

(1991) 05 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 234 of 1984

Devi Dass and Others

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 21-05-1991

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971
— Section 14, 18, 21, 22, 22(2)

Citation : (1992) 2 ShimLC 134

Hon'ble Judges : Davinder Gupta, J; D.P. Sood, J

Bench : Division Bench

Advocate : B.K. Malhotra, for the Appellant; Chhabil Dass, General for Respondents Nos. 1 to 3 and Sanjeev Kuthiala and K.D. Sood for Respondents Nos. 8, 9, 10 and 20, for the Respondent

Final Decision : Allowed

Judgement

Devinder Gupta, J.—Petitioners have approached this Court by filing this petition under Article 226 read with Article 227 of the Constitution of India, seeking to quash the consolidation of holding proceedings in so far as it pertains to the Petitioners and Respondents No. 4 to 22 carried out within the revenue estate Jadla and Koiri (Hadbast No. 627 within Tehsil Amb ` District Una).

2. According to the averments made in the petition, in the year 1953, predecessor of the Petitioners purchased 1/4th share in land measuring 30 kanals situate within revenue estate Jadla from one Jagat Singh, which at the time of purchase was recorded in the revenue records as Kharkana but after the purchase Petitioners effected improvement by making 22 kanals of land cultivable and also dug a deep soil well within the same area to enable them to irrigate the property. This development is stated to have been carried out after spending considerable amount and labour. Though the nature of the land had been changed from Kharkana to cultivable land, yet this change was not

reflected in the revenue records. It has further been averred in the petition that in the year 1978, the aforementioned revenue estates were notified under the provisions of the Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 (Act No. 20 of 1971)(hereinafter referred to as the Act) to enable the State Government to make a scheme of consolidation as per the provisions of the Act. Since the Petitioners were temporarily out of the village in connection with their respective avocations in life, on December 22, 1979, application Annexure "A" was sent to the consolidation officer with a prayer for making correction of entries in the revenue records and for reserving the entire developed area to the Petitioners as a single unit in the event of repartition of the holding. When the Petitioners received no response to their application Annexure "A", a reminder Annexure "B" dated April 28, 1980 was sent. The consolidation officer, vide communication Annexure "C" dated May 20, 1980, informed the Petitioners that since the consolidation scheme had already been prepared within the revenue estates, therefore, no action could be taken on the application of the Petitioners. They were advised to approach Respondent No. 1 with a petition u/s 54 of the Act. On June 23, 1980, communication Annexure "D" was also addressed by the Settlement Officer to the Petitioner to the same effect. On October 28, 1980, Petitioner No. 1 filed a Petition u/s 54 of the Act before Respondent No. 2 but the same was dismissed by him on December 23, 1980, vide order Annexure E-I holding that no injustice had been done either to the Petitioner or to other co-sharers during repartition. According to the Petitioners, this order was passed without affording an opportunity of being heard especially when Respondent No. 2 had apprised the Petitioners that such a petition was not maintainable in the absence of proper parties. Petitioners No. 2 and 3 thereafter moved another petition u/s 54 of the Act pointing out various illegalities and irregularities having been committed during the consolidation of holding operation and more particularly, the manner in which their application Annexure "A" had been rejected. Respondent No. 2 on May 15, 1982, passed Annexure "G" order declining to exercise the powers of State Government u/s 54 of the Act on the ground that since a substantive petition filed by Petitioner No. 1 had already been disposed of on merits by Annexure E-I order, therefore, any order passed by him would amount to reviewing the earlier order which power did not vest in him. It is the case of the Petitioners that as grave procedural irregularities had been committed during the proceedings by rejecting their application Annexure "A", the entire process of consolidation from the stage of preparation of scheme deserves to be quashed with further direction to carry out consolidation of holding operation as per the provisions of the Act after affording them an opportunity of being heard.

3. Respondents No. 1 to 3 have contested the petition by filing their return on the affidavit of Respondent No. 2, whereas, Respondents Nos. 8, 9 and 10 have filed the return on the affidavit of Ved Parkash Respondent No. 8.

