(1996) 12 SHI CK 0037

In the High Court Of Himachal Pradesh

Case No : C.W.P. No. 680 of 1986

Bachittar Singh and Others APPELLANT

Vs

State of H.P. and Others RESPONDENT

Date of Decision : 19-12-1996

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 14(1), 16A, 32
Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 — Section 15(2)
Punjab Land Revenue Act, 1887 — Section 117, 121, 122, 123, 16A

Citation : (1997) 2 ShimLC 99

Hon'ble Judges : M. Srinivasan, C.J;L.S. Panta, J

Bench : Division Bench

Advocate : Bhupender Gupta, for the Appellant; Indar Singh, General for Respondents 1 to 7 and Om Prakash, for Respondents 9 to 12, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—It is represented to us by learned Counsel for the Petitioners that 12th Petitioner, namely, Jaspal Singh, died on 9-7-1996. None of the legal representatives has chosen to come on record in his place. It is seen from the cause title that 12th Petitioner was one of the sons of Ajit Singh and the other sons are already on record as Petitioners No 13 and 14. The interest among them is common Hence, it is not necessary to wait for his legal representatives to come on record.

2. This order of writ petition will govern the second appeals, R.S.A. 82 and 83/86 and R.S.A. 378/88 on the question decided herein.

3. The Revenue Estate Lalsinghi located within Tehsil and District Una, formed part of Punjab prior to re organisation of States in the year 1966. On 13-1-1961. State of Punjab, in exercise of powers u/s 14(1) of the East Punjab Holdings Consolidation and Prevention of Fragmentation Act, 1948 (East Punjab Act No. 50

of 1948), hereinafter referred to as the Punjab Consolidation Act with the object of consolidating the holdings in various Revenue Estates for the purposes of better cultivation of lands, therein, including the Revenue Estate Lalsinghi, issued a notification declaring its intention, on its own motion, to make a scheme for the consolidation of holdings. This Notification was published in the Punjab Government Gazette on 20-1-1961.

4. But even before that in 1960, the Tehsildar Una, exercising the powers of Assistant Collector 1st Grade, passed an order sanctioning of partition of Lalsinghi Estate between the co-proprietors thereof. The land comprising Khewat No. 1 Khata No. 1, measuring 12,639-1 Kanals situate in village Lalsinghi, Tehsil and District Una, was sought to be partitioned. The Tehsildar passed an order on 3-11-1960 sanctioning the partition. The Petitioners and some Ors. filed an appeal in the Court of Financial Commissioner and by an order dated 17-6-1964, the appeal was dismissed and the partition was confirmed. On 21-12-1969, the parties were put in possession of their respective shares and finally the mutation was effected under No 927 on 9-6-1970 by the Sub-Divisional Officer (C), Una Ail the share-holders occupied their respective shares by actual possession and about 160 alienations had taken place after June 19, 1970 in respect of the lands which were put in possession of the respective shareholders Those alienations have also been mutated.

5. Respondents No 8 to 12 in the writ petition came to know that the mutation effected under No. 927 was reviewed at the instance of certain pet sons on a report made to the Collector by the Patwari that there were several errors in the mutation On that ground an order was passed on 4-10-1972 allowing the review. The order of the Collector was challenged by Respondents No. 8 to 12 by filing an appeal before the Divisional Commissioner, Kangra Division. The main grounds raised was that the review was effected without any notice to the Appellants and that the partition had already been effected before the notification was issued under the provisions of the Consolidation Act. Both the contentions were accepted by the Divisional Commissioner. He passed an order on 31-10-1983 allowing the appeal. In paragraph 7, it is pointed out by him that the partition was sanctioned in 1960 while the village came under the consolidation scheme some time in 1962. He has also observed that the matter regarding partition has been finally adjudicated by the highest Revenue Court i.e. Financial Commissioner, Punjab who had jurisdiction in that territory at that time. In pursuance of the order sanctioning partition, the mutation bad been entered by the Patwari and Partal had also been done by the Field Kanungo.

