

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

CWP No. 8037 of 2010

Judgment Reserved on. 24.3.2017

Date of Decision: 31st March, 2017

Harish Kumar & othersPetitioners.

Versus

State of H.P. & othersRespondents

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting¹?

For the petitioners: Mr. G.R.Palsra, Advocate.

For the respondents: Mr. P.M.Negi, Addl. Advocate General, with
Mr. Ramesh Thakur, Deputy Advocate
General, for respondents No. 1 and 2.

Mr. Bhupinder Gupta, Senior Advocate,
with Mr. Neeraj Gupta, Advocate, for
respondents No.3, 5, 12 and 13.

Sandeep Sharma, J.

Petitioners being aggrieved and dissatisfied with the order dated 23.8.2010(**Annexure P-3**), passed by respondent No.2, has approached this Court by way of instant writ petition, seeking therein directions to respondents not to implement the aforesaid order and to restore the original position as existed prior to the passing of impugned order by issuing a writ of mandamus as well as certiorari.

Whether reporters of the Local papers are allowed to see the judgment?

2. Briefly stated facts, as emerged from the record are that the Consolidation proceedings in mohal Karao/49, Tehsil Chachiot, District Mandi, H.P., commenced in the year 1988-89 vide resolution No.1, dated 29.5.1989. Pleadings available on record as well as impugned orders passed by the Revenue Authorities suggest that petitioners No.1 and 2 purchased the entire share of one Smt. Jethi by way of registered sale deed, whereas remaining share was owned and possessed by one Sh. Jawahar, predecessor-in-interest of respondents No. 3 to 6. It also emerge from the record that Sh. Jawahar, Predecessor-in-interest of respondents No. 3 to 6 being aggrieved with the aforesaid sale deed made in favour of petitioners No.1 and 2 by Smt. Jethi, filed a Civil Suit in the Civil Court, which was dismissed.

3. The predecessor-in-interest of respondents No. 3 to 6, being dissatisfied with the dismissal of the civil suit, preferred an appeal before the learned District Judge, wherein a compromise (**Annexure P-5**) was arrived between the parties on 21.3.1990. Since, compromise was arrived between the parties, appeal having been preferred by Sh. Jawahar, predecessor-in-interest of respondents No. 3 to 6

was decided accordingly. As per petitioners, aforesaid compromise was acted upon and implemented in its letter and spirit and the land of mohal, Karao was divided as per possession of the parties as well as co-sharers and land which was situated just on the edge of Mavaseri and Gohar road was allotted exclusively to the owners as per their possession. As per petitioners, since no objection, whatsoever, was ever raised by the predecessor-in-interest of respondents No. 3 to 6 during the time of consolidation operation, revenue entries were recorded as per possession of the parties. It emerge from the record that aforesaid Sh. Jawahar, being aggrieved with the entries made in the revenue record pursuant to the Consolidation proceedings, filed objections under Section 30(2) of the Consolidation Act, alleging therein that less land has been allotted to him. However, aforesaid objections were dismissed by the Consolidation Officer, Sundernagar on 8.6.1992. Sh. Jawahar, predecessor-in-interest of respondents No. 3 to 6, being aggrieved with the dismissal of his objections, preferred an appeal under Section 30(3) of Consolidation Act before the

Settlement Officer (Consolidation) Bilaspur, who also dismissed the same.

4. Thereafter, a revision petition under Section 54 of the Consolidation Act came to be filed by the predecessor-in-interest of respondents No. 3 to 6 before the Additional Director of Consolidation, who remanded back the case to the Settlement Officer (Consolidation) Hamirpur with the direction to allot the land to the parties on the basis of compromise arrived at between the parties before the Civil Court. However, Settlement Officer (Consolidation) Hamirpur, again dismissed the appeal of the respondents on 23.12.2006.

