Supreme Court of India
Deputy Director Of ... vs Deen Bandhu Rai on 23 August, 1963
Equivalent citations: 1965 AIR 484, 1964 SCR (4) 560
Author: N R Ayyangar
Bench: Das, S.K., Subbarao, K., Dayal, Raghubar, Ayyangar, N. Rajagopala, Mudholkar, J.R.

PETITIONER:
DEPUTY DIRECTOR OF CONSOLIDATION,AZAMGARH

Vs.

RESPONDENT:
DEEN BANDHU RAI

DATE OF JUDGMENT:
23/08/1963

BENCH:
AYYANGAR, N. RAJAGOPALA
BENCH:
AYYANGAR, N. RAJAGOPALA
DAS, S.K.
SUBBARAO, K.
DAYAL, RAGHUBAR
MUDHOLKAR, J.R.

CITATION:
1965 AIR 484 1964 SCR (4) 560

ACT:
Consolidation of Holdings-Application for permission to transfer-Grounds of rejection by Settlement Officer-U.P. Consolidadation of Holdings Act, 1953 (U.P. Act No. V of 1954), ss. 13,14, 15, 16, 18, 19, 20 and 23.

HEADNOTE:
The four respondents made two applications to the Settlement Officer Consolidation, for permission under sub-s. (1) of s. 16A for the U.P. Consolidation of Holdings Act 1953 for transfer by way of exchange of certain plots in 11 villages. The proceedings for consolidation were in progress in all the 11 villages. The settlement officer refused the permission under sub-section (2) of s. 16A of the Act and the same was confirmed by the. Deputy Director of Consolidation. The respondents challeng the said orders of Consolidation authorities in a writ petition filed before the High Court. The learned single judge dismissed the petition but the respondents succeeded in a special appeal before the division bench. The Division Bench held that s. 16A(2) of the Act was mandatory. Under it the Settlement

Officer is bound to grant permission torespondents as the exchange was not likely to defeat the scheme of consolidation and they directed the Settlement Officer to passan order keeping in view the aforesaid principles. The DeputyDirector of Consolidation preferred this appeal with Special leave.
Held : (1) that where an application for transfer fell within the terms of s. 16A(1) i.e., where it was filed at the stage referred to in it, the settlement officer is enjoined to allow the application unless the proposed transfer is likely to defeat the scheme of consolidation.
(2)that if there happened to be conflict between "a principle" as formulated under s. 18 or a concrete "proposal" as confirmed under s. 23 on the one hand and the transfer prayed for on the other, the settlement officer would be entitled to refuse the permission to transfer under section 16A(2) of the Act but otherwise the application for transfer would be allowed if it satisfied the conditions laid down under s. 16A(1) and 16A(2) of the Act. It is for the settlement officer to decide whether such conflicts exist or not.
(3)that the direction of the learned Judges of Division Bench to the Settlement Officer was not in accordance with the provision of s. 16A(2) read with other relevant provisions of the Act.
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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No., 483 of 1963.

Appeal by special leave from the judgment and decree dated Mach 19, 1962 of the Allahabad High Court in Sepcial Appeal No. 56 of 1961.

C.B. Agarwala, K. B. Garg and C. P. Lal, for the, appellants.

J. P. Goyal, for the respondents.

August 23, 1963. The judgment of the Court was delivered by AYYANGAR J.-Section 16-A of the U.P. Consolidation of Holdings Act, 1953 (U.P. Act No. V of 1954), which for brevity we shall refer to as the Act as it stood at the relevant date, enacted :

> "16-A. (1) After the publication of the statement under section 16 and until the issue of a notification under section 52, a tenure- holder shall' not, except with the permission in writing of the Settlement Officer (Con- solidation) previously obtained, transfer by way of sale, gift or exchange any plot or share in any holding included in the scheme of consolidation notwithstanding anything contained in the U.P.

Zamindari Abolition and Land Reforms Act, 1950.

