed as indicated above. There will be no order as to costs.