
(2007) 07 PAT CK 0148
In the Patna High Court

Basgit Singh and Another

APPELLANT

Vs

The Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 09-07-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2007) PLJR 129 Supp

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

Bench : Single Bench

Final Decision : Allowed

Judgement

J.N. Bhatt, C.J.—In this writ petition under Articles 226 and 227 of the Constitution of India, the challenge is against the order of the revisional authority, dated 5.9.1988, recorded by the Deputy Director, Consolidation (Hqrs.), Patna, who is respondent No. 1, in Consolidation Revision No. 1928 of 1987, a copy whereof is placed as Annexure 3.

2. Learned Counsel for the parties are heard. Entire record is examined. The relevant provisions of the Bihar Consolidation of Holdings & Prevention of Fragmentation Act, 1956 ("Act of 1956") have been considered and examined for the purpose of appreciation of the submissions raised in this writ application under Article 226 of the Constitution of India.

3. Consolidation proceedings started at the instance of the co-sharers of the petitioners by filing a petition before the Consolidation Officer for cancelling the name of the petitioners entered in the R.S. Khatyan and to enter their names with respect to 1.25 acres of land of khata No. 4 situated in village Majharia P.S. Karakat, District Rohtas, which is hereinafter referred to as the disputed land.

4. Upon consideration of the facts and circumstances, the first revenue authority allowed the application of the co-sharers of the petitioners and decided the matter against the petitioners.

5. Thereafter, the petitioners preferred an appeal u/s 10(6) of the Act of 1956. The appeal was allowed quashing the order of the Consolidation Officer and the matter was remanded. The Consolidation Officer, thereafter, decided the matter in Remand Case No. 42 of 1979-80 in favour of the petitioners against which respondent nos.3 and 4 filed an appeal being Appeal No. 98 of 1983-84. The petitioners, however, objected to the maintainability of the appeal which was rejected by the Deputy Director, Consolidation, Rohtas, Sasaram (respondent No. 2) in Appeal No. 98/83-84 by order dated 7.7.1987, against which the petitioner preferred Revision Case No. 1928 of 1987, u/s 35 of the Act of 1956, which was also rejected by the Deputy Director, Consolidation (Hqrs), Bihar, Patna.

6. The main contention which has been advanced is referable to the point of law. In that it has been contended on behalf of the petitioners that the order in appeal, which came to be heard by the Deputy Director, Consolidation, Rohtas (respondent No. 2), in Appeal No. 98 of 1983-84 against the petitioners, is affirmed by the concurrent and similar authority, namely, Deputy Director, Consolidation (Hqrs)(respondent No. 1), in Consolidation Revision No. 1928 of 1987 on 5.9.1988 and, therefore, it is illegal. This submission appears to be quite weighty and full of substance while examined in the light of the facts of the case and in the backdrop of the legal provision.

7. The provision of revision and reference has been made in Section 35 of the Act of 1956. It reads here as under:

35. Revision and reference.- The Director of Consolidation may on his own motion or on the application of any party or on reference being made by any subordinate authority, call for and examine the record of any case decided or proceedings taken by such authority for the purpose of satisfying himself as to the regularity of the proceeding; or as to the correctness, legality or propriety of any order passed by such authority in the case or proceedings, and may after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit.

8. The very design and desideratum of the aforesaid provision would go to show that it empowers the Director of Consolidation to see that the statutory functionary, subordinate revenue courts, are not acting arbitrarily and illegally in exercise of the jurisdiction under the Act of 1956. Once it is successfully shown that there is illegal exercise of jurisdiction or impugned decision has resulted in the manifested perversity or illegality, it has to be put in appropriate legal shape.

9. Section 10 of the Act of 1956, as noticed above, provides for publication of registers of lands and statement of principles and objections thereon with avowed purpose. It reads as under:

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 Sub-section (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.

10. Whereas, a further provision has been made regarding decision of matters relating to changes and transaction affecting rights or interest recorded in revised records, as provided u/s 10-B of the Act of 1956. It will be necessary at this stage to refer to the same provision with a view to appreciating the sole contention advanced before this court. It reads as under:

10-B. Decision of matters relating to changes and transaction affecting rights or interest recorded in revised records.- (1) All matters relating to changes and transfers affecting any rights or interests recorded in the register of land published under Sub-section (1) of Section 16 for which cause of action had not arisen when proceedings under Sections 8 and 9 were started or were in progress may be raised before the Consolidation Officer within thirty days of

cause of action, but not later than the date of notification u/s 26-A or under Sub-section (1) of Section 4A.