(2)The Settlement Officer shall grant the permission referred to in sub-section (1) unless for reasons to be recorded in writing he is satisfied that the proposed transfer is likely to defeat the scheme of consolidation." The four respondents before us made two applications to the Settlement Officer Consolidation, for permission under sub-s. (1) of the above provision for transfer by way of exchange of certain plots in 11 villages which were includded in schemes of consolidation in those several villages in which such proceedings were taking place. The officer, however, refused the permission sought under sub-s.(2) and his decision was affirmed on an application by way of revision filed by the respondents, by the Deputy Director-of Consolidation. Challenging the lagality of the said orders of the Consolidation authorities the respondents filed a petition before the High Court of Allahabad for quashing the same by the issue of a Writ of Certiorari under Art 226 of the Constitution. The learned Single Judge who heard the petition dismissed it. A special appeal was thereupon preferred and the Bench allowed the appeal holding that the Settlement Officer in passing his order rejecting the applications for exchange had proceeded on grounds not germane for the purpose on the terms of the statute and on that finding set it side and issued a writ of mandamus directing the Settlement Officer to pass fresh orders in accordance with the law as was explained in their judgment. Aggrieved by this the Settlement authorities-the Deputy Director of Consolidation and the Settlement Officer, Consolidation, Sought a certificate from the High Court under Art. 133(1)(c) of the Constitution but this was refused. They then applied for; and obtained special leave of this Court under Art. 136 and that is how the appeal is before us.

After hearing learned Counsel for the parties we have reached the conclusion that while the learned Judges of the High Court were right in setting aside the order of the Consolidation authorities refusing the application under s. 16-A of the Act, the directions which the High Court gave to the Settlement Officer in the matter of his reconsidering the applications were in their turn not proper and consequently while the appeal has to be allowed, the applications have to be remitted to the Settlement Officer for being disposed of properly in accordance with law. We shall now proceed to set out our reasons for the above conclusion.

The facts of the case do not appear very clearly from the proceedings which are on the record. As far, however, as could be gathered they are briefly as follows: There are four respondents. Respondents 1 and 2 are brothers, being the-sons of the 3rd respondent, and the 4th respondent is their mother. A division had been effected of the entire properties of the family by a decree of Court passed in 1940. Under this decree and the division effected thereby, while respondents 1 and 2 i.e., the sons have got parcels' of land in all the 11 villages, the third respondent-the father -has land in 8 villages and the 4th respondent--the mother-in 5 villages. In all these 11 villages proceedings for consolidation were in progress. While so, two applications Were

made to the Settlement Officer for permission to exchange the lands in such a way as to make the sons (respondents 1 and 2) the sole tenureholders in 3 villages. and the father (the third respondent) the sole tenureholder in 6 villages and petitioner 4 to be the sole tenureholder in respect of the property in the other two villages. We shall be referring a little later to the stage which the con- solidation proceedings had reached by the time the application was filed, but passing over this, it might be stated that the petitions for exchange were rejected by the Settlement Officer by an order dated February 28, 1951. All stated earlier, a revision to the Deputy Director was also dismissed by an order dated February 28, 1959 but nothing turns on this. It is the legality and propriety of the reasons given for the rejection of the applications by the Settlement Officer that forms the subject of debate between the parties.

To appreciate the points urged before us by learned Counsel for the appellant it would be necessary to read certain of the relevant provisions of the Act which bear upon the procedure for consolidation as well as the grounds upon which an application seeking permission to transfer could be dismissed. We might point out even at this stage that the Act has undergone radical alterations by amendments effected in 1958 and 1963, and what we are setting out are the 'provisions as they stood as the time relevant to this appeal. The preamble as well as the short title of the Act specify the object of the enactment as being "the consolidation of agricultural holdings for the development of agriculture". The expression "Consolidation" is defined in s. 3 (2) thus:

"3.(2). `Consolidation' means the re- arrangement of holdings in any area between the several tenure-holders entitled thereto in such a way as to make the holdings held by them as such more compace" omitting the portions not material for our purpose. Sec- tion 4 with which Ch. II opens enacts; "4.(1) With a view to consolidation, the State Government may declare that it has decided to make a scheme of consolidation for any district or other local ,area.

