

(2019) 05 PAT CK 0081

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8077 Of 2008, 15404 Of 2004

Budhu Yadav And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 07-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Bihar Consolidation Of Holdings And Prevention Of Fragmentation Act, 1956 — Section 4, 35

Bihar Tenancy Act, 1885 — Section 103, 106

Citation : (2019) 05 PAT CK 0081

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Rajesh Kumar Singh, Vivekanand Singh, Surendra Prasad Singh

Final Decision : Dismissed

Judgement

1. A common order dated 26.10.1997 passed by the Director Consolidation, Bihar, in Revision Case No. 260 of 1994 (Kesho Yadav and Others vs.

Budhu Yadav and Others) and Revision Case No. 691 of 1994 (Budhu Yadav and Others vs. Kesho Yadav and Others), both filed under Section 35

of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as "the Consolidation Act"), is under

challenge in both these writ applications filed by the same petitioners and, therefore, both the matters have been heard together and are being disposed

of by present common judgment and order.

2. I have heard Mr. Rajesh Kumar Singh, learned counsel appearing on behalf of the petitioners assisted by Mr. Vivekanand Singh and Mr. Surendra

Prasad Singh, learned counsel appearing on behalf of the respondent No.5. Learned State counsel has also assisted the Court.

3. It is to be noted, at the very outset, that C.W.J.C. No. 15404 of 2004 was filed on 08.12.2004, after more than seven years of passing of the

impugned order. The petitioners thereafter chose to file another writ application, giving rise to C.W.J.C. No. 8077 of 2008, after lapse of more than

three and half years of filing of the first writ application, seeking quashing of the same order dated 26.10.1997, on the plea that the order was

passed in the two separate revisional proceedings. In the writ petition filed in 2008, it has been stated that in the previous writ application only that part

of the order of the revisional authority has been put to challenge, which related to the revision filed by the respondents (Revision Case No. 260 of

1994). Revision case No. 691 of 1994 was filed by the petitioners.

4. There is, thus, apparent delay of more than seven years in filing of the first writ application and the only explanation for such delay, which finds

place in paragraph 16 of C.W.J.C. No. 15404 of 2004, is to the effect that the petitioners did not have any information about disposal of their

Consolidation Revision Case No. 260 of 1994 and upon learning so, they applied for the certified copy of the order, which was received on 07.10.2004,

whereafter the writ application was filed. The said explanation by the petitioners justifying delay of seven years in approaching this Court to invoke

extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not appear to be justified and convincing to this Court. I will deal with

this aspect of delay and laches on part of the petitioner, as one of the reasons, for non interference with the order impugned, later after taking note of

certain facts which essentially need to be taken note of.

5. The dispute relates to lands appertaining to revisional survey khata No. 111, having been carved out from cadestral survey khata No.23 and 24,

admeasuring 4.46 acre and 4.25 acre respectively (total 8.71 acre) of village Ataria, in the district of Kaimur. The petitioners and the contesting

respondents have common ancestors. The genealogical table of the family, as available in the impugned order of Director Consolidation itself is not in

dispute, which is being reproduced below: -

6. The dispute is between two branches originating from the common ancestor Kallu Ahir. The total area of the land held by the said Kallu Ahir was,

admittedly, 8.71 acres of the said survey khata No. 23 and 24.

