

(1975) 10 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : Writ Petition No. 8 of 1974

Dhyan Singh

APPELLANT

Vs

Director of Consolidation and Others

RESPONDENT

Date of Decision : 28-10-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9
Constitution of India, 1950 — Article 226
Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971
— Section 51

Citation : AIR 1976 HP 64 : (1975) 4 ILR HP 727

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Advocate : H.K. Bhardwaj, for the Appellant; A.G. and Inder Singh, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, C.J.—The petitioner prays for relief under Article 226 of the Constitution against an order dated November 26, 1973 of the Director, Consolidation of Holdings dismissing his petition.

2. The petitioner is a resident of village Saloh, Tehsil and District Una. Pursuant to a notification under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, consolidation operations were commenced in the area. After the pre-partition proceedings had been published the petitioner applied on January 12, 1971, for the reservation of land for the extension of his Abadi. The application was made u/s 42 of the Act to the Director, Consolidation of Holdings. It was recited that Khasra Nos. 10623/6564 and 11887/10626 were previously owned and possessed by the petitioner and his brother Hukam Singh, that the brother had applied to the Consolidation Officer for the allotment of the said khasra numbers for himself and the petitioner but the said khasra numbers had been allotted to the respondents Ranbir Singh and Harnam Singh contrary to law. The petition was dismissed on November 26, 1973 by the Director,

Consolidation of Holdings on the merits. He pointed out that no application for reservation of land had been made by the petitioner; it had been made by his brother Harnam Singh only. In that application Harnam Singh had sought reservation of Khasra numbers 10626/6564 and 6565, that both the numbers had been allotted to the respondents, and that as regards khasra number 11887/10626 no application had been made by the petitioner or by his brother Harnam Singh during preparation of the scheme for reservation. On that, the Director said, the petitioner had no case on the merits.

3. In this writ petition, learned counsel for the petitioner contends that the Director was bound in law to have dismissed the petitioner's petition in default and could not have dismissed it on the merits. The consequence of the petition being dismissed on the merits, learned counsel says, is that the petitioner is now debarred from having the petition re-determined on the merits. The second contention is that a number of respondents had not been served by the Director with notice of the petition and therefore the Director erred in disposing of the petition. As regards the first contention, learned counsel relies on *Madhao Narayan Vs. Ragho Niloo and Others*, . In that case, Rule 19 of the Bombay Tenancy and Agricultural Lends (Vidarbha Region) Rules 1959 permitted the Tribunal, in the case of non-appearance of the parties, to dismiss the application or to decide it on merits after hearing the respondent. The Bombay High Court held that ordinarily, unless there was a compelling reason for the Tribunal to proceed with the disposing of the revision application on merits, the proper order was an order for dismissal in the absence of the parties, and that the passing of an order on merits without hearing the parties acted to the grave prejudice of the party in default. It was pointed out that having regard to the scheme of the Act inasmuch as the Tribunal was the final forum where a dispute could be taken, the party suffers an adverse order without having an opportunity of being heard. It was held that the Tribunal should indicate clearly and satisfactorily why its discretionary power to decide the application on merits has been exercised rather than the dismissal of the application for default. The High Court allowed the application and quashed the order of the Tribunal.

It is pointed out that one of the respondents Ranbir Singh was present, but in my opinion that makes no difference to the application of the principle on which the Bombay High Court relied. If the applicant was absent, the principle would still require that ordinarily his application should be dismissed in default only and not decided on the merits. For dismissing an application in default it is the absence of the petitioner which is relevant. Section 54 of the Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 gives the widest power to the Director in the matter of disposing of a petition before him. He has the discretion, in the absence of the petitioner, to dismiss the petition in default or to decide it on the merits. On the basis of the principle mentioned above, the Director, Consolidation of Holdings erred in disposing of the petition before him on the merits. In the proper exercise of his jurisdiction he should have dismissed the petition in default.

4. It is urged by learned counsel for the respondents, Ranbir Singh and Harnam Singh, that the petitioner had no right to be heard in a proceeding u/s 54 of the Himachal Pradesh Act. It is pointed out that the power conferred by Section 54 has been left to be exercised, by the State Government entirely at its discretion and this is in contrast with the appeal provisions contained in the Act which expressly confer a right to be heard. It is urged that by contrast, Section 54 must be construed as excluding a right of hearing, especially when a right of bearing has been provided only to the respondent in the case set out in the proviso to Section 54. The submission is that by necessary implication a party applying in revision u/s 54 is denied a right of being heard. Now, it seems to me that when the statute does not lay down any specified procedure for the conduct of any judicial or quasi-judicial proceeding, it is open to the authority entrusted with that proceeding to adopt such appropriate and reasonable procedure as it considers desirable. Once the authority adopts that procedure all the necessary incidents of that procedure are attracted, and it is not then open to that authority to say subsequently that the omission of any feature of that procedure cannot be made the ground of complaint. In the present case, the Director of Consolidation adopted a procedure of which one feature was that an opportunity should be given to the party applying in revision to be heard in support of it. That is evidenced by the circumstance that notice was issued by the Director to the petitioner. When the Director did so, and adopted that procedure, the petitioner became entitled as of right to be heard. He enjoyed that right because it was a part of a procedure deliberately adopted by the Director, and the procedure had a statutory basis inasmuch as it was implied within Section 54 that the Director could adopt such procedure as he considered fit. It is not correct to say that the Director had no power to direct issue of such notice. Upon the aforesaid considerations, I am of opinion that the observations relied on in *B.K. Abdul Azeez v. State of Mysore* AIR 1957 Mys 12 and *T. Venkatasubbiah Setty v. Commr., Corporation of the City of Bangalore* AIR 1968 Mys 251 do not assist the respondents.

5. It is pointed out that the Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 does not contain any provision for an application for restoration of a revision petition dismissed in default. In my opinion, if there is power in the Director to dismiss a revision petition in default, it must be implied *ex debito justitiae* that the party so prejudiced is entitled to apply for restoration of the proceeding. There are several instances where the party may, for no fault of his own and for reasons beyond his control, be unable to be present at the time when his case is called on for hearing. If the case is dismissed in default and the party is unable to obtain restoration of the proceeding in such circumstances, he will be deprived of a decision on the merits for no fault of his, and a right to such decision will be defeated. In such a case, the law will step in and imply the right to apply for restoration.

6. Learned counsel for the respondents points out that a direct application was made by the petitioner to the Director of Consolidation and no application was

made by him in the first instance to the Consolidation Officer. It is said that he cannot maintain a direct application before the Director. This is a matter which the Director will consider, now that the case will go back to him.

7. In my opinion, the petitioner is entitled to succeed.

8. The writ petition is allowed. The order dated November 26, 1973 passed by the Director, Consolidation of Holdings is quashed. It is open to the Director to dispose of the revision petition afresh. There is no order as to costs.