

(2021) 03 SHI CK 0096

In the High Court Of Himachal Pradesh

Case No : Latter Patent Appeals No. 135 Of 2015

Jagdish Ram & Ors

APPELLANT

Vs

State Of H.P. & Ors

RESPONDENT

Date of Decision : 10-03-2021

Acts Referred:

Himachal Pradesh Holdings (Consolidation And Prevention Of Fragmentation) Act,
1971 — Section 54

Citation : (2021) 03 SHI CK 0096

Hon'ble Judges : Sureshwar Thakur, J;Sandeep Sharma, J

Bench : Division Bench

**Advocate : R.K. Sharma, Vidushi Sharma, Sudhir Bhatnagar, Narender Guleria,
Hemant Vaid, Ashwani Sharma, Kunal Thakur, Svaneel Jaswal, Vikrant Chandel,
G.D. Verma, B.C. Verma**

Final Decision : Disposed Of

Judgement

Sureshwar Thakur, J

1. The writ petitioner/respondent No.4 herein, in CWP No. 704 of 1994, claimed the making of the hereinafter extracted mandamus, upon, the respondents:-

a) Directing respondents No.1 to 3 to complete the consolidation proceedings within a time bound period not exceeding 6 months.

b) Directing the respondents to put the petitioner in possession of his holdings prior to the consolidation proceedings in 1982 till and so long as the new proceedings under the Act are not finalized and further directing the respondents to pay to the petitioner compensation for the deprivation of his property for the period he remained out of possession till the date of possession is restored to him.

c) Directing the Respondents to produce unto this Hon'ble Court the entire record relating to the consolidation proceedings so that justice is done.

d) Any other writ, order or direction as may be deemed just and proper in the facts and circumstances of the case may be passed in favour of the petitioner and against the respondents."

2. Through the impugned verdict made, upon, CWP No. 704 of 1994, by the learned Single Judge, the latter proceeded to, after accepting the proposals made in sub clauses (i) and (ii) of paragraph No. 5, by the Director, Consolidation of Holding, H.P., in, an affidavit of 22nd December, 2014, and, as, became sworn by the latter officer, and, as became tendered before the Court, in compliance, to, an order of 26.10.2004, hence, make a conclusion, that, the writ petitioner/respondent No.4 herein, becoming unlawfully deprived of possession of the writ property, (i) inasmuch as during consolidation proceedings his possession, upon, the writ property, became reduced from hitherto 42.3 kanals to 23.16 kanals, and, also his concomitant physical possession, upon, the writ property became reduced, (i) thereupon, the learned Single Judge proceeded to grant relief in paragraph No.16 of the impugned verdict, rather in consonance with the affidavit, of, 22nd December, 2004,. The afore occurring prior thereto observations become, the, bedrock, of, the order of disposal being made by the learned Single Judge, upon, CWP No. 704 of 1994.

2. Furthermore, there is also a reference in the impugned verdict about finality being assignable, to a judgment, and, decree pronounced by the Civil Court concerned, qua land measuring 42.6 kanals, and, that, upto, the finalization of the freshly instituted consolidation proceedings, the writ petitioner be put in physical possession of the writ property, or physical possession thereof be restored to the writ petitioner.

3. At the outset, the firmest conclusivity becomes assignable to the Order made by the Director Consolidation, upon, his exercising powers, under, Section 54 of the H.P. Holdings (Consolidation and Prevention of Fragmentation Act) (hereinafter referred to as the Act), (i) wherethrough the apposite scheme of consolidation, as, prepared, vis-a-vis, the writ kahasra numbers became rescinded, (ii) and, a direction was pronounced, for, rather with the apposite consensus ad idem of all the right holder concerned, in the contentious writ khasra numbers, hence a fresh consolidation scheme being prepared, (iii) and, thereafter consolidation operations under the afore nomenclatured statute being embarked upon.