5. Respondents No.3 to 6, being aggrieved with the aforesaid order having been passed on 23.12.2006, preferred a revision before the Director Consolidation. However, as a matter of fact, aforesaid revision petition came to be decided by Divisional Commissioner, Mandi Division Mandi, H.P. exercising the powers of Director Consolidation under Section 54 of the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 (**hereinafter referred to as Act**), whereby authority as referred above, accepted the

revision petition preferred by respondents No. 3 to 6 on 23.8.2010. Aforesaid authority came to conclusion that case at hand was required to be decided strictly in terms of the compromise entered between the parties before the Civil Court and accordingly sent the aforesaid order dated 23.8.2010 alongwith "Tarmim" to the Tehsildar, Chachiot for implementation. In the aforesaid background, petitioners have approached this Court by way of instant petition praying therein for setting-aside the order dated 23.8.2010.

6. Mr. G.R.Palsra, learned counsel representing the petitioners, while referring to the impugned order dated 23.8.2010, vehemently argued that same is not based upon the proper appreciation of evidence available on record and as such, same deserve to be quashed and set-aside being contrary to record. Mr. Palsra, forcibly contended that learned Divisional Commissioner, while accepting the revision preferred by respondents No. 3 to 6, has exceeded its jurisdiction by returning its findings on the basis of the judgment having been rendered by learned Sub Judge, Court No.1, Mandi because compromise arrived at between the parties was not given effect to by either of party, rather both

the parties violated the compromise deed, sold their respective shares/lands to other persons and as such, no order could be passed by the learned Divisional Commissioner on the basis of compromise **(Annexure P-5)**.

7. Mr. Palsra, further contended that if for the sake of argument, it is accepted that the parties to the lis were bound by the compromise deed arrived at inter-se them, Divisional Commissioner, while exercising its revisionary jurisdiction under Section 54 of the Act, had no authority to prepare "Tarmim" himself, rather he ought to have sent the compromise deed to the Tehsildar concerned for implementation of the same on the spot. Mr. Palsra, while inviting the attention of this Court to the first order dated 23.12.2006, passed by Settlement Officer, Hamirpur, H.P., in case No. 49/99 strenuously argued that impugned order having been passed by the Divisional Commissioner is totally illegal and could not be passed in any circumstance, especially in view of specific findings returned by the Settlement Officer, Hamirpur, wherein he had categorically concluded that factum with regard to compromise, if any, between the parties was never brought to the notice of the

agency during the Consolidation proceedings and as such, entries were made accordingly. Mr. Palsra, also invited the attention of this Court to the specific mention/observation having been made by the Settlement Officer, Hamirpur, wherein he had concluded that since both the parties have already sold their specific shares, it may not be possible to give effect to compromise at this belated stage as it will affect consolidation scheme of entire village.

8. While concluding his arguments, Mr. Palsra, contended that since both the parties have already sold their respective shares in violation of compromise arrived at between them, no order, if any, could be passed by the Divisional Commissioner in the revision petition that too without affording any opportunity of being heard to the petitioners because consequential action, if any, pursuant to such impugned order shall effect others, who are not party before this Court.

9. Mr. Bhupinder Gupta, learned Senior Advocate duly assisted by Mr. Neeraj Gupta, Advocate, supported the impugned order passed by the Division Commissioner, under Section 54 of the Act. Mr. Gupta, while referring to Section

54 of the Act stated that there is no illegality and infirmity in the aforesaid order passed by the Divisional Commissioner while exercising the powers of Director Consolidation because under Section 54 of the Act, authority concerned has vast power to examine and correct the legality and propriety of order/scheme passed/framed by any Officer under the Act.

10. Mr. Gupta, further contended that it is undisputed that parties had entered into compromise, whereby they had agreed to divide the suit land between themselves. While inviting the attention of this Court to the compromise dated 21.3.1990 Annexure P-5, Mr. Gupta, vehemently argued that there is no force in the arguments of learned counsel for the petitioners that no details, whatsoever, were given in the compromise with regard to land, which was to be divided amongst the parties. While inviting the specific attention to the aforesaid document, Mr. Gupta, made serious efforts to persuade this Court that compromise, as referred above, was not vague, rather all details were furnished in the same so that same is executed on the spot easily without there being any complication. Mr. Gupta, further contended that there is

no illegality in the order passed by the Divisional Commissioner, whereby authority concerned while sending the file to the Tehsildar concerned for implementation also enclosed "Tarmim" because while exercising powers under Section 54 of the Act, authority concerned has power to reframe the scheme, if it is not in accordance with the position on the spot. In the aforesaid background, Mr. Gupta, prayed that present petition is sheer abuse of process of law and as such, same deserve to be dismissed.

