
(2007) 02 PAT CK 0105

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6489 of 1988

Bipat Gope and Others

APPELLANT

Vs

Principal Consolidation Training Institute and Others

RESPONDENT

Date of Decision : 09-02-2007

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 10, 10(1), 10(3), 10(4), 10(6)
Constitution of India, 1950 — Article 226, 227

Citation : (2007) 2 BLJR 1766 : (2007) 3 PLJR 759

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

Bench : Single Bench

Advocate : Rajendra Prasad, Pramod Kumar and Ritesh Kumar, for the Appellant; Anil Kumar Verma, JC to S.C. 6 and Mahesh Prasad, No. 2, for the Respondent

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 judgment in Revision Case Nos. 1809, 1810, and 1811 of 1983 dated 25.6.1988 (Annexure-6.) passed by respondent No. 1 u/s 35 of the Bihar Consolidations of Holdings and Prevention of Fragmentation Act, 1956 (In short "the 1956 Act"), whereby the decisions of the Consolidation Officer and that of the Deputy Director, Consolidation, in favour of the petitioners came to be reversed, inter alia, contending that it is contrary to law and is rendered without examining material documentary evidence which is countered by the learned Counsel for the respondents.

2. There is no dispute about the fact that in respect of the subject matter, a civil suit came to be filed by the petitioners and upon consideration of the facts and circumstances, it came to be decreed which was carried in appeal by the respondents but it came to have abated in terms of Section 4(c) of the 1956 Act against which no further action had been taken.

3. The disputed immovable properties are lands located in three villages namely, Mauzas Islampur, Chandra Natai and Bhaishinbiga (Dhobdiha), details of which are enumerated hereinbelow as per page 6 of the petition:

Mauza Islampur:

Khata No.

Plot No.

Area

a. d.

439

10354

0 - 15

6800

10355

6800

0 - 08

10356

6800

0 - 74

10348

6795

0 - 25

1 - 22

440

10343

6789 & 6790

0 - 81

10344

6790 & 6791

1 - 14

10345

6791

0 - 49

10346

6792, 6793, 6794

2 - 31

10347

6790

1 - 04

10349

6796

0 - 32

10350

0 - 76

6796, 6797

10351

6796

0 - 49

10352

1 - 03

8 - 39

441

10353

6799

4 - 00

Mauza Chandra Natai

Tauzi No. 12772

Khata No. 24

51

0 - 39

72

52

0 - 40

12

53

0 - 40

12

54

0 - 39

12

1 - 58

Mauza Bhasin Bigha

215

563

0 - 42

568

0 - 57

575

0 - 44

629

0 - 03

1 - 46

4. For the appreciation of the merits of the matter, the genealogy of the parties has been shown and placed in a tabular form hereinbelow:

Mangar Gope		-----				Karma Chedi					
Hari		x	x		-----			Somari Shebalak			
-----					Bipat Ramdeo	-----	Shitapati Devi				
				Mahabir Bhatu Bisun Bijay							

5. It appears that pursuant to the objection in respect of the lands in question in terms of the provisions of Section 10(2) of the 1956 Act, proceedings before the Assistant Consolidation Officer were conducted. Section 10 of the 1956 Act reads 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 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.

6. 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. Sub-section (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.

7. The Assistant Consolidation Officer, upon consideration and evaluation of the objections raised by the petitioner in respect of the subject of lands, allowed the objection and directed, accordingly, to mutate the entry in the register of lands in terms of Sub-section (1) of Section 10 of the 1956 Act against which an appeal came to be filed by the respondents u/s 10(6) before the Deputy Director of Consolidation, unsuccessfully. The matter, was carried further in revision u/s 35 of the 1956 Act, successfully and, therefore, the petitioners have challenged the legality and validity of the judgment of the revisional court by filing this petition.

8. The impugned judgment of the revisional court is examined threadbare. There cannot be any doubt about the factum that scope of revision is circumscribed to an extent in order to quash and set aside the concurrent findings of fact recorded by the two revenue courts. Therefore, there ought to be a case of illegality, perversity or serious prejudice or non-examination of the documents.

9. After having considered the facts and circumstances and the submissions raised before this Court by the learned Counsels for the parties, this Court is of the clear opinion that the Civil Court decreed the suit in respect of the partition of the properties between the petitioner and other heirs which ought to have been considered in right perspective. Merely because the decree of the partition suit in appeal stands abated, does not mean that it cannot be carried further. It

is true that u/s 4(c) of the 1956 Act, every proceeding for the correction of records and every suit and proceedings in respect of declaration of rights or interest in any land lying in the area or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any court or authority whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending stand abated.

10. Section 4 of the 1956 Act provides to the effect of notification u/s 3(1) of the 1956 Act whereas Section 6 provides for declaration of the State Government of its intention to make scheme of consolidation of holdings. In this context, it has been contended on behalf of other side that the decree passed in the partition suit and subsequent challenge in the appeal by respondent stood abated and, therefore, they are non-est and could not be considered and despite that two revenue authorities had considered while dealing with the objections filed by the petitioners.

11. Prima facie the aforesaid submissions will appear to be attractive but not acceptable in view of the clear interpretation made by the Full Bench in the case of Hari Mohan Thakur and Ors. v. Mahendra Narain Chand and Ors. 1987 PLJR 88 (FB). It has been held in the aforesaid case that partition decree or proceedings shall not abate in terms of the provisions of Section 4(c) of the 1956 Act. The provisions of Section 4(c) does not apply to the execution proceeding. Similarly in a suit for partition, this Section will not apply to the proceedings subsequent to the preliminary decree which has achieved finality in pursuance of the preparation of the final decree as the proceedings for preparation of final decree is nothing but a proceeding in the nature of execution of the said preliminary decree or final decree in a partition suit. The Full Bench has thus in clear terms recorded and expounded a proposition that decree in a suit for partition of property or separate decision assailed therein will not be included and covered by Section 4(c) of the 1956 Act.

12. The Full Bench ratio still holds the field. The entire scheme of 1956 Act and the underlying design and desideratum of the proposition of Section 4(c) of the 1956 Act have been elucidated and expounded. Therefore, the contention which, is advanced on behalf of the petitioners that decree in the partition suit shall not abate in terms of the provisions of Section 4(c) of the 1956 Act stands fortified. As against that the learned Counsel for the respondents has placed reliance on a decision of the Apex Court rendered in the case of Most. Bibi Rahmani Khatoon and Ors v. Harkoo Gope and Ors. 1981 BBCJ 197 (SC).

13. After having considered the proposition expounded in the aforesaid decisions, there is no manner of doubt that the said decision does not apply to the facts of the present case.

14. In the net result for the foregoing grounds the impugned order of the

revisional court u/s 35 of the 1956 Act is required to be quashed and set aside restoring the order passed by the Assistant Consolidation Officer which has also come to be confirmed in the appeal while allowing this writ petition. Since the order of the revisional court is not legal and smacks of non-reading of material documents, the petition, therefore, shall stand allowed. Rule is made absolute. No costs.