4. It is the stand of Respondents No. 1 to 3 that since Annexure "A", application for correction of Khasra girdawari, was received by the consolidation officer, Una,

on December 26, 1979, on which date none of the Petitioners appeared before him as well as before the Settlement Officer (Consolidation), the same was rejected on January 10, 1980, while confirming the consolidation scheme for the village. It is not disputed by Respondents No. 1 to 3 that Petitioners had sent a reminder, upon which they were advised to approach Respondents No. 1 and 2 filing petition u/s 54 of the Act.

5. It has been contended by Respondent No. 2 that on receipt of Annexure "F", revision petition on behalf of Petitioners No. 2 and 3, powers u/s 54 of the Act were not exercised by him in view of the judgment of this Court rendered in Civil Writ Petition No. 361 of 1981 Rattan Dev Singh v. Director of Consolidation of Holding Himachal Pradesh dated December 15, 1982, as it would have amounted to reviewing the earlier orders. The stand of other contesting Respondents has been that not more than 10 kanals area was Barani and rest of the land was still Kharkana and the well which had been dug by the Petitioners was not capable of irrigation as the same remains dry during summer and water is available in it only during rainy season. It is further contended that after repartition, Respondents have improved the land allotted to them by spending considerable amount of time, labour and money and in case writ petition is allowed, it will cause material prejudice to them and in the interests of justice interference with the orders passed by Respondents No. 1 to 3 was not called for.

6. When the writ petition came up for hearing, we directed Respondents No. 1 to 3 to produce the entire record of the proceedings, which was made available to us. We have perused the same. On perusal of the same, we find that Annexure-A, application was received in the office of Consolidation Officer under registered cover. Jaishi Ram, Devi Dass and Yog Raj sons of Nathu Ram had besides praying for correcting the entries in revenue records about the nature of property as well as recording their actual physical possession had also prayed that the well situate in Khasra No. 5570/3987 which had not been shown in revenue records deserved to be reserved for them and allotted to them in repartition. Besides this, 9 marlas of land bearing Khasra Nos. 5431/2964 with 7 mango trees there upon also deserved to be reserved for them A prayer was also made for separating their shares from other members of their Beradari In another portion of their property name of one Rasila Ram was shown as tenant. It was pointed out by them that such an entry was incorrect and the same deserved to be corrected for which purpose they also had appended an affidavit of Rasila Ram dated December 10, 1979. Admitting that he was not cultivating any portion of the land owned by the Petitioners and had no objection in case correction, as prayed, was carried out. On receipt of the application, the consolidation officer on the same day made an order thereupon that the same be registered and presented before him on the spot after the expiry of the period of limitation. On January 5, 1980, when the application was put up before him at Koiri. he recorded an order that Jaishi Ram Applicant was not present but Sant Ram son of Rasila was present and that similar application had been presented by the Applicant before the Assistant Consolidation Officer and as possession of the Applicants could not be

verified on the spot and as the application did not relate to the scheme, therefore, the same deserved to be dismissed. With these remarks, the application was put up by him before the Settlement Officer (Consolidation) at Jadla on January 10, 1980, who made the following remarks thereupon:

None present. Rejected as proposed by the C.O Announced.

7. Reading of the contents of the application shows that the Petitioners had made manifold prayers first of which was with regard to correcting the entries in the revenue records and the other for reserving particular land for them in the event of there being repartition. Both these prayers stood rejected in view of the recommendations of consolidation officer recorded on the back of the application on January 5, 1980. It has not been denied that the orders were passed behind the back of the Petitioners and without any notice to them. The same were recorded without affording the Petitioners an opportunity of being heard. It is the case of the Respondents that consolidation scheme was finalised on January 10, 1980. In the return filed by Respondents No. 1 to 3, it has been contended that the prayer was rejected because it did not relate to the preparation of the scheme but related to correction of entries in the revenue records, for which time to raise objections had already elapsed. We find that the stand taken by the Respondents is not correct.

