
(2010) 04 SHI CK 0173
In the High Court Of Himachal Pradesh
Case No : CWP No. 825 of 2002

Sh. Kishore Chand

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 29-04-2010

Acts Referred:

Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971
— Section 30(3), 30(4), 54

Citation : (2010) 04 SHI CK 0173

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Judgement

Dev Darshan Sud, J.—The brief facts of the case may be noticed. The relevant fact for determination of the controversy between the parties is the order passed by the Division Bench of this Court in C.W.P. No. 823 of 1995. The order is reproduced herein below:

A scheme was published under the Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 and the same has been placed as Annexure P-5. Objections were filed by the Petitioner, that came to be heard and decided by the Consolidation Officer on June 21, 1982 and the order has been placed as

Annexure P-4. This order was challenged by way of an appeal u/s 30(3) of the aforesaid Act and this appeal was decided by the Settlement Officer vide Annexure P-3 placed on record. A further appeal was filed u/s 30(4) of the aforesaid Act, that came to be heard and decided by the Additional Director, Consolidation of Holdings, Himachal Pradesh, on October 9, 1985, vide Annexure P-2. This appeal was dismissed and the Petitioner aggrieved against the aforesaid orders, preferred a revision petition u/s 54 of the aforesaid Act, which stands decided by the Additional Director, Consolidation of Holdings on August 11, 1994, vide

Annexure P-1. As per provisions contained in the Act, an appeal u/s 30(4) of the

Act is to be heard by the Director, Consolidation of Holdings, but in the present case it was the Additional Director, Consolidation of Holdings, who decided this appeal vide Annexure P-2. It appears that the Additional Director, Consolidation of Holdings was exercising the powers of Director u/s 30(4) of the Act. u/s 54 of the Act, it is the Government before whom a revision petition has to be filed. In the present case, order annexure P-1 was passed by the Additional Director, Consolidation of Holdings exercising the powers of the State Government in this behalf. It appears that the said Additional Director, Shri J.R. Verma, was delegate of the State Government and it is in this situation that the revision petition came to be heard and disposed of by him. Before we proceed further to examine the merits of the case, we are of the opinion that the revision petition should have been decided either by some Secretary of the Government or by the Director, Consolidation of Holdings, as a delegate of the State Government. Annexure P-1 was passed on revision petition against the order

Annexure P-2, which order has also been passed by the Additional Director, Consolidation of Holdings. It is, thus, manifest that both the orders have been passed by the same authority. This is, of course, correct that the Presiding Officers were different. Be that as it may. The powers of appeal u/s 30(4) are to be exercised by the Director, Consolidation of Holdings, so the Additional Director while disposing of the appeal vide Annexure P-2 disposed it of as Director, Consolidation of Holdings. Once this position is accepted, then the State Government has to appoint some officer who is higher in rank to the Additional Director and Director, in case the revision petition is to be heard and disposed of u/s 54 of the Act as delegate of the Government. In our considered view, this writ petition has to be allowed on this short ground alone. We are purposely restraining ourselves from looking into the merits of the case, as it may amount to an expression of opinion by this Court. Annexure P-1 is, consequently, set aside. The case is remitted back to the State Government for fresh decision in accordance with law on the merits of the case.

In the light of the observations made above, the writ petition is disposed of accordingly. The matter is ordered to be decided by the concerned authority expeditiously preferably within six months from the date the parties appear. The parties to the lis, however, are directed not to change, alienate or encumber the property in any manner whatsoever, till the matter comes up for hearing before the concerned authority.

Dasti copy, as prayed for, on usual terms.

2. A reading of this order leaves no doubt in the mind of any person that the direction of this Court was unequivocal and clear that the appeal instituted by the Petitioner u/s 30(4) of the Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 should be decided either by the Director Consolidation or by Secretary to the Government of Himachal Pradesh, as a delegatee of the Government. Despite this, the order challenged in this petition by the Petitioner herein has been passed by Commissioner (Revenue) Himachal

Pradesh, Shimla. This is no compliance with the directions issued by a Division Bench of this Court. I must express my anguish in the manner in which this litigation has proceeded. All that was required by the State was to have the matter determined by the Director, Consolidation or by Secretary to the Government of Himachal Pradesh especially empowered in this behalf, who would be the delegatee of the State Government. The order under challenge Annexure P-5 does not comply with this direction. There is nothing on record to show or undertake that Sh. C.P. Pandey was delegated powers as Secretary to the Government of Himachal Pradesh. The order under challenge Annexure P-5 is accordingly quashed and set-aside with direction to the State Government to comply with the order passed by this Court in C.W.P. No. 823 of 1995 as reproduced above. I need not to add that the judgment requires compliance in letter and spirit and any deviation there from amounts to contempt of this Court.

3. I have not expressed any thing on merits of the respective case of the parties. In these circumstances, this Writ Petition is allowed. Case pertains to the year, 1997 hanging fire for the last more than thirteen years. It is expected that the case be decided afresh and shall be disposed of not later than 31st October, 2010. Dasti copy to the parties on usual terms. There shall be no order as to costs. All miscellaneous applications stand disposed of. All the interim order(s) stand vacated.