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**(1975) 10 SHI CK 0001**  
**In the High Court Of Himachal Pradesh**  
**Case No : Civil Writ Petition No. 9 of 1974**

Hukam Singh

APPELLANT

Vs

Director of Consolidatoin etc.

RESPONDENT

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**Date of Decision :** 28-10-1975

**Acts Referred:**

Constitution of India, 1950 — Article 226  
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —  
Section 21(1), 42  
Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971  
— Section 54

**Citation :** (1975) 4 ILR HP 724

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

**Bench :** Single Bench

**Advocate :** H.K. Bharadwaj, for the Appellant; B. Sita Ram, General and Inder Singh, for the Respondent

**Final Decision :** Allowed

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## Judgement

R.S. Pathak, C.J.—The Petitioner is a resident of village Saloh, Tehsil and District Una. Consolidation proceedings were started in respect of the area in the year 1970. The proceedings reached the stage of repartition u/s 21(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. The re-partition was carried out in accordance with the scheme. It is alleged that in accordance with the scheme the right-holders of the village were permitted to reserve their Khasra numbers for the extension of their Abadi, and that pursuant thereto the Petitioner made an application on August 24, 1970 praying for the reservation of khasra Nos. 10623/6564 and 6565 for the extension of his Abadi area. The application specifically stated that the present holding of land for the Petitioner's Abadi was not sufficient and therefore land for the extension of his Abadi should be reserved from the aforesaid khasra numbers owned by him. According to the Petitioner no order was passed on his application and he applied on January 12, 1971, u/s 42 of the Act for the reservation and allotment of the

aforesaid khasra numbers and also khasra numbers 11887/10626 for the extension of his Abadi. It appears from the record before me that notice for the hearing of that petition was issued by the Director, Consolidation of Holdings, to the Petitioner, The date fixed for the hearing was November 26, 1973, but as the notices were received by the Consolidation Officer, Una, for service on the parties on the very date fixed for hearing the Consolidation Officer expressed his inability to effect service on the parties in time. This was communicated telegraphically by the Consolidation Officer to the Director, Consolidation of Holdings. The Director, however, proceeded to dispose of the case ex-parte. Holding that no reference to khasra number 11887/10626 had been made in the original application for reservation and that it was not possible at that belated stage to make reservation in exercise of the powers u/s 54 of the Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971, he dismissed the petition in limine by his order dated November 26, 1973. The Petitioner is aggrieved by that order and prays for relief under Article 226 of the Constitution.

2. Learned Counsel for the Petitioner contends that he was entitled to be heard on his petition before it was disposed of by the Director and inasmuch as that opportunity was not made available to him the order is invalid. Now, Section 54 of the Himachal Pradesh Act of 1971 does not expressly oblige the Director, exercising the powers of State Government thereunder, to hear a Petitioner before his petition is dismissed in limine. But in the absence of anything else in the section it is open to the Director to adopt such procedure as is reasonable for the purpose of disposing of the petition before him. If the Director decides to hear the Petitioner before disposing of the petition, even if it were to be dismissed in limine, and issues notice to the Petitioner accordingly of the date fixed for hearing the Petitioner acquires a right to be heard in the matter and it is not then open to the Director to dispose of the petition without affording the Petitioner an opportunity of being heard. In the present case, the Director adopted that procedure, and having done so he should have afforded sufficient time for the Petitioner to be informed of the proceeding and to be present before him. The notice issued by the Director was received by the Consolidation Officer on the very date fixed for the hearing before the Director and, as the Consolidation Officer very rightly put it, it was not possible to inform the Petitioner in time to enable him to be present during the hearing of his petition before the Director. The Director did not wait for the return of intimation from the Consolidation Officer in regard to the service of notice and proceeded to dismiss the petition in the absence of the Petitioner. In doing so he erred.

3. It is urged on behalf of the Respondents Ranbir Singh and Harnam Singh in opposition to this writ petition that the Petitioner could not in any event have obtained any relief on his petition from the Director because the khasra number 11887/10626 for which he had applied in his petition had not been applied for in the original application and further the stage at which the question arose in the consolidation proceedings, that is the stage of Section 54 of the Himachal

Pradesh Act, the Director was not empowered to grant such relief. These are questions which should in the first instance be disposed of by the Director. The Director has mentioned both these reasons in his order but he has not heard the petition in regard to the merits of those questions. It is appropriate that those questions be decided on merits by the Director after hearing the Petitioner, and no opinion should be expressed by this Court at this stage.

4. Learned Counsel for the contesting Respondents points out that the Petitioner and his brother Dhian Singh were holders of a joint tenure and as owners of a joint khata the Petitioner had preferred objections on behalf of his brother Dhian Singh, that Dhian Singh had been served with notice and had applied for adjournment and the adjournment had been refused. It is pointed out further that on the petition filed by Dhian Singh the Director made an order dated November 26, 1973, dismissing it. Now none of these facts have been set out in the present writ petition. They form the subject of Civil Writ Petition No. 8 of 1974. It is not permissible in law for the parties to rely, or the Court to consider, any facts which are not contained in the record of this writ petition. The present writ petition must be disposed of strictly on the facts set out in that record. If the Respondents intended to rely on the aforesaid facts, they should have been incorporated in their return to the present writ petition. It is admitted by learned Counsel for the Respondents that those facts are not set out in that return. They cannot then be taken into account.

5. On the short ground that the Petitioner was not afforded sufficient opportunity for appearing before the Director when his petition was disposed of by that authority this writ petition must be allowed.

6. 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 petition afresh. There is no order as to costs.