8. It is on the basis of a declaration which is issued by the State Government u/s 14 of the Act that a revenue estate is deemed to have come under the consolidation operation from the date of publication of such declaration and thereafter consolidation officer is required to upto-date the entries in revenue record in accordance with the provisions of the Himachal Pradesh Land Revenue Act by carrying out field to field checking with the help of village map and field book. Such a corrected record is thereafter required to be published u/s 18 of the Act so as to enable the estate right holders to raise any objection, if they have any grievance as regards the entries. After the disposal of objections, if any, in accordance with the provisions of Section 21 of the Act, the Consolidation Officer has to prepare a scheme of consolidation for the revenue estate for which he has to take into consideration the principles as provided in Sub-section (2) of Section 22 of the Act. Such a scheme is required to be prepared with the advice of the landowners and tenants within the revenue estate. When draft of the scheme so prepared is ready, the same is required to be published u/s 28 of the Act and persons likely to be affected by such scheme are allowed thirty days time to raise objections, which are required to be disposed of by the consolidation officer. After disposal of the objections the scheme is confirmed u/s 29 of the Act. Repartition is carried out in accordance with the provisions of the scheme.

9. Reading of the provisions, reveals that the scheme prepared u/s 22 of the Act, which is confirmed u/s 29 of the Act is the basis for carrying out repartition with a view to consolidate the holdings. Rights of the parties at repartition are to be governed as per the provisions of the scheme. The scheme is the basic document and while preparing the same, consolidation officer is required to take into

consideration numerous principles enumerated in Sub-section (2) of Section 22 of the Act. One of the principles prescribed therein is that every tenure holder, as far as may be, allotted land in the block in which he holds the largest part of his holding. At the time of preparation of the scheme each of the tenure holder can specify as to which is his largest part of the holding so as to enable the consolidation officer to work out the allotment during repartition. Prayer made by the Petitioner to the consolidation officer by addressing Annexure A; application; that the entire 30 kanals area, major part of which had been developed by making the same cultivable and a well had been dug to irrigate the same by spending considerable amount, and the same was the largest part of their holding, which deserved to be reserved for them and allotted in repartition; was necessarily a matter directly relatable to the scheme. The consolidation officers as well as the Settlement Officer were as such not right in observing that no part of prayers made in Annexure A was relatable to the scheme. Reading of the contents of Annexure A and the orders passed by the consolidation officer and Settlement Officer thereupon would show that both the officers did not apply their mind and took a decision rejecting the application. The decision so arrived at without application of mind and without affording an opportunity of being heard to the Petitioners is bad in law.

10. The consolidation scheme, in so far as the parties to the writ Petition are concerned, cannot be said to have been properly prepared and all subsequent proceedings taken considering the scheme to be final are also bad in law. Petitioners were required to be afforded an opportunity of being heard. The decision having been arrived at in violation of the principles of natural justice is void which has the effect of nullifying the subsequent proceedings.

11. The objection of the Respondents that since they have developed the portions of land allotted to them in repartition, no relief deserves to be granted to the Petitioners, especially, after a period of about eleven years from the date of finalisation of the proceedings has no force, since the Petitioners have been continuing to agitate about their rights prior to the finalisation of the scheme and as advised by Respondent No. 3, they filed a petition before Respondent No. 2 and after the decision of the same, approached this Court within a reasonable time. The objection raised by the Respondents is not tenable in law.

12. In view of the above, we have no option but to allow the writ Petition. Accordingly, the writ petition is allowed. Orders passed by the consolidation officer on the application of Petitioners, Annexure A, dated January 5, 1980 and January 10, 1980 are quashed and set aside and as a consequent thereof orders at Annexures E-I and G are also quashed and set aside. Consolidation scheme for revenue estate Jadla and Koiri, in so far as it pertains to the parties to the writ petition, is quashed with a direction to Respondents No. 1 to 3 to take up the proceedings afresh by preparing consolidation scheme in accordance with the provisions of law and carry out repartition after affording an opportunity of being heard to the parties.