

(2007) 01 PAT CK 0196
In the Patna High Court
Case No : CWJC No. 6316 of 1988

Ajablal Rai and Another

APPELLANT

Vs

The Joint Director Consolidation and Others

RESPONDENT

Date of Decision : 31-01-2007

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 10, 9, 9A
Constitution of India, 1950 — Article 226

Citation : (2007) 2 PLJR 767

Hon'ble Judges : J.N. Bhatt, C.J

Bench : Single Bench

Advocate : Sri Nandan Prasad Singh, for the Appellant; V.M.K. Sinha and Anil Kumar Verma, for the Respondent

Final Decision : Allowed

Judgement

Dr. J.N. Bhatt, C.J.—Short question which has surfaced for consideration and adjudication in this application under Article 226 of the Constitution of India, is whether once the matter having been remanded back to the original revenue authority, and upon remand, the original authority having decided the matter, could a party avail the benefit of revision u/s 35 of the Bihar Consolidation of Holdings & Prevention of Fragmentation Act, 1988 (in short "the Act"), short-circuiting the channel of appeal u/s 10(6) of the Act?. It is not in dispute that the petitioners have lost in revision u/s 35 of the Act, which was directed against the adjudication made by the Consolidation Officer in an earlier round of litigation upon remand of the matter for reconsideration by the appellate authority under sub-section (6) of Section 10 of the Act. In view of the settled proposition of law, once the matter is remanded for fresh consideration, or for hearing de novo and if the aggrieved party wants to challenge, obviously, it has to take recourse to the normal channel statutorily provided under the Act. There could hardly be dispute to this proposition.

2. The Bihar Consolidation of Holdings & Prevention of Fragmentation Act, 1956 (Bihar Act XXII of 1956) (For short "the Act"), which received the assent of the President on 6th February, 1956, is designed to provide for the consolidation of holdings and prevention of fragmentation. The object is quite wholesome and healthy. This Act, has been enacted with a view to encourage amalgamation of agricultural lands to save interest of the agriculturists. In Section 10 of the Act provisions have been made for publication of registers of lands and statement of principles and objections thereon. Section 10 of the Act is attracted for consideration of the merits of the matter on hand. Therefore, it is quoted, profitably, hereunder:--

"10. Publication of registers of lands and statement of principles and objections thereon.--(1) The registers prepared under sub-section (2) of section 9 and the statement of principles prepared u/s 9A shall be published in the manner prescribed and shall remain published for not less than 30 days.

(2) Any person may, within 45 days of the date of publication of the register under sub-section (1) file before the Assistant Consolidation Officer, objection in respect thereof, disputing the correctness and nature of entries in the records or in the statement of principles:

(3) The Assistant Consolidation Officer shall, after hearing the persons interested and after such enquiries as may be necessary, decide the objection, settle the disputes or correct the mistake, as far as may be, by way of compromise between the parties appearing before him and pass orders on the basis of such compromise.

(4) All cases which are not disposed of by the Assistant Consolidation Officer under sub-section (3), all cases relating to valuation of plots and all cases relating to valuation of structures, tree, bamboo-clumps, well or other improvements for calculating, the amount thereof, and its apportionment amongst co-owners, if there be more owners than one, shall be forwarded by the Assistant Consolidation Officer to the Consolidation Officer who shall dispose of the same in the manner prescribed.

(5) Where objections have been filed against the statement of principles under sub-section (2) of Section 10, the Assistant Consolidation Officer, after affording opportunity of being heard to the parties concerned and after taking into consideration the view of the Village Advisory Committee, shall submit his report to the Consolidation Officer who shall dispose of the objections in the manner prescribed,

(6) Any person aggrieved by an order of the Assistant Consolidation Officer or Consolidation Officer under subsections (3), (4) or (5) may within 30 days of such order, file an appeal before the Assistant Director of Consolidation, whose decision, except as otherwise provided by or under this Act, shall be final.

(7) The Consolidation Officer shall and the Assistant Director of Consolidation

may, where necessary, before deciding an objection or an appeal, make local inspection of the unit, after giving due notice to the parties concerned and the Village Advisory Committee."

3. It could very well be seen that the register prepared under sub-section (2) of Section 9 of the Act and the statement of principles prepared u/s 9A are required to be published in the manner prescribed and shall remain published for not less than 30 days. It could further be noticed that if a person wants to raise objection, he is entitled to raise such objection within 45 days of the date of publication, before the Assistant Consolidation Officer. Under sub-section (3) of Section 10 of the Act, the Assistant Consolidation Officer is obliged to consider the objection after holding an inquiry and decide the objection to settle the dispute or correct the mistake, as far as may be, by way of compromise between the parties appearing before him and pass orders on the basis of such compromise, whereas sub-section (4) of Section 10 of the Act provides that all cases which are not disposed of by the Assistant Consolidation Officer under sub-section (3), all cases relating to valuation of plots and all cases relating to valuation of structures, tree, bamboo-clumps, well or other improvements for calculating, the amount thereof, and its apportionment amongst co-owners, if there be more owners than one, shall be forwarded by the Assistant Consolidation Officer to the Consolidation Officer who shall dispose of the same in the manner prescribed. Sub-section (5) of Section 10 provides how to deal with the objections and decide. Sub-section (6) of Section 10 of the Act empowers the aggrieved party to file an appeal against the order of the Assistant Consolidation Officer to Assistant Director of Consolidation whose decision except as otherwise provided by or under Act, shall be final. Subsection (7) of Section 10 of the Act prescribes procedures for holding of proceedings. Sub-section (6) of Section 10 of the Act provides a right to appeal, whereas Section 35 of the Act provides a revision and reference.

4. As provided under sub-section (6) of Section 10 of the Act, an appeal was preferred by respondent no. 4 challenging the order of the Consolidation Officer. The appeal was allowed to the extent of remand without going into the merits of the matters. So, factually, the matter was directed to be reconsidered by the 1st revenue authority and the first revenue authority decided in favour of the present petitioners and upheld their claim against which by taking a short-circuit, respondent No. 4 straightway invoked the provisions of Section 35 of the Act which is patently illegal. In the result, this application is allowed and the impugned order is quashed. The rule is made absolute. No costs.