

(1977) 12 SHI CK 0007

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 67 of 1971

Puran Singh

APPELLANT

Vs

State of Himachal Pradesh etc.

RESPONDENT

Date of Decision : 14-12-1977

Acts Referred:

Constitution of India, 1950 — Article 226, 227

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 42

Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971
— Section 14

Citation : (1977) 6 ILR HP 785

Hon'ble Judges : C.R. Thakur, J

Bench : Single Bench

**Advocate : K.D. Sood, for the Appellant; A.G., and H.S. Thakur, for Respondents
Nos. 3 to 5, for the Respondent**

Final Decision : Allowed

Judgement

Chet Ram Thakur, J.—By this petition under Articles 226 and 227 of the Constitution the Petitioner, who is a resident of village Majra in Tehsil and District Una, has challenged the validity of the various orders of Consolidation authorities under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (shortly called the Act).

2. The facts are that the consolidation of holding proceedings under the Act were started in village Majra in the year 1962. After the record was prepared a scheme for consolidation of holdings was framed in consultation with the Advisory Committee. The Petitioner had reserved the area under the well and Chahi (land attached with the well) which belonged to him. There had been considerable litigation over the well and Chahi which is situate in Khasra number 1862/872 in village Majra. The Petitioner had filed a suit No. 265 in the year 1952 in the Court of Sub-Judge 2nd Class, Una, which was decreed on 8-8-1953, whereby the Petitioner and his deceased brother Ishar Singh had been declared owners of

the same. For this very reason the Petitioner did not want to part with the same and he got it reserved. Further, according to the scheme the parties were to be allotted lands owned and possessed by them within the Phirni (circle) to the extent of the land that was to be allotted in consolidation if he had the same before the consolidation. Also every house had to be allotted two kanals of Abadi land.

3. It is averred that the repartition of the land were not carried out in accordance with the scheme framed for repartition. The Petitioner moved the State Government u/s 42 of the Act for quashing the re-partition effected. The Additional Director of Consolidation of Holdings, Punjab, Jullundur, who heard the petition, by his order, dated 26-7-1963 accepted some of the contentions raised by the Petitioner and remanded the case to the Settlement Officer (Consolidation of Holdings) with the specific orders to depute the Consolidation Officer to go into the matter at the spot, demarcate Lal Lakir correctly and adjust the plots if necessary and send his proposals accordingly. He also directed the Settlement Officer that the areas reserved by the Petitioner should be specified and the proposal for the adjustments so required be made. The copy of the same is Annexure PE. It had been specifically mentioned that rest of the contentions of the Petitioners were to be enquired after the report of the Settlement Officer was received.

4. The Settlement Officer (Consolidation of Holdings) instead of himself going on the spot and carrying out the directions of the State Government or by deputing the Consolidation Officer to go on the spot and carrying into effect the order Annexure PE, directed the Assistant Consolidation Officer to inspect the spot and take measurements. The said officer went on the spot on 6th November, 1964, but he could not demarcate the Lal Lakir correctly as the Respondents did not permit him to carry out the order. The relations of the Respondents and persons inimical to the Petitioner murdered Piara Singh, the son of the Petitioner, and also inflicted serious injuries on his another son, Mohan Singh. The Petitioner was greatly tortured and humiliated and he suffered irreparable injury. He had been requesting the Settlement Officer as well as the Consolidation Officer Una to visit the spot, as directed by the Director, to take measurements, but no proceedings took place as the assistance of the police was required. The Petitioner was told that he would be informed of the hearing and inspection would be carried in his presence. But, in fact, he was not so informed. The Petitioner had gone to Una on 23-9-1967 and had no knowledge or information regarding the proposed visit of the Assistant Consolidation Officer. Thereafter he approached the Assistant Consolidation Officer successively on 24th, 25th and 26th August, 1967, to apprise him about the demarcation but no heed was given.

5. The petition which had been moved by him u/s 42 of the Act was transferred to Himachal Pradesh and was sent for disposal to the Deputy Commissioner, Bilaspur, who exercised the powers of State Government. He heard the revision petition on 18-11-1970 and he partly accepted the petition. However, some other

reliefs sought by the Petitioner were wrongly and illegally rejected.

6. Therefore, from the petition the only point that arises for determination is whether after the remand order made by the State Government in exercise of the powers u/s 42 of the Act, the Settlement Officer was justified on sending the case to the Assistant Consolidation Officer for purposes of demarcation, etc. and then to submit a report, as directed by the State Government.

7. It is a common case between the parties that a revision petition had been filed under the provisions of Section 42 of the Act and the case was remanded to the Settlement Officer (Consolidation of holdings) to depute the consolidation officer for preparing necessary proposal and to demarcate the land in dispute. In para 8 of the return it has also been mentioned by the Respondents that the Assistant Consolidation Officer inspected the spot and according to the Respondents, though the Petitioner was not present but he had been informed, and the spot was inspected in the presence of the right holders in the village.