7. It is the petitioners case that there was partition in the family in 1942,

whereafter they came in peaceful possession over the land of their respective shares and in the revisional survey khata No.111, admeasuring 5.74 acres was rightly recorded in the name of Sadho Yadav @ Sadho Ahir and Sitaram Yadav @ Sitaram Ahir. It is also the case of the petitioners that ancestors of respondent No.5, namely, Sitaram Yadav @ Sitaram Ahir had sold out substantial land of khata No. 111 through different sale deeds. Since Sadho Yadav @ Sadho Ahir had not alienated any land of his share, the area of the land held by him was certainly more than that held by Sitaram Yadav @ Sitaram Ahir, which was shown in the revisional survey entry. The area was notified for consolidation operations under the Consolidation Act. During the pendency of the consolidation proceedings, Sitaram Yadav @ Sitaram Ahir filed an application before the Consolidation Officer, Durgawati seeking correction in the revisional survey entry asserting that out of mistake, the survey authorities had recorded much more land in the name of the respondentsâ?? branch compared to the petitionersâ?? share and less area was accordingly recorded in their name, than what they were entitled to. The Consolidation Officer, however, did not find any necessity of alteration/rectification with the revisional survey entry and accordingly dismissed the petition of Sitaram Yadav @ Sitaram Ahir on 20.09.1989. An appeal was thereafter preferred by Sitaram Yadav @ Sitaram Ahir before the Assistant Director of Consolidation, Rohtas at Sasaram, which was partly allowed in favour of Sitaram Yadav @ Sitaram Ahir by order dated 28.11.1991 passed in Appeal Case No. 1218 of 1989-90. This order was challenged by both the parties, through Revision Case No. 691 of 1994 filed by the petitioners and Revision Case No. 260 of 1994 filed by the respondents. It is also to be noted that the respondent Kesho Yadav had filed a suit seeking partition in the family, giving rise to Partition Suit No. 3 of 1989, which could not be maintained because of the bar under Section 4 of the Consolidation Act, during the pendency of the consolidation proceedings.

8. Both the aforesaid revision applications came to be disposed of by the Director Consolidation, Bihar, by his common order dated 26.10.1997, which is impugned in these two writ petitions. The Director Consolidation, has recorded his finding, based on the evidence adduced in course of the consolidation proceedings that Sitaram Yadav @ Sitaram Ahir had disposed of

2.47 $\frac{1}{4}$ acre of land and, therefore, he was entitled to hold $\frac{1}{2}$ (half) of the joint family property after deducting the area ($2.47\frac{1}{2}$ acre), which he had sold through four sale deeds. The revisional Court recorded that the respondents were, thus, entitled to hold $1.88\frac{1}{4}$ acre of land, whereas they were shown in possession of 19 decimals only, in the Revisional Survey records in khesra No.537 (three decimals) and khesra No.320 (16 decimals). The Director Consolidation accordingly recorded his finding that the respondents had valid claim over $1.69\frac{1}{4}$ acres of land in addition to what was being shown in the revisional survey records. It appears from the impugned order that a plea was taken on behalf of the petitioners that it was because of the different valuations of the land allotted to the two branches in the family, during the family partition held in 1942, that more area of land had fallen in the branch of the petitioners, due to less value of land. In view of the plea so taken, the revisional Court directed the petitioners to allow the respondents to have possession over $1.69\frac{1}{2}$ acre of land, which is of minimum value by his own conscience and consent, within one month, which the Consolidation Officer, Durgawati, would record, in the name of the respondents. Consequently, the Revisional Authority allowed the Revision Case No. 260 of 1994 and disposed of Revisional Case No. 691 of 1994 by the impugned order dated 26.10.1997.

9. Mr. Rajesh Kumar Singh, learned counsel appearing on behalf of the petitioners, has assailed the impugned order of the revisional authority on various grounds. He has submitted that the very fact that Sitaram Yadav @ Sitaram Ahir had executed sale deeds in respect of lands falling in his share and the factum of partition in the family in 1942 itself could not have been questioned. He has secondly submitted that the revisional entry having not been challenged under Section 103/106 of the Bihar Tenancy Act, 1885, the same could not be questioned under the provisions of the Consolidation Act. He has also argued that the revision petition filed by the respondents before the Director Consolidation, giving rise to Consolidation Revision Case No. 260 of 1994, was barred by limitation, having been filed nearly three years after the order was passed by the Assistant Director, and without condoning the delay, the Revisional Authority ought not have entertained the revision application. He has also argued that the authorities under the Consolidation Act have not contemplated and scrutinized in

appropriate and actual direction, the evidence adduced by the parties, both oral and documentary, which were enough to suggest that Sitaram Yadav @ Sitaram Ahir had disposed of more properties and had written bazidawa in favour of the petitioners.