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

12. It clearly emerge from the pleadings as well as original record made available to this Court that prior to Consolidation proceedings, which actually started in Mohal Karao, Tehsil Chachiot, District Mandi, H.P., in the year, 1988-89, petitioners No.1 and 2 had purchased the entire share of Smt. Jethi, who happened to be sister of one Sh. Jawahar predecessor-in-interest of respondents No. 3 to 6, vide registered sale deed. It is also not in dispute that predecessor-in-interest of respondents No. 3 to 6 had laid challenge to the aforesaid sale deed by way of civil suit, but

the same was dismissed and they had preferred an appeal before the Learned District Judge, Mandi. It is also not disputed that before aforesaid appeal having been filed by respondents No. 3 to 6, could be decided, parties entered into the compromise deed, wherein they agreed to divide the land themselves as per the terms detailed in the compromise deed. It emerge from the order(**Annexure P-1**), dated 23.12.2006 passed by Settlement Officer that since compromise deed passed in Civil suit was not brought to the notice of the authorities during the consolidation proceedings, entries could not be made in accordance with the same, rather entries were made according to the respective possession of the parties over the suit land. Vide aforesaid order, authority concerned came to the conclusion that though Consolidation proceedings in the village concerned started on 29.1989, whereas compromise in civil suit bearing No.63 of 1989 was entered between the parties on 27.11.1989, but since same was never brought to the notice of the Consolidation Officer during the preparation of scheme and as such, same could not be taken into consideration during the Consolidation proceedings.

13. In nutshell, aforesaid authority concerned came to the conclusion that compromise deed, as referred above, could not be given effect at this stage because it could affect the scheme for entire village, accordingly, rejected the appeal preferred by the predecessor-in-interest of respondents No.3 to 6. But careful perusal of order dated 20.2.2007(**Annexure P-2**) passed by Director consolidation under Section 54 of the Act in case No.18 of 2007 suggests that respondent No.3 being aggrieved with the aforesaid order, preferred an appeal under Section 54 of the Act , wherein authority while taking note of the record came to the conclusion that Additional Director Consolidation vide order dated 8.7.1999 in case No.220 of 1994 had remanded the case back to the Consolidation Officer, Bilaspur with the direction to allot the land on the basis of compromise entered between the parties in Civil Suit No.63/1989.

14. Additional Director Consolidation vide order dated 20.2.2007 came to the conclusion that since Consolidation Officer, Hamirpur failed to take note of specific direction having been issued by Additional Director in its order dated 8.7.1999, wherein Consolidation Officer was

directed to allot the land on the basis of compromise deed , matter requires to be remanded back and accordingly directed the Consolidation Officer, Bilaspur to make entry in the revenue record strictly in terms of the compromise entered between the parties on the basis of Civil Suit No.63/1989.

15. This Court after carefully perusing the order dated 20.2.2007 is of the view that once Additional Director vide order dated 8.7.1999 in case No. 220/1994 had remanded the case to the Consolidation Officer with the specific direction to allot the land on the basis of compromise entered between the parties in Civil Suit No.63/1989, it may not be open for the petitioners at this stage to state/contend that no land could be allotted on the basis of compromise having been entered between the parties in Civil Suit No.63/1989. Neither, there is any record nor learned counsel for the petitioners was able to point any document suggestive of the fact that aforesaid order dated 8.7.1999 having been passed by the Additional Director Consolidation, whereby Consolidation Officer, Bilaspur was ordered to allot the land on the basis of aforesaid compromise, was ever challenged in

any appropriate proceedings before the appropriate Court of law. Rather records suggest that pursuant to order dated 8.7.1999, petitioners participated in the proceedings afresh before Consolidation Officer, Bilaspur/Hamirpur, however it is another matter that Consolidation Officer came to the conclusion that no land can be allotted at this stage on the basis of compromise entered between the parties. But order dated 23.12.2006, which was admittedly passed on the direction dated 8.7.1999 passed by the Additional Director Consolidation clearly suggests that the petitioners participated in fresh proceedings without any demur or without laying any challenge to order dated 8.7.1999 passed by the Additional Director Consolidation, meaning thereby, order dated 8.7.1999 had attained finality qua both the parties and they cannot be allowed to state at this stage that no direction, if any, could be issued to the Consolidation Officer, Hamirpur/Bilaspur to allot the land on the basis of compromise entered between the parties in civil suit No.63/1989.

