

(2014) 08 SHI CK 0058
In the High Court Of Himachal Pradesh
Case No : CWP No. 6776 of 2012-H

Dandu Ram

APPELLANT

Vs

The Divisional Commissioner

RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:

Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971
— Section 54

Citation : (2014) 08 SHI CK 0058

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Neel Kamal Sharma, Advocate for the Appellant; Virender Kumar Verma, Meenakshi Sharma, Additional Advocate Generals, Surinder Saklani and Vinod Thakur, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.—This case has an unfortunate history. It epitomizes the sad plight and suffering of the parties for which they have none to blame but themselves as they all are members of one family and litigating amongst themselves.

The facts as are necessary for the adjudication of this case may be noticed thus.

2. Settlement took place in Muhal Jukain in the year 1970 and at that time the entire land measuring 0-74-55 hectares along with Malkiati Abadi was joint of the parties. The father of the parties Shri Ram Dayal had 1/3rd share in the said land. The consolidation operation took place in the year 1990-91. After various proceedings inter se parties regarding the consolidation, the Settlement Officer (Consolidation of Holdings) visited the spot on 06.12.1999 and dismissed the appeal preferred by the petitioner whereby he wanted Khasra No. 496 to be given to him, but the same had been allotted to the respondent No. 2. He further wanted to regain Khasra No. 510 but the same had been allotted to one Birbal Ram. The petitioner then preferred an appeal before the Additional Director

(Consolidation of Holdings), who too vide his order dated 29.08.2006 dismissed the appeal. The petitioner thereafter preferred a revision petition u/s 54 of the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971, before the Divisional Commissioner, who vide his order dated 03.07.2012 dismissed the revision.

3. Not satisfied with the findings returned by the three authorities below against him, the petitioner approached this Court by way of this petition claiming therein the following reliefs:-

i) A writ in the nature of certiorari may very kindly be issued and the impugned decision dated 3.7.2012 passed by Respondent No. 1 may kindly be set aside and quashed.

ii) That the authorities below may kindly be directed to give a portion of Khasra No. 635 to the extent of three biswas which is abutting to the Khasra No. 636 over which the house of the present petitioner is situated as bartan.

iii) That further Respondent No. 1 may kindly be directed to repartition the land in dispute again keeping in view the convenience of the present petitioner and respondents to reallocate the land to all the co-sharers as per their shares equally all types of land."

4. At the outset, it may be observed that the scope of judicial review to be exercised by this Court against any decision of a Court or a Tribunal in exercise of its powers under Articles 226/227 is very limited. The findings recorded by the authorities under the Consolidation Act are findings of fact and cannot be reopened except on very exceptional ground. It is settled law that the Court can interfere only in case the order passed by the authorities below is contrary to the provisions of the Act and further that such contravention has prejudiced the petitioner. In exercise of power of judicial review of the decision of the authorities under the Consolidation Act, this Court is concerned with the legality of procedure followed and not with the validity of the order.

5. Now let me examine as to whether the petitioner has been able to carve out a case for judicial review. In the entire petition, the petitioner has concentrated on the factual aspects of the case like:-

i) The spot inspection report dated 23.05.2008 prepared by the Assistant Consolidation Officer, Sarkaghat is contrary to the factual position.

ii) The land in dispute has been evaluated in a wrong manner.

6. The learned Settlement Officer (Consolidation of Holdings), Bilaspur, while visiting the spot on 06.12.1999 had passed the following orders:-

"....Appellant wants Khasra No. 496 to be given to him but it stands allotted to Narain Singh as there is no Bartan to him whereas appellant has given sufficient land with his house so his demand is rejected. There are Khasra No. 509 and 511 which are of the appellant. Appellant wants to regain Khasra No. 510 but that

has been allotted Sh. Birbal Ram who has constructed a house over it which cannot be given to the appellant we inspected all spots and no discrepancy found in the allotment of appellant rather maximum benefit has been given to him. So the appeal is dismissed...."

Thereafter, hearing the parties and taking into consideration the records of the case, the Additional Director (Consolidation) vide his order dated 29.08.2006 dismissed the appeal and found no irregularity committed by the Settlement Officer, who after visiting the spot had passed the aforesaid orders.

7. The matter was carried by the petitioner in revision before the Divisional Commissioner, who affirmed the findings recorded by the Settlement Officer as also the Additional Director by according the following reasons:-

"....Both the parties were summoned and asked to adduce their arguments. Both the parties were heard at length. Ld. Counsels for both the parties have also submitted their written arguments which are placed on the case file. In this case Assistant Consolidation Officer was directed to visit the spot to know the factual position of the case and he after visiting the spot has submitted his report on 23/5/2008 which is placed on the case file. I have perused the written arguments submitted by counsel for both the parties, entire record of the case file and report submitted by the Assistant Consolidation Officer and gone through the law points and come to the conclusion that Assistant Consolidation Officer has submitted very logical and point wise detailed report from which it transpires that easementary right i.e. right of way on the south eastern corner of Khasra No. 611 be given to the petitioner/revisionist which may be reflected on the field map by means of a red line and the remarks column of the Jamabandi of Muhal Jukain, Tehsil Sarkaghat District Mandi (H.P). Despite this, Khasra No. 635 is vacant on the spot but this is abutting to the road constructed by the H.P.P.W.D., hence it can not be proposed to be allotted to the petitioner. Whereas the question of the petitioner regarding Khasra Numbers 474, 465, 543 & 548 that he may be allotted share in these Khasra Numbers on the ground that there exist mango trees in aforesaid Khasra numbers are not logical reasoned as matter can be settled regarding trees without making any interference in the land already allotted to the respondents. Another question of Khasra No. 566 to 571 regarding correction of tatimas, it is ordered as per the report of the Assistant Consolidation Officer that there is no need to interfere in these tatimas as these are prepared already as per factual position on the spot.

In view of the above observations, the revision petition is partly accepted and easementary rights as referred to above i.e. right of way on the South eastern corner of Khasra No. 611 are hereby accorded to the petitioner and such right be recorded in the revenue record by mean of a Red line on the field map and a corresponding entry in the remarks column of concerned Jamabandi...."

8. Now, the perusal of the proceedings conducted by the three different authorities relevant extracts whereof have been reproduced hereinabove would

go to show that the findings recorded by these authorities are pure findings of fact and are, therefore, not open to judicial scrutiny. Moreover, the petitioner has not been able to point out any irregularity much less illegality committed by the learned authorities below. The petitioner cannot be permitted to prolong the litigation on one pretext or other and the same must be given a quietus.

9. In view of the discussion above, no ground for interference by way of judicial review has been carved out by the petitioner and accordingly I find no merit in the petition and the same is dismissed along with all pending applications, if any, leaving the parties to bear their own costs.