
(2014) 05 SHI CK 0108
In the High Court Of Himachal Pradesh
Case No : LPA No. 186 of 2007

Gian Chand and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 06-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Constitution of India, 1950 — Article 226

Citation : (2014) 05 SHI CK 0108

Hon'ble Judges : Mansoor Ahmad Mir, Acting C.J.; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Ajay Sharma, Advocate for the Appellant; Shrawan Dogra, Advocate General, Mr. Romesh Verma, Mr. V.S. Chauhan, Addl. A.Gs, Mr. J.K. Verma, Mr. Kush Sharma, Dy. AGs for Respondents No. 1 to 4, Mr. Bhupender Gupta, Senior Advocate and Mr. Janesh Gupta, Advocate for Respondent No. 5, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.—This appeal is directed against the order passed by the learned Single Judge on 10.10.2007 whereby he dismissed CWP No. 1062 of 2005 preferred by the appellants herein.

2. The appellants had filed a writ petition seeking a writ of certiorari for quashing the orders passed by the adjudicatory authority constituted under the Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 including the last order passed by the Director.

3. The learned counsel for the appellants would contend that in nutshell controversy as was aired before the Consolidation Authorities and before this Court at the time of hearing for adjudication is that respondent No. 5 herein purchased land i.e. half share of the petitioner No. 1 from Khasra No. 2014, 2015 and 1681 measuring 1 kanal 15 marlas i.e. in total 17 marlas. It is further alleged that later on it transpired that area in Khasra No. 2015 stand shown as

0-15 marlas whereas in fact same was 0-5 marlas and in this view of the matter respondent No. 4 herein was directed to decide the case after remand of the matter. The said mistake could have been corrected by the authorities concerned and that in such eventuality area sold by petitioner No. 1 and purchased by respondent No. 5 herein ought to have been 13 1/2 marlas instead of 17 marlas as total land instead of 1 kanal 17 marlas ought to have been 1 kanal and 7 marlas and in that eventuality there ought not have been any change but the authorities below including the learned Single Judge took different view of the matter which aspect is owing to misreading and mis-appreciation of the facts and circumstances of the case.

4. It is further contended that respondent No. 5 was having 11 kanal 12 marlas of Sada land and purchased 17 marlas. If the same is added further in the land of respondent No. 5, his total land will be 12 kanals and 9 marlas and standard area of the same will be 7 kanal and 6 marlas. As per respondents No. 1 to 4 in the orders impugned in the writ petition, the respondent No. 5 is having less area of 0-6 marlas Sada and 0-3 marlas standard. Firstly in view of the scheme which is Magna Carta and for the purpose of consolidation, said less allotment of 3 marlas standard ought to have been ignored, secondly it is stated that out of total land of respondent No. 5 ought to have been allowed land from the Khata of the petitioners to the extent of 13 and 1/2 marlas i.e. half of the area of khasra No. 2014, 2015 and 1681. After correction of Khasra No. 2015 from 10 to 5 marlas, total area of khasra No. 2014 and 2015 will be 17 marlas and from old khasra numbers of the petitioners 1681 and 1682, new khasra numbers 1490, respondent No. 5 stand allowed 1 kanal and 2 marlas of the land and he further stand allowed 17 marlas from the land of the petitioners from khasra No. 2014, 2015 and 2231, thus total 1 kanal and 17 marlas of land stand allowed from the land of the petitioners to the respondent No. 5 whereas he was entitled for 17 marlas only. This aspect again stand misread and mis-appreciated by the respondents No. 1 to 4 and is impugned in this appeal.

5. These grounds have already been dealt in detail not only by the authorities constituted under the Act but have been painstakingly dealt with by the learned Single Judge in the following manner:

The position which emerges from the pre-consolidation and post-consolidation record as taken note of by the Director, Consolidation of Holdings is that 1/2 of the land from Khasra No. 2014 (12 marlas), 2015 (15 marlas) and 1681 (8 marlas) was sold by the petitioners to the predecessor-in-interest of respondent No. 5 vide sale deed registered on 26.2.88 and during the consolidation, Khasra Nos. 1681 (8 marlas) and 1682 (14 marlas) had been merged into new Khasra No. 1490 (1 kanal 2 marlas) and allotted to the petitioners and one Shri Mehar Singh, predecessor-in-interest of Shri Purshotam Lal and Smt. Kanta Devi. Similarly, Khasra Nos. 2014 (12 marlas) and 2015 (15 marlas) had been merged into Khasra No. 2231 (1 kanal 7 marlas) and allotted to respondent No. 5. The respondent as per the karwahi register had demanded 12 kanal 18 marlas sada