(2)Every such declarations shall be published in the official Gazette and in each village of the said district or local area:' Section 5 specifies the statutory effect of a declaration under s. 4. This is stated to be that the district or the local area "shall be deemed to be under consolidation ope- rations from the specified date and the duty of preparing and maintaining khasra and the Annual Register shall stand transferred to the Settlement Officer". The other provisions of this chapter (Ch. 11) relate to the examination of the revenue records and the correction of entries therein and provide for objections being taken to the provisionally published statements of plots, tenureholders and other details regarding these. Chapter III which is more relevant for the question in issue in the present appeal is headed 'Preparation of Consolidation Scheme' and that is the Chapter in which s. 16-A occurs. Section 13 contains, what might be termed, a definition of a 'Consolidation Scheme' and it runs:

"13. The Consolidation Scheme shall consist of-

(a) the statement of principles referred to in section 14

(b) The statement of proposals referred to in section 19 and

(c) such other statements as may be prescribed."

Section 14 which is referred to in s. 13(a) enacts:

"14.(1)The Assistant Consolidation Officer shall prepare in respect of each village under consolidation operations, a statement (hereinafter called the Statement of Principles) setting forth in writing the principles to be followed in framing the consolidation scheme. The statement shall also show in broad outlines the proposed resurvey and layout of the village including-

(a) the existing and the proposed means of communications:

(b) the area proposed to be planted with trees or to be set apart for pasture, fisheries, manure pits, khaliyans, cremation grounds and grave-yards;

(c) the area to be set apart for abadi;

(d) the location of works of public utility;

(e) provision for public conservancy; (ee)the basis on which the tenureholders will contri-bute towards land required for public purposes and the extent to which vacant land may be, utilised with a view to the said purpose; and

(f) any other matter which may be prescribed, (2) The Assistant Consolidation Officer shall prepare the statement in consultation with the Consolidation Committee in the manner prescribed. (3) If there is a difference of opinion between the Assistant Consolidation Officer and the Consolidation Committee in regard to any matter, it shall be referred to the Settlement Officer (Consolidation) whose decision shall be final."

Section 15 is, as it were, a rider to s. 14 and sets out the principles to be followed in the preparation of the "statement of principles" under s. 14. It reads: 15, (1) The Assistant Consolidation Officer shall, in preparing the statement of principles under section 14, have regard to the following principles:

(a) the allotment of plots shall be made on the rental value thereof :

Provided that the area of the plots proposed to be allotted shall not differ in any case, except with the permission of the Director of Consolidation by more than 20 per cent from the area of the original plots:

(b) as far as possible, only those tenure- holders shall get land in any particular block who already held land therein and the number of chaks to be allotted to each tenureholder excluding areas earmarked for abadi and those reserved for public purposes shall not exceed the number of blocks in the village except with the permission of the Director of Consolidation of Holdings;

(c) every tenure-holder is, as far as possible, allotted land at the place where he holds the largest part of holdings;

(d) the tenure-holders belonging to the same family shall, as far as possible, be given neighbouring chaks;

(e) location of the residential house of the tenureholder or improvement, if any, made by him shall, as far as possible, be taken 'into account -in allotting chaks ;

(f) small tenure-holders shall, as far as possible, be given land near the village abadi. (9) an existing compact holding or farm which is 6 1/4 acres or more in area' shall not, as far as possible, be disturbed or divided.

(1-A)..... (2) The Assistant Consolidation Officer shall also have regard to such other principles as may be prescribed or specified by the Consolidation Committee and are not inconsistent with the provisions of this Act and the rules."

