

(2001) 10 SHI CK 0026

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1030 Of 1992

Bija Ram and Others

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 05-10-2001

Acts Referred:

Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971
— Section 14, 15, 16, 17, 20(2)

Citation : (2002) 1 ShimLC 143

Hon'ble Judges : Kamlesh Sharma, J;K.C. Sood, J

Bench : Division Bench

Advocate : G.D. Verma and Romesh Verma, for the Appellant; K.D. Batish, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Kamlesh Sharma, J.—The Petitioners are the permanent residents of village Jokhari, Tehsil Nalagarh, District Solan. They have filed this writ petition to assail the order contained in letter (Annexure P-8) dated 21.8.1991 from the Director, Consolidation of Holdings, Himachal Pradesh, Shimla-2, to the Consolidation Officer, Una, District Una, H.P. conveying the approval of the Government for cancellation of consolidation proceedings in village Jokhari, Tehsil Nalagarh, District Solan whereby it was also directed that the revenue record as well as that of the consolidation be filed in accordance with the rules and the compliance thereof be sent to the Directorate.

2. The brief facts as stated in the writ petition are that the consolidation proceedings had been going on in Tehsil Nalagarh, District Solan, since 1977 in mouza Jokhari to which place the Petitioners belong and the same have already been finalised. The decision to carry out the consolidation proceedings in mouza Jokhari, was taken in the beginning of 1985 and the Patwaris, Kanungos and Assistant Consolidation Officers were appointed for carrying out the consolidation proceedings. The interest holders of mouza Jokhari welcomed the consolidation

proceedings and there was no objection from anyone. Accordingly, the consolidation proceedings were carried out from 20.5.1985 to 21.8.1991 when abruptly, the Director of Consolidation conveyed the impugned order.

3. Giving the details of consolidation proceedings it is stated that vide Annexure P-1 dated 20.5.1985, the right holders were informed that as per notification dated 10.5.1985, the consolidation proceedings have been started in the village and no right holder without the permission of the Consolidation Officer, Bilaspur, would either raise any new construction or sell or purchase the land within Chak Jokhari or would cut the trees. Thereafter in the general meeting of the interest holders held on 9.9.1985 members of Mashawarti Committee were elected as per the proceedings of the meeting, Annexure P-2. On 11.12.1986, the Assistant Consolidation Officer convened a meeting of the right holders under the Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 (hereinafter called "the Act") to inform them that they can inspect the records and make inquiries in the office of Halqua Patwari free of charges.

4. On 12.12.1986, general meeting of the interest holders was convened to make them understand that the records after verification and correction of mistakes received from Kanungo and the copies of Istemal had been distributed amongst the share-holders to apprise them of the statement of plots, as such, the proceedings u/s 20(2) of the Act were duly carried out. The right holders were also told that in case they had any objection against the record, they could file written objection on judicial paper by affixing the court fee of Rs. 1.25 within 30 days in the office of Assistant Consolidation Officer, Swarghat either in person or through their counsel and after expiry of limitation, no objections would be entertained. The proceedings of the meeting dated 12.12.1986 are on record as Annexure P-3.

5. Thereafter, the general meeting of the Mashawarti Committee and the right holders was convened on 12.3.1987 by the Settlement Officer. In the meeting it was pointed out that the consolidation scheme of the village was published on 20.1.1987 against which no objections were received within the stipulated period. The scheme was read over and explained to the right holders and the oral objections were heard. The benefits of the scheme were explained to them. Consequently, the following changes were made in the scheme of consolidation of the village:

the interest holders who have constructed their houses, cow-sheds and other structures by encroaching the Government land before issuance of the notification of consolidation of holdings under some bona fide mistake in respect of demarcation, would give land in exchange of the land over which they have already made construction and information in this regard will be sent to the concerned Deputy Commissioner, otherwise, no such exchange in respect of other buildings or unauthorized possession would be allowed.

2. At page 93 item No. 19 may be treated as cancelled.

3. At page 17, item No. XVIII be treated as cancelled and deemed to be substituted as "in the Revenue Estate Government land shall remain as before along with the rights attached thereto.

6. With the above modification, the consolidation scheme was approved. It was also ordered that wide publicity of the scheme be given in the village and the amendments be incorporated in the records and thereafter the proceedings for repartition be started. Copy of the proceedings dated 12.3.1987 is on record as Annexure P-4.

On 22.4.1989, meeting of the interest holders of the village was called in which they were informed that repartition proceedings in accordance with the scheme were held u/s 30(1) of the Act and the objections received within limitation were disposed of and no objection petition was pending. Since the limitation for filing objections was over, the partition proceedings were confirmed and the interest holders were deemed to be in possession of the allotted land from the said date. Copy of the proceedings dated 22.4.1989 is on record as Annexure-P5. It is further stated that as per the demand made by the Respondents, the Petitioners deposited the requisite fee of Rs. 625 on 23.2.1987.

