

(2011) 03 SHI CK 0333
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 434 of 2010

Gian Chand

APPELLANT

Vs

The Divisional Commissioner and Others

RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Constitution of India, 1950 — Article 227

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

Citation : (2011) 03 SHI CK 0333

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kuldeep Singh, J.—This petition has been directed against the order dated 21.10.2010 passed by Divisional Commissioner, Mandi exercising the powers of Director Consolidation in case No. 18 of 2010.

2. It has been alleged that during consolidation the land abutting the road was allotted in favour of Respondent No. 2 by Settlement Officer Consolidation. The Petitioner challenged the order dated 1.9.1995 of the Settlement Officer in appeal which was partly allowed by Additional Director Consolidation of Holdings on 21.9.2000 and 18 marlas of land was allotted to the Petitioner. The further appeal preferred by Respondent No. 2 before Director, Consolidation of Holdings was dismissed on 3.8.2001. The Respondent No. 2 filed CWP No. 1197 of 2001 against aforesaid orders dated 3.8.2001, 21.9.2000. The Petitioner filed CWP No. 19 of 2002 in which aforesaid orders dated 3.8.2001, 21.9.2000 and 1.9.1995 were assailed. CWP No. 1197 of 2001 and CWP No. 19 of 2002 were decided by common judgment dated 15.3.2010 in which directions were issued to the Director, Consolidation of Holdings to take up the matter again for decision afresh in accordance with law.

3. The Civil Revision No. 224 of 2000 was filed by the Petitioner against order

dated 23.5.2000 passed by learned Sub Judge(II), Hamirpur in Execution Petition No. 54/93 rejecting the application of decree holder for passing final decree in Civil Suit No. 36 of 1991 of the Court of learned Sub Judge(II), Hamirpur. In Civil Revision No. 224 of 2000 decided on 5.7.2010, the order dated 23.5.2000 of the learned Executing Court was set aside with a direction to the learned Executing Court to proceed with the execution in accordance with law. The Respondent No. 1 vide judgment dated 15.3.2010 was directed by this Court to decide the matter afresh and to consider all the aspects of the matter and maintainability of the petition. The Respondent No. 1 in the order dated 21.10.2010 has not complied the directions given in judgment dated 5.7.2010. The Petitioner even submitted a copy of judgment dated 5.7.2010 before Respondent No. 1 but to no effect. It has been alleged that impugned order is perverse and unreasoned. The Respondent No. 1 has passed the impugned order by wrongly exercising the jurisdiction not vested with the Consolidation Authorities as the suit land is abadi land as has been held by Civil Court of competent jurisdiction.

4. The Respondent No. 2 has contested the petition by filing reply in which he has taken the stand that no case is made out for interference by this Court under Article 227 of the Constitution. The order passed by Director u/s 54 of the Himachal Pradesh Holdings (consolidation and Prevention of Fragmentation) Act, 1971 (for short Act) is subject to revision by the State Government u/s 54 of the Act which has not been invoked. The order dated 21.10.2010 is legal and valid. The order dated 3.8.2001 of the Director of Consolidation and order dated 21.9.2000 of Additional Director of Consolidation were rightly set aside by this Court in CWP No. 1197 of 2001. In the impugned order the Director of Consolidation has rightly upheld the order dated 1.9.1995 of the Settlement Officer. The land having been partitioned under the Act as such present petition and the suit filed by Petitioner have become infructuous. Complete and substantial justice has been done between the parties and therefore, petition deserves dismissal.

5. I have heard learned Counsel for the parties. The Divisional Commissioner exercising the powers of Director Consolidation u/s 54 of the Act has held that order dated 1.9.1995 of Settlement Officer is in accordance with the scheme and possession of the parties and upheld the said order. The Respondent No. 1 has held that the orders of Director and Additional Director, Consolidation have already been set aside by the High Court. The order dated 1.9.1995 of the Settlement Officer is required to be implemented. In the judgment dated 15.3.2010 in CWP No. 1197 of 2001 and 1 CWP No. 19 of 2002, this Court has observed that the said order does not in any manner pronounce on the merits of the respective contentions of the parties. This Court has further observed that the parties shall be free to urge their respective cases before the Director of Consolidation to show whether the petition is maintainable or the order challenged can be sustained in law. The observations of the Respondent No. 1 in the impugned order that the order of the Director and Additional Director, Consolidation have already been quashed by the High Court gives an impression

that Respondent No. 1 has assumed that the High Court has decided the lis between the parties on merits so far earlier orders of Director and Additional Director are concerned, which is contrary to the observations made by this Court in judgment dated 15.3.2010.

6. The Respondent No. 1 has not considered the question of maintainability of the petition. It has been argued on behalf of the Petitioner that copy of judgment dated 15.7.2010 in C.R. No. 224 of 2000 was submitted by the Petitioner to Respondent No. 1 so as to decide the issue of maintainability but despite that the Respondent No. 1 has not decided the question of maintainability of the petition as directed in judgment dated 15.3.2010. The impugned order indicates that the question of maintainability of the petition u/s 54 of the Act has not been decided by Respondent No. 1.

7. In view of above, the petition is allowed. The order dated 21.10.2010 passed by Respondent No. 1 Divisional Commissioner, Mandi exercising the powers of Director Consolidation in Case No. 18/10 is set aside with a direction to Respondent No. 1 to decide the petition afresh in accordance with law. The parties are directed to appear before Respondent No. 1 on 29.3.2011.