Section 16 provides for the publication of the principles prepared under s. 14 in the village to which that statement relates, and under s. 16(2) persons likely to be affected by the scheme are enabled to make objections "in the manner prescribed" within 15 days of the publication. This is followed by s. 16-A which we have already set out. section 17 deals with the disposal of objections filed under s. 16(2) and appeals from such orders and under s. 18 where no objections are filed or where they are filed and are finally disposed of provision is made for the confirmation of the statement and thereupon the statement, as confirmed, is declared to become final and is directed to be published in the village. Section 19 is the provision referred to in s. 13(b) as relating to the statement of proposals. That section enacts;

"19.(1)-As soon as the statement has been confirmed under section 18, the Assistant Consolidation Officer shall, in accordance with the Statement, prepare a statement of proposal in the prescribed form showing-

(a) the particulars specified in clause (b) of sub-section (1) of section 11 in respect of each tenureholder;

(b) the khasra number of the plots proposed to be allotted to each tenureholder in lieu of the original plots of his holding, the nature of rights therein, the rental value and soil classification of the field so allotted;

(c) briefly the reasons in support of the proposal in caluse (b).

(d) the compensation for trees, wells, buildings or any other improvement calculated in the manner prescribed;

(e) the area earmarked for public purposes and the layout of such areas and the rental value thereof;

(f) the revenue or rent of the allotted plot payable by the tenure-holder; and

(g) such other particulars as may be prescribed.

(2) The Statement of proposals shall be accompanied by a village map showing the proposed arrangement of plots. (3) Whenever in preparing a Statement of Proposal it appears to the Assistant Consolidation Officer that it is necessary to amalgamate any land used for public purposes any holding in the scheme, he shall make a declaration to that effect stating in such declaration that it is proposed that the rights of the public as well as of all individuals in or over the land shall be transferred to any other land earmarked for public purposes in the statement and whenever the rights are so transferred they shall stand extinguished in the land from which they are transferred.

(4) The Statement of Proposals shall be prepared in consultation with the Consolidation Committee in the manner prescribed.

(5) If there is difference of opinion between the Assistant Consolidation Officer and the Consolidation Committee in regard to any matter contained in the Statement of Proposals, it shall be referred to the Settlement Officer (Consolidation) whose decision shall be final."

Under s. 20(1) the statement of proposals prepared under s. 19 is required to be published in the village and under. 20(2) the persons affected by "the proposals" are permitted within 15 days of such publication to file objections in writing before the Assistant Consolidation Officer. Section 21 deals with the disposal of objections filed under s. 20 and the procedure to be followed in such disposal. Section 23 comes into play where no objections are filed under s. 20 or if they are filed, after their disposal and the second sub-section of this section enacts: "23.(2) The Statement as confirmed shall be published and shall be final except in so far as it relates to land which is the subject-matter of references made to the. Civil Judge and which have not been disposed of till then."

The other chapters and provisions of the Act deal with the execution and enforcement of schemes so framed and arc not necessary to be set out.

We shall now proceed to narrate the details of the facts so far as they appear from the record. The exact date upon which the applications for permission to exchange was filed is not ascertainable from the record; nor, of course, the details of the exact prayer made, with reference to each of the 11

villages. The following is, however, what is gatherable from the writ petition filed by the respondents; The 11 villages in which the properties of the petitioners are situate are: (1) Garhar Buzurug, (2) Mahmauni, (3)Bibipur, (4) Bhitari, (5) Tahabarpur, (6) Taraudhi, (7) Shambhupur, (8) Shrikantpur, (9) Lachahara, (10) Nawada, and (11) Garhar Khurda. Of these, the consolidation work in Garhar Buzurug, Mahmauni, Bibipur, Bhitari and Tahabarpur was at the stage of proceedings under s. 12 of the Act and, in Nawada and Lachahara proceedings under s. 20 were going on and in Shrikantpur and Shambhupur the scheme had been confirmed and was being enforced. In the village of Garhar Khurda publication of the statement of proposals under s. 19 had been objected to and as a result of the objection being upheld fresh principles were directed to be formulated under s. 16 and this was being done. This was admitted by the Consolidation authorities to be a correct representation of the stage at which the proceedings stood on the date of the application. There was one further allegation in the writ petition to which it is necessary to refer and this was that in the villages of Shrikantpur, Shambhupur and Lachahara the properties sought be exchanged were in adjacent chaks.