7. On the above stated facts and circumstances, the Petitioners have claimed that the consolidation proceedings of their village Jokhari were concluded in accordance with law and there was no question of cancellation thereof by the Government.

8. Feeling aggrieved by the impugned decision, the Petitioners were constrained to file representations dated 24.4.1992, Annexure P-7, to the then Chief Minister with a copy to the Financial Commissioner-cum-Secretary (Revenue), to the Government of Himachal Pradesh.

9. In the reply filed on the affidavit of Shri A.N. Sharma, the then Director, Consolidation of Holdings, the Respondents have not denied the consolidation proceedings from time to time. It is explained that the right holders in the village are divided as some of them favored the consolidation, whereas the Ors. objected to it. On receipt of objections raised by some of the right holders, the Consolidation Officer (Vigilance) visited the village on 9.12.1988, the Consolidation Officer, Bilaspur on 28.4.1989 and the Settlement Officer (CH) on 31.5.1989 and the Director Consolidation of Holdings on 29.8.1990 and gave hearing to the right holders and thereafter sent their reports to the Government. Consequently, the decision to cancel the consolidation proceedings was taken by the Government on 9.8.1991. The copy of the notification dated 9.8.1991 has been placed on record during the course of hearing. It is stated in the notification that in exercise of the powers conferred u/s 16 of the Act, the Governor of Himachal Pradesh is pleased to cancel the declaration made by the Director, Consolidation of Holdings, Himachal Pradesh, vide his notification dated 10.5.1985. A copy of this notification was sent to the Director, Consolidation of Holdings, Shimla with reference to his letter dated 20.3.1991 for information

and necessary action.

10. It is also stated in the reply affidavit that the consolidation proceedings were held upto the stage of Section 30(2) of the Act till 22.4.1989, but the same were revoked by order dated 24.8.1989 passed by the Additional Director, Consolidation of Holdings, exercising the powers of State Government u/s 54 of the Act. A copy of the order is placed on record as Annexure R-I. The perusal of this order show that as many as 33 right holders had filed revision petition on the ground that the consolidation proceedings in the village had not been conducted properly, hence these be cancelled u/s 16 of the Act. It is stated in the order of Additional Director, Consolidation of Holdings, Himachal Pradesh, Shimla that he visited the spot and perused the record carefully. He found that there were two groups in the village. One group was satisfied with the consolidation proceedings whereas the other had objection that so many irregularities were committed by the lower staff and the demarcation was not given properly by the Kanungo. As per the right holders, the plots were allotted to them without considering major portion and the value thereof and as such, they were not satisfied with the decision made u/s 30(2) of the Act. It was also pointed out by the right holders that they had not changed their possession as per repartition under Sections 30(1) and 30(2) of the Act.

11. Considering these objections the Additional Director, Consolidation of Holdings, Himachal Pradesh, held that proper opportunity should be given to the right holders for filing fresh objection u/s 30(1) and consequently, he revoked the consolidation proceedings from the stage of Section 30(1) of the Act and directed the Consolidation Officer to get the demarcation done again, give one month's time to the right holders to prefer objections and thereafter to conduct the proceedings u/s 30(2) of the Act.

12. On the allegations made in the writ petition, the Petitioners have prayed for quashing the notification canceling the consolidation proceedings on the ground that it is without jurisdiction as the notification issued u/s 14 declaring the village under the scheme of consolidation, stood exhausted.

13. Learned Counsel appearing for the Petitioners referring to Annexures PI to P6 has pointed out that the scheme of consolidation was prepared, published and confirmed as per the provisions under Sections 22 - 29 of the Act and thereafter repartition proceedings were held u/s 30 of the Act in pursuance whereof the right holders entered into possession of the plots allotted to them. According to the learned Counsel, having entered into possession of the holdings respectively allotted to the right holders, the consolidation scheme had come into force and the Government has no jurisdiction to cancel the consolidation proceedings. Referring to the aforesaid provisions of the Act, the learned Counsel has urged that the cancellation of the consolidation proceedings in the village is wrong, illegal, arbitrary and not in the public interest. In support of his submission, the learned Counsel has relied upon the judgment of Punjab and Haryana High Court in *The State of Punjab and Ors. v. Jagir Singh and Ors.* 1971 PLJ 51.