16. Once, order dated 8.7.1999 was accepted by the petitioners without there being any protest, this Court sees

no force much less substantial in the arguments having been made by the learned counsel for the petitioners that the Director had no authority while exercising its power under Section 54 of the Act, to order for allotment of land on the basis of compromise allegedly entered between the parties.

17. Similarly, there is no dispute that compromise (Annexure P-5) has also attained finality because it is own case of the petitioners that compromise deed was given effect between the parties and parties were put to their respective possession of the suit land strictly in accordance with the terms and conditions of the compromise, hence, this Court sees no illegality and infirmity in the impugned order having been passed by the Divisional Commissioner, wherein he has specifically concluded that once parties had entered into the compromise before the Civil Court, revenue entries were required to be made strictly in accordance with the same.

18. It is well settled that decree, if any, passed by the civil Court is binding on the revenue authorities. Perusal of objections having been filed by the respondents clearly proves on record that it was a specific plea of the respondent that he has been not allotted land in terms of the

compromise entered between the parties before the learned Civil Court. Otherwise also, Divisional Commissioner while exercising power under Section 54 of the Act has ample power to call for the record to make order for necessary correction if he/she is satisfied that the order/scheme/ passed/framed by authority below is not based upon the proper appreciation of record.

19. It would be apt to reproduce Section 54 of the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 as under:-

“54 Powers of the State Government to call for proceedings:- The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under this Act call for and examine the record of any case pending before or disposed of by such officer and may pass such orders in reference thereto as it thinks fit.

Provided that no order, scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration.

20. After carefully examining the record as well as submissions made on behalf of the respective parties,

this Court is of the view that learned Divisional Commissioner, while exercising the powers of Director under Section 54 of the Act, rightly set-aside the order passed by Settlement Officer, Hamirpur and himself prepared “tarmim” on the basis of compromise, as referred above, and sent the same to Tehsildar for implementation. Similarly, this Court sees no force in the contention of learned counsel for the petitioners that authority concerned while exercising power under section 54 of the Act, had no authority to prepare “Tarmim”, rather he ought to have sent the same to the Tehsildar for implementation on the spot after seeing the actual position on the spot. In the instant case, as clearly emerge from the record that dispute is hanging fire since the year, 1991 and till date despite there being repeated orders having been passed by the Civil Court and writ Court and thereafter by authority envisaged under consolidation Act, no final order could be passed and as such, learned Divisional Commissioner exercising the powers under section 54 of the Act, rightly prepared the scheme on the basis of compromise, which

has admittedly attained finality and sent the same for implementation to the Tehsildar.

21. At the cost of repetition, it may be stated that once petitioners had accepted the order dated 8.7.1999 having been passed by the Additional Director Consolidation in case No.220/1994 without any demur, whereby Consolidation Officer, Bilaspur was directed to allot the land on the basis of compromise entered between the parties in civil suit No.63/1989, they cannot be allowed to contend at this stage that no effect can be given to the compromise deed at this stage because both the parties have violated the compromise deed and action, if any, pursuant to the same shall put other stakeholders to inconvenience because such stakeholders are not party before this Court.

22. Needless to say that since there was specific direction to the Consolidation Officer, Bilaspur by the Additional Director vide order dated 8.7.1999 to allot the land on the basis of compromise, he/she had no option but to prepare scheme inter-se the parties on the basis of compromise. In the aforesaid background, learned

Divisional Commissioner rightly concluded that the decree passed by the Civil Court could not be ignored by the authorities concerned while preparing scheme during consolidation.

23. Consequently, in view of the detailed discussion made hereinabove, the present petition fails and same is dismissed.

Interim directions, if any, are vacated.

All the miscellaneous applications are disposed of.

March 31, 2017

Shankar

**(Sandeep Sharma),
Judge.**