6. The said order was challenged by the Petitioners before the Financial Commissioner in Revenue Appeal No. 31 of 1984.

7. By order dated 21-9-1985, the Financial Commissioner affirmed the order of the Divisional Commissioner and dismissed the appeal. The Financial Commissioner also found that the partition had been sanctioned and effected before the Consolidation proceedings commenced and on that footing the order

of review was erroneous.

8. The said orders passed by the Divisional Commissioner and Financial Commissioner as well as the order of mutation pursuant to the partition are being challenged in this writ petition herein. It is the contention of the Petitioners that once a notification is issued under the provisions of the Consolidation Act, no proceeding should continue under the Land Revenue Act for effecting partition of the Estate. Reliance is placed on Section 32 of the East Punjab Holdings Consolidation and Prevention of Fragmentation Act, 1948 (Act No. 50 of 1948).

The section reads as follows:

32. After a notification under Sub-section (1) of Section 14 has issued, no proceedings under Chapter IX of the Punjab Land Revenue Act, 1887, in respect of any estate or a sub-division of an estate affected by the scheme of consolidation shall, subject to the provisions of Section 16A, be commenced, and where such proceedings were commenced before the issue of the notification they shall remain in abeyance, during the pendency of the consolidation proceedings.

9. It is seen therefrom that it is only the proceedings under Chapter IX of the Punjab Land Revenue Act in respect of any estate which is directed to be kept in abeyance during the pendency of the consolidation proceedings. The section itself makes exception with regard to the provisions of Section 16-A of the Act. Section 16A provides that notwithstanding anything contained in Chapter IX of the Punjab Land Revenue Act, 1887, except Section 117 thereof the scheme prepared by the Consolidation Officer may provide for the partition of the land between joint owners of land, or between joint tenants of a tenancy in which right of occupancy subsists in accordance with the share of each owner or tenant in the land or tenancy as the case may be. But it is also seen that under that section if such share is recorded under Chapter IV of the Act as belonging to them it will be recognised in the consolidation proceedings. A combined reading of Sections 16A and 32 shows clearly that the proceedings under Chapter IV of the Punjab Land Revenue Act are in no way affected by the provisions of the Consolidation Act.

10. It is seen from the provisions of Punjab Land Revenue Act that Chapter IV relates to Records of rights and annual records. Section 31 provides for records of rights and documents included therein. Section 32 provides for making of special revision of record of rights. Section 33 provides for annual record. Procedure for making record is also set out under Sections 34 to 40. The rights of the Government and presumption with respect thereto and other matters are provided in Sections 41 to 45. Chapter IX of the said Act provides that when there is a question as to title in any of the property of which partition is sought, the Revenue Officer may decline to grant the application for partition until the question has been determined by a competent court or he may himself proceed to determine the question as though he were such a Court.

11. Section 121 provides for an instrument of partition. It reads as follows:

When a partition is completed, the Revenue Officer shall cause an instrument of partition to be prepared, and the date on which the partition is to take effect to be recorded therein.

12. Section 122 provides for delivery of possession of property allotted on partition and Section 123 provides for affirmation of partition privately effected and the party to approach the Revenue Officer and get the partition affirmed.

13. A reading of these sections shows that what is stayed under the provisions of Consolidation Act, is only the proceedings under Chapter IX of the Land Revenue Act and not the proceedings under Chapter IV. In this case as a matter of fact, it is found by both the authorities that the partition was sanctioned before the consolidation notification was issued and that was challenged by the parties concerned before the Financial Commissioner who affirmed it. When the Financial Commissioner had confirmed the order sanctioning the partition, it is not open to the lower authority to re-open it by pointing out certain errors in the mutation proceedings.

14. It is also seen from Annexure P-S that the Patwari has made reference to 63 errors which, according to him, are errors in the mutation proceedings and based on that report a review has been ordered by the Collector. When that order was passed on 4-10-1972, the partition had already been completed and parties had taken the possession. It is also found on record that several alienations have been effected by different sharers with reference to the shares which were allotted to them.