10. The submissions made by Mr. Singh questioning the impugned order of the Director Consolidation, on the ground that the revision application was itself not maintainable, being barred by limitation and so could not have been entertained without condoning the delay, deserves to be rejected for two reasons. Firstly, the petitioners are estopped from taking such plea as they had themselves filed the revision application after filing of the revision application by the respondents. Secondly, in the writ application, C.W.J.C. No. 15404 of 2004, filed more than seven years after the date of passing of the order in the revision case, no such plea that the revision petition was barred by limitation and there was no condonation of delay, has been taken.

For the first time, nearly 11 years after passing of the said order, in subsequent writ application, in C.W.J.C. No. 8077 of 2008, this plea has been taken and argued. At this stage, I need to advert to the findings recorded by the Assistant Director Consolidation, in his order dated 28.11.1991, to the effect that more area of land was recorded in the name of the members of the branch of these petitioners than what they were entitled to. The Assistant Director Consolidation by the aforesaid order had directed for allotment of chak accordingly after entering one more acre of land in favour of the respondents' branch after deducting the same from the petitioners' portion.

11. It is evident, thus, that there is concurrent finding recorded by the Consolidation Authorities that in survey records more area of land was recorded in the name of these petitioners in respect of the land held by the family admeasuring 8.71 acre.

12. Mr. Rajesh Kumar Singh has attempted to convince me that Sitaram Yadav @ Sitaram Ahir had written a bazidawa and had relinquished his share in favour of these petitioners, in order to establish his case that there was no error in the survey record entries. He has, however, failed to lay out that the petitioners were able to produce any evidence before the Consolidation Authorities that Sitaram Yadav @ Sitaram Ahir had transferred more than 2.47 acres of land and that these petitioners had self acquired any

property because of which they possessed more area of land as shown in the revisional survey records.

13. The findings of the facts recorded by the Revisional Court in the impugned order, in my view, cannot be said to be suffering from any perversity or such illegality necessitating this Court's interference with the said order. The argument that since the revisional survey entry was not challenged by the respondents under Section 103 of 106 of the Bihar Tenancy Act, 1885, the same could not have been questioned in consolidation proceeding, is not acceptable to this Court. It is true that there is presumption of correctness of entries made in the records of rights, but it is equally true that a right or title over the land cannot be said to be created on the basis of such entries, the presumption of correction being rebuttable.

14. What is evident from the order impugned is that the Revisional Court has found the respondents entitled to $\frac{1}{2}$ (half) of the area of the land held by the family having common ancestor, Kallu Ahir. The Director Consolidation, exercising power of a Court under the provisions of the Consolidation Act, has passed the order, which cannot be, in my opinion, said to be beyond jurisdiction.

15. Coming back to the question of unexplained delay in filing of these writ applications, I must take note of Supreme Court's decision in case of Karnataka Power Corporation Limited through its Chairman and Managing Director and Others vs. K. Thangappan and Another, reported in (2006) 4 SCC 322, which casts an obligation on the High Courts, while exercising their discretionary powers under Article 226 of the Constitution of India to keep in mind delay or laches on part of a litigant. It is true that it is within the discretion of the Court, even when a fundamental right is involved, to entertain or not a belated claim raised in a writ proceeding. In the said case, the Supreme Court has noticed an earlier decision in case of Durga Prasad v. Chief Controller of Imports and Exports, reported in (1969) 1 SCC 185, in which the Supreme Court has observed thus :

