

**(1984) 12 SHI CK 0005**  
**In the High Court Of Himachal Pradesh**  
**Case No : Civil Writ petition No. 611 of 1984**

Achharu Ram and Others

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

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**Date of Decision :** 06-12-1984

**Acts Referred:**

Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971  
— Section 10, 11, 12, 13, 14  
Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Rules,  
1973 — Rule 5

**Citation :** (1985) 14 ILR HP 1

**Hon'ble Judges :** P.D. Desai, C.J.; R.S. Thakur, J

**Bench :** Division Bench

**Advocate :** Om Parkash Sharma, General, for the Appellant; P.N. Nag, for the Respondent

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## Judgement

P.D. Desai, C.J.—The Petitioners are 224 in number and most of them are residents of village Lohara, Tehsil Amb, District Una. They have challenged in this petition the notification, Annexure-PA, dated April 20, 1984 issued by the Director Consolidation of Holdings, Himachal Pradesh, as delegatee of the State Government, u/s 14, sub-section (1) of the Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 (hereinafter referred to as "the Act"), declaring the intention to make the scheme for consolidation of holdings in respect of village Lohara. The challenge is leveled on the ground that the exercise of powers u/s 14(1) in the present case is outside the scope of the Act inasmuch as having regard to the hilly terrain and topography of the village and in view of the fact that only a few pieces or parcels of small cultivated land are interspersed between large tracts of uncultivated or un-cultivable land, the scheme for consolidation of holdings will not sub-serve the purposes of the Act.

2. The Act, as its long title indicates, has been enacted to provide for the consolidation of agricultural holdings and for preventing the fragmentation of agricultural holdings and for the assignment or reservation of land for common

purposes of the village. Section 2 is the definition Section. The expression "common purpose" is defined in sub-section (2) to mean any purpose in relation to any common need, convenience or benefit of the village and includes, inter-alia, the extension of the village abadi, providing income for the Panchayat of the village concerned for the benefit of the village community, providing village roads and paths, village drains, village wells, ponds or tanks, village water courses or water channels, schools, playgrounds, dispensaries, hospitals etc. The word "consolidation" is defined in sub-section (3) to mean the redistribution of all or any of the lands in any area between the several tenure holders entitled thereto in such a way as would make the areas for the time being held as such, more compact. The word "land" is "defined in subsection (7) to mean the land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture or for pasture, and includes: (1) the sites of buildings and other structures on such land; (2) orchards; and (3) ghasnis.

Sections 3 - 13, comprising Chapter-II, deal with the determination of standard areas and treatment of fragments. Section 14, sub-section (1) authorises the State Government to declare that "in the interests of the general public and for the purposes of better cultivation of land" it has decided to make a scheme of consolidation for any estate or a group of estates or a sub-division of an estate. Section 16 confers upon the State Government the power to cancel, at any time, the declaration made u/s 14, sub-section (1), in respect of whole or any part of the area specified therein and upon such cancellation the concerned area ceases to be under consolidation operations.

3. The Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Rules, 1973 (hereinafter referred to as "the Rules") have been enacted in exercise of the powers conferred by Section 59, sub-section (2), clause (b) of the Act. Rule 5 relates to the matters pertaining to cancellation of declaration made u/s 14 and enumerates some of the grounds on which the power of cancellation could be exercised. For the purposes of the present case, it would suffice to extract clauses (c) and (d) of Rule 5, which read as under:

5. (a) xx xx xx xx xx

(b) xx xx xx xx xx

(c) the village is so much torn up by factions as to make any consolidation work very difficult;

(d) cultivation in any village is scattered coupled with interspersal of uncultivated patches and consolidation of holdings is likely to serve no useful purpose.

4. The village Lohara is a revenue estate consisting of 2 "TARAFS". These 2 "TARAFS" are further sub-divided into 15 "BASIS". The total area of the land comprising the village is 6295 acres out of which 657 acres are cultivated land and the remaining are uncultivated. Out of the uncultivated area of 4734 acres,

1561 acres of land has been categorised as "Banjar Quadim" and 29 acres is categorised as "Kharkana". The land described as "Banjar Quadim" was originally under cultivation but on account of non-cultivation for 8 harvests, it had been rendered fallow. The land described as "Kharkana" was capable of being brought under cultivation. These facts appear in the return filed by the State.