(2) The provisions of Sections 8 and 9 shall mutatis mutandis apply to the hearing and decision of any matter raised under Sub-section (1) as if it were a matter raised under the aforesaid sections.

11. The provision for appeal against the order of the Consolidation Office has been made in Sub-section (6) of Section 10 of the Act of 1956. Therefore, if any body has any objection against the entry in survey register before the Consolidation Officer, he has been empowered to file an appeal under Sub-section (6) of Section 10 of the Act of 1956, as could be seen from the aforesaid provisions. The authorities under the Consolidation Act of 1956, being judicial authorities, obviously, have to pass judicial orders. They cannot pass the order in perfunctory manner. They have also to record reasons.

12. It will be interesting to refer to the definitional clause of the Act of 1956 as devised and designed for consolidation of holdings and prevention of fragmentation in the State of Bihar. Section 2 provides for definitions and Section 2(4) defines "Director of Consolidation". It means the officer appointed as such by the State Government to exercise the powers and perform the duties of Director of Consolidation under this Act or the rules made thereunder and shall include an Additional Director of Consolidation and a Joint Director of Consolidation, who is competent to hear the revision u/s 35 of the Act of 1956.

13. It could very well be visualized from the aforesaid provisions that it does not include Deputy Director of Consolidation. Nothing has been brought on record or shown successfully that such powers are further delegated later on and, therefore, in absence thereof, clear interpretation of the definitional Clause 2(4) makes no manner of doubt that the revision can be heard against the appeal by the Director of Consolidation, which includes Additional Director of Consolidation and Joint Director of Consolidation. If any authority other than that prescribed in Section 2(4) decides the revision, that will not be legal and valid in law.

14. In the present case there is no dispute about the fact that the Revision No. 1928 of 1987, by order dated 5.9.1988 has been decided by the Deputy Director Consolidation, (Hqrs), Patna, who is respondent No. 1, affirming the order of Deputy Director Consolidation, Rohtas (respondent No. 2) in Appeal No. 98 of 1983-84 u/s 10(6) of the Act, 1956.

15. It becomes, therefore, clear and evident that the revisional authority, here the Deputy Director, Consolidation is not competent to hear the revision. Again it needs to be stated that the basic cannon of fairplay of the system under the jurisprudence, as well as, fundamental frame of the rule of law makes it clear that concurrent authority cannot decide the merit of the matter in appeal or revision. In the present case such basic cannon and fairplay has been flagrantly violated as the same or the concurrent authority cannot decide the matter in appeal as well at revision. No person has jurisdiction to decide the matter as

appellate authority, as well as, the revisional authority, who happens to be same or concurrent authority or same legal personality. It is also cardinal principle of law that justice should not only be done but it must seem to have been done, whereas, in the present application the impugned order recorded by the same and concurrent authority, in appeal and revision, is challenged in this application under Article 226 of the Constitution and, therefore, the same is without jurisdiction and is in direct infraction of the statutory provision incorporated in Section 35 of the Act of 1956. Therefore, in the opinion of this Court, the impugned order recorded by the Deputy Director, Consolidation (Hqrs) Patna, respondent No. 1, in Consolidation Revision No. 1928 of 1987, dated 5.9.1988, against the order of the appellate authority, namely, Deputy Director, Consolidation, Rohtas (respondent No. 2), dated 7.7.1987, purported to have been recorded u/s 10(6) of the Act of 1956 is illegal and invalid. The same is, accordingly, quashed and set aside.

16. Since the matter pertains to right of immovable property, this Court is inclined to follow the principles adopted in similarly situated other cases of this Court and is inclined to remit the matter back to the Director, Consolidation to hear the entire matter afresh in terms of Section 35 of the Act of 1956 after restoring the Consolidation Revision No. 1928 of 1987 to its original number and giving fresh opportunity of hearing to the parties in accordance with law. Since the matter is very old one, it shall be decided, expeditiously, as early as possible within upper time limit of six months of the receipt of the writ of this Court.

17. This application shall, accordingly, stand allowed but without costs. Rule is made absolute.