

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 897 of 2000

Decided on : October 31, 2006

Shiv Kumar and others

.....Petitioners.

VERSUS

State of H.P. and others

.....Respondents.

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The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the petitioners : Mr. K.D. Sood, Advocate.

For the Respondents : Mr. Ashok Chaudhary, Additional Advocate General, for respondents No.1 and 2.

Mr. Ajay Sharma, Advocate, for respondents No.3, 4, 7 & 8.

Mr. Sanjeev Kuthiala, Advocate, for respondents No.5 & 6.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Through the present writ petition, the legal heirs of late Shri Birbal, who was recorded as joint owner with respondents No. 3 to 8 in Khasra Nos. 28 to 32, situate in Village Chhaproh, Tehsil Amb, District Una, have challenged the report dated 20.1.1998 of Assistant Consolidation Officer, the order dated 24.2.1998 of Consolidation Officer and the order dated 29.4.2000 passed by Director (Consolidation), under Section 54 of the Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971, hereinafter referred to as Act, in exercise of his revisional powers,

Whether the reporters of the local papers may be allowed to see the Judgment?

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whereby the name of Birbal, the predecessor-in-interest of the writ petitioners, has been ordered to be deleted from the column of ownership, on the application of respondents No.3 to 8.

3. Relevant facts are that consolidation process started in village Chhaproh sometime in the year 1992. Statement of plots and tenure holders was published, in terms of Section 20 of the Act. Thereafter, respondents No. 3 to 8 moved an application for correction of entries in respect of Khasra Nos.28 to 32 and five other khasra numbers. Assistant Consolidation Officer treated the application as one under sub-section (2) of Section 20 of the Act and proceeded to make an enquiry. He submitted his report to the Consolidation Officer on 20.1.1998. Acting upon that report, which recommended the correction of entries in respect of Khasra Nos. 28 to 32 in such a manner that the name of Birbal, the predecessor of the writ petitioners, was deleted from the list of co-owners, the Consolidation Officer passed order dated 24.2.1998 ordering that respondents No.3 to 5 be recorded as exclusive owners in possession of Khasra Nos. 28 & 29, and respondents No.6, 7 and 8 be recorded in exclusive ownership and possession of Khasra Nos. 30, 31 & 32. The writ petitioners filed a Revision Petition before the Director (Consolidation) in the year 2000, alleging that no notice of the enquiry conducted by the Assistant Consolidation Officer, or the proceedings held by the Consolidation Officer for passing the aforesaid order dated 24.2.1998, had been given to them and that they came to know about the aforesaid report and the passing of the order based on that report much later. Their main plea in the Revision Petition was that the Assistant Consolidation Officer as also

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the Consolidation Officer had not afforded any opportunity of being heard to them and thus the report and the order were violative of the principle of natural justice as also the provisions of Section 21(2) of the Act. The Director has dismissed the revision petition with the observation that order dated 24.2.1998 was passed by Consolidation Officer in the gathering of villagers and proclamation of his visit to the village on that day was made in advance.

4. Two sets of replies have been filed by the private respondents. One by respondents No.5 and 6 and the other by respondents No.3, 4, 7 and 8. They have taken the plea that though specific notice of the application for correction of entries with respect to the aforesaid Khasra Numbers had not been issued to the writ petitioners, yet an announcement was made in the village that the Consolidation Officer would be visiting the village on 24.2.1998 and that the impugned order dated 24.2.1998 was passed by the Consolidation Officer in a gathering of the villagers.

5. I have heard the learned counsel for the parties and gone through the record.

6. Section 21(2) of the Act says that the Assistant Consolidation Officer, to whom an objection petition is submitted with regard to the statement of plots and tenure holders, shall after hearing the parties, if necessary, on the objections, submit his report on those objections to the Consolidation Officer. In the present case no notice was issued by the Assistant Consolidation Officer before making the enquiry into the objections filed by respondents No.3 to 8 seeking deletion of the name of the father of the writ petitioners, who had admittedly died in the year 1990 and mutation of whose estate

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had yet not been attested in favour of the writ petitioners. Now, when respondents No. 3 to 8 had sought the deletion of the name of one of the persons, who was recorded as joint owner with them to the extent of half share, there cannot be any manner of doubt that it was necessary for the Assistant Consolidation Officer to have issued a notice of the enquiry to the writ petitioners. The Assistant Consolidation Officer by not issuing any notice to the writ petitioners and not hearing them against the objections filed by respondents No.3 to 8 clearly violated not only the provisions of Section 21(2) of the Act but also the principle '*audi alteram partem*' of natural justice. The report of the Assistant Consolidation Officer was, thus, made in contravention of the statutory provision as also the aforesaid principle of natural justice and, hence, it could not have been made the basis of passing the order dated 24.2.1998 by the Consolidation Officer. The order, having been passed solely on this report, is also thus illegal and violative of the aforesaid statutory provision of law and principle of natural justice.

7. The plea taken by respondents No.3 to 8 that notice was issued to all the residents of the village, which included the present writ petitioners also, by means of a public proclamation that the Consolidation Officer would be visiting the village on 24.2.1998, is of no consequence because notice of the enquiry conducted by the Assistant Consolidation Officer was required to be issued to the writ petitioners. Moreover, two of the writ petitioners do not reside in the village, as they have been residing in Ludhiana for the last several years, per averment in the writ petition, which is not denied by the respondents in their replies.

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8. As a result of the abovestated position, the impugned report of the Assistant Consolidation Officer and the impugned orders of the Consolidation Officer and the Director (Consolidation) are set aside. The Assistant Consolidation Officer shall decide the matter afresh after affording opportunity of hearing to the writ petitioners in accordance with the provisions of Section 21(2) of the Act. In case the consolidation process has been denotified, instead of the Assistant Consolidation Officer, the matter shall be decided by the Assistant Collector under the provisions of the H.P. Land Revenue Act.

9. Writ petition stands disposed of.

October 31, 2006_(sd)

(Surjit Singh), J.