This would be the convenient point to refer to the grounds upon which the Settlement Officer rejected the applications under s. 16-A(2). As stated earlier, there were two applications--one by the father and the two sons, and the other by the mother and the sons. After setting out briefly the gist of the applications the Settlement Officer stated: "Under this section [16-A(2)] it is to be considered as to whether the exchange is likely to defeat the scheme of consolidation or not."

He then pointed out that from his file and the inquiry which he conducted it was disclosed that the statement of principles under s. 16 had been published in 7 villages, while in respect of 5, besides the principles, a statement of proposals had also been published under s. 20 of the Act. Nothing was mentioned in it about the other 4 villages in regard to which also application for exchange had been made. He promised the discussion of the- reasons' for rejecting the applications by referring to the report of the Consolidation Officer which he had called for on receipt of the two applications thus:

"the consolidation officer reported that chak formation was in hand in these villages."

By "these villages" he apparently meant the 5 villages of Shambhupur, Nawada, Garhar Khurda, Lachahara and Shrikantpur in which not merely the principles but "the proposals" also had been published under s. 20 and he continued:

> "I entirely agree with him that the exchange of land, which is of considerably big area shall disturb either the concluding phase of chak formation or the proposed chaks already formed. If the exchange is permitted, the provisions of Section 15(c) and (b) of the Act shall necessitate the review of the chaks of these tenureholders and obviously such a review shall dislocate and disturb other chak holders also and he concluded by saying: "By the exchange prayed for, the parties, who are big tenureholders would become bigger still and the obvious increase of land in their favour shall adversely affect the interest of other small tenureholders and would cause undesired disturbance and dislocation to them. Moreover, as the parties are father, mother and sons, as far as possible they would be deriving benefits of sec.

15(d) of the C.H. Act also."

The learned judges of the Division Bench analysed the grounds given by the Settlement Officer for rejecting the application and came to the conclusion that the two main reasons which induced him to make an order adverse to the respondents were (1) that, having regard to the stage at which the chak formation had reached the granting of the petition would entail considerable work on the officers 37-2 S. C. India/64 of the Consolidation Department in the matter of readjusting the chaks of others, (2) that the petitioners being big land-holders the granting of permission would mean that if the exchanges were allowed they would have become even bigger land-holders. The learned Judges pointed out that neither of these considerations would be Legitimate or pertinent grounds on which an application for exchange made under s. 16-A(1) could be rejected and so the writ petition was granted.

If the terms of s. 16-A(2) were borne in mind it is clear that where an application fell within the terms of s. 16- A(1) i.e., where it was filed at the stage referred to in it the Settlement Officer is enjoined to allow the application unless the conditions laid down in the last portion of sub- sec. (21 were satisfied. The condition is that the officer should be satisfied that the proposed transfer is likely to defeat the scheme of consolidation. One of the points urged by the respondents before the High Court was as regards the meaning of these words "the scheme of consolidation". The contention was that the word "scheme" had to be understood in a popular sense or as explained in a dictionary, and meant "the mode" or "process" of effecting consolidation. On this construction it was contended that as the exchanges for which permission was sought would have' if allowed effected an aggregation, the applications should have been granted. Both the learned Single judge as well as the learned Judges on appeal rejected this submission and held that by "the scheme of consolidation" was meant not some method of effecting consolidation as popularly understood, but the words were a specific reference to the provisions of s. 13(a), (b) and (c) which we have quoted. This is obviously correct and, indeed, learned Counsel for the respondent did not dispute the correctness of this position before us.