5. Having regard to the avowed object and purpose of the Act and the guidelines prescribed in Section 14, sub-section (1) as well as in Rule 5, it is apparent that the declaration regarding the making of the scheme of consolidation has to be made bearing in mind the interests of general public and with the primary objective of securing better cultivation of land by consolidation and prevention of fragmentation of agricultural holdings. If, for reasons such as those which are mentioned in the extracted clauses of Rule 5, the scheme of consolidation is not truly feasible or cannot be regarded as subserving the purposes of the Act, a question might well arise whether the purported exercise of power u/s 14 is *intra vires*.

6. In the instant case, having perused the petition and the return and the annexures, we are not satisfied that adequate material has been brought on record to meet the challenge to the exercise of power resulting in the issuance of the impugned notification u/s 14, sub-section (1) of the Act. It is pertinent to note in this connection that a section of the residents of village Lohara had made a representation to the Chief Minister against the initiation of the consolidation operations. The matter was thereupon inquired into by the District Revenue Officer who held a spot inquiry. Several objections were raised before him by as many as about 179 residents of the village who appeared before him and some of those objections were to the effect that: (1) the cultivable area was less and the remainder consisted of khads, chos, nallahs and hills; (2) most of the land was Banjar and/or exposed to wild animals and if such land was allotted to any person under the scheme of consolidation, he would be put to great loss; and (3) on the land which was utilised for productive purposes, fruit and bamboo trees and fodder were raised, and if small land owners were deprived of land yielding such cash crop in the course of consolidation, they would be put to great loss. The District Revenue Officer, in the course of his report, annexure-RB, made no attempt to meet with the specific objections. The burden of proof in his report was that "generally the masses are not against the operation but some "vested interests" are working against the operations which are more beneficial to small landowners than big landowners." The report appears to have been submitted to the Deputy Commissioner, Una, who made a further report to the State Government, annexure-RC. In the course of the said report he referred to the various provisions of the Act which provide the machinery for consolidation operations, valuation of land and the right of representations, objections, appeals etc. He too reiterated that "some interested persons are misguiding the innocent people of the village due to some motive behind it as mentioned in the enclosed report." By the "enclosed report" what was meant was the report of the District

Revenue Officer. The return filed in the course of the instant proceeding does not improve the situation. No precise attempt is made nor any specific material is placed on the record of the case to meet the challenge levelled in the petition. Indeed, an impression is left on the mind of the Court that all the relevant aspects adverted to above and all the material facts to which the attention of the authorities was drawn by the residents of the village do not appear to have been taken into consideration before the power was exercised u/s 14, sub-section (1).

7. For the foregoing reasons, it appears to be expedient in the interest of justice to direct the second Respondent (Director of Consolidation, Himachal Pradesh) to make a spot inquiry into the question whether, on the facts and in the circumstances of the case, the making of consolidation scheme in respects of village Lohara is an exercise which is proper and permissible and within the parameters of the Act. The second Respondent will visit village Lohara after giving prior notice to the residents of the village through any local authority. He will give to the residents and/or their accredited representatives an opportunity of hearing and take into consideration their views, pro and con, in regard to the consolidation operations. He will take into consideration the object and purpose of the Act and the various statutory provisions adverted to above and arrive at a fresh decision in accordance with law on the question whether, on the facts and in the circumstances of the case, the consolidation operations should go on in pursuance of the impugned declaration made u/s 14, sub-section (1), or Whether the power of cancellation should be exercised u/s 16 read with Rule 5. While arriving at the decision, the second Respondent will also take into consideration the decisions of this Court in *Rajkumar Rajinder Singh v. State of Himachal Pradesh* and *Ors. ILR(1973) HP 469* and *Gram Panchayat Khunyara etc. v. State of Himachal Pradesh etc. ILR (1978) HP 225*, and the unreported decision in *State of Himachal Pradesh v. Maharani Kamsundari of Dharbanga*, LPA No. 17 of 1971, decided on July 26, 1984. These decisions deal with the meaning of the word "land" as defined in cognate legislations and those definitions being substantially in pari materia with the definition of the said word as found in Section 2(7) of the Act, the decisions have a direct bearing on the question whether consolidation operations in respect of the land falling within village Lohara is possible or permissible under the Act. The second Respondent will record his decision in the matter on or before March 1, 1985. If the second Respondent arrives at the decision that this is a fit and proper case in which the power u/s 16 read with Rule 5 should be exercised, he will immediately take an appropriate consequential action in that regard. If, however, the decision of the second Respondent is to the contrary, he will file an additional affidavit setting out the grounds and materials on the basis of which he has arrived at such a decision.

8. Adjourned to March 5, 1985.

9. Dasti order on usual terms.