

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****CWP No.2930 of 2016****Decided on: 25.11.2025**

Shiv Ram & others ... Petitioners**Versus**Divisional Commissioner, Mandi &
others ... Respondents

Coram**Hon'ble Mr. Justice Ajay Mohan Goel, Judge.****Whether approved for reporting?¹**

For the petitioners : Mr. Vijay Chaudhary, Advocate.
For the respondents : Mr. Pushpinder Jaswal, Additional
Advocate General, for respondents
No.1 to 3.
Mr. N.K. Thakur, Senior Advocate,
with Mr. Divya Raj Singh, Advocate,
for respondents No. 4 to 8.
No notice issued to respondents No.9
to 26.

Ajay Mohan Goel, Judge (Oral)CMP No.28248 of 2025

In view of the averments made in the application, seeking early hearing of the petition, the same is allowed and disposed of.

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2. With the consent of the parties, the case is taken up for consideration today itself.

3. By way of this petition, the petitioners have, *inter alia*,

¹ Whether reporters of the local papers may be allowed to see the judgment?



prayed for the following reliefs:-

“(I) That the order dated 26.8.2016, passed in Case No.430/96 (Old), 777/09 (New) annexure P-3, may kindly be quashed and set aside.

(II) That the respondent No.1 may kindly be directed to hear the matter afresh after giving due opportunity of hearing to the parties.”

4. The grievance of the petitioners is that in terms of the impugned order, the appeal filed by them under Section 54 of the Consolidation of Holdings (Prevention of Fragmentation) Act, 1971 (hereinafter to be referred as ‘the 1971 Act) has been dismissed that that on merit at the back of the petitioners.

5. Learned Counsel for the petitioners too the Court through Annexure P-3 and submitted that perusal thereof demonstrates that on 25.08.2016, the case was listed before the Appellate Authority, on which date the present petitioners who were the appellants before the said Authority were not present nor their Counsel was present. Yet, in terms of the impugned order which was announced on the next day, the appeal was dismissed by the Appellate Authority on merit without hearing the appellants. He submitted that this is a glaring infirmity in the order under challenge and therefore, as the order is perverse the same is liable to



be set aside as the Court could only have dismissed the case in default but not on merit.

6. On the other hand, learned Senior Counsel appearing for the contesting respondent submitted that there is no infirmity in the impugned order because perusal thereof would demonstrate that the petitioners were present on the previous dates and they willfully absented themselves on the subsequent dates. Not only this, the petitioners were not taking steps to bring on record legal representatives of some of the deceased party since the year 2013. This is what weighed with the Appellate Authority while dismissed the same. Accordingly, he submitted that as there is no illegality in the impugned order the present petition being devoid of any merit be dismissed.

7. I have heard learned Counsel for the petitioners as also learned Senior Counsel for the contesting respondents and have carefully gone through the order under challenge.

8. It is not in dispute that the appeal was heard in the absence of the appellants by the Appellate Authority on 25.08.2016 and the order was announced on the next day. Now incidently, the order which is under challenge demonstrates that the same has not been passed by dismissing the appeal for non prosecution may be for



the want of presence of the parties or on account of their not having taken steps to bring on record the legal representatives of deceased party. The Appellate Authority after taking note of these facts, thereafter, ventured and touched the merits of the appeal and dismissed the appeal on merit.

9. This Court is of the considered view that when the appellants were not there before the Appellate Authority, it could have had dismissed the appeal for non prosecution or could have simply deferred the hearing of the case. However, it was not having any authority to adjudicate the same on merit as has been done in the present case in the absence of the appellants. The Appellate Authority could also have had dismissed the case for non prosecution in case the appellants were not taking steps to bring on record the legal representatives of some deceased party, but then again the Appellate Authority could not have had dismissed the appeal on merit.

10. Therefore, obviously as the impugned order, in terms whereof, the appeal has been dismissed on merit in the absence of the appellants is not sustainable in the eyes of law, this petition is allowed. Order dated 26.08.2016 (Annexure P-3) is set aside and the matter is remanded back to the Divisional Commissioner concerned



to decide the appeal afresh on merit after hearing the parties. The appeal shall be heard from the stage where it is. The parties shall not be allowed now to place on record any application etc. The effect of the appellants not having taken steps to bring on record legal representatives of some of the deceased-respondents shall be taken into consideration by the Appellate Authority while deciding the appeal. The appeal be positively decided within a period of three months as from the date of presence of parties before it. The parties through Counsel to appear before the Divisional Commissioner concerned on 08.12.2025. This order is subject to payment of costs of Rs.15,000/- by the petitioners, to be paid to the respondents. It goes without saying that in case the costs in terms of this order is not made good by the petitioners by 08.12.2025, then this order will loose its efficacy.

11. The petition stands disposed of. Interim order, if any, stands vacated. Pending miscellaneous application(s), if any also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

November 25, 2025
(Rishi)