(7 kanals 8 marlas standard) against which he was allotted 12 kanals 3 marlas sada (7 kanals 3 marlas standard), i.e. 15 marlas sada, (5 marlas standard) less. Accordingly, the total deficiency in case of Khasra No. 2015 came to 0-10 marlas sada (8 marlas standard). This deficiency was made good by the Consolidation Officer by allotting Khasra No. 1490 to respondent No. 5. The deficiency of the area which has occurred due to wrong recording of the areas in the revenue record has been made good by the Consolidation Officer by allotting Khasra No. 1490 to respondent No. 5. The petitioners have been allotted 25 kanals 19 marlas against their demand of 26 kanals 6 marlas. The Financial Commissioner while remanding the matter back to the Consolidation Officer in his order dated 7.5.2002 has made specific reference to Khasra No. 2015. While correcting the area of Khasra No. 2015, the deficiency came to 0-10 marlas sada (8 marlas standard) which has been made good by the Consolidation Officer.

6. This Court while exercising the powers in writ jurisdiction under Article 226 of the Constitution of India would not interfere with pure findings of fact. It is well settled that writ of certiorari is issued only when there is error of law apparent on the face of record or else it will not interfere. The writ court will not quash the findings of fact of quasi judicial body even if they are erroneous and based on insufficient evidence. (See: Raja Ram Chandra Reddy and Another Vs. Rani Shankaramma and Others, and Smt. Ujjam Bai Vs. State of Uttar Pradesh,).

7. It is settled law that court issues a writ of certiorari in exercise of its supervisory and not appellate jurisdiction (See: Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and Another, , Province of Bombay Vs. Kusaldas S. Advani and Others, , Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, and Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra,).

8. It is equally settled that in Letters Patent Appeal the Court will interfere only where the findings are demonstrably erroneous, irrational or perverse being without any evidence. The Hon"ble Supreme Court in Gopal Swaroop Vs. Krishna Murari Mangal and Others, has held as under:

11. In a letters patent appeal arising out of an order passed by a Single Judge hearing a civil second appeal the Division Bench of the High Court would not reappreciate the evidence to record a finding of fact. That is because the Single Judge cannot himself do so in the light of the limitations placed upon the Court by Section 100 CPC. That may not, however, be true when the Single Judge passes an order in a first appeal filed before him. Even when the finding of fact recorded by the Single Judge may affirm the finding recorded by the trial Court, there is no express bar to the examination of any such finding by the Division Bench of the High Court hearing the letters patent appeal. Having said so, we must hasten to add that even in the absence of any legal bar to the examination of a finding of fact, a Letters Patent Bench will be slow in interfering with the concurrent finding of fact recorded by the trial Court and the Single Judge in the first appeal. The court may interfere where the finding is demonstrably erroneous, in that it is either irrational or perverse, being without any evidence.

The jurisdiction exercised by the Court being discretionary ought to be exercised along judicial lines. (See: Smt. Asha Devi Vs. Dukhi Sao and Another, and B. Venkatamuni Vs. C.J. Ayodhya Ram Singh and Others, .)

9. As already observed, the present appeal has now been filed questioning therein the orders passed by the Collector, Commissioner, Financial Commissioner and learned Single Judge, who have throughout recorded adverse findings against the appellants. There can be no dispute that such findings are pure findings of fact and, therefore, this Court would be slow in interfering with the findings of fact. The Court will have very limited and restricted jurisdiction for interfering with such findings.

10. The findings rendered by the authorities is a pure findings of fact and were not even required to be gone into by the writ Court, yet the learned Single Judge has dealt with the matter threadbare and arrived at a conclusion which cannot be said to be demonstrably erroneous, irrational or perverse being without any evidence. No question of law has been raised and in so far facts are concerned they have been correctly appreciated by the adjudicatory authorities as also by the learned Single Judge calling for no interference by this Court.

11. We find no merit in the appeal and accordingly the same is dismissed leaving the parties to bear their own costs.