4. Necessarily, the valid embarking, upon, or recouring to the statutory mandate enshrined in the Act, is, comprised in the relevant khasra numbers being free from any civil litigation, appertaining to the title, of, the landowners concerned, in, and, upon apposite khasra numbers, whereons, the, exercising(s) of jurisdiction, under, the Act, is, strived to be recoured. Contrarily, if there is an acid contest, vis-a-vis, valid assumption(s) thereon of title, by any or all the landowners concerned, (I) thereupon, upto the dispute appertaining to the validity, of, title, upon, the, khasra numbers concerned, of/or any of the land owners concerned, becomes enjoined to be completely rested by a conclusive,

and, binding decree, becoming made, upon the apposite civil action, by the Civil Court concerned, and, obviously thereupto, the recouring to the mandate of the Act, becomes completely forbidden.

5. Be that as it may, the afore impediments working against the complete valid holdings, of, consolidation proceedings in the Mohal concerned, whereons, the writ khasra numbers are located, is vociferously urged, by the co-respondents, arrayed as respondents No.4 to 10 in the writ petition No. 704 of 1994, in their apposite reply(ies), wherein, they asserted that they did rather acquire title to the suit property through adverse possession. Moreover, an alike therewith contention is reared in the LPA, and, the afore factum has remained undenied by the writ petitioner/respondent No.4 herein. Untrovertedly, when hence, the apposite therewith, RSA No. 365 of 2015, is subjudice, before this Court, and, the lis borne therein appertains to the validity, of, canvassing(s), of the afore acquisition of title qua the suit khasra numbers hence by the appellants herein, (a) and, also an averment is raised therein, vis-a-vis, the appellants rather making interference(s) in the ownership, and, possession of the writ petitioner, arrayed, as respondent No.4, in the extant LPA, upon, hence, vis-a-vis writ khasra number or suit khasra numbers , as the case may be, and, also the latter causing obstruction in the further progression(s), of, the partition proceedings hence subjudice before the Assistant Collector 1st Grade concerned.

6. In aftermath, even if, the judgment, and, decree, (supra) rendered by the Civil Court, and, though purportedly appertaining to the writ khasra numbers or the suit khasra numbers, and, also if in pursuance thereto mutations qua therewith became attested, besides even if, as, alluded in the verdict of the learned Single Judge, hence symbolic and physical possession, of the writ khasra numbers, or suit khasra numbers, stood delivered, to the writ petitioner arrayed as co-respondent No.4 in the LPA, (i) thereupon, uptill a decision, both final and conclusive becomes recorded, upon RSA No. 365 of 2015, wherein also a purportedly alike dispute becomes encapsulated, with respect to suit khasra numbers or the writ khasra numbers, (ii) and/or appertains to the validity of acquisition, of, title thereons, respectively by the appellants, and/or by the writ petitioner, arrayed as co-respondent No.4, in the extant LPA, (iii) thereupon, it was judicially inapt for the officer, who swore an affidavit to make, a, proposal therein for the delivery of possession, of, the writ khasra numbers, being made to the writ petitioner/co-respondent No.4 herein, besides it was also obviously inapt for the learned Single Judge, to proceed to accept the afore proposal. The appropriate course was obviously to wait for a decision, both final and, conclusive being made upon, RSA No. 365 of 2015.

7. In summa, the impugned verdict is recalled. Also since unclouded, and, uncontested title, upon, the apposite khasra numbers, is, the indispensable norm for hence thereons , consolidation proceedings becoming validly recoured, thereupon, hence, till a final and conclusive adjudication, is, made upon RSA No. 365 of 2015, thereupto the respondents concerned, may not subject, the writ

khasra numbers, and, suit khasra numbers to consolidation operations. The writ petition No. 704 of 1994 is disposed of in the afore terms, and, since the High Court is seized, of, the RSA, and, also becomes the appropriate forum, for determining the factum, of, legality or illegality of assumption of possession, upon, writ khasra numbers, and, also it becomes, the, appropriate forum, for, determining whether during pendency thereof either status quo is to be maintained or whether possession subject, to, payment of mesne profit, is, to be delivered, to, either of the contesting litigants, thereupon, even the afore res-controversia is left, open, to decided by the High Court, hence seized with the afore RSA.

8. For the foregoing reasons, the judgment of the learned Single Judge, impugned before this Court is set aside, and, the extant LPA is disposed of in terms of the afore observations. All pending applications also stand disposed of.