The next question is whether the reasons given for the rejection of the application for exchange contravene the matter set out in s. 13(a), (b) or (c). It is to the criteria there laid down that the Settlement Officer has to direct his attention and it is only where he is satisfied that either " the principles" formulated under s. 14 or "the proposals" under s. 19 or some other matters prescribed to be taken into account under s. 13.(c) are contravened by allowing the proposed transfer, that he could reject an application and besides he is enjoyed to record the reasons which induce him to do so in writing.

We should point out that the order of the Settlement Officer is far from clear as to the precise grounds upon which the rejection was based. We also entertain little doubt about two points: (1) that at least in great part the reasons underlying the order of the Settlement Officer for rejecting the applications were the two we have set out earlier as those relied on by the High Court as grounds for holding his order to be invalid, and (2) that these reasons are not germane or pertinent for rejecting the application for exchange under s. 16-A(2). If these matters were taken into account, it is clear that the resulting order could not be justified and we consider, therefore, that the learned judges of

the High Court acted properly in setting aside order of the Settlement Officer under Art. 226. Before parting with the order of the Settlement Officer there is one other matter also to which reference has to be made. In their petition to the High Court and in the affidavit they filed in support of their petition, the res- pondents asserted that the lands in 3 villages which they sought to exchange-Shrikantpur, Shambhupur and Lachahara- were in adjacent chaks-in the "proposals". This allegation was not denied by the appellant in the counter affidavit filed before the High Court, but on the other hand there was an express admission regarding the correctness of this allegation. If really the lands were in adjacent and contiguous chaks, it is difficult to see how the granting of the permission to exchange would violate any "principle" or "proposal", for in such an event the rights of no others would be affected and instead of a mother and a son or a father and the son holding adjacent chaks, one of them would be holding both. Mr. Aggarwala did not contest this position either. In fact, even the Settlement Officer pointed out in his order that having regard to the relation- ship between the parties they would be "deriving benefits of s. 15(d) of the Act", which Mr. Aggarwala suggested was a reference to the feature of continguity in the light of their relationship. If this was what the officer had in mind, that would be a circumstance which should have led Fm to allow the exchange in regard to some, at least, of the lands, and in this view the rejection of the permission to exchange in respect of every item of land could not be sustained. This would be an additional reason why that order should be set aside.

We shall deal next with the complaint of the learned Counsel for the appellant regarding the directions of the learned judges to the Settlement Officer in regard to the fresh disposal of the applications. The learned Judges explained what, according to them, was the law on the point and practically required the Settlement Officer to grant the permission sought and it is this portion of the judgment of the learned Judges that is challenged by the appellant as erroneous and incorrect. The learned judges stated the position thus:

> "It seems to us that there was nothing in the statement of principles or statement of proposals which could militate against formation of larger chaks in the case of a particular tenure-holder. On the contrary the whole scheme of the Act including the statements of principles and proposals envisage that as far as possible every tenure-

holder should have one single Chak and the chak should be as large as possible. The transfer, therefore' instead,of defeating the scheme of consolidation would only have furthered it..... Section 16-A(2) is in the mandatory form in which the Settlement Officer is bound to grant permission unless he is satisfied that the proposed transfer is likely to defeat the scheme of consolidation and as we have arrived at the view that this exchange was not likely to defeat the scheme, he was bound to grant permission", and in the concluding portion of the judgment they directed the Settlement Officer to pass an order keeping in view the principles of law which they have set out earlier i.e., in the passage extracted. This brings us to the question as to the scheme of the Act and the precise, import of the phrase "likely to defeat the scheme of consolidation" in s. 16- A(2).