14. On the other hand, the learned Additional Advocate General appearing for the Respondents has argued that in the facts and circumstances of the case, the decision for cancellation of consolidation proceedings has been taken in the best interest of the right holders. Referring to Section 16 and other relevant provisions of the Act, learned Additional Advocate General has pointed out that the proceedings were at the stage of repartition to be effected u/s 30 of the Act and the right holders had not entered into possession of the holdings respectively allotted to them to conclude that the scheme had come into force and the notification declaring the village under the consolidation scheme stood exhausted. He has further argued that the authority which confirms the scheme of consolidation under the Act, has been empowered to vary and revoke the said scheme confirmed by it subject to any order of the State Government as provided u/s 46 of the Act, whereas in the present case on the recommendation of the authority which confirmed the scheme, the State Government has taken the decision of cancellation of the consolidation proceedings with the result the scheme of the consolidation stood revoked.

15. During the course of arguments learned Additional Advocate General has also placed on record the communication dated 20.9.1997 from the Financial Commissioner-cum-Secretary (Revenue), to the Government of Himachal Pradesh to the Director, Consolidation of Holdings, Shimla, containing the decision taken in the meeting held on 23.9.1997, under the chairmanship of the Chief Minister to review the work of consolidation of holdings in the Pradesh and attended by the Revenue Minister, the Chief Secretary, the Financial Commissioner (Revenue) and the other officers inter alia, that the consolidation work in 72 notified villages where it has not been started as yet, shall not be taken up and these shall be denitrified for the time being and no new village shall be taken for consolidation even if Gram Sab has passed resolution in favour of consolidation operation and the Consolidation Department was amalgamated with the Settlement Department. Relying upon this decision, he has urged that in view of the policy decision of the Government that in future no village will be taken for consolidation, the present writ petition has become infructuous and it deserves to be dismissed on this ground alone. According to him, the policy decision contained in communication dated 20.9.1997 is not justifiable and this Court would not sit in judgment over it.

16. In order to appreciate the respective contentions raised by the learned Counsel for the parties, we will examine the scheme of the Act and refer to the various provisions thereof.

17. So far the object of the Act, as contained in the preamble thereof is concerned, it is to provide for the consolidation of agricultural holdings and for preventing the fragmentation of agricultural holdings in the State of Himachal Pradesh and for the assignment or reservation of land for common purposes of the village with the end in view to put the agricultural land to the optimum use so that it is a viable unit for purposes of carrying on agricultural operations in a

more efficient and economic manner which will also be in public good. For this purpose, the Consolidation Officer may frame a scheme under which the lands are repartitioned and right holders are allotted substituted lands in lieu of lands comprised in original holdings.

18. u/s 14 of the Act, the State Government, by notification in the official Gazette, may declare that in the interest of general public and for the purposes of better cultivation of land, it has decided to make a scheme of consolidation for any estate or group of estates or a sub-divisions of an estate. Section 15 provides for the effect of the said declaration. Section 16 empowers the State Government to cancel the declaration, made u/s 14, any time in respect of whole or any part of the area specified therein. Sections 17 - 21 provide for revision and correction of records, publication and declaration thereof, preparation of statement of plots and tenure holders, objection on the statement and decision thereon by the Assistant Consolidation Officer after hearing the parties, which is final except as otherwise provided by or under the Act and reference to the Arbitrator in the cases involving question of title. The work for preparation of the scheme for consolidation starts thereafter and Sections 22 - 29 pertain to preparation, publication and confirmation of the scheme.

19. The draft scheme is prepared after obtaining in prescribed manner the advice of the land owners and the tenants of the estates concerned and thereafter published in the prescribed manner in the estate and any person likely to, be affected by such scheme or committee appointed in accordance with the rules framed under the Act, is entitled to file objections within a period of 30 days, which would be considered by the Consolidation Officer before submitting it to the Settlement Officer along with such amendments as he considers necessary together with his remarks on the objections, as provided u/s 22(1) of the Act. The Consolidation Officer is also required to publish the scheme as amended by him in the prescribed manner, as also provided u/s 28(2) of the Act. If no objection is received u/s 28(1) or within 30 days of the publication of the amended draft scheme published u/s 28(2), the Settlement Officer (Consolidation) shall confirm the scheme submitted by the Consolidation Officer, as provided u/s 29(1) of the Act. If any objections are received to the amended draft scheme published u/s 28(2) of the Act, the Settlement Officer shall, after taking objections into consideration either confirm the scheme with or without modification or refuse to confirm it. In case of such refusal, the Settlement Officer (Consolidation) shall return the draft scheme with such directions as may be necessary to the Consolidation Officer for reconsideration and re-submission. This procedure for confirmation of the scheme is provided under Sections 29(1) and 29(2) of the Act. On the confirmation of the scheme, it is published in the prescribed manner in the estate concerned.