15. Respondents No. 8 to 12 have stated in their reply that the Petitioners 19 to 22 and 29 own no land in the estate and, therefore, are not entitled to maintain the present petition. It is also stated that the parties had transferred the land and even the Petitioners themselves had transferred the land allotted to their shares. In paragraph 15 of the reply, it is stated as follows:

It is wholly wrong that partition is bogus and is neither just nor equitable as alleged. The Petitioners have exhausted their remedies against the partition right upto the Financial Commissioner, Punjab, who had confirmed finally the partition vide order dated 17-6-1964. After exhausting all the remedies right upto the court of the Financial Commissioner, Punjab, now the Petitioners at this stage are not entitled to challenge the factum of partition in 1987, that too, by way of writ petition and basing their claim on the sanctioning of mutation No. 927. The writ petition deserves to be dismissed... The partition was sanctioned by the competent authority as far back as on 30-11-1960 and the Petitioners have exhausted their remedies right upto the court of the Financial Commissioner, Punjab, who had confirmed the factum of partition on 17-6-1964. Now in 1987, the Petitioners cannot be allowed to undo what they have not challenged in this Hon''ble Court by invoking extra-ordinary jurisdiction after all these 22 years. Even the Petitioners have effected transfers by way of sale and about 118 sales have been effected and the Petitioners-vendors have given actual possession to the purchaser on the spot as well. The shares of the joint land have to be mentioned by the sellers because the land is still being identified on the basis of the jamabandi for the year 1955-56 and not because no partition had been effected. There is no question of consolidation authorities being in a fix because of the restoration of mutation No. 927. By sanctioning of mutation, the consolidation scheme will not be effected at all nor it will be frustrated as alleged. Mutations do not confer or divest any right whatsoever on any person It may also be stated here that at the moment, the consolidation proceedings in the estate are at the initial stages and only the Mushabati Committee (Village Committee) and the consolidation authorities are fixing the valuation of the different fields of the estate.

16. No doubt a rejoinder has been filed by the Petitioners disputing the statements of facts contained in the reply.

17. But it is clear from the records that the sanction of the partition was made, long before the notification was issued under the Consolidation Act and that was also confirmed by the Financial Commissioner.

18. Our attention is drawn by learned Counsel for Respondents to section 15(2) of Himachal Pradesh Holdings Consolidation and Prevention of Fragmentation Act, 1971 (Act No. 20 of 1971). Section 15(2) of the Act reads as under:

Where an estate, group of estates or a sub-division of an estate is under consolidation operations, the duty of maintaining the maps, field book and preparing the annual record under the Himachal Pradesh Land Revenue Act, 1954 (6 of 1954), as applicable to the areas which formed part of the Himachal Pradesh immediately before the 1st day of November 1966, and the Punjab Land Revenue Act, 1887 (17 of 1887), as applicable in the areas added to Himachal Pradesh u/s 5 of the Punjab Re-organization Act, 1966 (31 of 1966), and the rules framed thereunder, shall stand transferred to the Settlement Officer (Consolidation) and thereupon all the powers conferred on the Collector and Assistant Collector, under the said Acts and rules, shall, so long as an estate, group of estates or a subdivision of an estate remains under consolidation operation, be exercised by the following officers

19. It is clear therefrom that on the publication of the declaration what is entrusted to the consolidation officer is the duty of maintaining the maps, field book and preparing the annual record etc. as applicable in the areas, and thereupon all the powers conferred on the Collector and Assistant Collector, under those Acts and Rules, shall so long as an estate, group of estate or a sub division of an estate, remains under consolidation operation, be exercised by the officers set out in the section. Thus mutation proceedings are not in any way affected by the notification under the Consolidation Act. Hence it is not possible to accept the contention of the Petitioners that after the issue of notification mutation proceedings could not have been continued and the entire proceedings

were invalid in law. The order sanctioning mutation was passed on 30-11-1960 and confirmed by the Financial Commissioner on 17-6-1964. It is in no way, affected by notification issued under Consolidation Act. Therefore, the contention of the writ Petitioners fails. Consequently the prayer to quash the orders found in Annexures P-4, P-9 and P-11 has to fail and the writ petition is dismissed.