Adopting the language of s. 13 of the Act, the question to be considered is whether the transfer for which permission is sought would contravene the principles referred to in s.- 14 or the proposals referred to in s. 19. The two matters to be noticed in respect of both "the principles' of consolidation

under s. 14 and of "the proposals" under s. 19, is that the Act specifically provides for objections being filed and for their being considered before the "principles" or the "proposals" attain finality. It is not very clear whether the present respondents filed or did not file any objections to the principles or the proposals under s. 16(2) or s. 20(2) respectively based upon their claim to exchange. If such objections have been filed, they would be dealt with in the manner prescribed and the decision on the objections and on the application for sanction would be founded on the same grounds. If, however, no such objections were filed the question which would have to be considered by the Settlement Officer in dealing with the application under s. 16-A(1) would be whether the proposed transfer, if permitted, would affect substantially and in a concrete manner any of the "principles" which had become final under s. 18 or the "proposals" which were confirmed under s. 23. The conflict to justify a rejection under s. 16-A(2) must exist between "a principle" as formulated or a concrete "proposal" as confirmed, on the one hand and the transfer prayed for. If there should be such a conflict the officer would be entitled to refuse the permission but otherwise the applicant would be entitled to the grant of the permission sought. We need hardly add that it is for the officer to decide whether these conflicts exist and to pass a speaking order setting out the grounds for holding that such conflict exist and the jurisdiction of the Court would be attracted only if there were an error apparent on the face of the record or similar infirmity in his order. The direction of the learned Judges, therefore, does not, with great respect to them, appear to us to be in accordance with the proper interpretation of s. 16-A(2) read with the other relevant provisions and we, therefore, set aside the order of the learned judges also.

Before concluding there is one matter to which we have already adverted and that relates to an assertion by the respondents in their petition to the High Court that the lands, transfer of which was sought, were contiguously situated in three of the villages concerned in the applica- tions. We have further noticed that this statement was admitted by the appellant in his counter-affidavit.

Mr. Aggarwala, while conceding that if the factual position was as above, the applications for transfer by way of ex- change would have in respect of those plots had to be allow- ed, submitted that a mistake had been made in drafting the counter-affidavit in the High Court and that in fact, except in one village, there were lands belonging to third parties intervening between the chaks of the several respondents in the other two villages. Normally, there is no doubt that where allegations of fact are admitted, a party would not be allowed to go behind them, but this case is rather peculiar, in that parties do not seem to have paid attention to the details of the facts, but rather concentrated on whatthey considered to be points of law. In view of this we consider that it would not be proper to hold theappellant to the admission made in his affidavit beforethe High Court and particularly in view of the order we are passing directing the Settlement Officer to dispose of the applications filed to him in accordance with law' the Settlement Officer could have regard to the actual location of the plots in the matter of granting the permission sought. It is only necessary to mention that subsequent to the order of the learned judges of the Division Bench the Settlement Officer took up the matter afresh and passed an order on August 31, 1962 granting permission under s. 16-A(1). But it is clear on a perusal of the said order thatthe same was granted not after any examination of theapplication with reference to the relevant provisions of the Act and of the "principles" and "proposals" under ss. 14-18 and ss. 19- 23 respectively but only because of the order of the High Court. Learned Counsel for the respondents attempted to suggest that second order dated August

31, 1962 had become final and therefore could constitute a preliminary objection to the hearing of the appeal, on the ground that without setting aside this order the appellant could not obtain any relief regarding the correctness of the order of the High Court now under appeal. We consider that this objection by the respondents is without substance as this subsequent order of the Settlement Officer is wholly dependent on and was passed in mechanical compliance with the order of the High Court, and if the order of the learned Judges was wrong and ought to be set aside the existence of this order would be no bar to such a course, for this order of the Settlement Officer would fall with the order of the High Court on which it was based.

We therefore allow the appeal and set aside the order of the learned Judges as also the order of the Settlement Officer dated August 31, 1962 which was dependent on it, and direct the Settlement Officer to take the applications of the respondents for permission to effect the exchange to his file and dispose of them in accordance with law and in the light of the observations contained in this judgment. We consider it necessary to add, to avoid any misconception, that the Act has (in 1958 and 1963) undergone radical alterations, and the Settlement Officer in dealing with the applications according to law would have regard to these later enactments only in so far as they apply to the case on hand.

In the circumstances of the case we make no order as to costs in this Court.