20. Thereafter, repartition is carried out after consultation with the land owners and the tenants of the estates as provided u/s 30 of the Act and the boundaries of the holdings, as demarcated, are shown in Aks Shajra, which is published in

the prescribed manner in the estate concerned.

21. Any person aggrieved by the repartition may file written objection within 30 days of the publication before the Consolidation Officer, who will pass such orders as he considers necessary either confirming or modifying the repartition. The order of the Consolidation Officer is appealable before the Settlement Officer (Consolidation) who, after hearing the parties will pass such orders as he considers proper. Any person aggrieved by the order of the Settlement Officer (Consolidation) may, within 60 days of that order, appeal to the Director, Consolidation of Holdings, whose order shall be final and not liable to be called in question in any Court.

22. After examining the provisions of Sections 14 - 30 of the Act, we find that from documents Annexures PI to P6 and RI, it is clear that proceedings of consolidation were held up to the stage of repartition, against which objections were filed and the order of Consolidation Officer was set aside by the Additional Director, Consolidation of Holdings, exercising the powers of State u/s 54 of the Act and the proceedings were ordered to be re-started from the State of Section 30(1) of the Act. The Consolidation Officer was directed to get the demarcation done again in the village and thereafter to proceed u/s 30(1) of the Act after giving opportunity to file objections within the prescribed period and deciding the same judiciously after hearing the objectors and visiting the spot.

23. In this view of the matter, cannot be said that the persons entitled to possession of the holdings under the Act had entered into possession of the holdings respectively allotted to them and the scheme deemed to have come into force. In fact, notification of cancellation of the Declaration u/s 14 of the Act had been issued at the stage when the Consolidation Officer, was in the process of carrying out repartition, though after confirmation of the scheme u/s 29 of the Act. It has come on record that the decision for cancellation was taken on the recommendations of the Consolidation Officer, the Settlement Officer and the Director Consolidation, who had considered the objections of the right holders, aggrieved by the consolidation proceedings and who had requested for the cancellation thereof. therefore, it cannot be said that the decision for cancellation of the consolidation proceedings was taken abruptly without any material on record.

24. Otherwise also, from Annexures PI to P6 it is not clear whether revision and correction of records and statement of plots of tenure holders were prepared and the objections on the statement were considered in accordance with law. There is nothing on record to show that draft scheme was prepared on the advice of the land owners and tenants of the estates concerned and the Mashawarti Committee and wide publicity was given to it to enable the right holders to submit their objections within the prescribed period. In the meeting held on 12.3.1987, the right holders did raise the oral objections; but, what were those objections and how those were considered and decided, is not clear, though it is stated that the right holders were explained the benefits of the draft scheme and

thereafter it was prepared after making some changes in it. In this view of the matter, we have no hesitation to hold that the confirmation of the consolidation scheme was made in a casual manner without giving proper opportunity to the right holders to consider the draft scheme and file objections thereto.

25. therefore e, it cannot be said that the scheme for consolidation was confirmed by following the procedure laid down in law. If the scheme was not confirmed and the right holders had not entered into possession of the holdings allotted to them, it cannot be said that the notification issued u/s 14 of the Act, was exhausted. The powers of the State Government u/s 16 of the Act to cancel the declaration made u/s 14 are very wide and these can be exercised at any stage of the consolidation proceedings, but irrespective of the plenary nature of the powers, the State Government is supposed to exercise the same in the public interest and in order to achieve the object of the Act. So far the case in hand is concerned in the facts and circumstances on record, we do not find that the State Government has exercised the powers u/s 16 in canceling the declaration u/s 14 of the Act wrongly, illegally and arbitrarily for the reasons given hereinabove. therefore e, we do not find any reason to quash the notification dated 9.8.1991 of cancellation of the consolidation proceedings.

26. Otherwise also in view of the decision of the Government as contained in communication dated 20.9.1997, the work of consolidation has been abandoned in the State and no new work shall be taken up for consolidation even if the Gram Sabhas pass resolutions in favour of the consolidation operations, as a matter of policy. This policy is not under challenge in the present writ petition. therefore e, the Petitioners are not entitled to any relief.

27. So far the judgment of Punjab and Haryana High Court in *The State of Punjab and Ors. v. Jagir Singh and Ors.* 1971 PLJ 51, is concerned, it is on the facts of that case in which there was no dispute that the consolidation scheme was finalised by following the procedure laid down in law and some right holders had actually taken possession of their respective plots of land and number of matters taken upto the Additional Director u/s 42 (Section 42 of the Act is equivalent to Section 44 of the Act) exercising the powers of the State Government, were finally settled. It was in these facts and circumstances that the learned Judges came to the conclusion that the State Government had no jurisdiction to denotify the notification declaring the village in question under consolidation.

28. In the result, we do not find any merit in this writ petition and it is rejected. No costs.