8. Annexure P.E. is the order of the Additional Director, Consolidation of Holdings, Punjab, Jullundur, with powers u/s 42 of the Act and this order was made on 26-7-1963. From the perusal of first paragraph of this order it would appear that the contention of the Petitioner that the Lal Lakir had not been correctly demarcated with the result that the plots allotted in paper outside the Lal Lakir actually on the spot fell within the Lal Lakir, was accepted and the file was ordered to be sent back to the Settlement Officer, Consolidation of Holdings, with the request to depute the Consolidation Officer to go into the matter on the spot and demarcate the Lal Lakir correctly and direction was further given to prepare necessary proposal so as to remove the shortages. The second contention of the Petitioner was with regard to the original area that he had reserved for himself. The contention with regard to this was also accepted to be correct and the Settlement Officer was directed to propose the adjustments and prepare a sketch and it was further ordered therein that the other such points raised by the Petitioner would also be considered when the file was received back from the Settlement Officer, Consolidation of Holdings.

9. The Petitioner has in para 8 averred that after the case was received by the Settlement Officer, instead of personally going on the spot and carrying out the directions of the State Government or by deputing the Consolidation Officer to go on the spot and carrying into effect the order, he directed the Assistant Consolidation Officer to inspect the spot and take measurements. This fact is not denied by the Respondents. The submission made by the learned Counsel for the Petitioner is that the Settlement Officer was not competent to send the case to the Assistant Consolidation Officer for the purposes which were required to be complied with under the directions of the State Government. In my opinion, this submission appears to be correct. When the case was remanded by the State Government to the Settlement Officer for a particular purpose he had no jurisdiction to send the case to a subordinate authority against the specific directions of the authority which remanded the case to him. Therefore, any

action taken by the Assistant Consolidation Officer contrary to the directions of the State Government could not be held to be valid and the report consequently made by the Settlement Officer on the basis of the findings of the Assistant Consolidation Officer, who was not authorised under the remand order to carry out the purpose of the order, is not valid and, therefore, the State Government also could not act upon the report of the Settlement Officer which report was based on the findings of an authority which was not empowered under the remand order to take the measurements and propose the adjustment according to the letter and spirit of the remand order. Therefore, on this short ground, in my opinion, this order which has been impugned cannot stand and must be struck down. I may also cite in this behalf the case, *Uthuman Ammal and Anr. v. Naina Mahomed Rowther* AIR 1973 Mad 351 where the High Court, in similar circumstances, had remanded the case for trial by the Munsif's court of Madura Town, but the case was tried by the court of Madura Taluk which is a different court altogether and it was held that the latter court had no jurisdiction to deal with it or pass any orders in it; and consequently the orders passed by that court must be set aside and the Town court directed to dispose of the case. It was further held that the jurisdiction of the court trying a remanded case depends entirely on the order of the High Court when remanding the case. Exactly this is what happened in the present case. A specific direction as contained in the remand order was that the Settlement Officer was directed to depute the Consolidation Officer to take measurements and to propose adjustment and submit a report, but he without complying with the order sent the case to the Assistant Consolidation Officer who went at the spot and made his report. The Assistant Consolidation Officer was not competent to make any adjustment or make any such report contrary to the directions of the State Government and the State Government who subsequently heard the case did not take into consideration its remand order and acted on the report of the Settlement Officer, who based his report on the findings of the Assistant Consolidation Officer. Therefore, this order is not sustainable.

10. The learned Counsel for the Respondents had raised the point that this is a matter which raises disputed question of fact and that necessary parties were not impleaded that these objections as argued were not raised before the Deputy Commissioner or the State Government. But it may be stated that even if there may be disputed questions of fact and necessary parties were not impleaded still there is the question of jurisdiction raised by the Petitioner and which point can be decided without calling for any further evidence. The Act under which proceedings were conducted defines Consolidation Officer meaning an officer appointed as such u/s 14 by the State Government and includes any person authorised by the State Government to perform all or any of the functions of the Consolidation Officer under this Act. There is no authority shown whereby the Assistant Consolidation Officer was appointed as a Consolidation Officer for the purpose of that Act nor Section 14 speaks of any such authorisation or of the powers of the Assistant Consolidation Officer though under the Himachal Pradesh

Holdings (Consolidation and Prevention of Fragmentation) Act, 1971, the Assistant Consolidation Officer has been defined meaning an officer appointed by the State Government to perform the duties of a Consolidation Officer under the Act. But, there is no corresponding provision in the Punjab Act and in such a case the Settlement Officer could not further send the case to the Assistant Consolidation Officer contrary to the directions contained in the remand order.

11. In the light of the above, the petition, therefore, succeeds with the result that the orders as contained in Annexures PI and PJ are quashed and it is ordered that the case shall go back to the Settlement Officer for carrying out the directions as contained in the remand order of the State Government passed on 26-7-1963. In view of these facts the parties are left to bear their own costs.