It is well-settled that under Article 226, the power of the High Court to issue an appropriate writ is discretionary. There can be no doubt that if a citizen moves the High Court under Article 226, and contends that his fundamental rights have been contravened by any executive action, the High Court would naturally like to give relief to him; but

even in such a case, if the petitioner has been guilty of laches, and there are other relevant circumstances which indicate that it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the petitioner, ends of justice may require that the High Court should refuse to issue a writ. There can be little doubt that if it is shown that a party moving the High Court under Article 226 for a writ is, in substance, claiming a relief which under the law of limitation was barred at the time when the writ petition was filed, the High Court would refuse to grant any relief in its writ jurisdiction. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the High Court and like all matters left to the discretion of the Court, in this matter too discretion must be exercised judiciously and reasonably.

16. It must be added that the following apt observations, in this regard, made in *Lindsay Petroleum Company v. Prosper Armstrong Hurd etc.*, reported in (1874 (5) P.C. 221 at page 239), by Sir Barnes Peacock, have been quoted with approval by the Supreme Court in case of *Moon Mills Ltd. v. Industrial Courts* (AIR 1967 SC 1450) and *Maharashtra State Road Transport Corporation v. Balwant Regular Motor Services* (AIR 1969 SC 329) :-

“Now, the doctrine of laches in Courts of Equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially

equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the

interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates

to the remedy.â??

17. What is evident from the facts, which I have already noted, that there is no acceptable justification for delay of more than seven years in filing the

writ application. Mr. Rajesh Kumar Singh, learned counsel, has submitted that since this writ application has been admitted by order dated 14.05.2008

and after having recorded prima facie case, the effect of the impugned order has been stayed, this Court may not dismiss the writ applications only on

the ground of delay and laches.

18. Delay and laches on the part of the petitioners is not the only ground why I am not inclined to interfere with the impugned order. I have kept in my

mind, the observations made by the Supreme Court, in case of K. Thangappan (supra), that while considering the case of the rival parties delay and

laches is also an important factor. Upon perusal of the impugned order of the Revisional Court, it can be easily discerned that the rival claims of the

parties have been considered after appreciating the evidence on record. Nowhere it is pleaded that the finding recorded by the Director Consolidation

is against the materials, which were available before him. There is nothing to sight that he has taken into account any material, which was irrelevant

for the purpose of adjudication of the dispute between the parties. The legal proposition that judicial review is not akin to adjudication on merits by

appreciating the evidence as an appellate authority is a settled principle, which has been stated and reiterated by the Supreme Court in various

pronouncements, particularly the decisions in case of *Nirmala J. Jhala v. State of Gujarat*, reported in (2013) 4 SCC 301 relying on various other

decisions, namely, *State of T.N. v. S. Subramaniam*, reported in (1996) 7 SCC 509, *R.S.Saini v. State of Punjab*, reported in (1999) 8 SCC 90 and

Government of A.P. v. Mohd. Nasrullah Khan, reported in (2006) 2 SCC 373.

19. In case of *Zora Singh v. J.M.Tandon*, reported in (1971) 3 SCC 834, the Supreme Court has lucidly stated the law that in a writ application of

certiorari, the superior Court does not sit in appeal, rather exercises only supervisory jurisdiction and, therefore, does not enter into the question of

sufficiency of evidence. Applying the well recognised parameters of exercise of power of judicial review, principles of which have been laid down in

case of *Tata Cellular v. Union of India*, reported in (1994) 6 SCC 651, I do not feel inclined to interfere with the impugned decision of the Director

Consolidation, which is apparently based on appreciation of evidence, on objective basis. By no means, power of judicial review can be exercised, the

way power of appeal is exercised. A reference may be made in this regard to a relatively recent decision of the Supreme Court in case of *Royal*

Medical Trust v. Union of India, reported in (2017) 16 SCC 605 (paragraph 50).

20. For the reasons noted above, I do not find any merit in these applications, which are accordingly dismissed.

21. There shall be no order as to costs.